



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

SECOND SECTION

CASE OF PASLAVIČIUS v. LITHUANIA

(Application no. 15152/18)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Applicant ordered, as the losing party, to pay his former employer's legal costs in proceedings contesting the lawfulness of disciplinary penalties and his dismissal • Convention requirements of access to court handled properly by domestic courts • Applicant, a lawyer, afforded a reasonable opportunity to present his cases effectively • Court unable to find that legal assistance to his former employer of such a degree that it could have given rise to unfairness • No breach of the right to equality of arms

STRASBOURG

18 July 2023

FINAL

18/10/2023

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

In the case of Paslavičius v. Lithuania,

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

Arnfinn Bårdsen, *President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Lorraine Schembri Orland,
Frédéric Krenç,
Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 15152/18) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Tadas Paslavičius (“the applicant”), on 21 March 2018;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning the applicant’s right of access to a court, under Article 6 § 1 of the Convention, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 27 June 2023,

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

INTRODUCTION

1. The case concerns the applicant’s complaint, under Article 6 § 1 of the Convention, regarding the alleged impairment of his right of access to a court on account of the domestic courts’ decisions to order him to pay his former employer’s legal costs during litigation concerning disciplinary penalties and the applicant’s dismissal from his employment.

THE FACTS

2. The applicant was born in 1986 and lives in Vilnius. He was represented by Mr E. Šriupša, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

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

5. As noted by the applicant in his submissions to the administrative courts (see paragraph 26 below), on 12 June 2013 the applicant began working – having been assigned the employment grade of A10 – in the legal

and personnel administration department of the Trakai district municipal administration (*Trakų rajono savivaldybės administracijos Juridinio ir personalo administravimo skyrius*) as a senior legal specialist (*vyriausiasis [teisės krypties] specialistas*). In August 2015 the Trakai municipality reorganised its legal and personnel department, and established the legal, personnel and public procurement department (*Teisės, personalo ir viešųjų pirkimų skyrius*), wherein the applicant continued to work. On 30 December 2016 he was dismissed from his position, on the ground that his position had become redundant (see also paragraphs 18-23 below).

6. On 9 October 2015 the Trakai municipality concluded a legal-services agreement with a law firm, in which A.P. – an advocate – was a partner, to provide the municipal administration with legal services – legal consultations, drafting legal and procedural documents, and representing the municipality in court proceedings.

The Government provided the Court with the Trakai Region District Court’s ruling of 17 March 2016, which noted that A.P. had represented the Trakai municipality in those court proceedings, which were related to the lawfulness of dismissal of the municipality’s driver, L.P., by a decision of 7 July 2015 issued by the municipality.

I. THE PROCEEDINGS REGARDING THE APPLICANT’S DISCIPLINARY PENALTY AND RELATED PROCEEDINGS REGARDING LEGAL COSTS

A. The proceedings regarding the disciplinary penalty

7. By order no. K3-105 of 14 April 2016, issued by the director of the Trakai district municipality administration (hereinafter also “the Trakai municipality”), a disciplinary penalty – a strict reprimand – was imposed on the applicant for insulting and harassing one of his colleagues, Ms X, actions that had continued for some time (see also paragraphs 41-44 below).

8. The applicant then initiated court proceedings seeking to annul that disciplinary penalty. The Trakai municipality, which was represented by advocate A.P., submitted a response, asking that the applicant’s complaint be dismissed. The applicant afterwards revised his complaint, adding a request to be awarded, 650 (EUR) for non-pecuniary damage, which he assessed as loss of his time spent when drafting the complaint to court. The Trakai municipality then submitted a response to the applicant’s revised complaint.

On 1 February 2017 the Vilnius Regional Administrative Court – having examined the case in a public hearing, with the participation of the applicant, and advocate A.P., and having heard witnesses and examined written evidence – found that the municipality’s disciplinary commission had correctly established the factual circumstances in respect of the applicant’s

offensive behavior. The applicant's complaint regarding the annulment of order no. K3-105 was dismissed.

Subsequently the applicant attempted to lodge an appeal, and the municipality submitted a response, but by a final ruling of 28 April 2017 the Supreme Administrative Court established that the applicant had failed to lodge his appeal within the prescribed time-limit.

B. The follow-up proceedings for legal costs

9. In respect of the above-mentioned proceedings, on 12 May 2017 the Trakai municipality lodged a claim with the Vilnius Regional Administrative Court for the reimbursement of legal costs, in view of the fact that that court's decision of 1 February 2017 had come into force (see paragraph 8 above). The municipality wished to recover EUR 1,016 in fees paid to A.P. for the drafting of the response to the applicant's complaint, EUR 381 in fees paid to A.P. for the municipality's representation in court, and EUR 398 for in fees paid to A.P. for the drafting of the response to the separate complaint lodged by the applicant with the Supreme Administrative Court.

The applicant submitted a response, arguing that the municipality's claim was unlawful, and that the expenses requested were disproportionate. He further argued, *inter alia*, that (i) the municipality had had a sufficient number of employees who were lawyers and who could have represented it, (ii) the case had not been complex, and (iii) at that time the applicant was unemployed (see paragraph 20 below), and – except for the money that he received in unemployment benefit, which amounted to only a few hundred euros, had no money by means of which to reimburse the municipality with the sum that it had requested in legal costs.

10. On 16 August 2017 the Vilnius Regional Administrative Court partly granted the Trakai municipality's claim for the reimbursement of legal costs. The court noted that, under the relevant legal regulation, at the relevant time the maximum fee that could have been paid to an advocate for drafting a response to the complaint had been EUR 1,870; however, the sum the defendant requested by the municipality, EUR 1,016, was even lower. Regarding the expenses in respect of the municipality's representation in the court hearing, the duration of the time spent by the advocate in court had amounted to no more than four hours; thus, the advocate's maximum fee could only have been a maximum of EUR 317, instead of the EUR 381 sought by the municipality. Lastly, according to the Supreme Administrative Court's case-law, the question of the reimbursement of legal expenses incurred by the parties to a case before the first-instance or the appellate court had to be dealt with by the respective court. Accordingly, the municipality's request for the reimbursement of EUR 398 for the drafting of the response to the applicant's separate complaint to the Supreme Administrative Court was referred to the latter court.

11. The Vilnius Regional Administrative Court held that the fact that the Trakai municipality had had in-house lawyers had not prevented the municipality from hiring an (external) advocate to argue its case in court. The municipality had had discretion to choose how to defend its rights. In the case in question, the dispute had arisen between the Trakai municipality and its employee; thus, in the court's view, the fact that the municipality had hired an advocate to represent it in that kind of case had been justifiable. Moreover, the case file had been voluminous – it had contained three volumes of documents, and the municipality's employees had been questioned as witnesses. The court also noted the applicant's conduct, and the fact that the municipality had had to respond to the applicant's revised complaint and had thus incurred additional expenses. The court took into account the fact that the applicant was unemployed, which had constituted the basis of the decision, in the interests of justice, reasonableness and fairness, to reduce the amount to be recovered from the applicant to EUR 1,000. That being so, the court also observed that even if at the time of the events in question the applicant had not been earning income from work, he was of working age and had a university degree in law, and would therefore be able to earn income in future and to repay the aforementioned legal costs.

12. The applicant then lodged a separate complaint against the first-instance court's decision regarding the award of legal costs, reiterating his previous arguments.

