



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

SECOND SECTION

CASE OF MISIŪNAS v. LITHUANIA

(Application no. 38687/22)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Applicant's inability to effectively contest the President of the Republic's decision, not formalised by a decree, not to reappoint him to the post of district court judge • Art 6 applicable • Genuine and serious dispute over "right" in domestic law to a fair procedure in the examination of an application for the return to a judicial post • Second condition of the *Eskelinen* test not met • Exclusion of the applicant, who met statutory eligibility requirements, from a (re)appointment procedure, without judicial review, not in the interest of a State governed by the rule of law • Applicant's situation to be distinguished from cases involving initial appointments to the judiciary • No exceptional or compelling reasons justifying absence of judicial review • Domestic courts' failure to provide an effective legal remedy capable of addressing the substance of the applicant's complaint

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

FINAL

07/01/2026

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

In the case of Misiūnas v. Lithuania,

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Jovan Ilievski,

Peeter Roosma,

Oddný Mjöll Arnardóttir,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 38687/22) 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 Eimutis Misiūnas (“the applicant”), on 2 August 2022;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning the applicant’s right to access to court and his right to an effective remedy;

the withdrawal from the case of Mr Gediminas Sagatys, the judge elected in respect of Lithuania (Rule 28 § 3 of the Rules of Court), and the decision of the President of the Section to appoint Mr Peeter Roosma to sit as an *ad hoc* judge in the case (Article 26 § 4 of the Convention and Rule 29 § 1);

the parties’ observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The application concerns the applicant’s complaint that he was unable to effectively contest the President of the Republic’s decision not to reappoint him to the post of district court judge, a decision which was not formalised by a decree (*nejformintas dekretu*).

THE FACTS

2. The applicant was born in 1973 and lives in Vilnius.

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

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

I. BACKGROUND

5. By a decree of 18 November 2015 the President of the Republic appointed the applicant to the post of judge of the Vilnius City District Court.

6. By a decree of 8 December 2016 the President of the Republic, referring to Articles 84 § 1 (11), 112 § 4 and 115 § 1 (4) of the Constitution (see paragraph 57 below) and Article 90 §§ 1 (4) of the Law on Courts (see paragraph 59 below), dismissed the applicant from the post of judge of the Vilnius City District Court in connection with the applicant's appointment as a member of the Government (see paragraph 7 below).

7. As noted by the applicant, on 13 December 2016 he was sworn in by the *Seimas* as Minister of the Interior. Immediately following his term in that post, from 16 September 2020 to 11 December 2020, he served as Vice-Minister of the Ministry of Defence.

II. THE APPLICANT'S FIRST REQUEST TO BE APPOINTED TO THE POST OF JUDGE

A. The applicant's requests to the National Court Administration and the Chancellery of the President of the Republic

8. On 11 December 2020 the applicant asked the National Court Administration (*Nacionalinė teismų administracija*) that he be appointed to the post of judge of the Vilnius City District Court. The applicant referred to Article 61 §§ 2 and 3 of the Law on Courts (see paragraph 59 below) and pointed to his service as Minister and Vice-Minister (see paragraph 7 above).

9. On 16 December 2020 the National Court Administration forwarded the applicant's request to the Chancellery of the President of the Republic (hereinafter also "the Chancellery").

10. In public statements made in January 2021, State officials, including the President of the Republic, Gitanas Nausėda, expressed the view that the applicant would not be reappointed. The reasons included (i) the applicant's departure from the post of judge for a political post, (ii) concerns on the part of the President of the Republic that the applicant would lack impartiality and would be unable to responsibly perform the duties of a judge, and (iii) a "cooling-off period" was necessary after a political post, although no specific duration for such a period was indicated. No formal decision was taken on the applicant's request to be reappointed as a judge (see paragraphs 14, 20 and 22 below).

11. On 1 February 2021 the applicant wrote to the Chancellery of the President of the Republic, requesting a reply, with reasons, to his request of 11 December 2020.

B. Replies from the Chancellery of the President of the Republic and the National Court Administration

12. On 23 February 2021 the Chancellery of the President of the Republic, responding to the applicant's request of 1 February 2021, wrote that, under Article 84 § 1 (11) and Article 112 of the Constitution (see paragraph 57 below) and under Articles 56 and 61 of the Law on Courts (see paragraph 59 below), it was the President of the Republic who took decisions on judges' appointments. The Chancellery noted that the Law on Courts provided for a possibility that judges who had discontinued their career as judge could apply, for a certain period, to be a judge without the necessity of passing an exam and without the need to take part in the pre-selection procedure for judges. However, the general rules of appointment still applied to such individuals – it was for the President of the Republic to take a decision to ask the Judicial Council (*Teisėjų taryba*) for advice on the appointment of a person as a judge and afterwards it was also for the President of the Republic to take a decision regarding the appointment. Under the Constitution and under the Law on Courts, the President of the Republic could, but was not obliged to, appoint a former judge to the post of judge. The President of the Republic, using his discretion established in the legislation, assessed all relevant circumstances and was guided by public interest. The Chancellery lastly noted that “regarding the question asked, the President's decree was not adopted” (*prašomu klausimu Respublikos Prezidento dekretas nebuvo priimtas*).

13. On an unknown date in February 2021, in reply to the applicant's email of 19 February 2021, the National Court Administration confirmed that between 11 December 2020 and 29 January 2021 no selection procedure for the post of judge at the Vilnius City District Court had taken place. Likewise, the National Court Administration had not performed a selection procedure related to that post. In addition, it had not submitted a list of the most suitable candidates to the President of the Republic.

III. ADMINISTRATIVE COURT PROCEEDINGS

A. The applicant's claim

14. On 1 March 2021 the applicant lodged a claim with the Vilnius Regional Administrative Court, requesting that it: (1) find that the Chancellery of the President of the Republic, by not providing a written reply to his request, had not followed the principle of responsible governance (the principle of good public administration); (2) find that the President of the Republic, in deciding not to appoint the applicant to the post of judge, had disregarded the Law on Courts and had acted in breach of the principles of fairness, objectivity, transparency and professionalism and to find that the

President of the Republic, in implementing the powers granted to him when appointing judges, had not complied with the requirements arising from Article 5 § 2 of the Constitution, the constitutional principles of responsible governance and the rule of law; (3) find that the President of the Republic, in basing his decision on the opinions he expressed in his statements that the applicant had “left the post of judge for a political post”, that he would “lack impartiality and be unable to responsibly perform the duties of a judge of the [Vilnius City District Court]” and that the applicant needed a “political cooling-off period”, had disregarded the principles of responsible governance and rule of law; (4) find that the legitimate expectations of the applicant, as a former judge, had been breached and to oblige the Chancellery to pay him the salary which he would have received during the period when he had not been appointed judge [which the applicant stated amounted to 3,464 euros (EUR) before taxes]; (5) declare that the statements made by the President of the Republic that the applicant had “left the post of judge for a political post”, that he would “lack impartiality and be unable to responsibly perform the duties of a judge of the Vilnius City District Court” and that the applicant needed a “political cooling-off period” were null and void, not based on evidence and in breach of the applicant’s honour and dignity, undermining the applicant’s reputation as a professional lawyer and a judge (on the basis of which the applicant asked the administrative court to award EUR 10,000 in respect of non-pecuniary damages); and (6) oblige the National Court Administration and the Chancellery to carry out all necessary procedures as regards [the applicant’s] appointment as a former judge.

B. Ruling of the Vilnius Regional Administrative Court

15. In a ruling of 10 March 2021 the Vilnius Regional Administrative Court pointed out that, under Article 84 § 1 (11) and Article 112 § 4 of the Constitution and Articles 56 and 61 of the Law on Courts, it was the President of the Republic who took a decision on the appointment of a person to the post of judge of the district court. Therefore, neither the acts of the Chancellery nor the acts of the National Court Administration had any legal consequences for the applicant and their correspondences (see paragraphs 12 and 13 above) thus fell outside the scope of the case.

16. The Vilnius Regional Administrative Court then referred to the ruling of the Constitutional Court of 13 May 2010 (see paragraph 30 below) and held that the formation of the corps of judges as State officials exercising State power was an activity of the President that was exclusively related, not to public administration, but to the State power (*valstybės valdžia*) exercised by him; therefore, the administrative courts could not examine such activity of the President of the Republic nor could they oblige the President of the Republic to issue a legal act (decree) related to the above-mentioned exercise of State power.

17. The Vilnius Regional Administrative Court also observed that the powers of the President of the Republic, entrenched in the Constitution as regards the formation of the judiciary, were a significant element of the constitutional status of the Head of State. The appointment or the refusal to appoint a former judge to the post of judge fell within the sphere of implementation of State power by the President of the Republic.

18. Noting that the activities of the President of the Republic, when exercising State power, could not constitute the subject of an administrative dispute, the Vilnius Regional Administrative Court refused to accept for examination the applicant's claims in so far as requests nos. 1-4 and 6 of his claim were concerned (see paragraph 14 above), as they were not amenable to administrative court proceedings.

19. Lastly, regarding the applicant's request no. 5 (his claim for non-pecuniary damage), the Vilnius Regional Administrative Court held that it fell within the competence of the courts of general jurisdiction.

The Government noted that applicant had not appealed against that decision to the Supreme Administrative Court.

IV. CIVIL COURT PROCEEDINGS

A. The Vilnius Regional Court

1. *The applicant's complaint*

20. On 22 March 2021 the applicant brought a lawsuit in the Vilnius Regional Court. The applicant stated that on 25 January 2021 the Head of the Legal Group of the President's Office (*Teisės grupės vadovė*) J.Š. had called the applicant on the phone and announced that he would not be appointed to the post of judge since, as quoted by the applicant, he had "been in politics and therefore did not comply with the principle of political neutrality and needed a 'political cooling-off period'" (*buvaū politikoje ir neatitinku politinio neutralumo principo ir dabar reikia "politinio atšalimo" laikotarpio*). He was also told that no written answer regarding such decision would be sent to him.

21. The applicant further noted that J.Š. had confirmed that decision – that the applicant would not be appointed judge – on the news of the TV3 and LNK channels on 26 January 2021; that decision had also been confirmed by the President of the Republic, Gitanas Nausėda, during a press conference on 29 January 2021, wherein the President stated that the length of a political cooling-off period had to be "assessed in each individual case" (*politinio atšalimo terminas gali būti nustatomas kiekvieną kartą individualiai*).

