



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

## FIFTH SECTION

### CASE OF KUBÁT AND OTHERS v. THE CZECH REPUBLIC

*(Applications nos. 61721/19 and 5 others –  
see appended list)*

## JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Proportionate denial of retroactive payment of difference in judges' salaries, unconstitutionally reduced during 2011-2014 financial crisis but legal provisions repealed only *pro futuro* • Decision in accordance with domestic law and pursuing a legitimate aim in the general interest based on consideration of economic and social issues • Impugned measure not putting at risk judges' ability to exercise functions independently and impartially or constituting a threat to their livelihood • Level of judges' remuneration to be fixed to protect them from pressures aimed at influencing their decisions and their behaviour in general

Art 6 § 1 (civil) • Fair hearing • Domestic courts' decisions dismissing the applicants' claims sufficiently reasoned and civil proceedings fair

STRASBOURG

22 June 2023

**FINAL**

**06/11/2023**

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



**In the case of Kubát and Others v. the Czech Republic,**

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

Lado Chanturia, *President*,  
Carlo Ranzoni,  
Mārtiņš Mits,  
Stéphanie Mourou-Vikström,  
Mattias Guyomar,  
Mykola Gnatovskyy, *judges*,  
Mahulena Hofmannová, *ad hoc judge*,  
and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 61721/19, 5496/20, 21318/20, 33522/20, 43039/20 and 55448/20) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Czech nationals, Mr Ondřej Kubát, Mr Robert Ožvald, Ms Alena Makovcová, Ms Adriana Pilařová, Ms Soňa Biskupová Fišerová and Mr Miroslav Pečený (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Czech Government (“the Government”) of the complaints under Article 6 § 1, Article 1 of Protocol No. 1 and Article 14 in conjunction with Article 1 of Protocol No. 1, and to declare inadmissible the remainder of the applications;

the parties’ observations;

the decision of the President of the Chamber to appoint Ms Mahulena Hofmannová to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), considering that Ms Kateřina Šimáčková, the judge elected in respect of the Czech Republic, withdrew from sitting in the case (Rule 28),

Having deliberated in private on 30 May 2023,

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

## INTRODUCTION

1. The applicants, who are serving judges, complained that their claims to a retroactive payment of the difference in their salaries had been refused owing to the fact that legislative amendments, by virtue of which the multiplication factor used to calculate judges’ salaries had been decreased for the period 2011-2014, had been repealed by the Constitutional Court only *pro futuro*. They complained, in particular, that the reasoning of the domestic courts’ decisions had been insufficient (Article 6 § 1 of the Convention), that their legitimate expectation of receiving a full salary during the period in question had not been met (Article 1 of Protocol No. 1) and that they had been

discriminated against compared to other public servants and other individuals (Article 14 taken in conjunction with Article 1 of Protocol No. 1).

## THE FACTS

2. The applicants' years of birth and places of residence and the names of their legal representatives can be found in the appended table.

3. The Government were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

### I. GENERAL BACKGROUND

#### A. Summary of the relevant events

5. The applicants are serving judges whose salaries were reduced for the period 2011-2014, following amendments to the Salaries Act; those amendments decreased, *inter alia*, the multiplication factor that linked judges' base salary to the average salary in the non-commercial sector (*nepodnikatelská sféra*) of the domestic economy (specifically – judges' salary base was calculated by multiplying the average nominal monthly salary in the non-commercial sector by the multiplication factor – see paragraphs 19, 20 and 23 below).

6. Those amendments were later invalidated as unconstitutional by the plenary of the Constitutional Court (see paragraphs 10 and 11 below); however, the provisions relating to the decreased multiplication factor were repealed only with *ex nunc/pro futuro* effect. As a result, the judges were not able to recover the difference in their salaries for the period 2013-2014 (that is to say the difference between the salaries that they had actually received and what would have been their salaries had the multiplication factor 3 been applied).

7. On 29 December 2014 the Supreme Court granted a claim submitted by a judge, who is not among the applicants, and ordered the State to pay to her the difference in her salary for the period 2011-2012 (judgment no. 21 Cdo 1440/2014 of the Supreme Court). Later, that judgment was partly quashed by the Constitutional Court (see paragraph 12 below), holding that the *ex nunc* repealing effect was applicable not only in respect of payment of the difference in judges' salaries for the period 2013-2014 but also for the period 2011-2012.

The remaining part of the Supreme Court's judgment no. 21 Cdo 1440/2014 – according to which the claimant's base salary had not been determined correctly because the relevant calculation had not reflected (taking into account the average nominal salary in the non-

commercial sector) whether the receiver of that average salary worked full- or only part-time – remained unchanged.

8. In February 2015, representatives of the government and of the judiciary reached an agreement according to which the State undertook to pay judges the difference between salaries actually paid in 2012-2014 and the amount that they would have received had the correct calculation of the base salary been applied in accordance with the Supreme Court's judgment no. 21 Cdo 1440/2014 (see paragraph 7 above). The judges who accepted that agreement thereby waived all other salary claims against the State in respect of the period 2011-2014. All judges were given an opportunity to enter the agreement; eventually, about 96% of them signed it, but the applicants did not.

9. Having not entered into the above-mentioned agreement, the applicants instituted proceedings claiming, *inter alia*, the retroactive payment of the difference in their salaries. They were unsuccessful (see paragraphs 13-18 below).

**B. Repealing judgments of the Constitutional Court, the *pro futuro* effect of which is challenged by the applicants**

10. In its plenary judgment no. Pl. ÚS 33/11 of 3 May 2012 (see paragraph 22 below), the Constitutional Court observed that, in view of the principle of the separation of powers, the legislature had “different room” for manoeuvre in respect of restrictions on salaries of judges, compared to restrictions on salaries in other branches of the public sector. Therefore, it was only in very exceptional circumstances (such as the State finding itself in a poor financial situation) that interference with the material security of judges could be considered justified; even in such circumstances, however, account had to be taken of the different position of judges compared to that of representatives of the executive and legislative branches, and of the need for them to preserve their dignity and judicial independence. The Constitutional Court found, however, that in the case at hand, it was not possible to accept the argument according to which it was necessary to reduce public expenses by way of restricting judges' salaries, given that the relevant legislation lacked any reference to “exceptional circumstances” (as mentioned above) and that the available data showed a very high level of salaries received by senior public servants such as deputy ministers and departmental directors. In such a situation, the impugned restrictions on judges' salaries could no longer be considered to be extraordinary and proportionate; rather, their purpose appeared to be a decrease in judges' salaries, which the executive power (that is to say the government) and legislature seemed to consider too high. The Constitutional Court was thus of the opinion that the lowering of the multiplication factor amounted to a disproportionate interference aimed only at judges, which did not comply

with the conditions set out in its case-law governing restrictions on judges' salaries.

11. In its plenary judgment no. Pl. ÚS 28/13 of 10 July 2014 repealing the 2.75 multiplication factor (see paragraph 24 below), the Constitutional Court noted that the solidarity of judges with other employees in the non-commercial sector stemmed from the multiplication factor linking judges' base salary to the average salary in the non-commercial sector; if the latter decreased, so did judges' base salary (albeit with a delay). Furthermore, the Constitutional Court noted, the lowering of that multiplication factor from 3 to 2.75 had not been based on any analysis allowing the conclusion that such interference was proportionate and respectful of the limits of judges' material security (as defined by constitutional law); nor had it reflected the legislature's restricted room for manoeuvre. The freezing of judges' salaries in 2002-2011 had already facilitated considerable budgetary savings, so judges had legitimately expected in 2011 that the system linking judges' salaries to the average salary in the non-commercial sector would be restored. Therefore, while a difficult economic situation might have given cause for certain restrictions, the room for such restrictions had already been used to the maximum extent (if not exhausted), given that it was not (and had not been) possible to describe the country as being on the verge of collapse. According to the Constitutional Court, the legislature and the executive power had committed a strategic error in respect of the regulation of judges' material security: unlike some neighbouring States affected by the financial and economic crisis, they had not adopted general and long-term fundamental measures in respect of public servants and partial and temporary measures in respect of judges, but instead had taken the opposite approach. Given the circumstances, the argument citing the limited possibilities of the State budget could not be accepted in view of the fact that the impugned legislation did not rely on any exceptional circumstances justifying the prioritisation of equal restrictions on the remuneration of public servants and judges over the principle of judicial independence. The restriction consisting of introducing the 2.75 multiplication factor was thus deemed by the Constitutional Court to be contrary to the Constitution.

However, in order for the legislature to engage in a proper procedure aimed at adopting a constitutionally compliant link between the average salary in the non-commercial sector and the base salary of judges, the Constitutional Court had suspended the enforceability of the judgment for a reasonable period of time (until 31 December 2014). It observed that the repeal of a law did not, in principle, have any retroactive effect and that a repealing judgment (*zrušující nálezení* – that is, a judgment delivered by the Constitutional Court that had the effect of repealing a law) that was not accompanied by a suspension of enforceability had *ex nunc* effects. Consequently, a repealed provision did not expire until the date on which the judgment in question became enforceable. However, where a repeal was based on the finding that

the application of the repealed legislation amounted to a violation of individuals' fundamental rights, the individuals concerned should in principle be afforded protection through the retroactive non-application of the unconstitutional legislation in question, provided that the provision of such protection was not precluded by another fundamental right or important point of public interest. In vertical legal relationships between the State and an individual, the protection of individual rights and freedoms should in principle prevail. Here, too, however, the fact had to be taken into account that the retroactive non-application of an unconstitutional law could, in certain circumstances, compromise the State's ability to discharge its functions (for example, with regard to the impact on the State budget) or could put other important matters of public interest under threat, with the result that, by contrast, legal certainty and the preservation of the status quo should take precedence.

