

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

SECOND SECTION

DECISION

Application no. 71200/17
Kristina BRAZAUSKIENĖ
against Lithuania

The European Court of Human Rights (Second Section), sitting on 5 December 2023 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Ivana Jelić, ad hoc *judge,*
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 22 September 2017,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the decision of the President of the Chamber to appoint Ivana Jelić to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), considering that Egidijus Kūris, the judge elected in respect of the Republic of Lithuania, withdrew from sitting in the case (Rule 28),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Kristina Brazauskienė, is a Lithuanian national, who was born in 1949 and lives in Vilnius. She was represented before the Court by Mr G. Černiauskas, a lawyer practising in Kaunas.

2. The Lithuanian Government ("the Government") were represented by their Agents, Ms L. Urbaitė and Ms K. Bubnytė-Širmenė.

A. The circumstances of the case

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

4. During the years of the Lithuanian Soviet Socialist Republic, Mr Algirdas Mykolas Brazauskas held various positions in the government of the Lithuanian SSR and the Communist Party of Lithuania. In particular, from 1977 to 1987 he was the secretary of the Central Committee of the Communist Party of the Lithuanian SSR.

5. After the independence of the Republic of Lithuania was restored in 1990, from 25 February 1993 to 25 February 1998 Mr Algirdas Mykolas Brazauskas was the President of the Republic of Lithuania. Between 2001 and 2006 he was the Prime Minister of the Republic of Lithuania.

6. On 23 April 2002 the applicant married President Algirdas Mykolas Brazauskas.

7. On 26 June 2010 President Algirdas Mykolas Brazauskas died, leaving the applicant as his widow.

B. The proceedings regarding the state annuity

1. The applicant's request and the authorities' response

8. After President Algirdas Mykolas Brazauskas's death, on 28 July 2010 the applicant asked the Ministry of Social Care and Labour to grant her, as the widow of a former President of the Republic, the respective State annuity ("the State annuity") on the basis of Article 4 § 1 of the Law on the State annuity of the President of the Republic of Lithuania ("the Law on the State annuity", see paragraph 65 below).

9. The Ministry then established that all the documents necessary for granting the annuity had been provided, and that the applicant had no insured income as of 23 July 2010, which was a condition for the annuity (see Article 5 § 4 in paragraph 65 below). The Ministry then prepared a draft Government resolution proposing that the annuity be granted to the applicant as of 23 July 2010. The Ministry of Justice, which also reviewed the draft resolution, stated that it had no remarks to add.

10. On 25 August 2010 the press portal "*15min.lt*" posted a story on the applicant's request for the State annuity and quoted the then President of the Republic, President Dalia Grybauskaitė, as having stated that the applicant was entitled to it because such a rule was set out in the Law on the State annuity.

11. The applicant's request to be granted the State annuity received extensive public interest and was widely discussed in the media; it was noted that the applicant was already rather wealthy.

12. Politicians sought to challenge the constitutionality of the provisions of the Law on the State annuity. However, on 14 December 2010 the *Seimas*, sitting *in corpore*, refused to refer the question to the Constitutional Court.

13. On 15 December 2010 "*15min.lt*" ran an article entitled "[Prime Minister] A.K.: the State annuity should be granted to the destitute, which is not the case for Kristina Brazauskienė". The Prime Minister was reported as having stated that "in [the applicant's] case, as we understand it, [the applicant] would not have any financial obstacles to attaining a decent standard of living". The article also quoted the Speaker of the *Seimas*, I.D., as having stated that under the law, the applicant was entitled to the State annuity and that it was up to the applicant what she did with that money.

14. After the *Seimas* had refused *in corpore* to refer the question to the Constitutional Court (see paragraph 12 above), on 25 December 2010 this was done by the Minister of Social Affairs and Labour and thirty members of the Homeland Union political party group. In particular, they queried whether Article 4 § 1 of the Law on the State annuity, in so far as it established that the right to the State annuity of the President's widow(er) also arose in respect of the widow(er) who had not been the spouse of the President of the Republic while the latter was in office, conflicted with Article 90 of the Constitution and the constitutional principles of social harmony, justice and a State under the rule of law. The members of the *Seimas* also questioned whether the right to the annuity arose irrespective of how wealthy the widow(er) was.

15. On 28 March 2011 the Ministry of Social Care and Labour proposed that the Government not process the applicant's request for the State annuity while the case was pending before the Constitutional Court.

16. By a ruling of 3 July 2014, the Constitutional Court held that Article 4 § 1 of the Law on the State annuity was in conflict with Article 52 of the Constitution and the constitutional principle of a State under the rule of law (see paragraphs 64 and 69 below).

As of the day the Constitutional Court's ruling was delivered, that norm could no longer be applied (see Article 72 of the Law on the Constitutional Court in paragraph 72 below).

17. By a letter of 19 March 2015, the Ministry of Social Care and Labour informed the applicant that, having implemented the Prime Minister's order based on Government's Chancellor's resolution no. 27-659 of 4 March 2015, the Ministry had examined the applicant's request for the State annuity. The letter then referred to the Constitutional Court's ruling of 3 July 2014, and held that, as of the day of that, there was no legal basis to grant the applicant the State annuity, since Article 4 § 1 of the Law on the State annuity had been the only provision providing for such an annuity.

18. Having regard to this ruling by the Constitutional Court, on 16 June 2016 the *Seimas* amended the Law on the State annuity: the provisions regarding the President's widow(er)'s annuity were annulled. Instead, those matters were incorporated into the new version of the Law on State pensions,

in force as of 1 August 2016, in Article 15[1]. The amendment set out a new condition to qualify for the annuity in question: the widow(er) had to have been married to the President and executed the functions of spouse for no less than three years of the President's term of office (see paragraph 66 below).

19. The applicant was thus barred from receiving the State annuity as the widow of President Algirdas Mykolas Brazauskas, since they had not been married when he was in office.