13. By a final ruling of 21 September 2017 the Supreme Administrative Court dismissed the applicant's separate complaint, to which the municipality had submitted a response, against the Vilnius Regional Court's decision of 16 August 2017, leaving that decision unchanged. The Supreme Administrative Court referred to the guidelines set out in its ruling of AS¹⁴³-375/2008 (see paragraphs 49-52 below). Regarding the instant case, the Supreme Administrative Court observed that the dispute had arisen between the Trakai municipality and its employee, and that the disciplinary penalty had been imposed on the applicant for his behavior towards another employee of the municipality. During the proceedings before the first-instance court, the employees of the municipality, including the head of the department in which applicant worked, had been interviewed as witnesses. Given the circumstances, the first-instance court had rightly held that representation by an advocate, when conducting such kind of case, was justifiable. At the same time, the fact that the applicant was not represented by an advocate did not amount to a breach of the principle of equality of arms, given the fact that the proceedings had been initiated by the applicant himself. Moreover, as the applicant had noted in his separate complaint, while working in the Trakai municipality he had regularly represented it as the defendant before courts as a qualified lawyer and had won almost all the cases in respect of which he had acted.

14. Further, the Supreme Administrative Court noted that the fee for the drafting of the response to the applicant's complaint, for which the municipality had asked to be reimbursed, was nearly two times lower than the maximum fee provided in the Recommendations (see paragraph 47 below). The first-instance court took into account the applicant's difficult financial situation and reduced the sum of the expenses to be recovered; the first-instance court's calculations had been correct. The applicant's arguments regarding the size of his salary when he had worked at the municipality did not alter the fact that the municipality had actually incurred legal costs. Thus, the panel of judges found that there had been no basis to reduce the expenses even further.

15. On 27 September 2017 the Trakai municipality lodged a claim with the Supreme Administrative Court, asking to be reimbursed the costs, in the amount of EUR 381, that it had incurred in drafting the response to the applicant's separate complaint (see paragraph 12 above), given that the ruling of 21 September 2017 had become final (see paragraphs 13 and 14 above).

On 18 October 2017 the Supreme Administrative Court upheld the municipality's claim for costs in part, lowering it to EUR 327, that sum having been based on the calculations as to maximum sum to recover for drafting response to the separate complaint pursuant to Regulations (see paragraph 47 below).

16. On 25 October 2017 the Supreme Administrative Court adopted the ruling regarding the reimbursement of the defendant's expenses incurred in drafting the response to the applicant's separate complaint (see paragraph 10 *in fine*). The Supreme Administrative Court referred to Article 40 §§ 1 and 5 of the Law on Administrative Proceedings (see paragraph 45 below) and held that the Trakai municipality was entitled to be reimbursed for the expenses it had incurred in securing representation by an advocate. Nevertheless, although the municipality asked for EUR 398 by way of reimbursement for its legal costs, those costs having been substantiated by documents, in accordance with the Recommendations (see paragraph 47 below), the maximum fee for drafting a response to a separate complaint was EUR 317. Moreover, the subject matter of the separate complaint was not complicated, and no questions regarding the interpretation and application of law had raised; accordingly, the court fixed EUR 150 as an adequate sum to be afforded by way of reimbursement of the municipality's costs.

17. As summarised by the Government in their observations, the applicant subsequently lodged several new requests with the Supreme Administrative Court. Firstly, he asked that court to reopen court proceedings regarding the award of EUR 150 for legal costs (see paragraph 16 above), but on 8 March 2018 the Supreme Administrative Court held that the applicant's arguments were related to the application of procedural rather than substantive rules of law, but that the lodging of a request for the reopening of proceedings

regarding a procedural decision that had settled the issues of reimbursement of legal costs was not provided for in law.

Secondly, in March 2018 the applicant lodged a request with the Supreme Administrative Court, asking it to explain how the court ruling of 25 October 2017 (see paragraph 16 above) should be executed; however, on 8 May 2018 that court refused the applicant's request, holding that the operative part of the ruling of 25 October 2017 was clear, understandable and unambiguous.

II. THE APPLICANT'S DISMISSAL AND PROCEEDINGS REGARDING ITS LAWFULNESS

18. On 26 October 2016 the Trakai municipality adopted decision no. P2-1127 annulling the applicant's senior legal specialist's post (grade A10) (for the basis of the decision, see the municipality's explanation in paragraph 22 below).

19. On 27 October 2016 the municipality informed the applicant in writing that, if by 30 December 2016 he had not been appointed to other duties, he would be dismissed.

20. On 28 December 2016 the Trakai municipality adopted decision no. K3-303 dismissing the applicant from his post as of 30 December 2016.

21. The applicant started administrative court proceedings seeking his reinstatement and compensation for pecuniary damage, in the form of unpaid salary, and for non-pecuniary damage.

22. Responding to the applicant's claim, the Trakai municipality explained that the decision of 26 October 2016 (see paragraph 18 above) had been adopted after it had taken into account the situation in the legal, personnel and public procurement department, how busy the legal specialists of that department were: the lawyers of that department had not worked full time; after the laws on construction and territorial planning had been amended, the number of cases relating to the application of those laws had been reduced; similarly, the number of cases regarding the removal of tenants from municipal housing had diminished, as had the number of cases concerning the privatisation of municipal property; the number of inhabitants applying to the municipal administration for primary legal aid had also diminished. As a result, there had been a need to optimise the activities of the department, and to save budgetary resources. It could be seen from the descriptions of the duties of the department's specialists that essentially all the functions of the applicant could [from that time on] be performed and were being performed by the department's other legal specialists.

23. The municipal administration also noted that the decision of 26 October 2016 had been taken by the relevant authority – the director of municipal administration, such matters being within his remit. The director had an obligation to consider questions such as how to optimise the department's work and to raise effectiveness, including how to properly use

human and financial resources. After the applicant's dismissal, only several cases – one civil case and one administrative case, which the applicant had not seen to its conclusion, had remained to be dealt with by the department.

A. The Vilnius Regional Administrative Court

24. By a decision of 12 April 2017, having held an oral hearing the participation of advocate A.P., who represented the Trakai municipality, and of the applicant, the Vilnius Regional Administrative Court dismissed the applicant's claim. The court held that the annulment of the applicant's post had been real, lawful and well-founded. No unlawful actions on the part of the Trakai municipality had been established.

25. The applicant appealed, contesting lawfulness of his dismissal. The Trakai municipality responded, contesting the applicant's submissions, and reiterating the arguments regarding the department's reduced workload prior to the applicant's dismissal (see paragraphs 22 and 23 above).

B. The final ruling by the Supreme Administrative Court

26. On 3 August 2017, in written proceedings, the Supreme Administrative Court dismissed the applicant's appeal and left the first-instance court's decision unchanged. On the basis of the material contained in the case-file, the court shared the lower court's assessment that there were no grounds for holding that the annulment of the applicant's post had been fictitious – the result of a conflict between the applicant and the mayor and the director of administration, as the applicant had claimed. Both the municipality, when responding to the lawsuit, and the applicant, in his supplementary observations of 17 July 2017, "essentially acknowledged" that part of the applicant's functions were being performed by the remaining employees of his former department. Accordingly, it was true that in reality those functions could be performed by a lesser number of personnel than before the annulment of the applicant's post. The current state of affairs confirmed that the reorganisation had been genuine. The Supreme Administrative Court also found that the organisation of that work had been within the municipality's purview. The circumstances of the case, assessed on the basis of the documents in the case file, allowed the conclusion that, in annulling the applicant's post, the municipality had "essentially optimised the department's work".