The Constitutional Court further observed that although it was generally true that – even if the enforceability of a repealing judgment was suspended – the repeal should still have a manifest effect on the legal sphere in respect of the parties to the proceedings in question, in the present case the conditions were satisfied for the decision to be taken not to apply such rule. When considering the legal effects of a repealing judgment arising from a judicial review of legal provisions, it was necessary to also consider aspects – other than those that were purely procedural – that gave grounds for concluding that such a judgment should affect the parties concerned only from the moment at which it became enforceable. Thus, the present judgment did not establish the right to a retroactive payment of the difference in salary resulting from the application, as of 1 January 2013, of a factor of 2.75 instead of 3. The Constitutional Court stated that that conclusion had been guided primarily by the interest in calming the general atmosphere regarding judges' salaries that had long prevailed on the political scene and, in particular, among the general public. Although the legislature had long acted in a deliberately unconstitutional and hence inexcusable manner in that matter, the Constitutional Court had to take into account the fact that the retroactive payment of the difference would constitute a significant and, in particular, unforeseen interference with the State budget, which would inevitably exacerbate the aforementioned tensions between society and judges. Nor could the Constitutional Court overlook the fact that the retroactive payment of the sums sought would relate to a period when the Czech Republic had been in a financial crisis or at a stage when it had been slowly recovering from that crisis. Such a solution would therefore probably elicit little sympathy from society and could potentially weaken the position of judges and bring their function into disrepute. Moreover, the Constitutional Court did not consider that applying the 2.75 factor would create a situation so intolerable that it would necessarily require correction – not only *pro futuro* but also retroactively. It also considered that judges – who were supposed to

represent the true elite of society – were expected not only to be professional and to demonstrate a strong work ethic, but also to be more generous and accommodating than other groups.

12. By its plenary judgment no. Pl. ÚS 20/15 of 19 July 2016 the Constitutional Court quashed part of the Supreme Court’s judgment no. 21 Cdo 1440/2014 of 29 December 2014, which had granted a claim lodged by a judge seeking the retroactive payment of the difference between her actual salary and that which she would have received in 2011 and 2012 when calculated according to the multiplication factor 3 (see paragraph 7 above). The Constitutional Court observed that it clearly followed from the reasoning provided in judgments nos. Pl. ÚS 16/11, Pl. ÚS 33/11 and Pl. ÚS 28/13 that the objective independence of the judiciary constituted a protected interest and that there were limits to possible restrictions on the material security of judges, but that this did not “automatically” mean that the repealed provisions had resulted in an infringement of the individual right of judges to fair remuneration for the work that they had performed prior to the repeal of those provisions. Thus, although the Constitutional Court had previously repealed the provisions aimed at reducing judges’ salaries, it had done so in order to protect judicial independence, not the individual subjective rights of judges; it could not be argued that individual judges had a specific property claim that would ensure their independence as judges.

The Constitutional Court further referred to its practice (nos. Pl. ÚS 48/05, Pl. ÚS 38/06, Pl. ÚS 1/10, Pl. ÚS-st. 31/10, Pl. ÚS 23/11), according to which its judgments had no retroactive effect and repealing effects applied *ex nunc* – that is to say from the date on which the judgment in question was published in the Official Gazette, unless expressly otherwise provided by the Constitutional Court. Similarly, in a previous judgment concerning a similar matter as that in issue in the instant case (no. Pl. ÚS 16/11, see paragraph 21 above), it had already rejected the concept of a “revival” of previous legislation, observing that as a consequence of a repeal, the impugned provision would be removed but that no new legislation would be created by way of a “revival” of the preceding legislation. The Constitutional Court also noted that by its judgment no. Pl. ÚS 33/11 (see paragraph 22 above), it had not removed the multiplication factor 2.5 from section 3(3) of the Salaries Act until 31 December 2012, thereby making it clear that it considered such a base salary as constitutionally compliant until that date and that it did not find any reason for the judgment to be retroactively reflected in judges’ individual entitlements for the period prior to its enforceability.

Referring to its case-law concerning the “precedential” binding nature of its judgments, including their *ratio decidendi*, the Constitutional Court observed that a failure on the part of an ordinary court to use such *ratio decidendi* as a basis for its decision-making would amount to disregarding a binding interpretation of the constitutional law and to a violation of the

Constitution, which was why it was necessary in the instant case to quash a part of the Supreme Court's judgment. Indeed, the manner in which the Constitutional Court had dealt with the issue of judges' salaries in its judgments nos. Pl. ÚS 16/11 and Pl. ÚS 33/11 clearly indicated that the conclusions concerning the legal effects in respect of 2013 and 2014 of repealing judgment no. Pl. ÚS 28/13 could also be applied to claims concerning judges' salaries in 2011 and 2012, and the Supreme Court had not submitted relevant arguments to the contrary. The two periods under review differed only in the level of the multiplication factor employed (2.5 and 2.75, respectively); however, that did not mean that the retroactive payment of the difference in salary resulting from the application of a reduced multiplication factor was inadmissible.

## II. PROCEEDINGS BROUGHT BY THE APPLICANTS

13. The applicants each lodged a claim in respect of their salary claims concerning the period 2011-2014. Their respective claims were granted in the part concerning the difference between the salaries actually paid to them and the amount that they would have received had the correct calculation of the base salary been applied (see paragraphs 7 and 8 above). However, in so far as the applicants lodged a claim against the State for the retroactive payment of the difference in their salaries, compared to what they would have received had the multiplication factor 3 been applied, their claims were dismissed with reference to the above-mentioned plenary judgments of the Constitutional Court (in particular judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15), which did not allow such retroactive payment.

14. Subsequent constitutional appeals by the applicants were dismissed as follows.

15. The first applicant's constitutional appeal was dismissed as manifestly ill-founded by the Constitutional Court's decision no. II. ÚS 53/19 of 14 May 2019. As to the complaint raised under the right to a fair trial, the Constitutional Court noted, firstly, that the Supreme Court had responded to the applicant's arguments by stating that it had found no reason to depart from the conclusions reached by the Constitutional Court in its judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15. Secondly, in so far as the applicant challenged those conclusions from the point of view of domestic law and case-law, the Constitutional Court referred to its respective judgments, deeming that they had amply addressed that aspect and that its reasoning also applied to the applicant's objections. Concerning the complaints submitted by the first applicant under Article 1 of Protocol No. 1 and Article 14 of the Convention, the Constitutional Court considered that the Strasbourg Court's case-law did not support the first applicant's arguments. The applicant was seeking the reimbursement of the salary that had not been granted to him owing to the above-mentioned legislative amendments; indeed, the fact that

salaries in 2004-2010 had been calculated in a certain manner set by Law no. 236/1995 was not in itself sufficient to create a legitimate expectation that the same method would be applied in the following years – especially in the light of the fact that law had been repeatedly modified. The Constitutional Court further considered that, Article 1 of Protocol No. 1 not being applicable, there could not have been any violation of the prohibition of discrimination. Moreover, reiterating the fact that the State enjoyed a wide margin of appreciation, it was convinced that even if there had been a different treatment, it would not have amounted to discrimination, for the same reasons as those advanced to justify why the repeal of the above-mentioned amended provisions had not created any right to reimbursement.

16. The constitutional appeal lodged by the third applicant was dismissed as manifestly ill-founded by the Constitutional Court's decision no. II. ÚS 3160/19 of 30 October 2019. In the Constitutional Court's view, the applicant was essentially engaged in a polemic regarding its judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15, which she deemed illogical, based on non-existent facts and contrary to the principle of legal certainty and to the Constitutional Court Act. Yet the Constitutional Court had repeatedly addressed the issue of the retroactive payment of the difference in judges' salaries, not only in the judgments mentioned above but also in a number of decisions dismissing constitutional appeals lodged in cases similar to the applicant's (for example, decisions nos. I. ÚS 1700/19, II. ÚS 53/19, IV. ÚS 3692/18 and III. ÚS 2673/18), to which it could not but refer. Furthermore, the ordinary courts had already sufficiently dealt with the applicant's complaints and explained why they had not considered her arguments relevant or likely to overrule the established and long-standing case-law of the Constitutional Court. Although the latter could be overruled, a reference to a plenary judgment of the Constitutional Court dealing with an identical issue was a crucial argument and, in the interest of legal certainty, a different finding was possible only if extremely relevant and compelling arguments were put forward.

17. The constitutional appeal lodged by the fourth applicant was dismissed as manifestly ill-founded by the Constitutional Court's decision no. III. ÚS 3884/18 of 28 January 2020. As to the applicant's arguments that there was no reason to consider the Constitutional Court's judgments universally binding and that the repealing judgment no. Pl. ÚS 28/13 should have had *ex tunc* effect, the Constitutional Court found that they had been already addressed in its judgment no. Pl. ÚS 20/15. In this respect, reference was made also to a plenary opinion (no. Pl. ÚS-st. 31/10 of 14 December 2010), according to which the repealing effects of a judgment came into existence *ex nunc* – that is, only as of the day on which the judgment was published in the Official Gazette, unless that judgment expressly provided otherwise. The Constitutional Court

further noted that the finding made in its judgment no. Pl. ÚS 20/15 about the existence of a public interest in calming the atmosphere in society and fostering public confidence in the judiciary (which overrode a judge's individual right to retroactive payment) did not need to be supported by evidence because it concerned the justification of the necessity of a specific course of action taken by the Constitutional Court in respect of the temporal effects of its rulings. The Constitutional Court also observed that it did not follow from its case-law that there existed a legitimate expectation that judges would be paid a certain amount in salary.

18. The other applicants directed their constitutional appeals only against the decisions issued by the Supreme Court in respect of their appeals on points of law.

As to the second and fifth applicants (whose appeals on points of law had been rejected without an examination of the merits), the Constitutional Court endorsed the application by the Supreme Court of the relevant procedural rules regarding the conditions of admissibility of an appeal on points of law, and found its conclusions to be pertinent; it accordingly dismissed the constitutional appeals by the second and fifth applicants as manifestly ill-founded (decisions no. I. ÚS 1700/19 of 9 July 2019 and no. I. ÚS 339/20 of 25 March 2020, respectively).

In its decision no. IV. ÚS 2902/19 of 16 June 2020 the Constitutional Court dismissed as manifestly ill-founded also the constitutional appeal lodged by the sixth applicant. It endorsed the Supreme Court's decision finding the applicant's appeals on points of law not admissible on the grounds that the ordinary courts' decisions challenged by the applicant before the Supreme Court had followed the relevant established case-law and had been duly reasoned, clear, reasonable and logical. Those decisions had been based, *inter alia*, on the Constitutional Court's judgment no. Pl. ÚS 20/15, which had been binding and from which the Constitutional Court found no reason to depart in the instant case.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. LEGISLATION GOVERNING JUDGES' SALARIES

19. Law no. 236/1995 on salaries and other benefits related to the performance of the duties of representatives of State authority and certain State bodies, judges and members of the European Parliament ("the Salaries Act") applies, apart from the above-mentioned specific categories, also to members of parliament and of the government and to the President of the Czech Republic. Section 3(3) of the Act, as in force from 1 January 2004 until 31 December 2010, provided that the base salary in any given year should be three times the average nominal monthly salary in the non-commercial sector in the year preceding the previous year.