20. On 16 June 2016 the Internet site of one of the biggest national newspapers, *Lietuvos rytas*, posted an article entitled "Bad news from the *Seimas* for K. Brazauskienė concerning the widow's pension". The publication quoted one of the members of the *Seimas*, K.M., who stated that "the draft legislation had been prompted by very particular circumstances. We had a situation where a woman had been very quick to make use of benefits to which she had not been entitled. This woman had already been given a lot of [property] by her spouse". The publication also noted that the question to the Constitutional Court had been referred by a group of *Seimas* members after the applicant had, in 2010, requested the State annuity once President Algirdas Mykolas Brazauskas had died.

2. Court proceedings for damages on account of the unpaid annuity

21. On 1 March 2018 the applicant started court proceedings for damages under Article 6.271 of the Civil Code. She claimed that even though she had lodged a request to receive the widow(er)'s annuity with the Ministry of Social Care and Labour as early as in 2010 (see paragraph 8 above), until the date of lodging an application with the court she had not received any official response to her request. Her request had been forwarded to the Government, which had not taken a decision on the matter, even though the explanatory report of the Ministry had specified that the applicant satisfied all the criteria for such an annuity to be awarded. In her submission, the failure to grant her the widow(er)'s pension for the period up to the date of the Constitutional Court's ruling amounted to legal nihilism.

22. The applicant nevertheless acknowledged that since the Constitutional Court's ruling of 3 July 2014, the provisions of the Law on the State annuity concerning the widow(er)'s annuity could no longer be applied in her case. She likewise acknowledged that she was barred from receiving a widow(er)'s pension since the new legal regulation in the Law on State pensions had come into force on 1 August 2016.

(a) The decision by the Vilnius Regional Administrative Court

23. On 29 June 2018 the Vilnius Regional Administrative Court dismissed the applicant's claim.

The court established that the dispute had arisen because of what the applicant saw as the State authorities' unlawful actions (inaction), that is, the

non-payment of the President's widow(er)'s pension for the period between 23 July 2010 and 3 July 2014. It was also clear that the applicant had based her claim on Article 4 § 1 of the Law on the State annuity, which had been in force until 3 July 2014, when the Constitutional Court had declared it to be in breach of the Constitution.

Having examined the basis of the applicant's claim and its nature, and having taken into account the factual circumstances of the case, the court established that the applicant had requested the widow(er)'s annuity on 28 July 2010, when she had lodged a request with the Ministry of Social Care and Labour (see paragraph 8 above). Accordingly, she had been aware or should have been aware of the breach of her rights, on account of not having been granted the widow(er)'s annuity as of the latter date, when she had lodged a request with the Ministry of Social Care and Labour and not received any response.

24. In the light of the above, the Vilnius Regional Administrative Court concluded that from the day of the applicant's request of 28 July 2010 to the day of the Constitutional Court's ruling of 3 July 2014, when the applicant, under Article 7 § 1 of the Constitution, had lost "the right to be granted and paid the [President's widow(er)'s] annuity" (*teisę į rentos skyrimą ir mokėjimą*), "there had possibly been a continuous breach of her rights" (*pareiškėjos atžvilgiu galimai buvo vykdomas tęstinis pažeidimas*): the Government, on the basis of the Law on the State annuity, which had been valid during the period between 28 July 2010 and 3 July 2014, had failed to fulfil its obligation to take a decision regarding the applicant's request to be awarded the President's widow(er)'s State annuity. However, applying the standard of an intelligent, prudent and considerate person, the court concluded that throughout that entire period "the applicant had known (or should have known) that her right to the President's widow(er)'s annuity was being breached". Once the Constitutional Court had adopted its ruling of 3 July 2014 the possible breach (*galimas pažeidimas*) of her rights had come to an end. The three-year time-limit imposed by the statute of limitations to lodge a claim for damages was to be counted from 3 July 2014 at the latest. The applicant had not presented any reasoned arguments to show that during the breach of her rights she had not known and could not have known about the breach of her rights, which could have led to a different calculation of the date from which the statute of limitations applied.

25. Given that the applicant had applied to the court on 1 March 2018, the limitation period within which to claim pecuniary damage for the period between 23 July 2010 and 3 July 2014 had expired. The court noted that the applicant had not provided to the court arguments why the statute of limitations should not be applied to her claim. Neither had she pointed to objective circumstances, which did not depend on her will, which would have obstructed her in the exercise of her right to the defence of her interests in court. For the court, the applicant had learned that her rights had potentially

been breached (the President's widow(er)'s State annuity not having been awarded or paid) not when the institution (*institutas*) of the President's widow(er)'s State annuity had been abolished, but when the relevant legal provisions had been in force and should have been applied. The applicant, having lodged a request to be awarded the widow(er)'s annuity, and not having received a response, should have and could have realised that her rights to this annuity were potentially being breached. There was no information in the case file that she had been prevented from instituting court proceedings before the limitation period had expired. The court had also not of its own motion established grounds to renew the time-limit to lodge a claim, whereas "the applicant had unreasonably delayed for a long period lodging her claim with the court to protect her possibly breached rights".

26. The court also noted that the Law on administrative proceedings, which had been in force since 1 May 1999, guaranteed a person's right to start administrative court proceedings regarding, among other things, the lawfulness and reasonableness of the State authorities' actions or their failure to act. In addition, on 27 February 2015 the applicant had signed a representation agreement with an advocate, A.R., who had the same day presented, in the applicant's name, a request to the Government, urging the latter to take the decision to grant the widow(er)'s annuity to the applicant. Accordingly, already in February 2015 the applicant, "having been represented by a professional lawyer", could have lodged a complaint with an administrative court regarding the Government's refusal or delay to perform the actions within its competence and/or regarding compensation for damage.