22. The applicant lodged a claim, requesting that the court:

(1) find that the President of the Republic, by subjectively deciding not to appoint the applicant to the post of judge of [the Vilnius City District Court], had disregarded the Law on Courts, thus violating the principles of fairness,

objectivity, transparency and professionalism, as applicable to the selection of judges;

(2) find that the President of the Republic, by taking a decision not to appoint the applicant to the post of judge and not formalising that decision by a decree, had not followed the constitutional principle of responsible governance and had violated the principle of the rule of law;

(3) find that the President of the Republic, in basing his decision on his opinions expressed in groundless statements, had had no legal basis to take a decision not to appoint the applicant to the post of judge;

(4) award compensation for pecuniary damage for the unpaid salary for the period when the applicant was not appointed to the post of judge;

(5) find that the statements made by the President of the Republic that the applicant had “abandoned the post of judge for a political post” (*mečiau teisėjo darbą dėl politinio posto*), that the applicant “would lack impartiality and would be unable to responsibly perform the duties of a judge of the district court” (*nesugebėsiu būti nešališkas ir atsakingai vykdyti apylinkės teismo teisėjo pareigų*) and that the applicant needed a “political cooling-off period” were null and void, not based on evidence and humiliating to a person who had worked honestly and honorably, thereby undermining the applicant’s reputation as a professional lawyer and judge; and to additionally find that such statements by the President of the Republic had humiliated the applicant, a former politician, and had denied the applicant the opportunity to honestly serve the people of Lithuania. The applicant asserted that such statements had caused him moral suffering for which he sought EUR 10,000 in respect of non-pecuniary damage;

(6) oblige the President of the Republic to appoint the applicant to the post of judge; and

(7) apply to the Constitutional Court regarding the legislative omission (*legislatyvinė omisija*) that had prevented the applicant from exercising his rights under Article 30 § 1 of the Convention (right of access to a court – see paragraph 57 below).

23. Among the arguments in support of his claim, the applicant stated that the decision not to appoint him, as a former judge, to a post of judge could be considered to amount to a complete loss of the status of judge, somewhat similar to a situation of a judge who is dismissed from office for discrediting the office of judge through his own actions (Article 90 § 1 (5) of the Law on Courts – see paragraph 59 below).

2. The Vilnius Regional Court’s decision

24. On 29 March 2021 the Vilnius Regional Court refused to accept for examination the applicant’s claim. Firstly, the applicant’s request that it find that the President of the Republic had unreasonably decided not to appoint him to the post of judge and to oblige the President to do so was not amenable to review in any court, either under the rules of administrative law

proceedings or under civil proceedings. The same had already been explained to the applicant by the Vilnius Regional Administrative Court, which had held that the formation of the corps of judges, as State officials exercising State power, was the activity of the President that was exclusively related, not to public administration, but to the State power (*valstybės valdžia*) exercised by him, and that, therefore, the administrative courts could not examine such activity of the President, nor could they oblige the President to issue a legal act (decree) related to the above-mentioned exercise of State power (see paragraphs 16-18 above).

25. Referring to the Constitutional Court's ruling of 13 May 2010 (see paragraph 30 below), the Vilnius Regional Court further held that the domestic courts could not make relevant decisions on behalf of the *Seimas*, the President of the Republic or the Government or to oblige those authorities to enact acts related to the exercise of State power. Contrary to what had been suggested by the applicant, Article 90 § 9 of the Law on Courts (see paragraph 59 below) could not be applied by analogy in the applicant's situation, as he was not a judge at that time.

26. The Vilnius Regional Court lastly stated that the applicant's claim for compensation for pecuniary damage caused by his non-appointment to the post of judge and his claim for protection of honour and dignity could be heard in the district court of general jurisdiction (lower jurisdiction).

B. The Court of Appeal

27. The applicant lodged a separate appeal (*atskirasis skundas*), however on 1 July 2021 the Court of Appeal left the Vilnius Regional Court's decision unchanged.

C. The Supreme Court

28. On 9 September 2021 the applicant lodged an appeal on points of law.

29. On 20 April 2022 the Supreme Court firstly examined a request, submitted by the applicant, that a referral be made to the Constitutional Court regarding a legislative omission, which, in the applicant's view, provided the applicant with no possibility of appealing to a court against a decision by the President not to appoint the applicant to the post of judge, which had not been formalised by a decree.

The Supreme Court noted that the basis on which to make a referral to the Constitutional Court was a situation where a doubt might arise in the context of a court hearing a case that a concrete legal act, which should have been applied in that concrete case, contradicted the Constitution; a court hearing a case would itself decide whether there was a basis for a referral. That did not deny the parties the right to ask the court hearing a case to suspend the

proceedings and make a referral to the Constitutional Court; yet such a request by the parties did not bind the court.

30. The Supreme Court then pointed to the Constitutional Court's ruling of 13 May 2010 regarding the specific details of the execution of State power, wherein the Constitutional Court had held as follows:

“7. ... the peculiarities of the constitutional status of the *Seimas*, the President of the Republic, the Government and the judiciary related to the implementation and separation of State powers imply, *inter alia*, that these institutions may not go beyond each other's constitutional powers, thus, also the courts to which the persons concerned apply with petitions requesting the investigation of the acts adopted by the *Seimas*, the President of the Republic or the Government or the otherwise expressed activities of these institutions may not go beyond the constitutional powers of the *Seimas*, the President of the Republic or the Government, that is, [the courts may not] adopt corresponding decisions for these institutions of power or oblige those institutions of power to pass acts related to the execution of State power.”

31. The Supreme Court underlined, that for the reasons above it followed that the activity of the President of the Republic, when appointing (or not) a person to the post of judge, fell within the sphere of execution of State power. A court therefore could not oblige the President of the Republic to appoint a person to the post of judge and the “non-appointment to a post of judge [could] not be the subject of examination in court” (*asmens nepaskyrimas teisėju negali būti teisminio nagrinėjimo dalykas*). There was therefore no basis for a conclusion that the legal regulation under which a court could not oblige the President of the Republic to appoint a former judge to the post of judge might contradict the Constitution. Thus, there was no need for a referral to the Constitutional Court.

32. The Supreme Court next held that the applicant's claims regarding the President's decision not to appoint the applicant as a judge and not to issue a decree had not created legal consequences for the applicant's rights and obligations and, therefore, those claims could not be considered independent and could therefore not be examined in court. The lower courts had correctly refused to accept those claims for examination.

The Supreme Court also agreed with the lower courts' finding that the applicant's request to oblige the President to appoint him to the post of judge was not amenable to review in any court (*nepriskirtinas nagrinėti jokiam teismui*).

33. The Supreme Court then noted that even though the act of forming the judiciary (*teisėjų korpuso formavimas*) belonged in the sphere of execution of the State power of the President of the Republic, this did not deny a person the right, if he or she considered that the State power had been implemented improperly, to demand compensation for the damage sustained.

34. The Supreme Court noted that in his lawsuit the applicant had asked, among other things, to be awarded damages in the amount of the salary which he had not received for the period when he had not been appointed to the post of judge; he had also asked the court to defend his honour (to hold the

President's statements as unfounded and as breaching the applicant's honour and dignity) and to be awarded compensation for non-pecuniary damage.

The Supreme Court then held that the applicant had not specified a concrete sum in unpaid salary in respect of his claim for pecuniary damage. There was, therefore, no possibility of establishing the amount of pecuniary damage he had sustained. The Supreme Court therefore held that the Vilnius Regional Court, as the court of first instance, should not have refused to accept for examination the applicant's claim for pecuniary damage; rather, it should have imposed a time-limit for the applicant to rectify the shortcomings of his lawsuit, that is, to specify the sum claimed as pecuniary damage.

35. The Supreme Court lastly held that the other arguments in the applicant's appeal on points of law related to the procedures for appointments to the post of judge and the President's competence when appointing judges were unrelated to the resolution of the question whether the claim should be accepted for examination, but that they were instead related to the merits of the lawsuit; thus the Supreme Court refrained from addressing those arguments.

D. The Vilnius Regional Court

36. On 21 April 2022 the Vilnius Regional Court, referring to the Supreme Court's ruling of 20 April 2022, set out a ten-day time-limit for the elimination of the deficiencies of the claim: firstly, the applicant was to indicate whether the claim for pecuniary damage was linked to the defence of honour and dignity and, if so, to pay the court fee; secondly, the applicant was to indicate whether the claim for pecuniary damage was based on an employment relationship and, if so, to explain (in relation to the total sum claimed) why the case should fall within the jurisdiction of a regional court rather than a district court as the court of first instance.

37. By a ruling of 11 May 2022 the Vilnius Regional Court found that the applicant had not eliminated the deficiencies of the claim within the time-limit set by the Vilnius Regional Court (see paragraph above) and thus held that it would be considered that the applicant's claim had not been submitted.

V. THE APPLICANT'S SECOND REQUEST TO BE REINSTATED TO THE POST OF JUDGE

38. On 16 September 2022 the applicant submitted a new request to the President of the Republic (and the Chancellery), referring to his prior work as a judge and to his work as a Minister and Vice-Minister – a post specified in Article 61 §§ 2 and 3 of the Law on Courts (see paragraph 59 below). The applicant asked to be appointed judge of the Vilnius City District Court.

39. On 5 October 2022 the applicant asked the President of the Republic (and the Chancellery) to be allowed to have his health checked and to be

issued security clearance. Upon that request, he received the relevant documents and clearances.

40. As stated by the Government in their observations to the Court, on 18 October 2022 the President of the Republic, taking into account the fact that a reasonable period of time had passed since the applicant had held a political position, which in his view meant that possible political connections would be severed, met with the applicant. During that meeting with the President the applicant made no mention of any further intention to take part in politics. By a decree of 19 October 2022 the President of the Republic asked the Judicial Council for advice on the applicant's appointment to the Vilnius City District Court.

41. As noted by the Government, the question of the applicant's appointment was discussed during the Judicial Council's meeting of 11 November 2022. In reply to a question by the chair of the Judicial Council, Ms S.R., whether the applicant had indeed decided to take up the post of judge, the applicant replied as follows:

“The President of the Republic also asked the question whether, should Mr Skvernelis win the next election and again offer me the post of Minister, I would [accept it]. If they offered me the position of Minister I would probably go, as it is really a great honour to be the Minister of Lithuania and to represent Lithuania [and] in that event I may not choose other positions – I mean the position of Vice-Minister, or something similar. For the moment, I have decided to work as a judge and what challenges may arise, especially as I will consider them from my human [perspective], fate will decide; it is difficult to answer, but at the moment I am truly determined to be a judge and I see the opportunity to work as a judge and to be a member of your community.”