20. With effect from 1 January 2011 Law no. 425/2010 decreased the multiplication factor in the above-mentioned provision from 3 to 2.5. This amendment also added section 3b to the Salaries Act, whose subsection 1 provided that in 2011 the base salary for judges would be 54,005 Czech crowns (CZK)<sup>1</sup> (which represented a decrease of 5% compared to 2010, while three times the average nominal monthly salary in the non-commercial sector would in 2011 normally jump to CZK 69,300<sup>2</sup> owing to the restoration of valorisation mechanisms), and subsection 2 provided that in 2012 the base salary for judges would be CZK 56,849<sup>3</sup>.

21. By its plenary judgment no. Pl. ÚS 16/11 of 2 August 2011 the Constitutional Court repealed section 3b(1) of the Salaries Act as of the date of the publication of the judgment in the Official Gazette (12 September 2011). It emphasised that the only consequence of that repeal was the removal of that provision from the Czech legal order – not a *de facto* creation of new legislation by way of the “revival” of a provision that had been abrogated previously.

For procedural reasons related to the lack of standing of the appellant to seek the abrogation of section 3(3) of the Salaries Act, the Constitutional Court did not examine that provision, and the 2.5 factor remained in force.

22. Furthermore, by its plenary judgment no. Pl. ÚS 33/11 of 3 May 2012 the Constitutional Court repealed section 3b(2) as of the date of publication of the judgment in the Official Gazette (1 June 2012). At the same time, it repealed the 2.5 factor laid down in section 3(3) with effect from 1 January 2013.

23. With effect from 1 January 2013 Law no. 11/2013 introduced a new version of section 3(3) of the Salaries Act, setting the multiplication factor at 2.75.

24. By its plenary judgment no. Pl. ÚS 28/13 of 10 July 2014 the Constitutional Court repealed the 2.75 factor, in so far as it applied to judges, with effect from 1 January 2015.

25. As of 1 January 2015, section 3(3) of the Salaries Act set the multiplication factor at 3 again.

## II. THE CONSTITUTIONAL COURT ACT (LAW NO. 182/1993)

26. Pursuant to section 11, the plenary is composed of all judges of the Constitutional Court and has authority, among other things, to (i) abrogating laws or specific provisions thereof and (ii) for delivering an opinion on a legal opinion of one of its chambers which differs from the one expressed by the Constitutional Court in a judgment (*nálež*).

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<sup>1</sup> EUR 2,149 according to the exchange rate applicable on 1 January 2011.

<sup>2</sup> EUR 2,757.

<sup>3</sup> EUR 2,217 according to the exchange rate applicable on 1 January 2012.

### III. OTHER CASE-LAW OF THE CZECH CONSTITUTIONAL COURT

27. In its dismissing plenary judgment no. Pl. ÚS 16/2000 of 3 July 2000, the Constitutional Court acknowledged that judges of ordinary courts did not find themselves in a legal or economic vacuum that would isolate them from economic and social reality. Therefore, it could not be argued that those judges had an *a priori* right to a level of material security that the legislature would not be able to modify in any way and in any circumstances. On the other hand, the Constitutional Court was far from thinking that judges' salaries should be a factor that could be changed according to the views of different governments. The impugned measure (the suppression of the so-called "fourteenth salary") was thus to be considered as an exceptional act which could only be justified by serious reasons and within the framework of proportionate overall adjustments of salaries over the whole public sector.

28. In its plenary judgments nos. Pl. ÚS 55/05 of 16 January 2007 and Pl. ÚS 13/08 of 2 March 2010 dismissing applications for the invalidation of several legislative provisions that had ultimately led to the freezing of judges' salaries in the periods 2003-2004 and 2008-2010, the Constitutional Court emphasised that the impugned measure had not led to a reduction in judges' salaries or to a permanent decrease in their material security. Indeed, a temporary suspension of the increase in judges' salaries was different from any permanent deprivation of salary (or a part thereof), which would most likely have a negative impact on the level of their material security. It reiterated in this connection that, while the judges could not be said to have a permanent and unquestionable right to an annual increase in their salaries, their remuneration, in a broad sense, should be stable and irreducible in quantity – except in the event that the State found itself in truly exceptional and extraordinary circumstances.

29. In its decision no. II. ÚS 1831/18 of 19 June 2018, the Constitutional Court pointed to the explanation provided in its judgment no. Pl. ÚS 28/13 as to why it had deemed that the repeal of the provisions on judges' salaries should have *pro futuro* effect. It reiterated that a retroactive payment of the difference in judges' salaries would constitute an unforeseen interference with the State budget that would inevitably heighten tensions between society and judges. Rather than ensuring that all amounts claimed by judges were paid, the relevant repealing judgments aimed at making the legislature aware of the limits that cannot be overstepped when legislating on judges' salaries.

### IV. RELEVANT INTERNATIONAL DOCUMENTS

30. Under Chapter 6 ("Remuneration and Social Welfare") of the European Charter on the Statute for Judges (Department of Legal Affairs of the Council of Europe Document (98)23), which is a non-binding document, judges exercising judicial functions in a professional capacity are entitled to

remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions (and, more generally, their behaviour within their jurisdiction), thereby impairing their independence and impartiality.

31. In its Recommendation CM/Rec(2010)12 of 17 November 2010 on the independence, efficiency and responsibilities of judges, the Committee of Ministers observed (points 53 and 54) that the principal rules of the system of remuneration for professional judges should be laid down by law; that judges' remuneration should be commensurate with their profession and responsibilities and be sufficient to shield them from inducements aimed at influencing their decisions; and that specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

32. In its Report on the Independence of the Judicial Systems, adopted on 12–13 March 2010, the European Commission for Democracy through Law ("the Venice Commission") was of the opinion (paragraphs 51-53) that in respect of judges a level of remuneration should be guaranteed by law, and that even in times of crisis the proper functioning and the independence of the judiciary should not be endangered; courts should not be financed on the basis of discretionary decisions taken by official bodies but in a stable manner on the basis of objective and transparent criteria.

In its Amicus Curiae Brief for the Constitutional Court of "the Former Yugoslav Republic of Macedonia" concerning amendments to several laws relating to the system of salaries and remuneration of elected and appointed officials, adopted on 17–18 December 2010, the Venice Commission observed (in paragraph 20) that in the absence of an explicit constitutional prohibition, a reduction in judges' salaries could, in exceptional situations and under specific conditions, be justified and could not be regarded as amounting to an infringement of the independence of the judiciary. In the process of a reduction of judges' salaries dictated by an economic crisis, proper attention should be paid to the question of whether judges' remuneration continued to be commensurate with the dignity of a judge's profession and his or her burden of responsibility and complied with the requirement that judges' remuneration be adequate.

33. According to the 2014 and 2016 reports issued by the European Commission for the Efficiency of Justice (CEPEJ) on European judicial systems (which indicated both the gross annual salary of judges in each country and the ratio of that salary to the average gross annual salary of employees working in the national economy), in 2012 and 2014 the gross annual salary of a judge in the Czech Republic at the beginning of his or her career had been, respectively, EUR 26,492 and EUR 27,915, which had amounted to 2.1 and 2.5 times the average gross annual salary of employees in the national economy. The average level of this figure for all Council of

Europe countries in those years had been, respectively, 2.3 and 2.4 times the average national salary.

34. In its judgment C-64/16: *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* of 27 February 2018, the Court of Justice of the European Union addressed the issue of the reduction of judges' salaries within the context of the economic crisis in Portugal. Within that context, it observed, *inter alia*, that adequate financial remuneration of judges was one of the prerequisites for the independence of judicial bodies; however, that did not preclude general salary-reduction measures aimed at eliminating an excessive budget deficit.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

35. Having regard to the similar subject matter and factual background of the applications, the Court finds it appropriate to examine them, in accordance with Rule 42 § 1 of the Rules of Court, jointly in a single judgment.

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

36. The applicants complained that the domestic courts (including the Constitutional Court) had not sufficiently reasoned the decisions issued in their cases, limiting themselves to referring to the Constitutional Court's existing case-law. They submitted, in particular, that the courts had not addressed all those arguments and evidence that they had submitted with a view to refuting the reasoning of the Constitutional Court's plenary judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15, which in their view had not sufficiently explained why their repealing effect applied only *ex nunc*.

The applicants relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

#### A. Admissibility

37. 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 applicants

38. The applicants argued that while the Constitutional Court had ascribed *ex tunc* effect to judgments nos. Pl. ÚS 16/11 and Pl. ÚS 33/11 and had not indicated therein any reason why judges should not be entitled to the retroactive payment of their salary claims, it had adopted a completely different approach in its subsequent plenary judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15, thereby denying to judges the right to such a retroactive payment but without providing any legal analysis or explanation as to why it had deviated from its previous judgments.

39. The applicants also considered it unacceptable that the courts, in the proceedings brought by them personally, had failed to address their specific arguments that the key conclusions of plenary judgments Pl. ÚS 28/13 and Pl. ÚS 20/15 could not apply in their cases. In the applicants' view, those conclusions (which had been based only on general political and social grounds and had not addressed the specific legal issues to which they had subsequently pointed during the proceedings at hand) could not have had any precedential value or have constituted settled case-law. Thus, there had been no basis for dismissing their claims with a mere reference to those plenary judgments, without the courts having carefully dealt with their arguments demonstrating the lack of any exceptional circumstances.

40. The applicants contested the Government's arguments that the Constitutional Court's judgments could have *ex tunc* effect only when final criminal judgments were thereby repealed. In their view, the effect of the Constitutional Court's repealing judgments should be determined in such a way as to ensure that fundamental rights were preserved as much as possible. However, despite the fact that it had found the impugned legislation unconstitutional, by ruling that its judgment no. Pl. ÚS 28/13 would have *ex nunc* (or *pro futuro*) effect, the Constitutional Court – followed by the courts dealing with the applicants' claims, which had refused to reconsider this aspect in the light of their submissions – had completely emptied their rights of their substance (the applicants referred to *Malysh and Others v. Russia*, no. 30280/03, § 82, 11 February 2010). Moreover, their cases did not concern a "revival" of previous regulations (see paragraph 44 below) but rather the determination of their salary entitlements in accordance with their legitimate expectation that the multiplication factor 3 would be applied, and with the criteria clearly set out by the Constitutional Court.