27. Besides, there was no dispute that on 27 October 2016 the applicant had been warned that his post was to be abolished by the end of that year, and that, should he not be appointed to new duties by that date, he would be dismissed from his post (see paragraphs 18 and 19 above). There was also no dispute about the fact that on 22 December 2016 the Trakai municipality had informed the applicant of other posts in the municipal administration that had

been vacant at that time: the only unoccupied posts that had then been available were that of (i) the deputy head of the legal, personnel and public procurement department – an A11 grade post (that is, one grade higher than that of the applicant’s post), and (ii) a senior specialist in the environmental and public order department (an A9 grade) – which had required a university degree in biomedicine, a qualification that the applicant had not possessed. The guarantees set out in Article 43 § 1 of the Law on Civil Service (see paragraph 48 below) had therefore not been applicable in the applicant’s case.

28. Lastly, the first-instance court had correctly assessed that there had been no unlawful actions on the part of the municipal administration in annulling the applicant’s post and dismissing him. Accordingly, there was no basis to grant the applicant’s claim for compensation for non-pecuniary damage.

C. The follow-up proceedings regarding the municipality’s legal costs

29. After the final ruling of the Supreme Administrative Court of 3 August 2017 (see paragraphs 26-28 above), the Trakai municipality lodged a claim with the Vilnius Regional Administrative Court for the reimbursement of the litigation costs that it had incurred in relation to the court proceedings concerning the lawfulness of the applicant’s dismissal (see paragraphs 21-28 above). The municipality sought compensation in the amount of EUR 1,694 – the sum that it had paid to A.P., the advocate, for his services in that regard.

The applicant objected to that request, arguing, among other, that the municipality had had enough lawyers on its payroll and that the case had not been complex enough to have required an advocate’s participation.

1. The Vilnius Regional Administrative Court

30. By a ruling of 26 September 2017 the Vilnius Regional Administrative Court upheld the municipality’s request in part. The court noted that questions regarding the reimbursement of legal costs were regulated by Article 40 §§ 1 and 5 of the Law on Administrative Proceedings, and that the party that had won the case had the right to be reimbursed for its legal costs, including the costs of representation by an advocate (see paragraph 45 below). The reimbursement of legal costs was also regulated by Article 98 of the Code of Civil Proceedings and by the Recommendations (see paragraphs 46 and 47 below). In the applicant’s case, the municipality had been represented by A.P., with whom a contract for legal representation had been concluded. The requested sum of EUR 1,694 was supported by documents.

31. The Vilnius Regional Administrative Court then cited the case-law of the Supreme Administrative Court (ruling of 25 September 2008 no. AS¹⁴³-375/2008, which held that a public administration entity’s status as a party to

proceedings, in and of itself, did not restrict its entitlement to the reimbursement of legal costs; a public administrative entity could be entitled to recover the costs of legal representation in court proceedings where representation in court was necessary for the effective defence of the interests of the State or a municipality (see paragraph 51 below). Referring to the information posted on the Trakai municipality's Internet site, the court noted that its legal, personnel and public procurement department had six senior specialists, one of whom had been on special leave, and a head of department. It followed that the municipality had had internal personnel capacity and had been able to defend its interests. Even so, when assessing the need for an advocate in the instant case, the court had regard to the voluminous nature of the complaint and of the revised complaint that included detailed analysis of the dispute and raised significant number of questions, together with the sheer complexity of the case. The court thus found that the internal capacity of the municipality had not been sufficient for the effective conduct of the defence, and the assistance of an advocate had been necessary.

32. When assessing the maximum amount for legal costs to be awarded against the applicant, the court observed that the case had originated in an employment relationship, and that the Supreme Administrative Court's case-law, to which the municipality referred in its response, in respect of such cases was well-established. Accordingly, the court reduced by 50% the amount that could be reimbursed in respect of costs incurred in respect of drafting the reply to the lawsuit. The court further considered that the advocate had become familiar with the case while drafting the reply to the lawsuit, and had thus reduced the hours needed to prepare for the court hearing from four to two. The court also made the calculations according to the Recommendations, and, on the basis of the criteria of justice, reasonableness and fairness, concluded that the amount to be recovered from the applicant was EUR 904.

2. The Supreme Administrative Court

33. The applicant appealed, lodging a separate complaint regarding the Vilnius Regional Administrative Court's ruling of 26 September 2017 (see paragraphs 30-32 above). He asked that the municipality's request for the reimbursement of legal costs be refused; failing that, he asked that the expenses to be covered be significantly lowered. The applicant argued that his dismissal had been based on redundancy, and that it had therefore been unreasonable for the municipality to hire an advocate for those court proceedings. He also argued that at that time he had been unemployed and that, even if he had been working, the awarded sum would be equal to twice his monthly salary; the awarded sum was therefore excessive. Lastly, he stated that since his monthly salary during his employment at the municipality had been around EUR 480, he had not been able to afford to hire an advocate, whereas the municipality, even though it had had a large administrative

apparatus, had hired one. This had put the parties on an unequal footing in the court proceedings.

34. By a final ruling of 18 October 2017 the Supreme Administrative Court partly upheld the applicant's separate complaint. The court observed that, when assessing the question of litigation expenses, one had to bear in mind the principle of "loser pays", which had been established by Article 40 § 1 of the Law on Administrative Proceedings (see paragraph 45 below). In the applicant's case, the court decision had been taken in the municipality's favour; there was thus a legal basis for awarding legal representation costs against the applicant (Article 40 §§ 1 and 5 of that Law). The right to avail oneself of legal assistance provided by an advocate was one of the essential elements that guaranteed the right to a judicial remedy (*teisė į teisminę gynybą*). Professional legal representation in administrative cases was meant not only to assist the parties to properly express their position and provide legal arguments, it was also part of the system by which justice was implemented. Accordingly, each party to administrative proceedings had the possibility to choose whether it would conduct the proceedings itself or with an assistance of an advocate, and the Law on Administrative Proceedings did not limit the right of parties to administrative proceedings to avail themselves of an advocate for the purposes of the hearing of the case in court. Lastly, by the above-mentioned ruling no. AS¹⁴³-375/2008 the Supreme Administrative Court had already held that the reimbursement of the costs of a public administration entity's legal representation by the party that had lost the case was possible (see paragraph 51 below).

35. The case at hand concerned an employment dispute between the administration of a municipality and a person who had been dismissed from serving in that administration. The first-instance court received a large number of documents concerning the structural reform of the municipality's administration; all of those documents were assessed by the court in terms of the application of law. The applicant revised the complaint several times, and raised a number of procedural issues, such as the involvement of new parties to the proceedings. The court deemed that given the circumstances, the assistance of an advocate during the conduct of the case was justified. The fact that the applicant was not represented by an advocate did not lead to the breach of the principle of equality of arms in this case, given that the court proceedings had been initiated by the applicant himself, and, moreover, the applicant had had a legal education. The first-instance court had also properly calculated the advocate's fees, according to the rules set out in the Recommendations (see paragraph 47 below).

36. Referring to its own case-law, the court lastly noted that litigation costs to be reimbursed by the losing party in a case could be reduced, should that party be facing financial difficulties. Having regard to the principles of justice, reasonableness and fairness, as well as the difficult financial situation

of the applicant, the court reduced to EUR 700 the sum to be reimbursed, by way of covering the litigation costs incurred by the Trakai municipality.