“Prezidentas irgi klausė klausimo - o jeigu Skvernelis laimės kitus rinkimus ir vėl pasiūlytų būti ministru ar eisiu? Jeigu pasiūlytų ministru, tikriausiai eičiau, tai tikrai didelė garbė būti Lietuvos ministru ir atstovauti Lietuvai, šiuo atveju kitų pareigų gal ir nesirinkčiau. Turiu omenyje ten viceministro pareigas ar taip toliau. Šiam momentui esu apsisprendęs dirbti teisėjo pareigose, o kokie iššūkiai bus, ypač juos vertinsiu savo žmogiškąja prasme kaip likimas lems, sunku atsakyti, bet šiuo metu esu tikrai apsisprendęs būti teisėju ir matau galimybę dirbti teisėju ir būti jūsų bendruomenės nariu.”

Afterwards, a member of the Judicial Council, Mr N.M., asked the applicant the following question:

“When you were asked if you wished to come back to the post of Minister, you expressed a doubt that it was really a post for which you really need to quit and come back; does this mean that you consider the post of judge less prestigious, less honourable [or] less significant for the State of Lithuania, which you would quit because of an [opportunity to go] back to the Ministers?”

“Kai jūsų klausė ar sugrįžtumėte į ministro postą, tai na tokią išreiškėt abejonę, kad toks tikrai postas dėl kurio tikrai reikia mesti ir sugrįžti, tai jūs teisėjo pareigas laikote mažiau prestižines, mažiau garbingas, mažiau reikšmingas Lietuvos valstybei, kad mestumėt jas dėl kelio atgal į ministrus?”

The applicant replied as follows:

“You are speaking in the President’s words. In principle, serving as a Minister does not mean giving up the post of judge. As you are well aware, the Law on Courts provides for the possibility of being appointed to the post of judge after two years and this is a special right; that is why, when I was appointed as a member of the Government, in view of the fact that under the Law of Courts the right of possibly being reappointed to a post of judge, even without a competition, after previously being appointed to such post, I was convinced that I could avail myself of that right. Well, I am now availing myself of that right, that is, two years have not yet passed and I am not participating in a competition, but I am applying in accordance with the provision of the Law on Courts. For this reason, it is very disappointing to hear that [member of Judicial Council] Mr. N. calls the temporary exchange of the post of judge for, let’s say, the position of Minister as leaving the post of judge.”

“Kalbate Prezidento žodžiais. Iš principo eiti ministro pareigas tai ne mesti teisėjo pareigas. Jeigu puikiai žinot ten teisėjų įstatyme yra numatyta galimybė grįžti į teisėjo pareigas praėjus dviem metams ir tai yra specialioji teisė, dėl ko buvau įsitikinęs, kad paskiriant mane Vyriausybės nariu, t.y. numatyta šiuo atveju Teismų įstatyme, kad tokia teisė paskyrus į tokias pareigas yra galimybė grįžti ir be konkurso į teisėjo pareigas, tai aš ta teise maniau, kad galiu ir pasinaudoti. Na ta teise šiuo metu ir naudojuosi, t.y. 2 metai nepraėjo ir aš ne dalyvauju konkurse, o pretenduoju pagal teisėjų įstatymo šią nuostatą. Dėl to labai apmaudu girdėti, jeigu gerbiamas N. teisėjo darbo laikinai iškeitimą į sakykime ministro pareigas vadina metimo teisėjo pareigomis.”

According to the Government, at the same meeting a member of the Judicial Council, Mr E.R., asked the applicant about the articles which had appeared in the media two days prior to the meeting, those articles having mentioned allegedly illegal actions of the applicant while being a Minister and allegedly concealing the crimes that may have been committed (at the time of the adoption of the decree of the President of the Republic on application to the Judicial Council, there were no such articles yet, the circumstances mentioned in them were not known to the President of the Republic). The applicant, among other things, replied as follows:

“If I had compromised with my conscience, I would probably have been in the *Seimas* now; only because I was as I am I got the thirtieth place on the list, and it happened as it happened“

„Jei būčiau daręs kompromisus su savo sąžine, tikriausiai dabar būčiau Seime, nes dėl to, kad buvau toks, gavau trisdešimtą vietą sąraše ir taip atsitiko, kaip atsitiko”.

42. As noted by the Government in their observations, on 11 November 2022 the Judicial Council (fifteen votes for, and one vote against) decided to advise the President of the Republic to appoint the applicant to the post of judge of the Vilnius City District Court.

The Government also stated that the President of the Republic had decided not to appoint the applicant to the post of judge of the Vilnius City District Court.

A. The applicant's request for follow-up to the President of the Republic (and the Chancellery of the President of the Republic)

43. On 17 March 2023 the applicant asked the President of the Republic (and the Chancellery) to “state the reasons” that a decision to appoint him as a judge of the Vilnius City District Court had not been taken. The applicant noted that in November 2022 the State Security Department’s report that he had a right to work with classified information had been obtained and that in November 2022 the Judicial Council had consented to his being appointed judge of the Vilnius City District Court (see paragraph 42 above).

44. On 12 April 2023 the Chancellery responded, noting that, under Article 84 § 1 (11) and Article 112 (4) of the Constitution, the President of the Republic had the power to appoint district court judges when executing State power (*įgyvendindamas valstybės valdžią*). Under Article 112 (5) of the Constitution, a special institution (the Judicial Council) was to advise the President regarding the appointment of judges. That notwithstanding, if the President asked the Judicial Council for advice regarding the appointment of a judge and that institution advised the President that that specific person could be appointed, such advice did not bind the President; that meant that the President (among others, should certain circumstances relevant for the appointment come to light) could decide not to appoint such person as a judge.

45. The Chancellery observed that, although under Article 61 of the Law on Courts a former judge could be reappointed as a judge (see paragraph 59 below), neither the Law on Courts nor other legal acts established the President’s obligation to do so irrespective of any circumstances (*neatsižvelgiant į jokias aplinkybes*). The Chancellery then added that during the Judicial Council’s meeting of 11 November 2022 its members had “raised various questions and pointed to the applicant’s activities while he was a Minister and about his future plans to take part in politics”, which had not been known before the President’s referral to the Judicial Council regarding the applicant’s appointment as a district court judge and which were “important to the President of the Republic in taking a decision regarding [the applicant] after the Judicial Council’s meeting”.

B. The Vilnius Regional Court

1. The applicant’s claim

46. The applicant initiated a new set of civil proceedings against the President of the Republic and the Chancellery. As summarised by the Vilnius Regional Court (see paragraph below), the applicant requested that court to: (1) find that, having decided not to appoint the applicant as a district court judge and demonstrating his particular bias against him, the President of the Republic had ignored Article 29 § 1 of the Constitution and had also breached

the principles of honesty, objectivity, transparency and professionalism applicable to the process of the selection of judges; (2) find that the President of Republic had based his decision on unfounded arguments, which could not be considered circumstances that could have influenced a decision not to appoint the applicant as judge and not follow the Judicial Council recommendation, and had had no legal ground on which to take a decision not to appoint the applicant to the post of judge; (3) find that the President of the Republic, by taking a decision not to appoint the applicant to the post of judge and by not issuing a decree to formalise that decision, had not followed the constitutional principle of responsible governance and had also breached the principle of the rule of law; (4) order the respondent to pay him the average salary (*vidutinį darbo užmokestį*) calculated from the day the applicant was not appointed to the post of judge, that is, from December 2022, until the court's decision was fully executed; and (5) refer to the Constitutional Court the question regarding the legislative omission, which, in the applicant's assessment (a) did not allow him to implement his rights under Article 6 § 1 and Article 13 of the Convention and Article 30 § 1 of the Constitution and (b) prevented the applicant from being given the equivalent legal possibility of defending his good name and reputation as a former judge, this being in breach of Article 29 § 1 of the Constitution and Article 6 § 1 and Article 13 of the Convention.

2. *The Vilnius Regional Court*

47. On 25 May 2023 the Vilnius Regional Court refused to accept the claim for examination.

The Regional Court stated that the applicant's requests nos. 1-3 (see paragraph 46 above) were not amenable to examination in court in civil proceedings. The court referred to the Supreme Court's ruling of 20 April 2022 on this point, in which that court had held, while referring to the Constitutional Court's rulings, that the appointment of judges fell within the remit of the powers of the President of the Republic, beyond which the courts could not go. The Vilnius Regional Court stated that formation of the judiciary (*teisėjų korpuso formavimas*) was the responsibility of the President of the Republic and was therefore related to the execution of State power. A court had no jurisdiction to take decisions in the place of the President of the Republic or to oblige the President to pass a decree, to implement State power or, among other things, to appoint judges. It also followed from this that a court, without being able to take such decisions, also did not have jurisdiction to examine them.

48. As to the applicant's request no. 4 (see paragraph 46 above), the Vilnius Regional Court considered that the applicant had not specified a concrete sum, although the court noted that the applicant's claim had mentioned that his monthly salary was EUR 3,463.50 (before taxes), as based on a document previously issued by the Vilnius City District Court. The

Vilnius Regional Court added that the regional courts only heard cases regarding claims exceeding EUR 100,000, except for labour litigation cases, and held that, therefore, such claim for pecuniary damage should be lodged with a district court (lower jurisdiction).

49. The Vilnius Regional Court found it necessary to emphasise that, when examining the question of whether the applicant's request no. 4 (payment of salary arrears) was admissible in court (*sprendžiant šio ieškinio reikalavimo priimtinumą*), it had to bear in mind that the claim for the awarding of the alleged amount of his unpaid salary as pecuniary damage was based exclusively on the factual circumstances related to content of the applicant's requests nos. 1-3. Therefore, having refused to accept requests nos. 1-3 as non-amenable to judicial examination (*kaip nenagrinėtinas teisme*), a situation arose where the factual basis of the claim compensation for pecuniary damage could not be examined in court on account of its nature. It followed that such a claim could not be examined since it did not have an independent factual basis. Consequently, it was also necessary to refuse to examine request no. 4 as it was not amenable to examination in court.