41. In the applicants' view, they had thus suffered a violation of Article 6 of the Convention on three counts: the failure to consider their arguments and evidence, the inconsistency of the domestic decisions, and their being denied material justice.

## 2. *The Government*

42. The Government pointed out that the scope of the courts' obligation to state reasons for their decisions was to be determined in the light of the circumstances of each case and according to whether there had been a departure from the existing case-law and to what extent (in this respect, they cited *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010). Thus, detailed reasoning was not required if a court decision relied fully on the existing domestic case-law concerning the matter at stake. Furthermore, it was not contrary to Article 6 for a court not to respond to less crucial arguments put forward by an applicant if the proceedings as a whole could be described as fair (the Government referred to *Čivinskaitė v. Lithuania*, no. 21218/12, §§ 142-144, 15 September 2020).

43. The Government observed that in the cases at hand, the ordinary courts had proceeded in a manner that had been in full compliance with domestic law, under which the Constitutional Court's judgments had been binding as "quasi-precedents". Had they decided otherwise – that is to say had they granted the applicants' claims, contrary to the legal opinion previously expressed by the Constitutional Court – they would have failed to respect the binding nature of the Constitutional Court's enforceable judgments. Thus, in the Government's view, the reasoning of the ordinary courts' decisions in the applicants' cases had been in line with the requirements of Article 6 of the Convention.

44. Concerning the reasoning underlying the Constitutional Court's judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15, the Government emphasised that, as a general and traditional rule applicable in non-criminal cases, the repealing judgments of the Constitutional Court were intended to have *ex nunc* effect. Indeed, that court had constantly rejected the concept of a "revival" of previous regulations and had confirmed that as a consequence of a repeal, an impugned provision would simply be removed from the legal order (see paragraph 12 above).

45. Therefore, in the above-mentioned plenary judgments the Constitutional Court clearly had not "deviated" from the existing approach; on the contrary, the solution chosen had been fully in compliance with the relevant regulations, the constitutional-law tradition and the Constitutional Court's previous practice. Furthermore, the Constitutional Court advanced specific arguments in favour of repealing – with *ex nunc* effect – the provisions decreasing the multiplication factor used in calculating judges' salaries, such as (i) the fact that the retroactive payment of the sums requested would result in significant and unforeseen budget expenditure during a period of financial crisis or slow recovery, which would thus elicit little sympathy from the public and could potentially weaken the position of judges, (ii) the application of a decreased multiplication factor had not led to such an unbearable situation for judges that would necessarily require that situation

to be remedied not only *pro futuro* but also retroactively, (iii) judges, who were supposed to represent the elite of society, could also be expected to be more generous and accommodating than other groups, (iv) although there were limits to possible restrictions on the material security of judges, the repeal of the impugned provisions had not automatically established a breach of judges' individual right to fair remuneration for their work prior to that repeal, since the reason for the repeal had been to protect judicial independence rather than any specific property claims lodged by judges, and (v) the repealing judgments had been aimed mainly at making the legislature aware of the limits that could not be exceeded when legislating on judges' salaries, rather than at ensuring that all amounts claimed by judges would be paid (see paragraphs 11-12 and 29 above).

46. Regarding the dismissal of the constitutional appeals lodged by the first, third and fourth applicants (see paragraphs 15-17 above), the Government were convinced that the Constitutional Court had duly addressed the applicants' complaints and arguments. It was decisive in this respect that the Constitutional Court had found no reason to depart from its previous plenary judgments concerning the issue of judges' salaries. Seen in that light, the endorsement by the Constitutional Court of the reasons advanced in the ordinary courts' decisions was capable of satisfying the requirements of Article 6 § 1 of the Convention. In the Government's view, the same considerations applied to the decisions issued by the Constitutional Court in respect of the second, fifth and sixth applicants (see paragraph 18 above).

47. Lastly, as to the complaint about the lack of adversarial proceedings raised by the third applicant, who asserted that the Constitutional Court had failed to send her the observations made by the State on her constitutional appeal, the Government submitted that it did not appear from the content of the relevant file (no. II. ÚS 3160/19 – see paragraph 16 above) that the Constitutional Court had requested any such observations, nor were there any such observations in the file. One could only speculate that the third applicant had been referring to statements submitted by the State in the proceedings that had led to plenary judgment no. Pl. ÚS 20/15; however, there was no requirement under the Convention that parties be informed of the content of statements submitted during proceedings conducted in respect of previous similar cases.

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

#### (a) **General principles**

48. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems concerning the interpretation of domestic legislation. Its role is to verify whether the effects of such interpretation are compatible with the Convention. That being so, save in the event of evident

arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the national courts. Similarly, on this subject, it is not in principle its function to compare different decisions delivered by national courts – even if given in apparently similar proceedings; it must respect the independence of those courts (see, in particular, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-50, 20 October 2011).

49. Nevertheless, the Court's established case-law requires that judgments delivered by courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision. The question of whether a court has failed to fulfil the obligation (arising from Article 6 of the Convention) to state reasons can only be determined in the light of the circumstances of the case in question. In the case of the highest courts, scant reasoning is, in principle, acceptable (see, *mutatis mutandis*, *Atanasovski*, cited above, §§ 36 and 38). The Court has also recognised that, in view of the special role played by the Constitutional Court as the court of last resort for the protection of fundamental rights, proceedings before it may be more formal (see *Arribas Antón v. Spain*, no. 16563/11, § 50, 20 January 2015).

**(b) Application to the present cases**

50. The Court notes that the decisions adopted in the applicants' individual cases followed the plenary judgments of the Czech Constitutional Court – in particular, judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15, which had already dealt with claims for the retroactive payment of the difference between judges' salaries that had actually been paid in 2011-2014 and those that they would have received if their salaries had been calculated according to the multiplication factor 3 (see paragraphs 11 and 12 above).

51. The Court sees no reason to disagree with the Constitutional Court that the considerations set out in those plenary judgments applied to the applicants' cases. Contrary to the applicants' assertions (see paragraph 39 above), the lower courts dealing with the applicant's claims had to respect that case-law and it was only natural that their reasoning amply referred to it.

52. While judgments nos. Pl. ÚS 16/11 and Pl. ÚS 33/11 did not explicitly elaborate on their *ex tunc/ex nunc* (or *pro futuro*) effect or on judges' right to the retroactive payment of their salary claims, as submitted by the applicants (see paragraph 38 above), the Constitutional Court emphasised in the first of those judgments that the only consequence of the repeal arising from that matter had been the removal of the provision in question from the Czech legal order – not the *de facto* creation of new legislation by way of the "revival" of a provision that had been previously abrogated (see paragraph 21 above). It followed from the text of the judgments that the subsequent judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15 built upon that consideration, as well as upon the previous practice of the Constitutional Court (according to which its judgments as a rule had no retroactive effect and repealing effects applied *ex*

*nunc*). Moreover, the latter judgment (see paragraph 12 above) clearly indicated that judgment no. Pl. ÚS 33/11 – having postponed the removal of the multiplication factor 2.5 provided by section 3(3) of the Salaries Act until 31 December 2012 – also had *ex nunc* (or *pro futuro*) effect and excluded any right to a retroactive payment in respect of the period 2011-2012 (see paragraph 7 above).

53. Hence, prior to the proceedings initiated by the applicants, the Constitutional Court, sitting as a full bench, provided specific arguments explaining that the approach taken in its judgments nos. Pl. ÚS 28/13 and Pl. ÚS 20/15 was compatible with that taken in its previous judgments nos. Pl. ÚS 16/11 and Pl. ÚS 33/11, which appears to be in line (as argued by the Government) with the Czech constitutional-law tradition (see paragraph 45 above). It thus dealt with the specific issues that the applicants raised later in their claims, and which they submitted to the Court (see paragraphs 38-40 above).

54. In the proceedings instituted by the applicants, the courts (including the Constitutional Court) applied the approach already taken by the Constitutional Court in respect of previous (repealing) judgments regarding judges' salaries – this prevented them from granting the applicants the retroactive payment sought. They considered that the applicants had merely been engaged in a polemic regarding the established case-law of the Constitutional Court. However, in the interests of legal certainty, the latter could be overruled only if extremely relevant and compelling arguments were put forward, which was not so in the applicants' case.

55. Against this background, the Court is of the view that in the proceedings to which the applicants were party no approach diverging from the practice of the Constitutional Court was taken, and neither was there any reversal of case-law; rather, the Constitutional Court explicitly clarified the reasons that had led it to apply, in respect of the cases at hand, a general rule of domestic constitutional law according to which decisions declaring legislation unconstitutional did not have retroactive effect.

56. In sum, having examined the documents submitted by the parties and their submissions, the Court does not consider that the domestic courts' decisions dismissing the applicants' claims were insufficiently reasoned or that the civil proceedings in the applicants' cases were otherwise unfair.

57. There has accordingly been no violation of Article 6 § 1 of the Convention in respect of any of the applicants.

### III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

58. The applicants, except for the fifth applicant, complained that their legitimate expectation of receiving full salaries had not been met, even though the legislative amendments providing a decrease of their salaries had been declared unconstitutional.

They relied on Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

## A. Admissibility

### 1. *The parties’ submissions*

59. The Government, citing *Denisov v. Ukraine* ([GC], no. 76639/11, § 137, 25 September 2018), first observed that future income could not be considered to constitute “possessions” unless it had already been earned or was definitely payable; they also observed, citing *Béláné Nagy v. Hungary* ([GC], no. 53080/13, § 75, 13 December 2016) and *Zubko and Others v. Ukraine* (no. 3955/04 and others, § 70, 26 April 2006), that a legitimate expectation had to be based on a legal provision or a legal act, such as an enforceable court judgment ordering the State to pay. The Government further stated that the Court had repeatedly emphasised, for example in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 94, 19 April 2007), that there was no right under the Convention to continue to be paid a salary in a particular amount. If a State adopted austerity measures in the form of a cut in the salaries of public employees for a limited period of time and if those employees could not derive the right to a higher salary from regulations in force during the relevant period or from a final court decision, they could not claim to have “possessions” within the meaning of Article 1 of Protocol no. 1 (the Government cited *Mihăieş and Senteş v. Romania* (dec.), no. 44232/11 and other, § 16, 6 December 2011). Lastly, the Government pointed to the case of *Serebryanskyy v. Ukraine* ((dec.) no. 54704/10, 3 June 2014), in which the applicant, a war veteran, had been entitled by law to an annual payment which had at one point been decreased by virtue of provisions that had subsequently been found by the Constitutional Court to be unconstitutional. The applicant’s request for a retroactive payment of the difference had been rejected on the grounds that the Constitutional Court’s decisions did not have retroactive effect. The Court had ruled that the applicant did not have a “legitimate expectation” under Article 1 of Protocol no. 1, and he had received the benefit to which he had been entitled under the national law as it had stood at the moment that the payment had been due.