D. The applicant's attempt to have his case reopened and additional court fees ordered to be paid by the applicant

37. As noted by the Government, on 3 November 2017 the applicant lodged a request with the Supreme Administrative Court, asking it to reopen the administrative court proceedings regarding his dismissal. Later that month he submitted to the court additional evidence allegedly proving that his dismissal from his employment had been unlawful. In December 2017 the Trakai municipality submitted a reply to the applicant's request; subsequently the applicant submitted to the Supreme Administrative Court additional evidence aimed at strengthening his argument that the case should be reopened.

On 12 December 2017 the Supreme Administrative Court refused the applicant's request for the proceedings to be reopened.

38. In that connection, following the Supreme Administrative Court's final ruling of 12 December 2017, on 27 December 2017 the Trakai municipality lodged with the Supreme Administrative Court a claim that it be reimbursed for the legal costs that it had incurred (EUR 1,863) owing to A.P. having drafted the reply to the applicant's request regarding the reopening of the proceedings (see paragraph 37 above). In response, the applicant pleaded that the municipality could have availed itself of the legal assistance of its in-house lawyers, rather than hiring a "well-paid advocate" (*brangiai apmokamas advokatas*) to draft the response to the applicant's request for the reopening of the proceedings, and that the sum claimed was unjustifiably high.

39. On 21 February 2018 the Supreme Administrative Court upheld in part the municipality's request for reimbursement: when calculated according to the Recommendations and according to the Supreme Administrative Court's practice, the fee for drafting the reply to the applicant's request regarding the reopening of the proceedings could be no higher than EUR 335; thus, the sum requested was too high. Moreover, during the main proceedings regarding lawfulness of the applicant's dismissal the Supreme Administrative Court had already noted that (i) the case was linked to an employment dispute, (ii) the courts' practice in such cases was clear, (iii) the legal questions concerned were not novel, and (iv) the applicant's financial situation was dire; on those grounds the court lowered the sum awarded [for litigation costs] by 50 per cent (see paragraph 32 above). Therefore, in respect of the present claim, the court concluded that the applicant should cover EUR 168 of the costs incurred by the Trakai municipality.

III. OTHER PROCEEDINGS INSTITUTED BY THE APPLICANT

40. In their observations of 6 March 2020, the Government further referred to several other proceedings involving the applicant.

Those included the case where, by a final ruling of 24 April 2017 the Supreme Administrative Court annulled, as factually unfounded, a disciplinary penalty (reprimand) (*pastaba*) imposed on the applicant on 18 November 2015, for not having submitted, on the Trakai municipality's behalf, a response to a lawsuit in labour litigation. As pleaded by the applicant, labour disputes at the municipality "nearly always" were outsourced to (external) advocates.

Similarly, by a final ruling of 20 July 2018 the Supreme Administrative Court annulled another disciplinary penalty (strict reprimand) for improper performance of his duties, imposed on the applicant on 18 May 2016.

In those two proceedings the Trakai municipality was represented by A.P., the advocate.

41. The Government also referred to the fact that in March 2016 the applicant had been fined by the police for publicly insulting his work colleague, Ms X., at the premises of the Trakai municipality, that fine having been upheld by courts at two levels of jurisdiction in 2016.

42. In another set of proceedings, by a decision delivered by the Vilnius City District Court on 31 January 2018, which on 8 January 2019 was upheld by the Vilnius Regional Court, a claim for defamation lodged by the applicant against a former colleague at the Trakai municipality, Ms X., was dismissed. The courts observed that the applicant's disrespectful and inappropriate behavior towards his former colleague had occurred over some time, and that for that reason he had been given a strict reprimand (see also paragraphs 7 and 8 above). The Vilnius City District Court also ordered the applicant to pay EUR 1,198 to Ms X. by way of reimbursing her for the costs that she had incurred in connection with the defamation proceedings.

43. In that connection (see paragraph 42 above), the applicant asked that the payment of those costs be deferred: he noted that on 21 January 2019 he had begun a new job, and that his net salary was between EUR 540 and EUR 580, and that he owed other sums of money to other parties totaling EUR 2,700, which were now being sought through legal means (*vykdomi išieškojimai*). The applicant's former colleague Ms X. asked that the applicant's request be refused, as she had borrowed the money to cover the costs that she had incurred during the defamation proceedings.

By a decision delivered on 21 May 2019 by the Vilnius City District Court, which on 18 July 2019 was upheld by the Vilnius Regional Court, the applicant's request for a deferment was dismissed. The courts emphasised that the applicant had lodged an unfounded claim for defamation, and that as a result his former colleague had been obliged to seek the assistance of an advocate. It was in the colleague's interests that she be compensated for the

legal costs incurred by her as soon as possible. The courts also observed that the applicant was young and healthy and that he could therefore seek a job that was better paid. The fact that the applicant had not availed himself of all possible means of increasing his income could not justify the honest party to the proceedings – the applicant’s former colleague – having to suffer financially. In any case, all of his above-mentioned unpaid debts [in respect of legal costs] that were now being pursued through legal channels had been a consequence of the applicant’s own actions – that is to say they were a result of court decisions that had not been in his favour. The enforcement of a court decision should not be understood as causing no discomfort to the debtor; on the contrary, a debtor should comprehend that a court decision had to be enforced, even if the debtor was not able to enforce it immediately. The debtor had to demonstrate respect towards the winning party and towards the court that had dispensed justice and had to make a reasonable effort to enforce the court decision in question as soon as possible, rather than doing everything possible to delay the enforcement of the court decision. Accordingly, if the applicant’s request were to be granted and the payment of the awarded litigation costs deferred, or if it were to be ordered that those costs be paid in instalments, that would disproportionately breach the interests of the defendant, in whose favour the court decision had been delivered.

44. Other court proceedings, wherein in July 2018 the applicant had sued the Trakai municipality for non-pecuniary damage in the sum of EUR 5,000, on account of the municipality’s decision not to start disciplinary proceedings against the head of the department where the applicant had worked, in January 2019 the applicant asked for State-guaranteed legal aid, and same month was granted the assistance of an advocate in proceedings that took place before first-instance and appellate courts, given that the applicant’s income for the period of 1 January 2018 to 31 December 2018 had been below the required threshold. The municipality was represented by A.P., the advocate. On 15 February 2019 the Vilnius Regional Administrative Court dismissed the applicant’s claim as unsubstantiated. By a final ruling of 11 November 2020 the Supreme Administrative Court dismissed the applicant’s appeal. It also awarded the Trakai municipality’s legal costs, representation by advocate A.P., to be paid by the applicant, in the sum of EUR 150, instead of EUR 423, claimed by the municipality. The Supreme Administrative Court noted that the case had not been complex and also referred to its previous decision regarding such costs (see paragraph 16 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGISLATION

45. The Law on Administrative Proceedings (*Administracinių bylių teisenos įstatymas*) at the time material to the case read:

Article 40. Reimbursement of the expenses incurred by parties

“1. The party to the proceedings in whose favour a decision has been adopted shall be entitled to recover costs from the other party.

...

5. The party in whose favour a decision has been adopted shall be entitled to claim the reimbursement of expenses incurred in respect of assistance rendered by an advocate or trainee advocate. ... The question of the reimbursement of [legal] representation expenses shall be determined in accordance with the procedure laid down by the Code of Civil Procedure and other legal acts. ...”

Article 47. Representation in court

“1. Parties to the proceedings shall defend their interests in court [either] themselves or through their representatives. The participation of the party in the proceedings shall not deprive it of the right to be represented in the case. ...”

46. The Code of Civil Procedure, as worded at the relevant time, read:

Article 98. Reimbursement of the expenses incurred in respect of assistance rendered by an advocate or trainee advocate

“1. The party in whose favour the decision has been adopted shall be reimbursed [at the order of] the court by the other party for the fees [paid to] the advocate or trainee advocate who participated in the hearing of the case, as well as for help afforded in respect of the preparation of the court documents and for consultation...