50. The Regional Court also held that the applicant's arguments that, because of his inability to appeal against the President's decision, which had not been formalised by a decree, not to appoint him to the post of judge, a legal lacuna (legislative omission) existed which would constitute grounds to make a referral to the Constitutional Court, were devoid of legal basis. This had already been explained by the Supreme Court in its ruling of 20 April 2022 (see paragraphs 30 and 31 above). Accordingly, there was no basis to make a referral to the Constitutional Court.

C. The Court of Appeal

51. The applicant lodged a separate complaint with the Court of Appeal.

52. On 4 July 2023 the Court of Appeal upheld the Vilnius Regional Court's ruling inasmuch as it related to the applicant's requests nos. 1-3 (see paragraph 47 above). The Court of Appeal noted that, as already established by the Supreme Court, the applicant's claims that the President of the Republic had not adopted a decree were not amenable to court proceedings.

However, if a person considered that he or she had sustained damage on account of the fact that State power had not been properly executed, he or she could claim damages in the form of an award in the amount of the unpaid salary for the time he or she had not been appointed as judge. The Vilnius Regional Court had properly established that the applicant had not enumerated the sum of his claim, that is, a concrete sum of unpaid salary as pecuniary damage; therefore this defect had to be rectified.

The Court of Appeal varied the Vilnius Regional Court's decision of 25 May 2023 in so far it was decided to refuse to accept the applicant's claim

for compensation for damage (*dėl žalos atlyginimo*) and remitted that matter for fresh examination by the Vilnius Regional Court (see paragraphs 55 and 56 below).

D. The Supreme Court

53. The applicant lodged an appeal on points of law, asking that the Court of Appeal's ruling of 4 July 2023 be quashed and reiterating his previous arguments about the lacuna in the legal regulation which had allegedly prevented the applicant from defending his rights when the President of the Republic had decided not to appoint the applicant to the post of judge. The applicant also asked the Supreme Court to suspend the examination of the case and to make a referral to the Constitutional Court.

54. By a final ruling of 16 October 2023 the Supreme Court refused to accept for examination the applicant's appeal on points of law, holding that no legal questions had been raised in the applicant's appeal on points of law to merit an examination by the Supreme Court.

E. The Vilnius Regional Court

55. On 11 July 2023 the Vilnius Regional Court asked the applicant to state a precise sum to be awarded as compensation for pecuniary damage.

The Vilnius Regional Court also asked the applicant to specify the basis of his claim (*patikslinti ieškinio pagrindą*), that is, to precisely indicate and give reasons regarding all the conditions necessary for civil liability. The Vilnius Regional Court also pointed out that, having assessed the content of lawsuit brought by the applicant and the conclusions given in the Court of Appeal's ruling of 4 July 2023, on the basis of which part of the Vilnius Regional Court's ruling of 25 May 2023 was left unchanged in so far as it had refused to accept for examination the applicant's requests nos. 1-3, attention had to be drawn to the fact that when rectifying the flaws of the lawsuit it was necessary to refer (*nurodyti*) to the grounds for civil liability which by their nature would be amenable to examination in court. The regional court also asked the applicant to "eliminate" all the arguments related to his requests nos. 1-3 from the rectified lawsuit.

56. On 25 July 2023 the Vilnius Regional Court held that the applicant had not rectified the flaws within the set time-limit of ten days and that it would therefore be considered that the civil claim had not been lodged and that the claim had to be returned to the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

57. The Constitution reads:

Article 5

“In Lithuania, State power shall be executed by the *Seimas*, the President of the Republic, the Government and the judiciary.

The scope of power shall be limited by the Constitution.

...”

Article 29

“All persons shall be equal before the law, the courts and other State institutions and officials.

Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views.”

Article 30

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

Compensation for material and moral damage inflicted upon a person shall be established by law.”

Article 33

“Citizens shall have the right to ... enter on equal terms the State Service of the Republic of Lithuania.

...”

Article 84

“The President of the Republic:

...

10) shall, according to the established procedure, appoint and release State officials as provided for by law;

11) ... shall appoint the judges and presidents of regional and district courts and change their places of work ...”

Article 110

“Judges may not apply any laws that are in conflict with the Constitution.

In cases when there are grounds to believe that a law or other legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or other legal act in question is in compliance with the Constitution.”

Article 112

“In Lithuania, only citizens of the Republic of Lithuania may be judges.

MISIŪNAS v. LITHUANIA JUDGMENT

The justices of the Supreme Court, as well as its President chosen from among them, shall be appointed and released by the *Seimas* upon a submission by the President of the Republic.

The judges of the Court of Appeal, as well as its President chosen from among them, shall be appointed by the President of the Republic upon the consent of the *Seimas*.

The judges and presidents of district, regional and specialised courts shall be appointed, and their places of work shall be changed, by the President of the Republic.

A special institution of judges, as provided for by law, shall advise the President of the Republic on the appointment, promotion and transfer of judges or their release from duties.

A person appointed as a judge shall, in accordance with the procedure established by law, take an oath to be faithful to the Republic of Lithuania and to administer justice only in accordance with the law.”

Article 113

“Judges may not hold any other elective or appointive office or work in any business or commercial or other private establishments or enterprises. Nor may they receive any remuneration other than the remuneration established for judges and payment for educational or creative activities.

Judges may not participate in the activities of political parties or other political organisations.”

Article 115

“The judges of the courts of the Republic of Lithuania shall be released from their duties in accordance with the procedure established by law in the following cases:

- 1) of their own will;
- 2) upon the expiry of the term of office or upon reaching the pensionable age established by law;
- 3) on account of their state of health;
- 4) upon their election to another office or upon transfer, with their consent, to another place of work;
- 5) when their conduct discredits the name of judges;
- 6) upon the entry into effect of court judgments convicting them.”

58. The relevant parts of the Law on the Constitutional Court (*Konstitucinio Teismo įstatymas*) read:

Article 65. Filing a Petition with the Constitutional Court for an Investigation into the Compliance of a Legal Act with the Constitution

“...

A person shall have the right to file a petition with the Constitutional Court for an investigation into the compliance of laws or other acts of the *Seimas*, the acts of the President of the Republic, or the acts of the Government with the Constitution or laws if:

1) a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person ...

...”

59. The relevant parts of the Law on Courts (*Teismų įstatymas*), as in force at the relevant time, read as follows:

Article 56. Appointment of a district court judge

“1. A judge of a district court shall be appointed by the President of the Republic from the list of candidates to judicial vacancies at a district court ...

2. The President of the Republic shall be advised about the appointment of a judge of a district court by the Judicial Council (*Teisėjų Taryba*).

3. The President of the Republic, upon receiving the opinion of the Selection Commission on the candidates for a post of judge, shall, no later than within thirty days, submit for discussion the specific names of the nominees to the Judicial Council with a request for its advice.

4. The issue of appointment of the nominees to a judicial vacancy at a district court shall normally be dealt with during the next meeting of the Judicial Council.

5. After consideration of the appointments to the judicial office, the Judicial Council shall advise the President of the Republic in respect of a specific nominee ...

6. The Chairman of the Judicial Council shall, within five days, communicate in writing to the President of the Republic its advice and its decision.”

Article 61. Particularities of the appointment of a former judge to judicial office

“...

2. A former judge who was dismissed in the course of an election, transfer or appointment referred to in paragraph 3 may, without selection or examination, in accordance with the procedure for the appointment and dismissal of judges established in this Law, be appointed at his or her request as a judge of the same or any lower court if two years have not elapsed since the end of the position to which he or she was elected, transferred or appointed. Such rights shall not be granted to persons who, in accordance with Article 52 of this Law, cannot be considered to have an impeccable reputation.

3. A former judge may be appointed as a judge of the same or any lower court in accordance with paragraph 2 of this Article if he has been voluntarily relieved of his duties by reason of his election, transfer or appointment to:

1) a position of the head of a State institution or body, appointed by the *Seimas* or the President of the Republic, of a State official appointed by the *Seimas* or the President of the Republic, ... accepted for a term of office established by law;

... ”

Article 90. Dismissal of a judge

“1. A judge shall be dismissed in the following cases:

1) upon his resignation;

2) when his term of office expires or when he reaches the retirement age under law;

MISIŪNAS v. LITHUANIA JUDGMENT

3) by reasons of health;

4) when the judge has been elected to another post or when he has been transferred to another job subject to his consent;

5) when he engages in conduct discrediting the office of judge;

6) when a judgment for his conviction becomes final.

...

6. Judges of the regional court, the regional administrative court and the district court shall be dismissed by the President of the Republic.

...

9. When a judge contests his dismissal from judicial office he shall be entitled to appeal, within one month from the day of his dismissal, to the Vilnius Regional Court.”

60. In a ruling of 9 May 2006 on the constitutional system of the judiciary and its self-governance, the appointment, promotion and transfer of judges, their dismissal from office, and the prolongation of the powers of judges, the Constitutional Court held:

“3. In paragraph 2 of Article 109 of the Constitution it is prescribed that while administering justice, the judge and courts shall be independent. The independence of judges and courts is one of the essential principles of a democratic State under the rule of law: while administering justice, courts must ensure the implementation of the right embodied in the Constitution, laws and other legal acts, guarantee the supremacy of law and protect human rights and freedoms. It should also be noted that the independence of judges and courts is not an end in itself: it is a necessary condition of protection of human rights and freedoms, not a privilege, but one of the main duties of a judge and the courts arising from the right of every person who thinks that his rights or freedoms have been violated to [have access to] an independent and impartial arbiter of the dispute, which, under the Constitution and laws, would in effect resolve the dispute, as guaranteed in the Constitution (see, *inter alia*, in paragraph 2 of Article 109, as well as paragraph 1 of Article 30, in which it is prescribed that the person whose constitutional rights or freedoms have been violated shall have the right to apply to court).

...

The judicial power may implement its constitutional obligation and function to administer justice only while being free and independent from other State powers – legislative and executive – which are formed on a political basis. If the judicial power were not free and independent from the legislative and executive powers, it would not be fully fledged. The fact that the judicial power is free and independent from other State powers is also determined by the fact that, unlike other State powers, it is formed, not on a political, but on a professional basis (see the Constitutional Court’s rulings of 21 December 1999 and 12 July 2001, its conclusion of 31 March 2004 and its ruling of 28 March 2006) ...