60. On the basis of the above-mentioned case-law, the Government submitted that the applicants’ complaints were inadmissible *ratione materiae* since they had had no legitimate expectation to be paid a full salary

(calculated in application of the multiplication factor 3) in 2011-2014. In the Government's view, such an expectation could have been deduced neither from the relevant legislation, nor from any final court decision or settled case-law. Moreover, the Constitutional Court's case-law prior to the period in question (in particular judgments nos. Pl. ÚS 16/2000, Pl. ÚS 55/05, Pl. ÚS 13/08 and Pl. ÚS 12/10) had allowed for the possibility of reducing judges' salaries (that court having dismissed the argument that judges should have an automatic right to a certain level of material security that could not be legislatively altered in any way or under any circumstances). In judgments nos. Pl. ÚS 28/13 and no. Pl. ÚS 20/15, the Constitutional Court had explicitly stated that judges did not have the right to a retroactive payment of the difference in salary compared with what they would have received in 2011-2014 if the multiplication factor 3 had been applied.

61. The applicants argued that their legitimate expectation that they would be paid non-reduced salaries had been based on (i) the only constitution-compliant legislation, which had provided that the multiplication factor 3 should be used in calculating judges' salaries, and (ii) the case-law of the Constitutional Court, which had repeatedly declared all the legislature's attempts at decreasing that multiplication factor to be contrary to the Constitution, and (iii) the past conduct of the State, which – following the delivery of judgments nos. Pl. ÚS 16/11 and Pl. ÚS 33/11 – had voluntarily and retroactively paid judges the sums owed to them. They reiterated that in the latter judgments the Constitutional Court had not denied to judges the right to the retroactive payment of their salary claims, thereby conferring on them *ex tunc* effect, which the applicants had thus considered (contrary to the Government's submissions) to constitute a rule. Moreover, the Constitutional Court had always indicated that a real reduction of judges' salaries – and, thus, of the level of their material security – was inadmissible (see paragraph 28 above). In judgment no. Pl. ÚS 28/13 the Constitutional Court had explicitly recognised that in 2011 judges had been legitimately expecting the restoration of the regular system concerning their base salary and had quashed as unconstitutional the regulation under which their salaries had actually been calculated; this distinguished their case from the case of *Mihăieş and Senteş*, cited by the Government. The right to a retroactive payment stemmed in their view also from the fact that their dispute with the State was characterised by the vertical effect of Convention rights, as opposed to horizontal relations, in respect of which law could not be applied retroactively. Thus, the applicants considered that they had sufficiently substantiated the fact that their unpaid salary constituted "property" falling under the protection of Article 1 of Protocol No. 1.

## 2. The Court's assessment

62. The Court reiterates at the outset that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning that

is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case in question, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V; *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I).

63. In certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for the interest in national law – for example, where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law, and the applicant’s submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

64. Furthermore, the Court has held that there is no right under the Convention to continue to be paid a salary in a particular amount (see *Vilho Eskelinen and Others*, cited above, § 94). It is within the State’s discretion to determine what benefits are to be paid to its employees out of the State budget. The State can introduce, suspend or terminate the payment of such benefits by making the appropriate legislative changes. However, once a legal provision is in force that provides for the payment of certain benefits and the conditions stipulated have been met, the authorities cannot deliberately refuse to make such payments while the legal provisions remain in force (see *Mihăieş and Senteş*, cited above, § 15).

65. In the present case, the applicants’ complaints concern the lawfulness of measures concerning the payment of their salaries. It is undisputed that the applicants had a right to receive the full lawful amount of their salaries, constitutive of a proprietary interest. While the applicants’ position is that the lawful amount due to them should have included retroactive payments (a position with which the Government disagrees), the Court takes the view that the question of whether it was unlawful – as alleged by the applicants – to give *pro futuro* effect to the repeal of the provisions decreasing the multiplication factor used for calculating their salaries is an issue to be examined on the merits.

66. Given the specific circumstances of the instant case, the Court has doubts as to whether the applicants had a legitimate expectation and therefore

a “possession”. However, it need not determine this question because it considers that there has been no breach of Article 1 of Protocol No. 1, for the reasons that follow (see, for the same approach, *mutatis mutandis*, *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 59, 31 May 2011, and *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 87, 25 October 2011). It will therefore proceed on the assumption that Article 1 of Protocol No. 1 is applicable and that the refusal of retroactive payments can be regarded as an interference with the applicants’ rights under that provision. The Court further 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 parties’ submissions*

#### **(a) The applicants**

67. The applicants were of the view that the non-recognition of their retroactive salary claims had been unlawful and contrary to the fundamental principles of the rule of law. By not ascribing to its judgment no. Pl. ÚS 28/13 the standard *ex tunc* effect the Constitutional Court had allowed the State not to redress the violation of their property rights and this had resulted in an unlawful interference. Furthermore, the interference could not be justified by any public interest in cost-saving or in consolidating public finances, the true aim having been to revise the level of judges’ salaries downwards (see paragraph 26 *in fine*).

68. The applicants observed in this respect that the amounts that had been refused to them had clearly been lower than the sum conceded to taxpayers by virtue of the Constitutional Court’s judgment no. Pl. ÚS 31/13 in which retroactive effect was allowed (see paragraph 106 below). In the applicants’ view, the difference in the approach taken by the Constitutional Court was an unjustifiable double standard and, importantly, disproved the argument that paying to judges retroactively could cause problems for the State budget.

69. The applicants also argued that, contrary to Greece or Portugal (two countries that had been implicated in the cases cited by the Government) and to many other Eurozone countries, the Czech Republic had not been going through any extreme or serious economic crisis during the period in question; they relied in this respect on the Constitutional Court’s judgments nos. Pl. ÚS 16/11, Pl. ÚS 33/11 and Pl. ÚS 28/13, which had not found any exceptional circumstances justifying restrictions on judges’ salaries (see paragraphs 10 and 11 above). Yet without such exceptional circumstances, the public interest could not prevail over their individual rights (they relied on *Frantzeskaki and Others v. Greece* (dec.), no. 57275/17 and 14 others, § 39, 12 February 2019). In any event, there was no reason for them to bear

the consequences of bad management by the State of public funds. Moreover, their solidarity with other employees already stemmed from the fact that the multiplication factor linked their base salary to the average salary in the non-commercial sector; that mechanism sufficiently enabled the adjustment of their salaries to reflect the State-wide economic situation.

70. The applicants submitted that those considerations also disproved those of the Government's arguments that were based on the case of *Savickas and Others v. Lithuania* ((dec.), no. 66365/09, 15 October 2013), in which the situation had been fundamentally different. Above all, unlike in Lithuania, judges in the Czech Republic had not been compensated for the reduction of their salaries. Concerning the purported wide-ranging austerity measures – in particular, the reduction by 10% of public servants' salaries (see paragraph 76 below) – the applicants observed that only the total amount of funds earmarked for those salaries had been reduced. That had admittedly led to job cuts and the reduction of non-contractual benefits in the public sector, but not to a decrease in the individual salaries of public servants, who, moreover, were not precluded from having other sources of income. On the other hand, since judges' salaries had continued to decrease during the relevant period, the interference was more serious than a simple freezing of salaries. In any event, it had been the Constitutional Court, not the legislature, that had put an end to the interference complained of.

71. The applicants emphasised in this respect that their case was not about the material security of judges in general, but about their individual right to protection of property, which had been breached by a reduction of the real amount of their salary. That reduction had stemmed from the legislature's decision to decrease the relevant multiplication factor, which was an arbitrary, inadequate and non-systemic measure exceeding the limits set by the Constitutional Court, and constituted a strategic error on the part of the legislature (see paragraph 11 above). It had also gone against the Council of Europe Committee of Ministers' Recommendation CM/Rec(2010)12 (see paragraph 30 *in fine* above).

72. In the applicants' view, the issue to be assessed in the present case was whether the interference complained of (i) had resulted from an exceptional step taken by the legislature in a time of economic crisis, which would make it justifiable, or (ii) had amounted to the manipulation of their salaries in non-exceptional circumstances by the legislature. They submitted that the Constitutional Court had already answered that question in its judgments nos. Pl. ÚS 16/11, Pl. ÚS 33/11 and Pl. ÚS 28/13, choosing the second option but refusing to give such effect to those judgments as would be favourable to judges. Thus, the situation complained of had been ultimately profitable to the State, even though the latter should not be able to benefit from its own errors and mistakes (they cited, in particular, *Trgo v. Croatia*, no. 35298/04, § 67, 11 June 2009). Indeed, although the legislature had repeatedly disregarded the Constitutional Court's case-law and reduced

judges' salaries, the fact that it had taken some time for the Constitutional Court to repeal the impugned provisions (but without the judges being granted the right to a retroactive payment) had resulted in actual and repeated reductions in their salaries, which had allowed the State to make savings. For their part, each of them had over the relevant period been deprived of an amount corresponding on average to CZK 500,000 (approximately EUR 20,000), which constituted a significant financial impact.

**(b) The Government**

73. In the event that the Court found Article 1 of Protocol No. 1 applicable, the Government admitted that the legislative changes and subsequent court decisions challenged by the applicants in the present case had amounted to an interference with their right to the peaceful enjoyment of their possessions.