2. Expenses incurred in connection with assistance [provided by] an advocate or trainee advocate – taking into consideration the complexity of the specific case and the expenditure of labour and time on the part of the advocate or trainee advocate – shall be awarded in an amount no greater than that established in the recommendations regarding payment amounts approved by the Minister of Justice and the Chairman of the Council of the Lithuanian Bar Association.

3. The provisions of this article shall be applicable when awarding expenses incurred in respect of assistance provided by the advocate or trainee advocate who represented the party in the first instance, appellate or cassation court.”

47. The Recommendations on the Maximum Amounts of an Advocate’s or Trainee Advocate’s Fees that Can be Recovered in Civil Proceedings (hereinafter “the Recommendations”), approved by the Minister of Justice on 19 March 2015, Order no. 1R-77, provide:

“...

2. When determining the amount of the fee for legal services rendered, the court shall take into account the following criteria:

2.1. the complexity of the case;

2.2. the complexity of legal services [and] the need for specialist knowledge;

2.3. previous participation in that case;

...

2.5. the amount [of money concerned by] the dispute;

- 2.6. the permanence and nature of the legal services rendered;
- 2.7. the novelty of the legal issues being addressed;
- 2.8. the conduct of the parties during the proceedings;
- 2.9. advocate working time costs;
- 2.10. other relevant circumstances.

...

7. The recommended maximum fees for legal services rendered by an advocate in civil cases are calculated by applying default coefficients, which are based on the average gross monthly earnings over the whole Lithuanian economy in the previous quarter ..., as published by the Department of Statistics of Lithuania.

8. The recommended maximum fees for the legal services rendered by an advocate are as follows:

- 8.2. for a claim, counterclaim, defence or reply to a counterclaim – 2.5;
- 8.3. for reply to a claim, ... – 1.5;

...

- 8.9. for an appeal – 2.5;

8.10. for an appeal, if the lawyer was present at the relevant proceedings at first instance – 1.7;

- 8.11. for a response to an appeal – 1.3;

- 8.12. for a cassation appeal – 3;

8.13. for an appeal on points of law, if the lawyer was present at the first-instance or appellate proceedings – 2.2;

- 8.14. for a response to an appeal on points of law – 1.7; ...”

48. The Law on the Civil Service (*Valstybės tarnybos įstatymas*) at the material time read:

Article 43. Other Guarantees

“1. A career civil servant whose post is annulled shall be appointed to another career civil service post of the same level and category – or, if there is no such post and the civil servant gives his consent, to a post in a lower category. If a career civil servant is not appointed to another post before his position is cancelled, he shall be dismissed from office ...”

II. DOMESTIC COURT PRACTICE

49. In a ruling of 25 September 2008 in case no. AS¹⁴³-375/2008 – which concerned the award of litigation costs (namely, advocate’s fees) in favour of the Study Quality Evaluation Centre (*Studijų kokybės vertinimo centras*), a budgetary institution established by the Ministry of Education, against a private individual – the enlarged chamber of the Supreme Administrative Court noted that the right to a judicial remedy (*teisė į teisminę gynybą*) was a

fundamental right, granted not only under domestic law (Article 30 § 1 of the Constitution, Article 4 § 1 of the Law on Courts, and Article 5 § 1 of the Law on Administrative Proceedings), but also by Article 6 § 1 of the Convention. It added that the Constitutional Court had also held that a person's rights had to be defended effectively, rather than simply by way of a formality, against actions brought by both private individuals and by the State institutions or officials (the Constitutional Court's rulings of 1 October 1997, 8 May 2000 and 12 July 2001). The Supreme Administrative Court also noted in its ruling of 25 September 2008 that the right to a judicial remedy was not only a procedural right, which could be understood as right to apply to court; the right to a judicial remedy also comprised the parties' right that the court would adopt a procedural decision corresponding to the respective material legal relations and procedural positions of the parties. In administrative cases, it was not only the plaintiff but also the defendant and the third parties who had the right to a judicial remedy. When granting a plaintiff's claim, the court defended those of his or her subjective rights that had been breached by the defendant; when rejecting the plaintiff's claim the court defended the defendant from unfounded material legal claims by the plaintiff. The right to avail oneself of an advocate's assistance in administrative proceedings was recognised as one of the essential elements guaranteeing the right to a judicial remedy. Professional legal representation in administrative cases was aimed not only at assisting the parties involved to properly state and advance legal grounds for their respective positions, but also acted as part of the system by which justice was implemented.

50. The Supreme Administrative Court referred to the "loser pays" principle, established in Article 44 § 1 of the Law on Administrative Proceedings (see paragraph 45 above), and its significance:

"The general rule that the [winning party's] legal representation costs [shall be paid by] the losing party helps to guarantee the parties' right to mount a defence; otherwise, knowing that even if they were to win [their] case [they] would not be able to [be reimbursed for] incurred litigation costs, parties would avoid bringing in advocates to represent them. Then again, knowing that the losing party would have to pay not only its own representation costs, but also those of the [winning] party ... plays an important preventive role, [affording protection against] unfounded claims or unfounded responses to claims. The [possibility of having to] cover the other parties' [legal fees] discourages unfounded and lengthy litigation. Even so, this preventive role could have the effect of limiting the right to a judicial remedy, because [the risk of being] obliged to cover the other party's litigation costs [may prompt] a person to refrain from defending his or her breached right in court. This aspect becomes especially important in administrative proceedings, where a private subject usually defends ... rights that have been or allegedly have been breached by a public administration entity. For that reason the administrative proceedings should seek balance, so that the division of litigation costs would become means to guarantee the right to a judicial remedy, rather than restrict it".

51. Regarding the right of public administration entities to be reimbursed incurred legal costs the Supreme Administrative Court noted that, under

Article 49 § 1 of the Law on Administrative Proceedings, parties had a right to conduct a case either themselves or via a representative. A public administration entity that was a party to proceedings was not restricted by the relevant legislation in respect of the possibility of it being represented by an advocate. It was within the discretion of all parties to proceedings – including a public administration entity – to employ an advocate where the need for one existed.

Even so, this did not mean that such legal costs should be met by each party that had hired an advocate. The Supreme Administrative Court held that when a public administration entity is governed by administrative law, the litigation is related to legal relations where that entity performs the function of public administration. On the one hand, when acting in the specific area of public administration, this entity should assure such its inner administration structure, which would allow it to properly implement the functions of public administration. In order that such an entity might realise that aim, it received financing from the State or municipal budget. Even though engaging in litigation in court did not number among the direct tasks of a public administration entity, in principle such entities had to be capable of representing their own interests in court. On the other hand, litigation in court was a specific activity. It was often the case that the internal resources of the public administration entity in question were insufficient to deal with any complex legal question that might arise; in such an event, only professional legal representation (that is to say the participation of an advocate) could ensure the conditions necessary to properly protect the State's (or the municipality's) interests in court.