27. Lastly, the court noted that under the pertinent legal regulation and applicable case-law, the applicant's claim had to have been submitted within the three-year time-limit set out in Article 1.125 § 8 of the Civil Code, and that this time-limit was calculated backwards from the day when the claim had been electronically submitted to the court on 1 March 2018. That meant that, applying the statute of limitations (prescription), pecuniary damage could be awarded to the applicant only for the period between 1 March 2015 and 1 March 2018 (the three-year period), whereas the applicant had based her claim on the period from 23 July 2010 to 3 July 2014. It followed that, applying the three-year limitation period, the applicant no longer possessed a legal ground for an award in respect of pecuniary damage, and her claim had to be rejected.

28. Lastly, given that the applicant's claim had been rejected owing to the application of the statute of limitations, it was not pertinent to examine the question regarding whether her rights and interests had possibly been breached.

3. Final ruling by the Supreme Administrative Court

29. The applicant appealed, arguing that the question of the statute of limitations had been erroneously decided by the first-instance court.

30. By a final ruling of 18 December 2019, the Supreme Administrative Court upheld the lower court's decision, agreeing with the first-instance court's finding that throughout the entire period after submitting her request for the annuity on 28 July 2010 the applicant had always known or should have known that her right to the widow(er)'s annuity was being breached, yet she had lodged a claim with the court only on 1 March 2018.

31. Taking into account that the applicant had lodged the request for the widow(er)'s annuity on 28 July 2010, that as of 23 July 2010 she had had no insured income and that she had not received the widow(er)'s annuity "for even one month" up until 3 July 2014 (when the legal basis to grant the annuity ceased to exist after the Constitutional Court adopted its ruling), "the last date when the applicant learned" that the annuity had not been awarded and was not being paid was 25 August 2017, given the fact that under the Law on the State annuity, the annuity would be paid for the previous month up until the twenty-fifth day of the current month. Given that the applicant was requesting compensation for damage under Article 6.271 of the Civil Code, in the applicant's case Article 1.125 § 8 of the Civil Code applied, which set out a shorter limitation period of three years (see paragraph 73 below). The applicant had lodged a claim for damages with the court only on 1 March 2018, which meant that she had missed the statutory time-limit which had expired on 25 August 2017. The first-instance court had been correct in rejecting the applicant's claim as time-barred.

32. It was also apparent from the material in the case file that the Ministry of Social Care and Labour, having received information that the applicant had had no insured income as of 23 July 2010, had on the basis of Article 7 § 1 of the Law on the State annuity prepared a draft Government resolution to award the applicant the annuity as of 23 July 2010. That draft resolution had been presented to the Prime Minister's Office on 12 January 2011. Accordingly, the applicant's request to grant her the widow(er)'s pension "had been set in motion" (*pradėtas spręsti*), but "the decision had not been implemented" (*sprendimas nebuvo įvykdytas*), "even though the applicant had such expectation" (*nors pareiškėja tokį lūkestį turėjo*).

33. The Supreme Administrative Court referred to the Constitutional Court's ruling of 13 December 2004 in which it had stated that in certain situations a person's expectation or rights were to be protected and defended even where they stemmed from a legal instrument which was subsequently declared to be in breach of the Constitution (see paragraph 71 below). That notwithstanding, in the same ruling the Constitutional Court had also held that the Constitution did not protect or defend the acquired rights of persons which were in essence privileges (see paragraph 71 *in fine* below). The Supreme Administrative Court then referred to the Constitutional Court's

ruling of 3 July 2014, in which it had held that the legal provision which had been declared unconstitutional had created a privilege (see paragraph 69 below). That being the case, it followed that there remained no legal basis either for the legislature or for the courts to defend and protect that right for a person which had not been implemented before the legal provision had been declared to be contrary to the Constitution.

34. Lastly, the Supreme Administrative Court dismissed the applicant's plea that the first-instance court, having rejected her claim for damages as lodged outside the limitation period, had "unjustifiably not examined the merits of her claim" (*nepagrįstai netyrė skundo reikalavimo pagrįstumo*). On this matter the Supreme Administrative Court's practice had been constant: it had more than once ruled that when the first-instance court found that the plaintiff had lodged a claim outside the limitation period without a justifiable reason, it was to be rejected. Such a ground for rejection of the claim was independent and sufficient not to grant the demands of the claim. In sum, the first-instance court had correctly interpreted and applied the law and reached a reasoned and lawful court decision.

4. Most recent information provided by the Government

35. In a letter of 5 January 2021, the Government informed the Court of the following developments.

36. On 13 August 2020 the Office of the *Seimas* (the competent authority) had received the applicant's request to be granted the State annuity of the widow of a signatory of the Lithuanian Act of Independence, which had been signed by her late husband, President Algirdas Mykolas Brazauskas. On 11 November 2020 the Government had granted the request and awarded the applicant that annuity, which was calculated from 23 July 2010. The applicant received in total 35,150 euros (EUR) for the period from 23 July 2010 to 30 November 2020; the sum was paid in full on 11 December 2020.

The applicant received EUR 10,485 as part of that sum in relation to the period from 23 July 2010 to 2 July 2014 (inclusive) during which she did not receive the State annuity as the President's widow, which the Government saw as relevant for the present case before the Court. Further monthly payments of the State annuity of the widow of a signatory were to be paid to the applicant on a regular basis; in 2020 the amount was EUR 331 per month.

37. The Government acknowledged that the legal provision on the State annuity of the widow of a signatory was not the subject matter of the present case before the Court, which instead dealt with another kind of annuity – the State annuity of the President's widow(er). That notwithstanding, the State annuity of the widow of a signatory had been granted to the applicant for the following reason. Under Article 5 § 3 of the Law on the State annuity (see paragraph 65 below), where a widow(er) of the President was entitled to both the widow(er)'s annuity and a State pension and/or pension-type payments, paid from the State budget, only one of those benefits was to be granted and

paid upon the widow(er)'s request. Accordingly, pursuant to the above-mentioned legal provision, the annuity of the widow(er) of the President could not have been granted to the applicant, as she had been granted a pension-type payment from the State budget – the State annuity of the widow of a signatory – upon her own request, from 23 July 2010.