74. The Government also acknowledged that if a constitutional court found some legal provisions to be unconstitutional, that would have an impact on the issue of the lawfulness of the interference in question. They referred, in particular, to *R & L, s.r.o. and Others v. the Czech Republic* (no. 37926/05 and 4 others, 3 July 2014), in which the Czech Constitutional Court had declared the system of rent control unconstitutional on 21 June 2000, but had left it in force until 31 December 2001, which had led the Court to conclude that the period during which there had been no legal basis for the interference with the applicants' property rights had started on 1 January 2002, when the time-limit set by the Constitutional Court for the adoption of the new regulation had lapsed. Conversely, the Strasbourg Court had dismissed as manifestly ill-founded the application *Da Conceição Mateus and Santos Januário v. Portugal* ((dec.) no. 62235/12 and 57725/12, 8 October 2013), in which the applicants had contested the reduction of pensions that had taken place as part of the 2012 austerity measures which had later been found unconstitutional by the Portuguese Constitutional Court. Taking into account the impossibility of Portugal designing alternative measures in order to meet its budgetary objectives and to secure financial support from its lenders (considerations of "exceptionally important public interest"), the Constitutional Court had decided that its own decision should not take effect in 2012. In that respect, the Strasbourg Court noted that although the relevant domestic provisions had been declared unconstitutional, the Constitutional Court had nevertheless decided to allow the cuts to take place in 2012, on account of exceptional circumstances allowing the restriction of the effects of a finding of unconstitutionality; the cuts had therefore been in accordance with domestic law.

75. The Government were convinced that the requirement of lawfulness had been satisfied in the present case since throughout the impugned period of 2011-2014 there had been a legal basis for the payment of salaries in the amount actually received by the applicants. Although the relevant provisions

had been subsequently repealed by the Constitutional Court, what distinguished the present case from the case of *R & L, s.r.o. and Others* (cited above) and made it similar rather to the case of *Da Conceição Mateus and Santos Januário* was that new, constitutionally compliant legislation had been adopted immediately after the lapse of the time-limit (31 December 2014) set by the Constitutional Court; specifically, it had come into effect on 1 January 2015, when the multiplication factor 3 had again been added to section 3(3) of the Salaries Act in respect of judges' salaries. Moreover, the Constitutional Court had explicitly ruled that its repealing judgments did not give judges any right to the retroactive payment of the difference in salary.

76. Referring to the Court's case-law (namely, *Béláné Nagy*, cited above, §§ 113-114; *N.K.M. v. Hungary*, no. 66529/11, §§ 49 and 61, 14 May 2013; *Savickas and Others*, cited above; *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 37 and 39, 7 May 2013; *Da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, § 37, 1 September 2015; and *Mamatas and Others v. Greece*, nos. 63066/14 and 2 others, § 88, 21 July 2016), the Government submitted that the requirement of public interest had clearly been satisfied in the present case. They underlined that the interference at stake had formed part of a programme of austerity measures – affecting salaries across the entire public sector – that the State had adopted in response to a serious economic crisis experienced by the Czech Republic after 2008. Indeed, the 2011 State Budget Act had reduced the salaries of all public servants (except for teachers) by 10%, and prosecutors' base salary had been lowered from 2.7 to 2.25 times the average nominal monthly salary in the non-commercial sector.

77. Concerning the proportionality of the interference and the need to strike a fair balance between the demands of the general interest and the requirements of the protection of individuals' fundamental rights, the Government referred again to the above-mentioned cases of *Zubko and Others* (where the Court had considered that the failure of the State to comply with the domestic courts' judgments ordering it to pay judges' benefits in full had jeopardised the independence and impartiality of judges), *Savickas and Others v. Lithuania* (where the Court had found that a temporary lowering of judges' salaries – as part of wider austerity measures adopted in response to economic and financial crisis in Lithuania – had neither threatened judges' livelihoods nor had an impact on their independence or ability to perform their functions), and *Da Silva Carvalho Rico* (where the Court had found that a reduction in pensions – a measure that had been limited both in time and in quantitative terms and had been prompted by an unexpected budgetary crisis in Portugal – had not interfered with the "essence" of the right to property since the applicant had not suffered a substantial deprivation of income).

78. The Government considered that all the considerations set out by the Court namely in the case of *Savickas and Others* (cited above) were

applicable to the instant case. In particular, the reduction of judges' salaries had formed part of a wider programme of austerity measures adopted in reaction to a serious economic and financial crisis (see paragraph 76 above). Furthermore, every single year between 2011 and 2014 the average judge's salary had been higher than in 2010 (prior to the interference) and had also several times been higher than the average salary of a public-sector employee; thus, the applicants' salaries had been continuously growing over the period 2011-2014. In addition, the reduction of judges' salaries had been limited in time to the duration of the crisis, and all judges had been offered partial compensation (see paragraph 8 above). Lastly, there was nothing to suggest that the reduction of salaries had been so extreme as to have an impact on judges' independence or ability to properly perform their functions. Indeed, none of the applicants had proved (either in the domestic proceedings or before the Court) that as a consequence of the alleged interference their salaries had been reduced to an extent that would pose a threat to their livelihood or that would have an impact on their ability to perform their functions as judges. In this latter respect the Government pointed out that in the opinion of several European bodies (see paragraphs 30-32 and 34 above), a reduction of judges' salaries was admissible in an economic crisis, provided that the dignity of the judges' profession and their capacity to perform their functions were not negatively affected.

79. The Government therefore believed that a fair balance had been struck between the demands of the general interest of the community and the requirements for the protection of the applicants' individual rights, and that the interference complained of had not caused any of the applicants to bear an excessive burden.

## 2. *The Court's assessment*

### (a) **General principles**

80. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... . The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *Beyeler*, cited above, § 98).

81. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful and that it should pursue a legitimate aim “in the public interest”. Any interference must also be reasonably proportionate to the aim sought to be realised. In other words, a “fair balance” must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *Khoniakina v. Georgia*, no. 17767/08, § 70, 19 June 2012, and *Savickas and Others*, cited above, § 91).

**(b) Application to the present case**

82. Turning to the present case, the Court observes that the reduction of the applicants’ salaries originally stemmed from the legislative amendments providing a decrease (from 3 to 2.5, and later to 2.75) of the multiplication factor linking the judges’ base salary to the average salary in the non-commercial sector (see paragraphs 19, 20 and 23 above).

83. However, those amended provisions were repealed by the Czech Constitutional Court as being unconstitutional. Applying the principles set out in its case-law (see paragraphs 27 and 28 above), which – in line with the Court’s case-law – focused on the principle of judicial independence, the Czech Constitutional Court considered that the impugned amendments providing a decrease in the multiplication factor had not been based on any relevant economic analysis and had not relied on any exceptional circumstances justifying the prioritisation of restrictions on remuneration over the principle of judicial independence (see paragraphs 10-11 above).

84. The applicants’ grievances are related to the fact that the Constitutional Court decided to give only *pro futuro* effect to its repealing judgments nos. Pl. ÚS 33/11 and Pl. ÚS 28/13. As a result, the applicants (and judges in general) were not able to recover the difference in their salaries for the period 2011-2014 until the multiplication factor 3 was restored in 2015 (see paragraph 25 above). Given these circumstances, the Court observes that the interference complained of does not directly concern the legislation that reduced (until that legislation was repealed) judges’ salaries, but the choice made by the Constitutional Court not to give retroactive effect to its repealing judgments. This distinguishes the present case from the case of *Savickas and Others* (cited above), where the Lithuanian Constitutional Court admitted that a temporary reduction in judges’ salaries during a time of economic crisis was lawful, provided that certain safeguards were met, and where arrangements for paying to judges or their heirs any unpaid part of those judges’ remuneration were laid down by a special law enacted by the Lithuanian Parliament. In the Court’s view, a finding that exceptional circumstances might justify the delivery of a repealing judgment with *ex*

*nunc/pro futuro* effect constitutes a different matter from that of a reduction (in and of itself) of judges' salaries. It will therefore concentrate its analysis on the lawfulness and justification of the former, which is at stake in the present case.

85. Given the particular circumstances of the present case, the Court considers that the interference complained of falls to be examined under the general rule of protection of property under Article 1 of Protocol No. 1.

(i) *Lawfulness of the interference*

86. It has already been accepted that a constitutional court may set a time-limit in respect of the legislature enacting new legislation, with the effect that an unconstitutional provision shall remain applicable for a transitional period (see, *mutatis mutandis*, *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 65, 30 November 2010, and *Walden v. Liechtenstein* (dec.), no. 33916/96, 16 March 2000). The Court reiterates in this respect that the possibility for a supreme authority to adjust to a given timeframe the effects of a declaration of unconstitutionality (where, in exceptional circumstances, public-interest considerations so require) cannot be regarded as incompatible with the principle of lawfulness. It might indeed be necessary to avoid any manifestly excessive consequences of such a declaration in such a sensitive area as the economic policy of a country during a serious economic crisis (see, in particular, *Frantzeskaki and Others*, cited above, § 39).

87. Contrary to the applicants' allegations, the present case concerns neither divergent approaches nor a reversal of case-law on the part of the Constitutional Court. The Court has already noted, under Article 6 of the Convention, that the latter's decision to ascribe to the impugned judgments *ex nunc/pro futuro effect* was in line with its previous practice and the Czech constitutional-law tradition (see paragraphs 52, 53 and 55 above). Hence, the approach taken in that matter by the Constitutional Court, and followed in the applicants' cases, had a legal basis in the domestic law and practice.

88. The cuts suffered by the applicants, stemming from the fact that they had been denied the retroactive payment of the difference in their salaries, were thus allowed by the Constitutional Court, in accordance with domestic law within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Da Conceição Mateus and Santos Januário*, cited above, § 21). The applicants' allegations that the Constitutional Court acted arbitrarily in that, *inter alia*, it was not true that the retroactive payment would endanger the State budget are closely linked to the assessment of the justification for the interference complained of and will be examined below.

(ii) *Aim of the interference*

89. The Court observes that in the relevant judgments and decisions (see paragraphs 11 and 29 above), the Constitutional Court gave additional

reasons as to why the repeal of the provisions on judges' salaries should be covered by the rule of *ex nunc* (or even *pro futuro*) effect. It considered in this connection that the claimed retroactive payment of the difference in judges' salaries would have constituted a significant and unforeseen interference with the State budget in a period of economic crisis, and that it would have exacerbated the existing tensions between society and judges.