12. [T]he special institution of judges provided for by law set out in paragraph 5 of Article 112 of the Constitution also participates (thus also has certain constitutional powers) when the judiciary is being formed. In the area of the formation of the judiciary, this special institution of judges (which ... is an important element of the judiciary’s self-governance [and] an independent State power), serves as a balance to the President of the Republic, who is part of the executive ... The ... status, autonomy, [and] independence of the judiciary and the constitutional principle of the separation of

powers do not allow the constitutional purpose and functions of that special institution of judges to be construed in such a way that [the institution's] role as a balance to the President of the Republic in the area of the formation of the judiciary would be denied or ignored. On the other hand, as already mentioned, the checks and balances which the judiciary (and the institutions thereof) and other State powers (and the institutions thereof) have with respect to each other may not be treated as opposing mechanisms of corresponding powers. Accordingly, it would be unfair to construe the constitutional purpose of that special institution of judges as only a balance to the President of the Republic in the area of the formation of the judiciary, because partnership and cooperation between the President of the Republic and this special institution of judges is also necessary while it is being forming (in particular, paying heed to the interests of society – based on and defended by the Constitution – that the judiciary be formed fairly and transparently [and] that [candidates] for judicial office be chosen only on the basis of their professional qualifications and personal features and [on the basis of] other circumstances which determine their suitability or unsuitability for this activity (that is, a judicial office in a particular court)).

...

15.1. ... when the President of the Republic applies to the special institution of judges provided for by law specified in paragraph 5 of Article 112 of the Constitution for advice regarding the appointment, promotion or transfer of a judge, and this special institution of judges advises to appoint the person as a judge, to promote the judge or to transfer him, such advice is not binding on the President of the Republic. This means that the President of the Republic (*inter alia*, if certain circumstances significant to such appointment or release from office become clear) might decide not to appoint that person as a judge, not to promote the judge, or not to transfer him ... Under the Constitution, in such cases, the President of the Republic may apply to the special institution of judges provided for by law specified in paragraph 5 of Article 112 of the Constitution for advice regarding the appointment of another person as a judge, the promotion or transfer of another judge.

...

23. As, under the Constitution, only the President of the Republic may apply to the special institution of judges provided for by law specified in its Paragraph 5 of Article 112, he, before requesting that advice [and] after he has made use of the possibilities provided for by law (after he has, *inter alia*, requested the information from corresponding State institutions ([and their] officials)), must elucidate and assess all the significant circumstances, including whether the person who is proposed to be appointed as a judge or the judge proposed to be transferred or promoted meets the requirements established for a judge (as well as [requirements] for a judge of a court of that system of courts or of the same level of court), whether he has the qualifications necessary for the corresponding work, whether he is of impeccable reputation and whether there are any other circumstances on account of which the person should not be appointed as a judge or promoted or transferred (or appointed as a judge of a court specifically identified by the President of the Republic or promoted, appointed or transferred to that specific court).

...

26. Taking account of the purpose, the constitutional status and the exclusive role in the procedure of the formation of the corps of judges of the special institution of judges provided for by law in paragraph 5 of Article 112 of the Constitution, it must be added that certain requirements stem from the Constitution concerning the activity of this State institution and the organisation of its work.

For instance, before advising the President of the Republic on the appointment, promotion, transfer or release from office of a judge of a certain court of general jurisdiction ..., the special institution of judges has a duty to elucidate and assess all the significant circumstances, including, whether the person who is proposed to be appointed as judge or who is proposed to be transferred or promoted meets the requirements established for the [position of] judge (as well as [requirements] for a judge of court of that system of courts or of the same level of court), whether he has the qualifications necessary for the corresponding work, whether he is of impeccable reputation and whether there are any other circumstances on account of which a person may not be appointed as a judge, promoted or transferred (or appointed as a judge of a court specified by the President of the Republic or promoted or transferred to that specific court).”

61. The Constitutional Court’s case-law on the right of access to court, which is enshrined in Article 30 of the Constitution, is set out in *Černius and Rinkevičius v. Lithuania*, nos. 73579/17 and 14620/18, §§ 28-30, 18 February 2020.

In a ruling of 2 July 2002 the Constitutional Court held that:

“The constitutional principle of judicial protection is established in paragraph 1 of Article 30 of the Constitution. In its ruling of 18 April 1996, the Constitutional Court held that in a democratic State the court is the main institutional guarantor of human rights and freedoms and that the constitutional principle of judicial protection is universal.

It needs to be noted that, under the Constitution, the legislator has a duty to establish such legal regulation whereby all disputes regarding any violation of rights or freedoms of individuals may be decided in court. An out-of-court dispute settlement procedure may also be provided for. However, it is not permitted to establish any such legal regulation that would deny the right of an individual who believes that his rights or freedoms have been violated to defend his rights and freedoms in court.”

In a ruling of 15 May 2007 the Constitutional Court held that:

“9. ... it is imperative, from the constitutional principle of a State under the rule of law, that a person who considers his or her rights or freedoms to be violated has an absolute right to an independent and impartial court; this right may not be artificially constrained or artificially complicated ... The rights of the person must be protected, not only formally, but in reality and effectively, from unlawful actions of private persons, as well as those of State institutions or officials. The legal regulation establishing the procedure of implementation of the right of a person to judicial defence must conform to the constitutional requirement of legal clarity, and the legislature must clearly establish in laws in what manner and to which court a person can apply, so that he would in reality implement his right to apply to court regarding violation of his rights and freedoms.”

In a ruling of 30 June 2008 the Constitutional Court held that:

“3.3 ... the right of access to court is absolute, this right cannot be restricted or denied; under the Constitution, the legislator has a duty to establish such legal regulation so that all disputes regarding violation of the rights or freedoms of a person can be resolved in court; the rights of a person must be protected, not formally, but realistically and effectively, from the unlawful actions of both private persons and State authorities or officials.”

THE LAW

I. PRELIMINARY REMARKS

A. Submissions by the parties

1. *The Government*

62. The Government noted that by providing observations regarding its preliminary objection as to non-exhaustion of domestic remedies they would furnish their replies to the questions of the Court as regards Article 6 § 1 and Article 13, taken alone and in conjunction with Article 8.

(a) Exhaustion of domestic remedies

63. The Government submitted that the applicant had failed to exhaust effective domestic remedies. Firstly, he had failed to uphold his claim as regards the awards in respect of pecuniary and non-pecuniary damage, which might have provided the domestic courts of general jurisdiction with the possibility of assessing the relevant factual circumstances regarding the non-appointment of the applicant and which might have been relevant for a possible further request by him to be appointed to the post of judge. In the final decision of 20 April 2022, the Supreme Court noted that the applicant had failed to indicate the amount of compensation in respect of pecuniary damage in his claim (see paragraph 34 above) and the applicant later failed to rectify that deficiency (see paragraphs 36 and 37 above). Be that as it may, it is evident that the applicant's real intention behind his litigation was to have the domestic courts oblige the President of the Republic to appoint the applicant to the post of judge. However, such request ran counter to the Lithuanian constitutional order of appointment of a person to the post of district court judge (see also paragraph 70 below).

64. In their observations of 18 September 2023 the Government submitted that the applicant's repeated request to be appointed to the post of judge in September 2022 and the ensuing domestic court proceedings were not related to the subject matter of the instant case and served only as the context of the case. Be that as it may, following the second decision by the President of the Republic not to appoint the applicant to the post of district court judge, the courts had refused to accept for examination the applicant's claims and the applicant had failed to correct the deficiencies indicated by those courts, which had precluded those courts from examining the alleged deficiencies in the appointment procedure and from examining the applicant's claim for damages (see paragraphs 46-56 above).

65. Secondly, the applicant had also failed to apply to the Constitutional Court with an individual constitutional complaint. The applicant, if he had believed that the domestic law was unconstitutional, could have applied to

that court with an individual constitutional complaint contesting the constitutionality of the domestic legal provisions (for instance, Articles 56 and/or 61 of the Law on Courts), on the basis of which an adopted decision had allegedly violated the applicant's constitutional rights or freedoms.

(b) The Government's argument that the application was unfounded

66. The Government asserted that, should the Court find the application admissible, they were of the view that there had been "no violation of Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case", and no violation of Article 13 of the Convention read in conjunction with Article 8.

67. They argued that it was necessary to distinguish two different situations: firstly, the situation which concerned the lack of judicial review of the career and status of the acting members of the judiciary (the judges) and, secondly, the situation, as the applicant's, which did not concern a change of the status of a judge, but rather the request of a person to be appointed to the post of judge relying on the exceptional procedure and which was concerned with the exercise of State power of the President of the Republic. The domestic legal provisions related to the judicial review of a judge's dismissal, giving that person (who had been a judge at the relevant time) the right to apply to the domestic court and ask it to interfere with the competence of the President of the Republic, could not be applied by analogy to the applicant's situation. The applicant had not been a judge at the relevant time and, in his claim, had not contested the lawfulness of his dismissal. The non-appointment of a person to the post of judge by its content and nature could not amount to the dismissal of a judge.

68. The Government also stated that, in the case of the applicant, a right to be appointed had never been guaranteed to him. Under Article 61 of the Law on Courts, the domestic legal provision the applicant had relied on while asking to be appointed to the post of judge of the Vilnius City District Court, a former judge could be appointed, without selection or examination, at his or her request as a judge of the same or any lower court if two years had not elapsed since the end of the position to which he or she had been elected, transferred or appointed. Article 61 § 2 of the Law on Courts had also stated that such rights would not be granted to persons who, in accordance with Article 52 of that Law, could not be considered to have an irreproachable reputation. Thus, the procedure for the appointment of persons to the post of judge as established in the Law on Courts had still applied to the applicant. In other words, there were only two deviations from the general procedure for the appointment of a former judge to the post of judge: they were not required to take an exam or to participate in a selection procedure. All other requirements as set out in the domestic law were the same as for other persons applying to become judges.

69. The Government further asserted that, in the applicant's case, in the ruling of 20 April 2022 the Supreme Court had extensively relied on the Constitutional Court's case-law as to the constitutional competence of the President of the Republic to appoint a person to the post of district court judge. In that connection, the Constitutional Court had ruled that, when the corps of judges was being formed, the special institution of judges provided for in Article 112 § 5 of the Constitution also participated (thus, the Judicial Council also had certain constitutional powers). That special institution of judges was an important element of the judiciary's self-governance and it served as a balance to the President of the Republic, who was a subject of the executive (see paragraph 60 above). When the President of the Republic sought the Judicial Council's advice regarding an appointment and that special institution advised the President to appoint a person to the post of judge, according to the well-established constitutional jurisprudence, the advice of the Judicial Council was not binding on the President of the Republic. That meant that the President of the Republic (if, for example, certain circumstances significant to such appointment became clear), while exercising his discretion as regards the appointment, might decide not to appoint that person to the post of judge (see point 15.1 in paragraph 60 above).