38. On 12 January 2021 the information presented by the Government was forwarded to the applicant for information, who did not comment on it.

C. The proceedings regarding housing under the loan-for-use agreement

1. The applicant's request to be provided with the house where she and the President Algirdas Mykolas Brazauskas lived

39. After the death of President Algirdas Mykolas Brazauskas (see paragraph 7 above), the applicant asked the Government to provide her with housing, as provided for in Article 23 § 4 of the Law on the President of the Republic of Lithuania ("the Law on the President"), as that provision was valid at that time (see paragraph 67 below).

40. On 7 July 2010 the Government passed Resolution no. 1002, transferring into the applicant's use under a loan-for-use agreement (*panaudos sutartis*), a State-owned house, managed by the Chancellery of the President of the Republic ("the Chancellery"), situated in the Turniškės district in Vilnius. As the legal basis for the resolution, the Government referred to Article 23 § 4 of the Law on the President (see paragraph 67 below), and points 1.7 and 6.6 of the Circular regarding the procedure on the temporary management and use of State assets transferred under a loan-for-use agreement ("the Circular", see paragraph 68 below). Resolution no. 1002 did not set out any time-limit for the house being transferred for the applicant's use.

As subsequently noted by the courts (see also paragraphs 53 and 57 below), this was the house in which the applicant and President Algirdas Mykolas Brazauskas had lived until the latter's death, and where objects of value to the State – State awards, President's collections, books – were kept.

41. On 11 October 2010 the Chancellery and the applicant entered into a loan-for-use agreement for the house in question for "a five-year period". The contract referred to Article 23 § 4 of the Law on the President, the Circular and Government resolution no. 1002 as the legal basis for the agreement. The applicant signed the loan-for-use agreement; the same day she also signed a document accepting the property for her use.

42. In the meantime, by Resolution no. 725 of 8 July 2009, the Government, referring to Article 23 §§ 2 and 3 of the Law on the President as the legal basis, and to points 1.7 and 6.6 of the Circular, transferred to another President of the Republic, President Valdas Adamkus, a residence in the Turniškės district to use "for life" (*iki gyvos galvos*).

43. On 25 August 2015 the Chancellery wrote to the applicant that the agreement for using the house in the Turniškės district was going to expire on 12 October 2015, and asked her to vacate the premises by that date.

44. On 21 September 2015 the applicant asked the Chancellery to extend her loan-for-use agreement by ten years. She referred to Article 23 § 4 of the Law on the President (see paragraph 67 below), considering that that legal provision gave her the right to use the house in question until her death.

45. On 25 September 2015 the Chancellery refused the request, referring to the agreement signed on 11 October 2010, in which it was specified that use of the house had been granted for a period of five years (see paragraph 41 above). The Chancellery also pointed out that Article 23 § 4 of the Law on the President did not specify a particular location (town, district, street) where housing should be provided to the spouse of the dead President – it only referred to the fact that such housing was to be provided by the Government, and in accordance with the rules set out by the Government. The Chancellery also noted that the house in question was a house which was to be used in the interests of the State. In addition, it was situated in an area protected by the State Government Security Department (*Vadovybės apsaugos departamentas*), and as such should be given for use only to persons who had been granted State protection (which was not the case of the applicant).

46. In reply to the applicant's request of 21 September 2015, on 30 September 2015 the Government, referring to Article 23 § 4 of the Law on the President, proposed a 105 sq. m flat in the Antakalnis district in Vilnius to be granted to her on the basis of a loan-for-use agreement.

47. Responding to the Chancellery and to the Government, on 6 October 2015 the applicant again asked the Chancellery to extend, by ten years, the loan-for-use agreement in respect of the house in the Turniškės district, or, alternatively, to provide her with "a similar quality living space of a similar standard" – in her view, this was not the case of the flat in the Antakalnis district.

The same month, October 2015, both the Chancellery and the Government refused to grant the applicant's request to extend the loan-for-use agreement in respect of the house in the Turniškės district.

2. *Civil court proceedings regarding the applicant's removal from the house in the Turniškės district*

48. On 21 October 2015 the Chancellery started court proceedings to evict the applicant from the house in the Turniškės district. The applicant lodged a counterclaim, asking to be permitted to use that house for ten more years.

3. The Vilnius City District Court

49. By a decision of 13 May 2016, the Vilnius City District Court granted the Chancellery's claim, dismissed the applicant's counterclaim and ordered that she move out of the house in question in the Turniškės district.

50. The legal basis for granting the applicant the residential premises had been Government Resolution no. 1002 (see paragraph 40 above). To establish under what conditions and for what duration the loan-for-use agreement had been entered into with the applicant it was imperative to refer to the legal provisions that had been in force at the time of that resolution. The loan-for-use agreement (see paragraph 41 above) had only formalised the loan-for-use legal relationship which had already been established on the basis of the above-mentioned resolution. At the relevant time the Circular provided that State property could be assigned for free use and management to persons set out in its point 1.7, which was applicable to the applicant, and not to the President of the Republic, and set out a time-limit for this use of no more than five years.