52. Taking into account the aforementioned considerations, the Supreme Administrative Court concluded that the fees of the public administration entity's legal representative could be reimbursed by the losing party, provided that the following condition could be met:

“[W]hen deciding whether representation costs should be awarded in favour of a public administration entity and when deciding on the amount of costs that should be awarded, the administrative court must make a comprehensive assessment of whether, given the internal administrative capacity of the public administration entity in question and taking into account the nature of the case, it had been necessary to have recourse to an advocate. When determining the nature of the case, account must be taken, *inter alia*, of the novelty of the legal issue raised in the case (that is, whether the case-law on the issue in question has been formed), of the scope and complexity of the case, of the formulation of the applicant's position in the case, of the grounds and subject matter of the complaint, of whether the plaintiff himself/herself/itself is represented by an advocate, of whether the outcome of the case could have a wider impact not only on the legal relationship [between the parties] that has developed in the case but also on ... the public interest. None of these criteria is in itself decisive in addressing the question of an award of the costs of legal representation to a public administration entity. On the contrary, the court hearing the case must assess the entirety of such criteria and decide whether there are grounds for ordering the losing party to pay the [other party's] costs. It must be noted that similar criteria are set out in the [Recommendations (see paragraph 47 above)]. ... Thus, the representation costs incurred by a public

administration entity in administrative proceedings may be reimbursed, but only where the participation of a lawyer was necessary in order to properly protect the interests of the State (or a municipality)”.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. The applicant complained that there had been a breach of his right to a fair hearing, on account of the domestic courts’ decisions to oblige him to cover the litigation costs incurred by the Trakai municipality, when he had contested the disciplinary penalties and his dismissal. The applicant relied on Article 6 § 1 and Article 13 of the Convention.

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

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

A. Admissibility

55. The Government considered that there was nothing to indicate that the applicant had not been afforded a reasonable opportunity to present his cases effectively before the domestic courts. The domestic courts had handled the issue of legal costs in a reasonable way and in compliance with domestic law. Consequently, the complaint should be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention as manifestly ill-founded.

56. The applicant disagreed.

57. The Court finds 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 applicant**

58. The applicant submitted that in the court proceedings regarding the reasonableness and lawfulness of his dismissal he, not being an advocate, had been the weaker party *vis-à-vis* his former employer – the Trakai municipality. His former employer had a number of in-house lawyers, who would represent the municipality when interacting with companies, institutions, organisations or in court. In fact, it had been on that basis – that

his position had become redundant – that the applicant had been officially dismissed. That notwithstanding, during the court proceedings regarding the applicant's dismissal, the municipality had chosen to avail itself of the legal services of an advocate, even though the human resources at its own disposal would have allowed the municipality to effectively represent itself in court. As a result, not only had the applicant lost his job, but he had also had to pay disproportionately high litigation costs, which had vastly exceeded the monthly salary that he had received from the municipality until his dismissal. Thus the applicant, as the weaker party in the proceedings against his former employer – a public entity, had found himself in a particularly dire financial situation. The applicant also asseverated that the fact that an advocate had been hired by the Trakai municipality had placed pressure on the applicant not to bring a court action to defend his breached rights, as otherwise he would have to bear the costs of the expensive lawyer hired by the municipality.

59. The applicant further argued that part of the Government's observations had been aimed at characterising the applicant negatively – to portray him as someone who had constantly violated the rules of conduct at his former workplace. He therefore saw the Government's position as suggesting that individuals, such as the applicant, should not be in a position to be able to defend their rights. The applicant wished to note that several of the disciplinary penalties had been lifted by courts.

60. In the applicant's view, the proceedings in respect of his dismissal and those concerning the lifting of the imposed disciplinary penalties had not been complicated, and the civil servants of the Trakai municipality should have been able themselves to represent the municipality's interests in court. Cases concerning the lifting of disciplinary sanctions or the lawfulness of an employee's dismissal did not address matters that were so complex as to require specific knowledge and thus to warrant the hiring of an advocate. Such labour litigation had been common in the Trakai municipality, some new employees had been hired, while other employees had been dismissed; moreover, penalties would often be imposed on employees. Therefore, the specific nature and peculiarities of cases relating to labour law were well known. It would be clear and understandable if the services of a professional lawyer, such as an advocate, were used by a State or municipal institution that did not have lawyers on its payroll, or in the event that such an institution did have lawyers on its payroll, but those lawyer's duties did not include the representation of that institution in court, yet the situation in the Trakai municipality had been different, for it had had several lawyers on its payroll. The applicant also stated that while working at the Trakai municipality, he – as a senior legal specialist – had consistently and successfully represented the municipality's interests in much more complex cases.

The applicant also appeared to argue that the criteria established by the Supreme Administrative Court in case no AS¹⁴³-375/2008 (see paragraphs 49-52 above) had not been met in his case.

61. The applicant further stated that the maximum possible legal costs payable by the losing side in court proceedings, according to the Recommendation, would almost never be awarded; rather, a reduced amount would be awarded by the courts. According to the applicant's calculation, for the municipality's overall representation by advocate A.P. he had been ordered to pay an unreasonably high level of costs, about EUR 2,300 (and another sum of approximately EUR 500 for the bailiffs' execution costs), even though for the first six months after losing his job – he had been receiving monthly unemployment benefit of about EUR 250, and afterwards he had been receiving EUR 120 a month in social assistance from the State. Thus, the applicant could not have borne those costs, even if he would have requested a deferment to pay them.

(b) The Government

62. The Government considered that the applicant had availed himself of all opportunities to present his cases effectively before the domestic courts, to the extent that he had wished, despite the legal costs incurred. Overall, the essence of the applicant's right of access to court had not been impaired.

63. Regarding the extent to which the applicant had been able to present his cases properly, the Government underscored that he was a professional lawyer, with sufficient experience in conducting cases in court. The fact that a person was himself a professional lawyer in and of itself, did not in and of itself deprive that person of the possibility to avail himself of an advocate's assistance in court; nevertheless, the applicant had chosen to represent himself during the proceedings. That notwithstanding, this fact had not undermined the effectiveness of the conduct of the administrative proceedings. It was clear from the judgments and the various court decisions taken during the proceedings that a large amount of material and numerous submissions regarding substance and procedure had been made by the applicant to the courts. The manner in which the applicant had presented his cases did not indicate that he had been unable to present his arguments properly. On the contrary, in this regard the Government wished to point out the rather numerous sets of proceedings that the applicant had instituted against the Trakai municipality and his colleagues therein, and had even won several of those cases.

64. Contrary to the applicant's allegations (see paragraph 58 *in fine* above), the Trakai municipality had hired the services of an advocate after another employee, L.P., had brought a claim against the municipality's administration for his reinstatement (see paragraph 6 *in fine* above). The administration's decision to call upon the external assistance of an advocate had been made in order to avoid any conflict of interest in disputes with

former employees and other complex cases involving the municipality's administration. The Trakai municipality operated in a small community, where its residents, employees and civil servants were familiar with each other. After the conclusion of the agreement on the provision of legal services (see paragraph 6 *in fine* above), in-house lawyers, including the applicant, would continue to represent the administration in small-scale and simple cases, to provide primary legal aid, and to participate in working groups. Besides, insofar it concerned the applicant's case, the need for the municipal administration to have the assistance of an advocate had also been assessed by the administrative courts, and it had been held that under the circumstances the participation of an advocate was necessary.