70. In those circumstances, bearing in mind the exclusive constitutional prerogatives and role of the President of the Republic in the process of the formation of the judiciary, the applicant's request that the domestic courts oblige the President of the Republic to appoint the applicant to the post of judge of the Vilnius City District Court had run counter the very core of the Lithuanian constitutional order. Yet, the applicant had chosen to insist on that particular claim instead of properly availing himself of domestic remedies provided by domestic courts.

2. The applicant

(a) Exhaustion of domestic remedies

71. The applicant disagreed with the Government's view that he had not exhausted domestic remedies.

(i) Civil remedies

72. The applicant submitted that, although both the Supreme Court, in its ruling of 20 April 2022, and the Vilnius Regional Court, in its decision of 21 April 2022, had sought to define the limits of the applicant's action as a claim for pecuniary damage linked to defence of the applicant's honour and dignity and had examined whether the claim for pecuniary damage had arisen out of an employment relationship, none of those grounds had corresponded to the real object of the applicant's legal dispute.

73. In order to bring a lawsuit in respect of the defence of honour and dignity (as interpreted by those courts), the applicant would have had to sue Mr Gitanas Nausėda, the President of the Republic, as a fellow citizen for spreading information that was not in conformity with the truth and was derogatory to the applicant's honour and dignity in his public statements. However, this had not been the subject matter of the legal conflict, given that the President of the Republic, in his personal capacity, had not publicly disseminated such statements. Rather, the object of that legal dispute had arisen from an employment relationship wherein the President of the Republic, in the fulfilment of his presidential duties and in his unilateral and subjective capacity, on the basis of unsubstantiated arguments and assertions, had decided not to appoint the applicant as a judge.

74. At the same time, the applicant's claim for pecuniary damage could not be based on an employment relationship, since the applicant had no longer been a judge at the time he had submitted the request to be appointed to the post of judge.

(ii) Individual constitutional complaint

75. Firstly, the applicant noted that he had pursued court proceedings before the Vilnius Regional Court, the Court of Appeal and the Supreme Court, which, by its ruling of 20 April 2022, had dismissed the applicant's appeal. In that ruling the Supreme Court had considered that there was no reason to hold that a legal regulation, in accordance with which a court could not oblige the President of the Republic to appoint a former judge to a judge's post, was unconstitutional (see paragraphs 30 and 31 above).

76. Secondly, the applicant argued that his situation was complicated by the fact that he had appealed against the inaction of the President of the Republic. In other words, the fact that the President of the Republic had not formalised the decision by decree, indicating that he would not appoint the applicant to the post of judge. At the same time, under Article 65 § 2 (1) of the Law on the Constitutional Court, a person had the right to submit a request to the Constitutional Court to investigate the constitutionality of a law if a decision, taken on the basis of that law, had violated the person's rights or freedoms (see paragraph 58 above). On the basis of the facts above, an individual complaint lodged by the applicant against the President's inaction (failure to adopt a decree) would have failed to comply with the requirements laid down in the Law on the Constitutional Court which expressly specified that only the "adopted acts" could be challenged.

(b) The Government's argument that the application was unfounded

77. The applicant asserted that, by lodging a claim against the President of the Republic's decision not to appoint him to the post of judge, he had sought to protect his legally protected interests. The applicant disagreed with

the civil courts, which, when hearing his case, had considered that they could not investigate the activities of the President of the Republic in so far as it concerned his situation. In particular, he understood very clearly that, literally speaking, the Lithuanian courts could not oblige the President of the Republic to issue a decree and appoint a person as a judge; nevertheless, the President of the Republic's discretion in the area of the formation of the corps of judges had been subject to the provisions of the Constitution and the Law on Courts. Legal disputes had been examined when former judges, disagreeing with their dismissal from judicial office, had applied to the Vilnius Regional Court to have the decision of the President of the Republic to dismiss a judge from office declared unlawful, under Article 90 (9) of the Law on Courts. The courts had had a duty to investigate the facts of those disputes and to decide whether the President's decision to dismiss a judge had been lawful. That provision of the Law on Courts had constituted sufficient proof that the courts had investigated the President's discretion in the area of the formation of the judicial corps. The applicant also referred to the Constitutional Court's case-law to the effect that the right of access to court was absolute and that that right could not be restricted or denied.

78. The applicant also argued that, in the present case, the Government had taken a position of convenience and had treated the legal dispute as a simple procedure for the selection of candidates for judges. This was misleading, given that the selection and appointment of judicial candidates was regulated by Article 56 of the Law on Courts, whereas the peculiarity of the applicant's situation lay in the fact that Article 61 §§ 2 and 3 of the Law on Courts had set out a special right of a former judge to be appointed as a judge without undergoing a selection procedure. However, if the President of the Republic had refused to appoint such a person as a judge, Lithuanian law had not obliged the President to issue a decree against which a former judge could appeal to a court, nor had the Law on Courts provided procedures for appealing to the court against the inaction of the President of the Republic.

79. The positions which the applicant had taken up – those of Minister and Vice-Minister – had been included in the list of positions provided for in Article 61 § 3 of the Law on Courts, after which a former judge had had the right to be appointed to his or her former post as judge. In the applicant's perception, Article 61 §§ 2 and 3 of the Law on Courts had been understood to mean that the legislature regarded the appointment of a judge as a member of the Government as the performance of a higher, more exclusive duty, both in terms of responsibility and content. It could be argued that the legislature had intended that a former judge, who, as a result of his or her election, transfer or appointment was in a position provided for in Article 61 § 3 of the Law on Courts, should be able to return to his or her former position as a judge. In the applicant's view, the period during which the former judge had served as a member of the Government could be regarded as a temporary suspension of his or her status as a judge and, upon completion of his or her

service and upon application, he or she had an irrefutable right to be reappointed.

80. The discretion of the President of the Republic had been enshrined in the wording of Article 61 § 3 of the Law on Courts. This discretion had to be interpreted restrictively and only in relation to the specific conditions to be met in terms of a judge's qualifications and reputation, and two years must not have passed since the judge left the office defined in Article 61 § 3 of that Law. The applicant had met all three of the conditions in 2021 and also in 2015, when he had been appointed as judge. He also emphasised that he was not a member of any political party. In the applicant's view, the President of the Republic had had no established and factually substantiated reasons to deny the applicant's impeccable reputation as a former judge or as a Minister or Vice-Minister. In such situation, the non-appointment of a former judge could be considered a complete loss of the status of judge and had to be treated as a dismissal from that office in the event that a judge's actions brought a judge's name into disrepute (Article 90 § 1 (5) of the Law on Courts), where the Law on Courts had again provided for a possibility of an appeal against such decision of the President of the Republic to the court. The Lithuanian courts had not only been able, but had also been obliged to hear the applicant's claim.

81. Since the beginning of this legal dispute, the applicant had constantly received suggestions that he "not fight with the President of the Republic" and to "accept his injustice". It had also been said that this had not been "a question of the implementation of the law, but a question of the loyalty and fidelity of Lithuanian judges to the President of the Republic and a question of the courage of the judges to make the right decisions".

82. In the applicant's view, the situation showed that the Lithuanian judiciary, despite the obvious legal loophole in the procedure for the appointment of former judges and the unlawful actions of the President of the Republic in not appointing the applicant as a judge, had chosen loyalty and allegiance to the President of the Republic over justice and truth. The applicant was well aware that the careers of Lithuanian judges depended on the favour of the President of the Republic, yet the applicant had not expected such "blindness" to justice. The Lithuanian courts had conveniently "turned a blind eye" to the practice established by the courts and the logic of the law and had chosen the comfortable tactic to the effect that "the President of the Republic's activities [were] lawful" and "there [was] nothing to investigate".

B. The Court's assessment

1. Applicability of Article 6 § 1 of the Convention

83. At the outset, the Court observes that the applicability of Article 6 § 1 of the Convention to the proceedings of the present case was not contested by the Government (see paragraph 66 above). That notwithstanding, the Court

considers that it has to address this issue of its own motion (see, *mutatis mutandis*, *Durić v. Serbia*, no. 24989/17, § 49, 6 February 2024, and *Kurkut and Others v. Türkiye*, nos. 58901/19 and 6 others, § 87, 25 June 2024), and finds it pertinent to note the following.

(a) General principles

84. The relevant general principles concerning the applicability of Article 6 of the Convention in the context of disputes concerning the appointment, career and dismissal of judges were summarised by the Court in *Baka v. Hungary* ([GC], no. 20261/12, §§ 100-06, 23 June 2016) and, more recently, in *Grzęda v. Poland* ([GC], 43572/18, 257-64, 15 March 2022; see also *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, §§ 220-28, 8 November 2021; *Gumenyuk and Others v. Ukraine*, no. 11423/19, §§ 44-59, 22 July 2021; *Eminağaoğlu v. Turkey*, no. 76521/12, §§ 59-63, 9 March 2021; and *Bilgen v. Turkey*, no. 1571/07, §§ 47-52 and §§ 65-68, 9 March 2021).

(b) Application of the general principles in the present case

85. In the light of the relevant general principles (see paragraph 84 above), in order to determine the applicability of Article 6 in the present case, the Court needs to examine (i) the existence of a right; (ii) whether there was a “genuine” and “serious” dispute about a right; and (iii) whether the right in question was “civil” within the meaning of that provision (see *Gloveli v. Georgia*, no. 18952/18, § 35, 7 April 2022).

(i) Existence of a right

86. The Court must first analyse the actual nature of the applicant’s complaint before the domestic authorities. In that connection, the Court reiterates that it is the right as asserted by the claimant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 of the Convention is applicable (see *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 120, ECHR 2013 (extracts), and *Károly Nagy v. Hungary* [GC], no. 56665/09, § 63, 14 September 2017).