51. The court dismissed the applicant's submission that the right to housing, as established by the legislature in Article 23 §§ 3 and 4 of the Law on the President and implemented by the Government, was identical in respect of the President of the Republic and in respect of the President's widow(er). In fact, point 6.6. of the Circular set out different time-limits for the use of property for the President of the Republic and for the President's widow(er). When by Government Resolution no. 1002 of 7 July 2010 it had been decided to grant the applicant the right to use, on the basis of the loan-for-use agreement, the house in the Turniškės district, no other time-limit for such use had been established, and the duration had therefore been regulated by point 6.6 of the Circular. Had the applicant considered that the conditions proposed by the Chancellery did not satisfy the requirements of the law, she had had the right not to sign the loan-for-use agreement or to contest the Chancellery's actions. Yet, the applicant had agreed with the time-limit set out in the loan-for-use agreement; she had also entered into the agreement with the Chancellery to use the house in question for a five-year time-limit without specifying in that agreement that it could be prolonged. Throughout the whole period of the loan-for-use agreement, as well as after its expiry, the applicant had made no claims that the time-limit for the loan-for-use agreement had been set out incorrectly. Such behaviour showed that the applicant had agreed that the house in question would be granted to her for a concrete five-year period. The applicant thus "had had no basis to expect" (*neturėjo pagrindo tikėtis*) that after the expiry of the time-limit for the loan-for-use agreement she would continue to have a right to use the house in question.

52. The court also dismissed as unfounded the applicant's suggestion that Article 23 § 4 of the Law on the President entitled her, as the President's spouse, to use the house in question or other residential premises of "the same

size and same characteristics". None of the legal instruments provided that, when implementing the social guarantee provided for in Article 23 § 4 of the Law on the President, the President's widow(er) should be left the same residence which had been granted to the President or which the President had used until his death. Besides, contrary to what had been suggested by the applicant, her social guarantee to a residence could not be implemented on equal terms to that of President Valdas Adamkus (see paragraph 42 above), who was the President of the Republic, otherwise the specificity of the President's status would be denied. The content of social guarantees that were set out by law for Presidents whose terms of office have expired was different and much wider than that for the President's widow(er). The difference in the social guarantees that were applicable to the President and to his spouse was the basis for applying different requirements also as regards the residence which had been granted when implementing the social guarantee in respect of the President and of his spouse.

53. The court noted, lastly, that, even though the applicant had pleaded that she should be allowed to reside in the house in question because it contained the personal collection of President Algirdas Mykolas Brazauskas, that house had been designated as residential premises, and not as a storage facility. The Chancellery was therefore correct to ask the court to remove the applicant from the house in question.

(a) The Vilnius Regional Court

54. The applicant appealed, arguing that the law had been erroneously applied, but on 21 December 2016 the Vilnius Regional Court, having agreed with the reasoning in the first-instance court's decision, left that decision unchanged.

55. On the facts, the Regional Court pointed out that the loan-for-use agreement, entered into on the basis of Resolution no. 1002, provided that the house in question was being transferred to the applicant for *ex gratia* use for a term of five years (point 2 of the agreement). The agreement did not provide for a possibility to prolong it after the expiry of the five-year time-limit. In accordance with point 8.14 of the agreement, the applicant was under the obligation to return the property to the Chancellery in the same state as it was received. If the applicant had been dissatisfied with those conditions when they had been proposed to her, she could have contested them and not signed the agreement. The fact that she had signed the agreement meant that she had agreed with its conditions, including with the five-year time-limit without the possibility of prolonging the contract. Throughout the duration of the agreement and even upon its expiry she had not claimed that she had agreed to the time-limit of the loan-for-use agreement erroneously. Such behaviour by the applicant demonstrated that she had agreed that the house in question would be granted to her for a concrete five-year period. Accordingly, the

applicant could not have expected that she would have the right to use the house after the loan-for-use term had expired.

56. The court also shared the Chancellery's view that the President's and his spouse's legal status differed. That difference was based on the particular legal status of the President, which stemmed from the Constitution and the Law on the President. That status had also been noted by the Constitutional Court in its rulings of 23 May 2004 and 3 July 2014. Among other things, it noted that while the President's status was set out in the Constitution, his or her spouse's status was not. Even though the Law on the President set out not only the President's, but also his or her family members' material and social guarantees, it regulated them differently. Under Article 23 § 2 of that Law, social guarantees were provided for life only for the President. As had been correctly noted by the first-instance court, in its ruling of 3 July 2014 the Constitutional Court had explained that after the President's death welfare support was granted to his or her family members on the same basis as to other persons whose spouse or parent had died. Accordingly, the social guarantees applicable to the President were not applicable to his or her family members, unless this was provided for by law. The first-instance court had been correct in concluding that the fact that the social guarantee to a residence of the President's widow(er) and the President had been implemented under different conditions was owing to the particularity of the President's legal status, because the content of the President's social guarantees, once his term of office expired, was more extensive than the President's widow(er)'s. These more extensive social guarantees stemmed from Article 23 § 2 of the Law on the President. As correctly noted by the first-instance court, it was precisely the exceptional legal status of the President and the content of the social guarantees that had been set up by law that determined the particular requirements of the residence which was granted to the President. The difference in social guarantees between the President and his spouse that had been established by law formed the basis for applying different criteria also in respect of the residence which was granted when implementing the social guarantees of the President and his or her spouse.

57. Lastly, the Regional Court noted that the house in issue was located in the Turniškės district, a secured area, and that therefore the house should be assigned only to persons who were entitled to State protection (which the applicant was not). If the applicant wished to continue benefiting from the social guarantees provided by law, it was for the Government to decide which residential premises could be granted to the applicant. In any case, she had to vacate the house in question in the Turniškės district.

(b) The Supreme Court

58. On 28 March 2017 the Supreme Court refused to examine the applicant's subsequent appeal on points of law.

4. Subsequent developments as regards housing

59. On 14 April 2017 the applicant asked the Chancellery and the Government to be provided with a list of available housing (residential premises) and the description thereof which could be allocated to her under a loan-for-use agreement. She referred to Article 23 § 4 of the Law on the President as the legal basis for her request, and pointed out that it had not been contested either by the Chancellery or by the Government during the civil proceedings, which by then were over, that she did in fact have such a right.