65. As regards the legal expenses that the domestic courts had ordered the applicant to pay, those had been predetermined by the relevant legislation and settled practice of domestic courts, whereby the "loser pays" principle had been established. The Government stood behind the Supreme Administrative Court's reasoning that ordering the losing party to pay the winning party's litigation costs, including representation costs, helped to ensure parties' right to a judicial remedy, and also played an important role in preventing the lodging of unjustified complaints. In any case, that preventive role may also have a restrictive effect on the right to a judicial remedy, and this aspect had been [correctly] acknowledged by the Supreme Administrative Court (see paragraph 50 above). The Supreme Administrative Court had also held that public administration entity could not be automatically entitled to recover costs incurred for legal representation in administrative-court proceedings; rather, it had held that certain criteria had to be met (see paragraph 52 above). In the applicant's case, the domestic courts, when deciding whether and what level of costs could be recovered from him, had followed the above-noted criteria and had carefully examined the Trakai municipality's requests for reimbursement. The litigation costs that the applicant had incurred in the instant cases had been neither excessive nor beyond what the Recommendations indicated – all the more so given the sophistication of the applicant's litigation strategy, which had contributed to a large extent to the costs the applicant himself had had to bear in part.

66. The Government also submitted that if a losing party was in a difficult financial situation, the courts could, if requested, order the reimbursement of costs in instalments, and thus avoid the enforcement by the bailiff. The Government considered that in the present case the applicant had not availed himself of that possibility.

67. Similarly, although the applicant could have benefitted from State-funded legal aid, he had not availed himself of that opportunity. It had been the applicant's own choice to represent himself in the numerous judicial proceedings. The applicant had asked for State-funded legal aid only in January 2019 in respect of the proceedings against the Trakai municipality regarding the obligation to take action and the allegedly sustained non-

pecuniary damage, brought before the Vilnius Regional Administrative Court in July 2018, and he had then been granted legal aid in respect of the proceedings at first instance and at the appeal stage (see paragraph 44 above). On the basis of the data provided by the State Social Insurance Fund, the Government considered that the applicant had become eligible for State-funded legal aid: from November 2017 he had been eligible to request that the State cover 50% of his costs, and from February 2018 he had become eligible to apply for the State to cover his costs in full. In the Government's view, this demonstrated that it had been the applicant's own choice – until 2019 – to represent himself during the numerous sets of judicial proceedings.

68. Responding to the applicant's assertions that in their observations the Government had commented on certain circumstances and proceedings in order to give a negative image of the applicant, the Government stated that, in respect of the instant application, they had confined their observations to those that addressed only those proceedings and facts that they considered to be substantial, in order to illustrate the nature of the dispute. In the Government's view, the proceedings instituted by the applicant against the administration of the Trakai municipality and his colleagues – as well as the administrative proceedings for lifting the applicant's disciplinary penalties and his reinstatement – only confirmed that the essence of the applicant's right of access to court had not been impaired. The applicant, being a professional lawyer, had availed himself of all opportunities to present his cases effectively before the courts, despite the legal costs incurred.

2. *The Court's assessment*

(a) **General principles**

69. The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 76 and 77, 5 April 2018). It is central to the concept of a fair trial – in both civil and criminal proceedings – that litigants are not denied the opportunity to present their case effectively before the court and that they are able to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants the above-noted rights (see *Handölsdalen Sami Village and Others v. Sweden*, no. 39013/04, § 51, 30 March 2010, and *Zustović v. Croatia*, no. 27903/15, §§ 96 and 97, 22 April 2021).

70. The right of access to a court is not, however, absolute and may be subject to restrictions, provided that these pursue a legitimate aim and are proportionate (see *Zubac*, cited above, § 78).

71. Court further reiterates that the imposition of a considerable financial burden after the conclusion of proceedings may constitute a restriction on the

right to a court guaranteed by Article 6 § 1 of the Convention (see *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013, and *Zustović*, cited above, § 98).

72. The Court must examine the facts of the present case with reference to the above-noted criteria.

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

73. The Court notes that the applicant considered, firstly, that the domestic proceedings had been unfair, in that although the applicant had been dismissed from the Trakai municipality because his position had become redundant, his former employer had availed itself of legal assistance provided by an advocate. Secondly, legal costs in favour of the municipality had been awarded against the applicant by the administrative courts. In other words, the applicant asserted that the domestic proceedings had resulted in his incurring excessive legal expenses owing to the fact that the courts had ordered that he, as the losing party, should pay the Trakai municipality's legal costs. On this last point, the Court has already acknowledged that there may be situations in which the issues linked to the determination of litigation costs can be of relevance for the assessment as to whether the proceedings in a civil case seen as a whole have complied with the requirements of Article 6 § 1 of the Convention (see *Stankiewicz v. Poland*, no. 46917/99, § 60, ECHR 2006-VI).

74. The Court firstly turns to the applicant's complaint that the Trakai municipality's decision to hire an advocate had placed him in a disadvantageous position.

75. The Court observes that in the instant case the need of the Trakai municipality administration for the assistance of an advocate was thoroughly assessed by the administrative courts of two instances, which held that, given the circumstances, the employment of an advocate to represent the Trakai municipality in the court proceedings had been necessary and justified (see paragraphs 31 *in fine* and 35 above). Those courts did not ignore the applicant's argument that, as he had been dismissed because his post had become redundant, the Trakai municipality should have had enough lawyers on its payroll to effectively represent it in court proceedings. Rather, having observed that the Trakai municipality's legal, personnel and public procurement department had several specialists, the courts referred to the complexity of the proceedings, which was due to the claims formulated by the applicant himself in his litigation proceedings and as part of his litigation strategy – that is to say (i) his submission of numerous separate complaints and additional claims, (ii) the large amount of evidence and other material, and (iii) his requests for the reopening of proceedings (thus exhausting all the available procedural remedies), and other factors (see paragraphs 31 and 35 above). Regarding the domestic court's finding that the case was complex, the Court reiterates its long-standing case-law to the effect that it is a

fundamental principle that it is for the national authorities (notably the courts) to interpret and apply domestic law (see *Nait-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018). It is not for the Court to deal with alleged errors of law and fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention – for instance where, in exceptional cases, such errors may be said to constitute “unfairness” incompatible with Article 6 of the Convention. The Court should not act as a fourth-instance body and will therefore not question under Article 6 §1 the national courts’ assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017). In the present case, no unfairness can be discerned in the domestic courts’ findings.

76. Examining further, the Court notes that, when addressing the applicant’s arguments, both the Vilnius Regional Administrative Court and the Supreme Administrative Court had regard to the guidelines of the Supreme Administrative Court’s enlarged chamber set out in 2008 – namely, that a public entity, such as a municipality, was not by law barred from availing itself of an advocate’s assistance, but that when deciding if and what amount of the costs was to be recovered, the court had to assess whether the representation by an advocate had been necessary against a backdrop of certain precise criteria (see paragraphs 31, 34, 51 and 52 above). Those criteria were clearly taken into account and applied to the circumstances of the applicant’s case: specifically, the Vilnius Regional Court had regard not only to the structure of the Trakai municipality’s legal, personnel and public procurement department, but also to the nature of the dispute – that it had originated in an employment relationship, and so had the Supreme Administrative Court (see paragraphs 32, 35 and 39 above). Moreover, the Court also finds that that settled case-law of the Supreme Administrative Court should have been known to the applicant, as a lawyer who had worked at the Trakai municipality for three consecutive years and who, in his own words, had dealt with issues much more complex than those relating to an employee’s dismissal or those concerning disciplinary penalties (see paragraphs 5, 20 and 60 above).