90. The Court acknowledges that, in the instant case, the Constitutional Court could not overlook the tense social and political climate as well as the fact that the executive power and the legislature considered judges' salaries to be too high (see paragraph 10 above). It had therefore to bear in mind the time that had elapsed from the adoption of the impugned legislation and the resulting total amount of the one-off payment, which would have had to cover a retroactive period of some years and which would have placed too great a budgetary burden on the State. Those were essentially the considerations guiding the Constitutional Court in its decision to ascribe *ex nunc/pro futuro* effect to the repealing judgments at stake.

91. The above-stated aim of the interference with the applicants' rights was thus based on a consideration of economic and social issues, for an assessment of which national authorities are in principle better placed than the Court. The Court cannot but therefore attach particular weight to the arguments advanced by the plenary of the Czech highest judicial authority (that is to say the Constitutional Court, sitting as a full bench), which do not appear to lack reasonable foundation (see, *mutatis mutandis*, the above-cited cases of *Koufaki and ADEDY*, § 39, and *Mihăieş and Senteş*, § 19). The applicants' position that the real aim pursued had been to manipulate their salaries (see paragraph 72 above) is not supported by any convincing argument. Their points regarding the absence of an exceptional situation and the allegedly moderate impact that the retroactive payment could have had on the State budget concern rather the proportionality of the interference.

92. In sum, on the basis of the material in its possession, the Court concludes that in excluding the possibility of retroactive payment the Constitutional Court pursued a legitimate aim in the general interest.

*(iii) Proportionality of the interference*

93. The Court observes that the Constitutional Court referred to the fact that the retroactive payment of the sums sought would relate to a period when the Czech Republic had been in a financial crisis or at a stage when it had been slowly recovering from that crisis (see paragraph 11 above). While the applicants disputed that assessment, the Court does not find sufficient basis to consider that it was arbitrary or manifestly erroneous.

94. Most importantly, nothing in the case-file allows the Court to consider that the impugned measure put at risk the ability of judges (including the applicants) to exercise their judicial functions independently and impartially (compare *Zubko*, cited above, § 68). Nor does it appear that it constituted a

threat to their livelihood (compare *Savickas and others*, cited above, § 94) – a point that is not disputed by the applicants. It is not without importance in this connection that most judges (but not the applicants) waived the impugned claims within the framework of their settlement with the State (see paragraph 8 above). It should also be noted that according to the data submitted by the Government (which were not challenged by the applicants), despite the decrease of the multiplication factor, judges' average monthly salary was raised almost every year over the relevant period (2011-2014) and even compared to 2010 (CZK 81,485 CZK<sup>4</sup> in 2010, CZK 88,586 CZK<sup>5</sup> in 2011, CZK 85,293 CZK<sup>6</sup> in 2012, CZK 94,091<sup>7</sup> in 2013 and CZK 97,014<sup>8</sup> in 2014).

95. The Court is nevertheless sensitive to the applicants' argument that the situation complained of was ultimately profitable to the State (see paragraph 72 above), allowing it to save the above-mentioned sum (to the judges' detriment). It finds it worrying that, as stated by the Constitutional Court, the Czech legislature had long acted in a deliberately unconstitutional manner in the matter of judges' salaries (see paragraph 11 above), overstepping the limits set by the Constitutional Court's long-standing case-law. In this connection, the Court observes that the level of judges' remuneration should be fixed so as to shield them from pressures aimed at influencing their decisions – and, more generally, their behaviour (see paragraphs 30-32 above – notably the position of the Venice Commission), and that a failure to ensure that judges are paid the judicial benefits to which they are entitled by law constitutes a circumstance liable to impede the exercise of their judicial functions with the necessary dedication (see, *mutatis mutandis*, *Zubko*, cited above, §§ 68-69).

96. Having said that, the Court reiterates that its task in the present case is to review the interference stemming from the Constitutional Court's decision to deny judges the retroactive payment of the difference in their salaries – in particular, given the fact that the very same court had already repealed the legislation reducing judges' salaries as not having been based on a sound economic analysis. While the complaints under examination concern only the former decisions of the Constitutional Court (see paragraph 84 above), the fact that the Constitutional Court had already acted to protect judges' legitimate interests regarding their salaries is inevitably relevant in the assessment of the proportionality of the impugned decisions not to give retroactive effect to its findings that the laws reducing judges' salaries were unconstitutional. As follows from the above-noted considerations, the Court

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<sup>4</sup> EUR 3,081 according to the exchange rate applicable on 1 January 2010.

<sup>5</sup> EUR 3,525 according to the exchange rate applicable on 1 January 2011.

<sup>6</sup> EUR 3,327 according to the exchange rate applicable on 1 January 2012.

<sup>7</sup> EUR 3,743 according to the exchange rate applicable on 1 January 2013.

<sup>8</sup> EUR 3,538 according to the exchange rate applicable on 1 January 2014.

is of the view that, assuming that Article 1 of Protocol No. 1 applied, any interference with the applicants' proprietary interests was proportionate.

97. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 1 of Protocol No. 1.

#### IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

98. Lastly, all the applicants except the fifth applicant relied on Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and complained of having been discriminated against compared to other public servants – in particular, deputy ministers, departmental directors and other persons in comparable positions at ministries whose salaries had allegedly not been reduced during the period in question. In addition, the second applicant complained of discrimination compared to working pensioners (who had benefited from reduced taxes for the period prior to the Constitutional Court's repeal of provisions prohibiting such a reduction), and the sixth applicant compared himself to judges who had accepted the settlement agreement offered by the State (see paragraph 8 above).

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

##### A. The parties' submissions

###### 1. The Government

99. The Government submitted, firstly, that the second and sixth applicants had not exhausted the available domestic remedies since they had not duly raised the same complaints at the appropriate stage of the domestic proceedings.

100. Secondly, the Government noted that since, in their view, Article 1 of Protocol no. 1 did not apply to the present case, Article 14 of the Convention was not applicable either.

101. The Government further considered that it followed from the Court's case-law (namely *Valkov and Others*, cited above; *Fábián v. Hungary* [GC], no. 78117/13, § 128, 5 September 2017; and *Gellérthegyí and Others v. Hungary* (dec.), no. 78135/13, 6 March 2018, § 39) that – when confronted with issues concerning comparisons between professionals belonging to different categories (irrespective of public and private-sector divides) – the Court had been disinclined to view different types of functions as giving rise to analogous or relevantly similar situations. In none of the above-mentioned cases had the Court found the existence of an “analogous” or “relevantly similar” situation in respect of various categories of public employees; rather,

it had emphasised that (the principle of judicial independence being an exceptionally significant aspect) judges could not be likened to other public-sector employees. The Government also referred to the case of *Ruszkowska v. Poland* (no. 6717/08, § 63, 1 July 2014), in which the Court had found no violation of Article 14 read in conjunction with Article 1 of Protocol no. 1, noting that the applicant had failed to prove that the sum that she had lost owing to the impugned interference would have constituted “a significant part of the budget of her family”.

102. Thus, the Government disagreed with the applicants’ argument that judges and public officials holding senior offices were to be considered as being in an analogous situation. In this respect, the Government noted that judges had a unique position in the Czech Republic and, as a matter of principle, could not be removed against their will; their salaries were set by law. On the other hand, the employment of public servants had in the period in question been governed by the Labour Code, which had provided for the possibility to enter into employment for a definite or indefinite term, and that their salaries had been governed only by a government decree. Not even deputy ministers, departmental directors and other persons in comparable positions who were employed for an indefinite term had a level of job security comparable to that enjoyed by judges, to whom the law provided the right to stay in office until the age of 70 and among which there could not be any job cuts. Moreover, it was not in any way possible to compare *in concreto* the applicants to judges of district and regional courts (who held no higher functions) with the most senior State officials (constituting the top leadership of the government ministries).

103. In any event, the Government pointed out that, even if the respective situations of judges (on the one hand) and public servants (on the other) had been “relevantly similar”, the reduction of salaries in the period in question had also affected other public employees (including public servants). Relying on data indicating the average monthly salary of judges in general and that of deputy ministers and departmental directors at ministries in 2011-2014, they observed that judges’ salaries had been (i) higher than the income of departmental directors, when taken together with any bonuses paid to them, (ii) comparable or slightly higher than the income of deputy ministers (excluding bonuses), and (iii) slightly lower than the income of deputy ministers (including bonuses).

104. In the Government’s opinion, it was fully acceptable that the salaries of several dozen top ministerial officials were higher on average, by approximately CZK 20,000, than the average salary paid to approximately 3,000 judges serving in the Czech Republic. Indeed, the difference was due to the payment of bonuses as a variable component of deputy ministers’ salaries, and to which judges were not entitled since the payment of bonuses to them would be problematic from the point of view of judicial independence. In this respect, the Government reiterated that it was within

the State's discretion to determine what benefits were to be paid to its employees out of the State budget (they cited *Suk v. Ukraine*, no. 10972/05, § 23, 10 March 2011).

105. As to the assertion of the second applicant that he had been discriminated against compared to working pensioners – who the Constitutional Court had allowed, on account of the fact that the repeal in that matter had occurred during the tax period, to apply the taxpayer deduction in 2014, even though it had repealed the relevant provisions prohibiting such a deduction with effect from the publication of its judgment no. Pl. ÚS 31/13 in the Official Gazette (4 August 2014) – the Government believed that the situation of serving judges following judgment no. Pl. ÚS 28/13 could not be regarded as “relevantly similar” for the purposes of Article 14. Moreover, the amount of the second applicant's salary and of the sum that he had sought had exceeded by a large margin the average old-age pension in 2014 (approximately CZK 11,000) and the sum obtained by working pensioners through the impugned taxpayer deduction (CZK 24,840); the extent of the difference to their respective livelihoods had thus been incomparable.

106. Concerning the comparison with judges who had in 2015 accepted an out-of-court settlement with the State and received a partial supplement to their salaries (which the sixth applicant had had to justify through litigation), the Government observed that the sixth applicant had been offered the same settlement but had refused it, placing himself in a position different to that of those judges who had accepted the settlement (after waiving all other potential claims) and who, by definition, the State had had to treat differently (the Government referred to *Frantzeskaki and Others*, § 42, cited above).

## 2. The applicants

107. In response to the Government's objection (see paragraph 99 above), the sixth applicant submitted that he had duly raised his discrimination claim before the first-instance court.