60. On 20 April 2017 the television channel LNK announced that the applicant had asked the Government for a list of free-for-use flats to which she could move from the house in the Turniškės district. The television channel quoted President Dalia Grybauskaitė, as having stated to journalists that "free housing" was "a *nomenklatura* privilege" and, having suggested that the Government would refer the question whether the applicant had a right to free housing to the Constitutional Court, stated as follows:

> "Such [Soviet] *nomenklatura* privileges, as established in our laws, do not exist anywhere else in the European Union. We have already seen the Constitutional Court's reaction as regards the State annuity, and, I would think, in this case it would be pertinent for the Government to refer the matter of this particular privilege to the Constitutional Court so that the question can be resolved."

The LNK television channel also quoted Prime Minister Saulius Skvernelis, who seemed inclined to agree with the President's proposal. He was quoted as having stated:

> "If [the applicant] was going to have to live on the street, we would probably seek and find [housing]; the Government is preparing its position and will announce it ... during the Government hearing. The President has urged that the question be referred to the Constitutional Court, and this will be done."

61. In reply to the applicant's request (see paragraph 59 above), on 15 May 2017 the Government wrote to the applicant that on 26 April 2017 it had decided to refer to the Constitutional Court the question regarding the constitutionality of Article 23 § 4 of the Law on the President. That being so, the question regarding granting residential premises to the applicant would be examined after the Constitutional Court had ruled on the matter.

62. In a Resolution of 26 April 2017, the Government asked the Constitutional Court to rule on whether, in the case of the spouse of a President who had married him after he was no longer in office, Article 23 § 4 of the Law on the President, which created a privilege on the basis of a person's social status, was in conflict with Article 29 § 2 of the Constitution.

63. On 15 December 2017 the Constitutional Court held that Article 23 § 4 of the Law on the President was in conflict with Articles 29 and 90 of the Constitution and the constitutional principle of a State under the rule of law (see also paragraph 70 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Constitution

64. The relevant parts of the Constitution read as follows:

Article 29

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

Human rights may not be restricted; no one may be granted any privileges on the grounds of ... social status ..."

Article 52

"The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law."

Article 90

"The President of the Republic shall have a residence. The financing of the President of the Republic and of his residence shall be established by law."

Article 105

"The Constitutional Court shall consider and adopt decisions on whether the laws of the Republic of Lithuania or other legal instruments adopted by the *Seimas* are in conflict with the Constitution of the Republic of Lithuania.

..."

Article 106

"The Government, no less than one-fifth of all the members of the *Seimas*, and courts shall have the right to apply to the Constitutional Court concerning the legal instruments specified in the first paragraph of Article 105.

...

An application by the President of the Republic to the Constitutional Court, or a resolution of the *Seimas*, asking for an investigation into the conformity of a legal instrument with the Constitution shall suspend its validity.

..."

Article 107

"A law (or part thereof) of the Republic of Lithuania or another legal instrument (or part thereof) of the *Seimas* ... may not be applied from the day of the official publication of the decision of the Constitutional Court that the instrument in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal. ..."

B. Legislation and secondary legislation

1. As to the State annuity of the widow(er) of the President of the Republic

65. The relevant parts of the Law on the State annuity of the President of the Republic of Lithuania (*Lietuvos Respublikos Prezidento valstybinės rentos įstatymas*), as in force between 1 January 2007 and 2 July 2014, read as follows:

Article 4
Persons who have the right to receive the State annuity of the widow(er) ... of the President of the Republic

"1. The spouse of a deceased President of the Republic (hereinafter referred to as the widow(er)) ... shall have the right to receive the State annuity of the widow(er) of the President of the Republic ..."

Article 5
The conditions for granting and paying the State annuity of the widow(er) ... of the President of the Republic

"1. The State annuity of the widow(er) ... of the President of the Republic is granted after the death of the President of the Republic who was receiving or could have received the State annuity of the President of the Republic.

2. The State annuity of the President of the Republic is granted and/or paid to the widow(er) irrespective of his or her age, the pensions he or she receives or other permanent pension-type payments he or she receives, with the exception of the cases set out in paragraphs 3 and 4 of this Article.

3. In the event the widow(er) of the President of the Republic is entitled to the annuity of the widow(er) of the President of the Republic and a State pension and/or pension-type payments, granted under the laws of the Republic of Lithuania and paid from [its] budget, only one of those payments is granted and paid as per the widow(er)'s choice: either the annuity of the widow(er) of the President of the Republic, or the State pension or pension-type payment.

4. The State annuity of the widow(er) of the President of the Republic is not granted and/or not paid where the widow(er) has any insured income ..."

66. The relevant part of the Law on State Pensions, as amended and supplemented by Law no. XII-2587 of 30 June 2016, and in force as of 1 August 2016, reads as follows:

Article 15[1]
Right to receive the State pension of the spouse of the President of the Republic ...

"A person who, while the spouse of the President of the Republic during the President's term(s) of office, has performed the functions of the spouse of the President of the Republic, as established in the State and/or diplomatic protocol, for no less than three years has the right to receive the State pension of the spouse of the President of the Republic.

The State pension of the spouse of the President of the Republic is granted and paid to the ... spouse, who... has reached retirement age ..., has no insured income ... and does not receive any other State pension. ...”

2. *As to the right to housing for the widow(er) of the President of the Republic*

67. The relevant parts of the Law on the President of the Republic of Lithuania (*Lietuvos Respublikos Prezidento įstatymas*), as in force between 1 January 2009 and 14 December 2017, read as follows:

Article 1
Purpose of the Law

“This Law shall establish legal grounds [*teisinius pagrindus*] for the activities of the President of the Republic ... and the Chancellery of the President of the Republic, as well as material and social guarantees for the President of the Republic and his or her family members.”

Article 23
Material and social guarantees for the President of the Republic upon termination [of his or her powers]

“1. A person who has served as the President of the Republic shall hold the title of President of the Republic for life.