87. In the present case, the applicant, a former judge, complained that the decision to reject his candidacy for a judicial post had been arbitrary. In his appeals lodged with the administrative and civil courts, he invariably asserted his right to a fair procedure in seeking readmission to the judiciary, and the crux of his complaint was the alleged bias and lack of objectivity on the part of the President of the Republic (see paragraphs 14, 22 and 46 above). The Court therefore considers that what was at the heart of the relevant proceedings was not the right to be appointed to judicial office, as suggested by the Government (see paragraphs 67-70 above), but rather the right to a fair

procedure in the examination of an application by a former judge for a judicial post (see, *mutatis mutandis*, *Gloveli*, cited above, § 37, and the case-law cited therein).

88. The Court notes that Article 33 of the Constitution provides for the right of equal access to public service (see paragraph 57 above). The Court has also held that for a “right” to trigger the application of Article 6 § 1 of the Convention, it is sufficient to show that the applicant could arguably claim an entitlement under national law. As noted in *Grzęda* (cited above), in determining whether there was a legal basis for the right asserted by the applicant, the Court needs to ascertain only whether the applicant’s arguments were sufficiently tenable, not whether he would necessarily have been successful had he been given access to a court (*ibid.*, § 268). Furthermore, contrary to the facts in *Gloveli* (cited above, § 40), the Government do not appear to have argued in the present case that the applicant did not satisfy the “appropriate statutory requirements” for participation in a judicial (re)appointment procedure (see also paragraph 110 below). The Court also notes that domestic law – as interpreted by the domestic courts (see paragraphs 33-35 above), and as also emphasised by the Government (see paragraphs 63-65 above) – recognised the right to seek compensation for loss resulting from the improper exercise of State power, including in the context of the appointment of judges (see also *Regner v. the Czech Republic* [GC], no. 35289/11, § 105, 19 September 2017). In such circumstances, considering the relevant domestic legal framework, the Court is prepared to accept that there was arguably a “right” recognised under Lithuanian law to a fair procedure in judicial (re)appointment, including the right to be protected against arbitrary and discriminatory rejections (see, *mutatis mutandis*, *Gloveli*, cited above, § 38, and the case-law cited therein).

89. In the light of the foregoing, the Court is satisfied that, having regard to the terms of Article 33 of the Constitution and Article 61 of the Law on Courts, the domestic law set out a “right” to a fair procedure in the examination of an application for the return to a judicial post, which the applicant could assert.

(ii) “genuine” and “serious” dispute

90. The Court considers that the dispute was “genuine” and “serious” as it concerned the fairness of the judicial selection and appointment procedure, despite the fact that the domestic courts had not allowed the applicant’s appeal (see, *mutatis mutandis*, *Fiume v. Italy*, no. 20774/05, § 35, 30 June 2009; *Gloveli*, cited above, § 42, and *Frezadou v. Greece*, no. 2683/12, § 26, 8 November 2018). It remains to be determined whether the nature of the right in question was civil within the autonomous meaning of Article 6 § 1, in the light of the criteria developed in *Vilho Eskelinen and Others* ([GC], no. 63235/00, ECHR 2007-II; see *Gloveli*, cited above, § 42).

(iii) “Civil” nature of the right: the *Eskelinen* test(α) The first condition of the *Eskelinen* test

91. As regards the first condition of the *Eskelinen* test, that is, whether national law “expressly excluded” access to a court for the post or category of staff in question (see *Eskelinen*, cited above, § 62), the Government can be understood as arguing that access to a court for a judicial candidate was excluded by the Lithuanian constitutional law and the doctrine of separation of powers (see paragraphs 67 and 70 above). The applicant, however, can be considered to be arguing that domestic law did not explicitly exclude access to a court for claims relating to the same situation as his, given his prior status as judge (see paragraph 80 above).

92. Even if the Government’s argument that domestic law expressly excluded access to a court were to be accepted, the Court still has to be satisfied that the exclusion was justified on “objective grounds in the State’s interest” (see *Vilho Eskelinen and Others*, cited above, § 62). It will, therefore, proceed with the examination of the second condition of the test (see *Gloveli*, cited above, § 47).

(β) The second condition of the *Eskelinen* test

93. The Court will now examine whether, in the present case, the exclusion of access to a court could be justified on objective grounds in the State’s interest.

94. In this connection, the Court has on many occasions emphasised the special role in society of the judiciary which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if it is to be successful in carrying out its duties (see *Baka*, cited above, § 164, with further references; see also *Eminağaoğlu*, §§ 76 and 78, and *Bilgen*, § 58, both cited above). Given the prominent place that the judiciary occupies among State organs in a democratic society and the importance attached to the separation of powers and to the necessity of safeguarding the independence of the judiciary (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 196, 6 November 2018, with further references), the Court must be particularly attentive to the protection of members of the judiciary against measures affecting their status or career that can threaten their judicial independence and autonomy. The Court has stated that judicial independence is a prerequisite to the rule of law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 239, 1 December 2020). In this connection, as far as the characterisation of a court as “independent” within the meaning of Article 6 § 1 is concerned, it has held that regard must be had, *inter alia*, to the manner of appointment of its members (see, for instance, *Ramos Nunes de Carvalho e Sá*, § 144, and *Guðmundur Andri Ástráðsson*, § 230, both cited above). As stated by the Court in *Guðmundur Andri Ástráðsson*, there appears

to be a considerable consensus among the member States that the requirement of a “tribunal established by law” encompasses the process of the initial appointment of a judge to office (*ibid.*, § 228).

95. The Court has already stated that judges should be selected on the basis of merit and objective criteria, not only to ensure public confidence in the judiciary but also to supplement the guarantee of the personal independence of judges (see *Bilgen*, cited above, § 63, with further references). In that connection, in its previous case-law it has referred to paragraph 25 of Opinion. No. 1 (2001) of the Consultative Council of European Judges (CCJE), which recommends that “the authorities responsible in member States for making and advising on appointments and promotions should now introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are based on merit, having regard to qualifications, integrity, ability and efficiency” and highlighted the importance of a rigorous process for the appointment of ordinary judges to ensure that the most qualified candidates – both in terms of technical competence and moral integrity – are appointed to judicial posts (see *Guðmundur Andri Ástráðsson*, cited above, §§ 221-22). The Court has also stated that domestic law needs to be couched in unequivocal terms, to the extent possible, so as not to allow arbitrary interferences in the appointment process, including by the executive (*ibid.*, § 230). In this connection, the Court notes that there exists a clear link between the integrity of the judicial appointment process and the requirement of judicial independence in Article 6 § 1 (see *Thiam v. France*, no. 80018/12, §§ 81-82, 18 October 2018; see also *Gloveli*, cited above, § 50 *in fine*).

96. Against this background, the Court considers that, in view of the particular circumstances of the present case, the exclusion of the applicant, a judicial candidate who met the statutory eligibility requirements, from a (re)appointment procedure in the absence of any judicial review of that decision, cannot be regarded, in view of the importance of the protection of judicial independence, as being in the interest of a State governed by the rule of law. It refers in this connection to the relevant international standards, which likewise state that any decision concerning the selection and career of judges, or at least the procedure under which such a decision is made, should be amenable to judicial review (see, *mutatis mutandis*, *Gloveli*, cited above, §§ 24-29). The Court notes, at the same time, that it is not called upon to review the judicial appointment systems that are in place in the various Council of Europe member States. As already noted in its case-law, there are variety of different systems in Europe for the selection and appointment of judges and what is decisive is that appointees are free from influence or pressure when carrying out their adjudicatory role (see *Guðmundur Andri Ástráðsson*, cited above, § 207, with further references). The question is always whether, in a given case, the requirements of the Convention are met (see *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others,

§ 193, ECHR 2003-VI, and *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 46, 30 November 2010).

97. The Court finds, accordingly, that the second condition of the *Eskelinen* test, namely that the applicant's exclusion from access to a court be justified on objective grounds in the State's interest, has not been met.

(c) Conclusion as to the applicability of Article 6

98. It follows that Article 6 § 1 of the Convention under its civil head is applicable.

2. Exhaustion of domestic remedies

(a) Civil remedies

99. The Court finds that the Government's objection that the applicant had failed to properly exhaust domestic remedies by not following up with proceedings for damages are intrinsically related to the merits of the applicant's complaints under Article 6 § 1 and Article 13 of the Convention. It therefore joins this objection to the merits.

(b) Individual constitutional complaint

100. The Court observes that throughout the civil proceedings the applicant asked the courts of general jurisdiction and at all levels of jurisdiction – from the Vilnius Regional Court to the Supreme Court – to refer the question of the constitutionality of the legal regulation to the Constitutional Court (see paragraphs 22 and 29 above). He was clearly unsuccessful, for none of those courts made such a referral, those courts having pointed to the power of the President of the Republic, as provided for in the Constitution, to appoint judges (see paragraphs 24, 31, 50, 53 and 54 above). The Court also takes into account the applicant's argument that no "decision" within the meaning of Article 65 § 1 (1) of the Law on the Constitutional Court had been adopted in his case by the President of the Republic, this being a condition for the applicant's right to lodge an individual constitutional complaint (see paragraph 58 above). That being so, the Court does not consider that the applicant was to bear an additional burden and was obliged to lodge an individual constitutional complaint with the Constitutional Court.

3. Conclusion as to admissibility

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

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

102. The applicant complained that the Lithuanian courts had refused to hear his case concerning the President of the Republic's decision not to appoint him as a judge. As a result, he claimed he had been denied an effective right of access to a court, as provided in Article 6 § 1 of the Convention, which reads as follows:

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

A. The submissions by the parties

103. The parties' submissions are summarised in paragraphs 62-70 and 71-82 above.

B. The Court's assessment

1. General principles

104. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of the arbitrary exercise of power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018, with further references).

105. The right of access to a court must be “practical and effective”, not “theoretical or illusory” (see, to that effect, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §45, ECHR 2001-VIII; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016, and *Zubac*, cited above, § 77).

106. In respect of matters that fall within the ambit of the Convention, the Court's case-law has shown that where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Grzęda*, cited above, § 343). However, the Court has itself acknowledged that the right of access to the courts is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. A limitation will not be compatible with Article 6 § 1 if, however,

it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Baka*, § 120, and *Zubac*, § 78, both cited above).