108. As to the analogousness of their situation to that of senior public officials such as deputy ministers and directors of ministerial departments, the applicants noted that the Constitutional Court itself had made such a comparison in its judgments nos. Pl. ÚS 16/11 and 33/11 (see paragraph 10 above). The third applicant asserted that judges should be considered to be in a comparable position to that of all other persons whose salaries were paid from the State budget, and that any differences between them could only be taken into account when considering whether the difference in treatment had been objectively and reasonably justified.

109. The applicants further asserted that since public servants had been able – unlike judges – to receive bonuses and undertake secondary economic activities, and since the necessary cuts to expenditure on the part of the public sector could have been achieved by other means (see also paragraph 70 above), the average salary of public servants had in reality not been affected

(or had in some case even increased), while judges had suffered real salary reductions. Such different treatment could not be deemed to have been justified by the economic situation; rather it had shown, on the contrary, that the true aim had been to revise judges' salaries downwards (see paragraph 10 above).

110. The second applicant observed that he had never asserted that he had been in a similar position to that of working pensioners; rather, he had simply wished to draw attention to the fundamental contradictions in the Constitutional Court's judgments nos. Pl. ÚS 28/13 and Pl. ÚS 31/13 in respect of the issue of retroactive payments, which the wording of those judgments had simply not addressed.

111. The third applicant submitted that the sum of which she had been deprived had formed an important part of her family budget and could have been used to increase her mortgage payments.

112. The sixth applicant maintained that the State had penalised judges – such as the applicants – who had not entered into the so-called “settlement” and who had had to pursue their claims through court proceedings. Being convinced that his salary should be calculated according to the multiplication factor 3, he considered that the labour legislation had prevented him from waiving his salary claims, as required by the settlement, and that those settlements were in fact null and void.

All the applicants argued that, by means of that settlement, the State had only paid judges the sums that it had owed them according to a recalculation undertaken using the correct statistical data (see paragraphs 7 and 8 above); it had not paid them “compensation”. Moreover, the settlement had been made conditional on the judges' waiving of all other potential claims.

113. In sum, the applicants were convinced that there had been no objective and reasonable grounds to treat them differently from the above-mentioned groups.

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

### *1. General principles*

114. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. However, its application does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see *Stummer*, § 81, cited above).

115. In line with its approach under Article 1 of Protocol No. 1 taken alone (see paragraph 66 above), the Court proceeds from the assumption that the facts of the case fall within the ambit of that provision and that Article 14

is thus applicable. It further considers that it is not necessary to examine the Government's objection of non-exhaustion of domestic remedies (see paragraph 99 above) seeing that, in any event, the applicants' complaints regarding discrimination are inadmissible for the reasons that follow.

116. The Court notes that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment of individuals in analogous, or relevantly similar, situations. For the purposes of Article 14, a difference in treatment is discriminatory if it "has no objective and reasonable justification" – that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised (see *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French *Conseil d'État*, § 72, 13 July 2022). The notion of discrimination within the meaning of Article 14 also includes cases where one person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see *Biao v. Denmark* [GC], no. 38590/10, § 90, 24 May 2016).

117. The Court has also established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián*, cited above, § 113). However, the list set out in Article 14 is illustrative and not exhaustive (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 70, ECHR 2010). The words "other status" (and, *a fortiori*, the French equivalent *toute autre situation*) have been given a wide meaning, and their interpretation has not been limited to characteristics that are personal in the sense that they are innate or inherent (see *Clift v. the United Kingdom*, no. 7205/07, §§ 55-59, 13 July 2010). The Court has thus held that the holding, or otherwise, of high office (see *Valkov*, cited above, § 115), or, in some circumstances, military rank (see *Engel and Others v. the Netherlands*, 8 June 1976, § 72, Series A no. 22) can be regarded as "other status" for the purposes of Article 14.

118. The Court has further held that the elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject matter and purpose of the measure that makes the distinction in question (see *Fábián*, cited above, § 121). An analysis of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is thus both specific and contextual (see *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date*, cited above, § 67).

## 2. *Application to the present case*

119. Turning to the present case, the Court notes at the outset that the applicants complained of having been discriminated against compared to other public servants holding high offices within ministries whose salaries had allegedly not been reduced during the period in question. In so far as that complaint seems to be related to the legislation aimed at reducing judges' salaries, the Court observes that those provisions were repealed as unconstitutional; hence, any difference in treatment stemming from the legislation was eliminated. What remains is the fact that, as submitted by them (see paragraph 109 above), the applicants have suffered cuts to their respective salaries stemming from the fact that they were denied the retroactive payment of the difference in their salaries. It is against this background that the Court will examine whether judges in the Czech Republic can be considered as being in an analogous situation, with regard to their salaries, to that of public officials holding high office within ministries (for example, deputy ministers and departmental directors). In doing that, the Court will leave aside the question of whether the reduction by 10% of public servants' salaries, as referred to by the Government (see paragraph 76 above), led to a decrease in their individual salaries, which is contested by the applicants (see paragraph 70 above).

120. The Court notes, firstly, that judges' salaries are regulated by Law no. 236/1995, which also regulates the salaries of members of parliament and the government, the President of the Czech Republic and Czech members of the European Parliament (see paragraph 19 above); under Law no. 6/2002 on Courts, Judges and Lay Assessors, judges have the right to remain in their posts until the age of 70 and cannot, as a general rule, be removed against their will. On the other hand, according to the Government (see paragraph 102 above), the employment of other public servants was, during the period in question, governed by the Labour Code, as then worded (see also *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 24 and 25, 19 September 2017), and their salaries were set exclusively by government decree.

121. The Court further observes that the Government's argument about judges' unique position in terms of salaries and their right to remain in their posts until the age of 70 is corroborated by the case-law of the Czech Constitutional Court, according to which the legislature has to take account of the different respective positions of judges (compared to that of representatives of the executive and legislative branches), which therefore leaves room for manoeuvre in respect of whether to apply restrictions to the salaries of judges (compared to restrictions on the salaries of employees in other branches of the public sector – see paragraph 10 above). Consequently, at the time of the events in question exceptional circumstances justifying the prioritisation of equal restrictions on the remuneration of public servants and judges over the principle of judicial independence were needed if the

legislature wished to reduce judges' salaries (see paragraph 11 above). In the Court's view, the Constitutional Court's reference to senior public servants was thus made in order to emphasise that the legislature had to distinguish between them and the judges, and not with a view to placing them in an analogous situation, as submitted by the applicants.

122. The Court concludes, in this respect, that precisely because of the different legal framework governing their employment and salaries, public servants who were at the time in question employed within the public service under the rules of ordinary labour law cannot be compared to judges (a category of public servants to which the applicants belong), whose bonds to the State are characterised firstly by the specific functions they have to perform and secondly by the principle of judicial independence (compare *Gellérthegyí and Others*, cited above, §§ 34-41; also contrast *Pinkas and Others v. Bosnia and Herzegovina*, no. 8701/21, §§ 58-60, 4 October 2022). The Court thus finds that those applicants who had raised that complaint were not, for the purposes thereof, in an analogous or relevantly similar situation to that of senior ministerial officials.

123. In so far as the second applicant appeared initially to complain of discrimination by comparison with working pensioners affected by the Constitutional Court's judgment no. Pl. ÚS 31/13 (see paragraph 105 above), the Court observes that according to his observations he wished rather to draw attention to fundamental contradictions in the Constitutional Court's judgments nos. Pl. ÚS 28/13 and Pl. ÚS 31/13 as to the issue of retroactive payments, which had in his view been left without any explanation (see paragraph 110 above). This brings the Court to the conclusion that the second applicant's arguments rather relate to purported differences in the Constitutional Court's case-law and, thus, to the principle of judicial certainty, which the Court has already examined under Article 6 § 1 of the Convention. It accordingly considers that they do not require fresh examination under Article 14 in conjunction with Article 1 of Protocol No. 1. In any event, the disputed situations of judges and working pensioners could in no way be considered comparable.

124. Lastly, the sixth applicant compared himself to the judges who had accepted the settlement agreement offered by the State (see paragraph 8 above). In this respect, the Court finds that the alleged difference in treatment cannot be regarded as an issue under Article 14, as interpreted by the Court. The fact that the applicant had to seek before the courts the sums that the State had granted to the other judges by means of the said settlement stemmed from his free and informed decision not to accept that settlement, which would have required him to waive all his other salary claims against the State in respect of the period 2011-2014. By virtue of that decision, he placed himself in a different situation compared to that of the judges who had accepted the settlement.

125. In conclusion, the Court finds that the applicants have not demonstrated that, in terms of salaries, they were in a situation analogous or relevantly similar to public servants holding senior positions in government ministries, or that their situation could be compared to that of working pensioners affected by the Constitutional Court's judgment no. 31/13 or those judges who had entered into a settlement agreement with the State.

126. In view of the foregoing consideration, the Court finds that the complaints raised under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 are manifestly ill-founded and must be dismissed under Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 22 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik  
Registrar

Lado Chanturia  
President

## APPENDIX

List of cases:

| No. | Application no. | Case name                                | Lodged on  | Applicant<br>Year of Birth<br>Place of Residence           | Represented by   |
|-----|-----------------|------------------------------------------|------------|------------------------------------------------------------|------------------|
| 1.  | 61721/19        | Kubát v. the Czech Republic              | 18/11/2019 | <b>Ondřej KUBÁT</b><br>1977<br>Prague                      | Jiří JANOUŠEK    |
| 2.  | 5496/20         | Ožvald v. the Czech Republic             | 15/01/2020 | <b>Robert OŽVALD</b><br>1967<br>Tábor                      | Ladislav NOVOTNÝ |
| 3.  | 21318/20        | Makovcová v. the Czech Republic          | 13/05/2020 | <b>Alena MAKOVCOVÁ</b><br>1958<br>Prague                   | Lukáš BOHUSLAV   |
| 4.  | 33522/20        | Pilařová v. the Czech Republic           | 29/07/2020 | <b>Adriana PILAŘOVÁ</b><br>1963<br>Prague                  | Jiří JANOUŠEK    |
| 5.  | 43039/20        | Biskupová Fišerová v. the Czech Republic | 24/09/2020 | <b>Soňa BISKUPOVÁ FIŠEROVÁ</b><br>1974<br>České Budějovice | Vlastimil HÁJEK  |
| 6.  | 55448/20        | Pečený v. the Czech Republic             | 08/12/2020 | <b>Miroslav PEČENÝ</b><br>1976<br>Brno                     | Jiří JANOUŠEK    |