77. The Court also does not lose sight of the Government’s argument that the Trakai municipality is a small municipality, where a conflict of interests could arise should a lawyer on the municipality’s payroll represent it in court proceedings regarding disciplinary penalties imposed on a former employee, or a former employee’s dismissal. It is also relevant that, as can be seen from the material presented by the parties, the Trakai municipality concluded a legal representation contract with A.P.’s law firm as early as in 2015 in order that that firm could represent it in another litigation involving dismissal of the Trakai municipality’s another employee (see paragraphs 6 and 64 above); at that time the applicant had still been working as a lawyer in the municipality’s legal, personnel and public procurement department (see paragraph 20

above). Accordingly, the Court finds no basis to hold that the Trakai municipality had been in any way predisposed against the applicant and that it had had hidden motives for concluding a legal assistance agreement with A.P. in order to impair the applicant's ability to defend his rights. Besides, the applicant himself acknowledged that at the Trakai municipality labour disputes "nearly always" had been outsourced to (external) advocates (see paragraph 40 above).

78. Further, the Court cannot overlook the applicant's own statement that he was a very good lawyer who, when working at the municipality, had won most of the cases assigned to him (see paragraph 60 above). Without it being necessary for the Court to confirm or to refute the veracity of that statement (see, for example, paragraphs 8 *in fine* and 17 above), the Court finds it sufficient that the applicant appears to have been articulate and resourceful; he indeed won several cases in 2017 and 2018 when representing his own interests in the proceedings for the lifting of several of his disciplinary penalties (see paragraph 40 above). It is also plain that the applicant was successful in initiating (even if not always winning) numerous other sets of court proceedings, and in lodging abundant, although not always substantiated claims, counterclaims, and requests for the reopening of proceedings to various courts (see paragraphs 9, 12, 17, 21, 25, 29 *in fine*, 33, 37 and 38 above; regarding what the domestic courts acknowledged to be the applicant's groundless claims see paragraphs 42-44 above). As is evident from the various decisions and rulings taken during those proceedings, he presented a large amount of material to the courts (see, for example, paragraph 31 above) and made numerous submissions on the substance of the cases as well as on issues of procedure. The way in which the applicant conducted his defence does not indicate that he was unable to present his cases properly (see *Handölsdalen Sami Village and Others*, cited above, § 57). Last but not least, the administrative courts held that the principle of equality of arms had not been breached, as the proceedings had been initiated by the applicant, who is a lawyer – by contrast with other cases where the applicant had been the defendant (see paragraphs 11, 13 and 35 above; see also *Steel and Morris v. the United Kingdom*, no. 68416/01, § 63, ECHR 2005-II). The latter finding holds true, even admitting that the applicant must have felt compelled to defend himself and to start proceedings for the lifting of the disciplinary penalties imposed on him and the challenging the lawfulness of his dismissal.

79. The Court also notes the Government's argument that the applicant could have requested that he be granted legal aid (see paragraph 67 above), and on the facts it would appear that this opportunity was open to him (see paragraph 44 above).

80. In the light of the foregoing, the Court is unable to find that there was a considerable degree of disparity between the applicant and the Trakai municipality, and that the advocate's assistance to the latter was of such a

degree that it could have given rise to unfairness (contrast *Steel and Morris*, cited above, § 69). The Court is likewise unable to find that the applicant would not have been able to bring an effective defence, despite his not having been represented by an advocate himself. Indeed, the proceedings at issue concerned employees' disciplinary liability and the structural reorganisation of Trakai municipality's department – areas which were closely linked either to the applicant's former duties or to the workload of his former department, and which were therefore areas that should have been mostly familiar to the applicant (contrast *Steel and Morris*, cited above, § 65). There is no indication that during any of the court proceedings the applicant was prevented by the courts from introducing all the material and arguments that he considered relevant to the case (see, *mutatis mutandis*, *Handölsdalen Sami Village and Others*, cited above, § 58).

81. The Court next turns to the second limb of the applicant's complaint – the issue of the award of legal costs in favour of the Trakai municipality. Essentially, the Court must assess the extent to which the applicant was able to present his cases, despite the legal costs incurred (see, *mutatis mutandis*, *Handölsdalen Sami Village and Others*, cited above, § 53).

82. The Court observes that the possibility to award to a winning party legal costs, which derives from the "loser pays" principle, has been clearly established in the relevant domestic law – namely Article 40 § 5 of the Law on Administrative Proceedings, and Article 98 of the Code of Civil Proceedings; both of those provisions were repeatedly referred to by the domestic courts examining the applicant's case (see paragraphs 16, 30 and 34 above). The Court reiterates that it is not its task to rule on the "loser pays" rule as such, but to determine whether, in the circumstances of this case, the applicants' right of access to a court within the meaning of Article 6 § 1 of the Convention was respected. The Court has also accepted that imposition on the applicants to pay the costs of the State representation may be viewed as a restriction hindering the right of access to court see *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 119, 6 September 2016).

83. That being so, the Court observes that in the applicant's case the Lithuanian courts referred to the Supreme Administrative Court's guidelines to the effect that while it was possible to order that the losing party pay the winning party's legal costs, one also had to bear in mind that the award of such costs should not serve as deterrent to the right of access to a court (see paragraph 50 above). The Vilnius Regional Administrative Court and the Supreme Administrative Court thus did not fail to take into account that the case arose not only from the applicant's legal employment relationship, but also the applicant's, as an impecunious litigant's, financial situation (see paragraphs 32, 35 and 39 above). Accordingly, with regard to both the proceedings related to the disciplinary penalties imposed on the applicant and with regard to the proceedings related to the applicant's dismissal, those courts reduced the amounts in legal costs to be reimbursed to the Trakai

municipality (see paragraphs 11, 14, 16, 32, 36 and 39 above; see also paragraph 44 *in fine* above). Those courts closely followed the Recommendations in respect of the calculation of fees, gave meaningful reasons for their decisions which they based on principles of justice, reasonableness and fairness (see paragraphs 10, 11, 14, 15, 16, 32, 35 *in fine*, 36 and 39 above; compare and contrast *Dragan Kovačević v. Croatia*, no. 49281/15, § 83, 12 May 2022). Against this background, the Court cannot find that the national courts handled the issue of legal costs in a manner that was unreasonable or disproportionate (see *Cindrić and Bešlić*, cited above, § 120), or otherwise in contravention of domestic regulation (see *Handölsdalen Sami Village and Others*, cited above, § 56), all the more so bearing in mind that it is in the first place for the national authorities, and notably the courts, to interpret domestic law (see *Foltis v. Germany*, no. 56778/10, § 44, 30 June 2016).

84. Thirdly, the Court refers to the Government's argument that the applicant could have asked for a deferment of the payment of legal costs (see paragraph 66 above). It transpires that at least at the later set of litigation, in 2019, the applicant had sought that possibility, yet his request was rejected by the domestic court on the grounds which the Court cannot find to have been arbitrary (see paragraph 43 above). In those proceedings, when assessing the applicant's financial situation, the court underscored that the applicant was young and healthy and that it had been only his own choice not to seek a better paid job and thus delay the fulfilment of his financial obligations to the aggrieved party. The Court observes that the fact that the applicant had a university legal education, that he was of working age, and that he would be able to earn income in the future in order to repay the costs awarded against him had been noted by the domestic courts as early as in August 2017, that is, merely eight months after the applicant's dismissal from his post at the municipality (see paragraph 11 above). For the Court, this is one more argument to hold that the requirements of access to court, under the Convention, were handled properly by the domestic courts.

85. In conclusion, the Court does not doubt that the applicant's adversary (the Trakai municipality) enjoyed greater financial resources. However, examining the proceedings as a whole, the Court finds that the applicant was afforded a reasonable opportunity to present his cases effectively before the national courts and that there was not such an inequality of arms *vis-à-vis* the municipality as to involve a violation of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Handölsdalen Sami Village and Others*, cited above, § 59).

86. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the applicant's right of access to a court admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 18 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President