2. Application to the present case

107. The Court would begin by noting that its conclusion concerning the applicability of Article 6 under the *Eskelinen* test is without prejudice to the question of how the various guarantees of that Article (including access to a court) should be applied in disputes concerning civil servants (see *Vilho Eskelinen and Others*, § 64 and *Tsanova-Gecheva*, § 87 both cited above). In other words, a breach of the right of access to a court does not automatically follow from the finding that the second condition of the test in *Vilho Eskelinen and Others* has not been met. In similar disputes before it, the Court has had regard to whether any weighty and convincing reasons justifying the absence of judicial review have been adduced by the Government (see *Oktay Alkan v. Türkiye*, no. 24492/21, § 67, 20 June 2023, and the case-law cited therein).

108. In that connection, the Government acknowledged that the decision by the President of the Republic to decline to appoint the applicant to judicial office had not been reviewed, nor had it been open to review, by an ordinary tribunal or other body exercising judicial powers. However, the Government essentially argued that the exclusion of judicial review had nevertheless been called for in the present circumstances of the case given the exclusive constitutional prerogatives and the role of the President of the Republic in the appointment of the judiciary (see paragraph 70 above). The same had been repeatedly noted by the civil courts (see paragraphs 31, 33, 47, 52 and 54 above), those courts having also referred to the Constitutional Court's case-law (see paragraph 30 above). In line with the principle of separation of powers, judicial review of the decisions by the President of the Republic involving appointments to the judiciary had not been called for.

109. The Court finds it important to underline that it does not call into question the Lithuanian legal regulation inasmuch as it concerns the President of the Republic's exercise of State power in the appointment of judges (see *Guðmundur Andri Ástráðsson*, cited above, § 207). However, in the present case, the applicant alleged that the courts had not effectively examined his complaint about his inability to contest the decision not to appoint him as a judge, which had not been formalised by a decree of the President of the Republic. In this regard, the Court notes the following.

110. Firstly, contrary to the Government's suggestion (see paragraph 67 above), the Court finds that the applicant's situation is to be distinguished from cases involving initial appointments to the judiciary – that is to say, cases involving individuals from outside the judicial system. While it is true that, when submitting requests for reappointment to the post of judge on 11 December 2020 and on 16 September 2022, the applicant no longer held

the status of judge, this was because he had stepped down from the post of district court judge at his own request on 8 December 2016 in order to take up a Government position (see paragraphs 5-7 above). Indeed, and this fact was not contested by the Government (see paragraph 68 above), the applicant, as a former judge who took up a post in the Government, as mentioned in Article 61 §§ 2 and 3 of the Law on Courts, had a right to be considered for the post of judge without undergoing a competitive exam or selection procedure. The Court observes that, when seeking his reappointment to the post of district court judge, the applicant obtained the necessary clearances (see paragraph 39 above). The Court also attaches considerable weight to the fact that, subsequently, the applicant was interviewed by the members of the Judicial Council, which acted on a motion by the President of the Republic (see paragraph 40 above), in accordance with the Judicial Council's powers under paragraph 5 of Article 112 of the Constitution (see paragraph 57 above; see also paragraph 60 above on the Judicial Council's role). Having assessed the applicant's candidacy on the basis of competency and integrity criteria (see paragraph 41 and point 26 in paragraph 60 above; see also *Gloveli*, cited above, § 58), the Judicial Council then advised the President of the Republic to appoint the applicant to the post of district court judge (see paragraph 42 above). These elements lead the Court to hold that the applicant could have had a legitimate and reasonable expectation that his application for re-entry into the judicial profession would be given proper consideration, subject to transparent and objective evaluation, devoid of arbitrariness (see, *mutatis mutandis*, *Guðmundur Andri Ástráðsson*, cited above, § 230). The Court also notes the applicant's argument that he had not been a member of a political party (see paragraph 80 above).

111. The Court reiterates the importance which international and Council of Europe instruments, as well as the case-law of international courts and practice of other international bodies are attaching to procedural fairness in cases involving the selection, appointment and career of judges (see *Oktay Alkan*, cited above, §§ 28-29 and 32-34; see also *Guðmundur Andri Ástráðsson*, §§ 207, 215 and 226-27, and *Baka*, § 165, all cited above). In this connection, the Court notes that no reasons were provided as to how the applicant had failed to fulfil the requirements of the office, when the first request for reappointment to judicial office was declined (see paragraph 12 above). As to the applicant's second request, even though the Government implied that the applicant's statements, including those concerning the possibility of taking another position in the Government in the future and the questions about his activities while he was a Minister (see paragraph 41 above), might have influenced the President's decision not to appoint the applicant to the post of judge (see also paragraphs 43-45 above), no such reasons were formally communicated to the applicant in an official decision capable of being challenged in court. This is because no official decision not

to appoint the applicant was taken by the President of the Republic (see paragraphs 12 *in fine*, 15 and 42-45 above). In any event, the Court finds that the office of Minister that the applicant referred to during the Judicial Council's meeting was nothing more than a post – which the applicant had already held – which was referred to in Article 61 § 3 of the Law on Courts and which, under the Law on Courts, in and of itself would not appear to be incompatible with the reputational requirements for those seeking a judicial post (see, *mutatis mutandis*, *Oktay Alkan*, cited above, § 69). In these circumstances there is no basis for the Court to find that the dispute concerned any exceptional or compelling reasons that could justify its exclusion from a judicial review (see, *mutatis mutandis*, *Mnatsakanyan*, cited above, § 58).

112. Secondly, the Court is not persuaded by the civil courts' decisions to refuse to accept the applicant's claim for examination. As to the Vilnius Regional Court's finding that the applicant had not specified a concrete sum which he sought as pecuniary damage in the amount of the judge's salary which went unpaid until the day of the court's decision, the Court observes that the applicant indicated his previous monthly salary on the basis of a document issued by the Vilnius City District Court (see paragraph 48 above).

113. The Court also does not overlook the fact that, when refusing to accept the applicant's claim for examination and obliging him to rectify it, the Vilnius Regional Court explicitly asked the applicant to remove from his claim all the arguments linked to the actions of the President of the Republic (see paragraph 55 *in fine* above). The Court fails to see what the basis for the applicant's claim would have been if the core factual and legal context surrounding the actions of the President of the Republic had been excluded from judicial scrutiny. The Court also refers to the Constitutional Court's case-law to the effect that the right of access to court is absolute, that this right may not be artificially constrained or artificially complicated. Furthermore, the rights of a person must be protected, not formally, but realistically and effectively, from unlawful actions by private persons and State authorities or officials (see paragraph 61 above; see also paragraph 105 above for the Court's relevant position).

114. Thirdly, the Court finds that the domestic courts failed to consider the applicant's situation as a whole, considering his grievances in isolation. For example, they held that he should have started proceedings for compensation for damage to his honour and dignity and for pecuniary damage caused by his non-appointment to the post of the judge, rather than assessing what was at the heart of the applicant's complaint, namely the absence of any effective control over the manner in which the President of the Republic's discretion had been exercised, with the result that the applicant was not appointed to the post of judge.

In the light of the foregoing considerations, the Court dismisses the Government's preliminary objection as to exhaustion of domestic civil remedies.

115. Finally, it is true that, when submitting requests for reappointment to the post of judge on 11 December 2020 and 16 September 2022, the applicant no longer had the status of judge, for he had stepped down from that post at his own request on 8 December 2016 to take up a Government position (see paragraphs 5-7 above). However, the Court has already held that the applicant could have had a legitimate and reasonable expectation that his application for re-entry into the judicial post would be given proper consideration (see paragraph 110 above). In this context, the Court also gives weight to the applicant's argument that the decision taken by the President of the Republic, without that decision being formalised by a decree, had been not dissimilar to his dismissal from the office of judge. This decision could normally be contested in the Vilnius Regional Court under Article 90 § 9 of the Law on Courts (see paragraph 59 above).

116. Taking into account the above factors and the particular circumstances of this case, the Court concludes that the applicant's attempts to obtain a judicial review by the domestic courts, in order to effectively scrutinise any errors which might have occurred during the reappointment proceedings, were thwarted by the domestic courts' failure to provide an effective legal remedy capable of addressing the substance of the applicant's complaint.

117. There has accordingly been a violation of the applicant's right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 8

118. The applicant, relying on Article 13, taken in conjunction with Article 8 of the Convention, essentially complained that the Lithuanian courts had taken advantage of a lacuna in the legal regulation and had barred the applicant from protecting his rights in connection with the decision by the President of the Republic not to appoint the applicant as a judge.

119. The Government's position is stated in paragraphs 62-70 above.

120. Having regard to the content of the complaint raised in his application, the Court considers that, in view of the nature and scope of its findings under Article 6 § 1 of the Convention, it has examined the main issue in the present case. It therefore concludes that it is not necessary to examine separately the admissibility and merits of the applicant's complaints under Articles 8 and 13 of the Convention (see *Oktay Alkan*, cited above, § 73).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. The applicant

122. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage on account of the Lithuanian courts’ refusal to deal with the legal dispute.

123. The applicant further claimed a sum of EUR 107,554 (before taxes) or EUR 65,100 (after taxes) in respect of pecuniary damage – equivalent to the salary of a judge which he had not received for the period of January 2021 to August 2023 (the date of the submission of his observations to the Court).

2. The Government

124. The Government argued that the sum claimed by the applicant in respect of non-pecuniary damage was excessive and unsubstantiated.

125. The Government did not wish to speculate on the amount of the alleged pecuniary damage (the salary which was not received) and the period for which such compensation should be awarded. Those were questions for the domestic courts to examine and establish, having the necessary documents in their possession.

3. The Court

126. The Court has found a violation of Article 6 § 1 of the Convention in the present case on account of the applicant’s lack of effective access to court. However, it cannot speculate as to the outcome of the domestic proceedings should the applicant’s claims have been examined on the merits. In other words, it does not follow that, had that violation not occurred, the domestic courts would have granted the applicant’s claim for damages in respect of his unpaid salary in connection with his non-appointment to the post of district court judge. Therefore, the Court considers that the applicant has not established that the pecuniary damage alleged can be directly linked to the violation found (see, *mutatis mutandis*, *Kožemiakina v. Lithuania*, no. 231/15, § 61, 2 October 2018, and the case-law cited therein; see also *Gloveli*, cited above, § 64). Accordingly, the Court dismisses the applicant’s claim in respect of pecuniary damage.

127. At the same time, the Court accepts that the violation of his right of access to a court must have caused the applicant distress. Making its award on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

128. The applicant made no claim for costs and expenses.

129. The Court accordingly makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection as to the non-exhaustion of domestic civil remedies and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaints under Articles 8 and 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President