2. A President of the Republic ... shall, for life, be:

(1) granted and paid a Presidential State annuity ...;

(2) granted support staff and transport ...;

(3) granted protection ...

3. The President of the Republic shall, if he or she so desires, be provided with housing (residential premises) under a loan-for-use agreement in accordance with the procedure established by the Government ...

4. Where the President of the Republic dies while in office or after the expiration of his or her term of office, his or her spouse shall, if he or she so desires, be provided with housing (residential premises) under a loan-for-use agreement in accordance with the procedure established by the Government ...”

68. The version relevant to the present case (version of 8 July 2009) of the Circular regarding the procedure on the temporary management and use of State assets transferred under a loan-for-use agreement (*Valstybės turto perdavimo panaudos pagrindais laikinai neatlygintinai valdyti ir naudotis tvarkos aprašas*), as adopted by Government Resolution no. 1890 on 3 December 2002, read as follows:

“1. This procedure regulates the transfer of State-owned assets for the temporary management and use free of charge under a loan-for-use agreement:

1.1. to subjects performing State and municipal functions;

...

1.7. to other subjects in the event the legislation ... so provides.

...

2. The State property in question can be transferred for the temporary management and use free of charge under a loan-for-use agreement in accordance with the following provisions:

2.1. immovable property is transferred to the subjects indicated in paragraphs 1.2.-1.7. of this procedure ... by resolution of the Government ...;

...

6. The State property in question may be transferred on the basis of a loan-for use agreement for temporary management and use free of charge:

...

6.6. to the subjects indicated in paragraph 1.7. of this procedure, except for the President of the Republic, for no longer than five years, unless the legislation ... provides otherwise [other time-limits]."

C. The Constitutional Court's case-law

1. As to the State annuity of the widow(er) of the President of the Republic

69. In a ruling of 3 July 2014 on the right to the State annuity of the widow(er) of the President of the Republic, the Constitutional Court held as follows (summary by the Constitutional Court):

"In this ruling, the Constitutional Court considered issues relating to the right to social assistance in the event of widowhood. The Constitutional Court recognised that paragraph 1 of Article 4 of the Law on the State annuity of the President of the Republic ..., which consolidated the right of the spouse of a deceased President of the Republic to receive the State annuity of the widow(er) of the President of the Republic, was in conflict with the Constitution. The Constitutional Court held the said right to be a privilege on the grounds of the social status of the person.

In the ruling, it was emphasised that the constitutional status of the President as Head of State is individual and exceptional, and that it differs from the legal status of all other citizens and State officials. This status includes, as an inseparable part, the constitutional social guarantees of the President of the Republic. The purpose of the guarantee of the financing of the President and his or her residence, as set out in Article 90 of the Constitution, is to ensure that the President is able to properly perform his or her duties and to properly represent the State of Lithuania. This constitutional guarantee means that the legislature has the duty to establish, by law, the financing necessary to perform the duties of the President, which includes not only the financing of the activities and residence of an incumbent President, but also proper financing, that is, which is in line with the dignity and exceptional legal status of the President as Head of State, provided to former Presidents (including the pension of the President or another State payment corresponding to the essence and purpose of this pension).

[P]rovisions of Article 90 of the Constitution do not regulate the legal status of the spouse of the President of the Republic or his or her material (social) maintenance after the death of the President of the Republic; however, social assistance for the spouse and other members of the family of the President of the Republic is guaranteed on the basis

of other provisions of the Constitution, among other things, on the basis of the social assistance provided for under Article 52 of the Constitution in the event of widowhood.

Article 52 of the Constitution lays down the basis for pensionary maintenance and social assistance. One of the types of social assistance guaranteed by the State, as indicated in the said Article of the Constitution, is social assistance in the event of widowhood. Thus, the State is constitutionally obliged to provide this social assistance, namely, to partly compensate for the family income lost by a person as a result of the death of his or her wife or husband. The Constitution does not lay down any grounds and conditions for providing this type of assistance, nor any duration and amounts of this assistance – this must be established by the legislature; however, the legislature is bound by the constitutional principles of social solidarity, social harmony, justice, reasonableness, proportionality, and the equality of rights, as well as by the capacities of the State and society.

[A] deceased person's social status alone is not in itself a constitutionally justified ground to provide to the widow(er) of that person an essentially different social assistance of a much larger amount than that provided to other widow(er)s.

Thus ... such a legal regulation – under which, on the grounds of the mere fact of becoming the widow(er) of the President of the Republic, who has the individual and exceptional legal status of Head of State granting him or her the right to the pension of the President of the Republic or a State payment corresponding to the essence and purpose of this pension, the said widow(er) is granted the right to receive social assistance that is, in substance, different from and much larger than that provided to widow(er)s of other persons in the event of widowhood, that is, the State annuity of the widow(er) of the President of the Republic – constitutes a privilege on the grounds of the social status of the person. Thus, this legal regulation was ruled to be in conflict with Article 52 of the Constitution and the constitutional principle of a State under the rule of law."

2. As to the right to housing of the widow(er) of the President of the Republic

70. In a ruling of 15 December 2017 on providing the spouse of a deceased President of the Republic with housing under a loan-for-use agreement, the Constitutional Court held as follows (summary by the Constitutional Court):

"[H]aving considered the case subsequent to the petition of the Government, the petitioner, the Constitutional Court declared unconstitutional paragraph 4 of Article 23 of the Law on the President, which establishes the right of the spouse of a President of the Republic who dies while in office or after the expiration of his or her term of office, if he or she so desires, to be provided with housing (residential premises) under a loan-for-use agreement.

[T]he status of the Head of State is acquired for the period set out in the Constitution by only one person, that is, the President of the Republic, who is elected by the citizens of the Republic of Lithuania. The legal status of the President of the Republic as the Head of State is an individual one and it differs from the legal status of all other citizens and State officials. The constitutional status of the Head of State includes, as an inseparable part, his or her constitutional social guarantees.

[T]he provision of Article 90 of the Constitution according to which the financing of the President of the Republic and of his or her residence is established by law constitutes

the guarantee of the financing of the President of the Republic and of his or her residence. The purpose of this guarantee is to ensure that the President of the Republic is able to properly perform his or her duties, among other things, to properly represent the State of Lithuania. This constitutional guarantee means that the legislature has the duty to establish by law the financing necessary to perform the duties of the President of the Republic, which includes not only the financing of the activities and residence of an incumbent President of the Republic, but also proper financing, namely which is in line with the dignity and exceptional legal status of the President of the Republic as the Head of State, provided to former Presidents of the Republic.

[T]he exclusive constitutional status of the President of the Republic as the Head of State also implies his or her exceptional material and social guarantees, differing from those granted to other State officials and all citizens, as well as the prohibition on equating, on the basis of these material (social) guarantees, any other person with an incumbent or former President of the Republic. Thus, Article 90 of the Constitution as interpreted in the light of the fact that, under the Constitution, the legal status of the President of the Republic is an individual one, gives rise to a prohibition on establishing a legal regulation that would create the legal preconditions, when providing material and social guarantees connected with the financing of housing, among other things, to equate any other person, including the spouse of the President of the Republic, with a former President of the Republic. Article 90 of the Constitution does not set out any exclusive material and social guarantees for the spouse of the President of the Republic which could be acquired on the basis of having the status of spouse upon the death of the President of the Republic.

According to the Constitutional Court, the impugned provision has created the legal preconditions, when providing material and social guarantees connected with the financing of housing, to equate the spouse of the President of the Republic with a President of the Republic whose term of office has ended, thus denying the constitutional status of the President of the Republic as the Head of State differing from the legal status of all other persons; therefore, the said provision is in conflict with Article 90 of the Constitution.

[T]he Constitution does not protect or defend rights acquired by a person that are privileges in terms of their content. The defence and protection of privileges would lead to the violation of the constitutional principle of the equality of the rights of persons and of paragraph 2 of Article 29 of the Constitution, which prohibits the granting of privileges, among other things, on the grounds of the social status of a person ... As regards the material and social guarantees linked to the financing of housing of the spouse of the President of the Republic, the following provisions (with the appropriate amendments) of the official constitutional doctrine of the equality of the rights of persons, which were formulated in the Constitutional Court's ruling of 3 July 2014 ... are also applicable: the mere fact that a person is the widow(er) of a person who belonged to a group of persons with a certain social status (the distinction of which is objectively justified) and who, by virtue of that status, acquired the right to receive social assistance (a pension) is not in itself a ground to objectively justify such a legal regulation that would constitute the right of the said widow(er) to receive in the event of widowhood social assistance (a pension) that would differ in substance from that provided to widow(er)s of other persons. The deceased person's social status alone is not in itself a constitutionally justified ground to provide to the widow(er) of that person social assistance of a much higher amount than that provided to other widow(er)s.

[T]he laws of the Republic of Lithuania do not establish the right, which would be analogous to that of the spouse of the President of the Republic, to receive State property under a loan-for-use agreement for temporary management and use free of charge.

Thus, the social guarantee in question is created by the impugned legal regulation on the sole basis that a person becomes the spouse of the President of the Republic. Such a legal regulation is incompatible with paragraph 2 of Article 29 of the Constitution, which prohibits the granting of privileges on grounds of the social status of a person, as well as with the constitutional principle of a State under the rule of law."

3. Other relevant Constitutional Court's case-law

71. In its ruling of 13 December 2004 on State service, the Constitutional Court held as follows:

"[T]here may be factual situations where the person who meets the conditions set out in legal instruments has acquired particular rights under those legal instruments and, therefore, certain expectations which could be considered by this person to be reasonably legitimate during the period of validity of the legal instruments in question; therefore, he or she could reasonably expect that if he or she obeys the law and fulfils the requirements of the law, his or her expectations will be held to be legitimate by the State and will be defended and protected. Even legal instruments which ... are subsequently ruled to be in conflict with the Constitution ... may give rise to such expectations. [T]here may also be factual situations where the person has already fulfilled his or her rights and obligations arising from the legal instrument which was subsequently ruled to be in conflict with the Constitution ... [I]n certain cases quite a long period of time may elapse from the moment of the emergence of such expectations and the recognition of the respective legal instrument as being in conflict with the Constitution ... The imperative of the balance between the constitutional values, the constitutional requirements of legal certainty and legal security, the protection, enshrined in the Constitution, of the acquired rights, and the presumption of constitutionality and legitimacy of legal instruments predetermines, *inter alia*, the fact that the Constitution generally does not prevent protecting and defending in certain special cases a person's acquired rights arising from legal instruments that are subsequently ruled to be in conflict with the Constitution ... When deciding whether the acquired rights gained by the person during the period of validity of a legal instrument which was subsequently ruled to be in conflict with the Constitution ... should be protected and defended or not (and if so, to what extent), in each case it is necessary to determine whether in the event of a failure to protect and defend such acquired rights, other values protected by the Constitution would be violated, and whether the balance between the values entrenched in and protected and defended by the Constitution would be disturbed ... In the event legal instruments are ruled to be in conflict with the Constitution ... [and], owing to this, persons who have obeyed the law, followed the law and respected the State and its law before the said ruling suffer negative consequences, the legislature bears the constitutional duty to evaluate all the circumstances related to this and, if necessary, put in place a legal regulation providing for the possibility in the above-mentioned extraordinary cases to fully or partially protect and defend the acquired rights of those persons arising from the legal instruments which were subsequently ruled to be in conflict with the Constitution ..., so that the principle of justice enshrined in the Constitution is not deviated from.

At the same time, it is worth stressing that the Constitution does not protect and defend the acquired rights of persons which are in essence privileges. The protection and defence of privileges would mean that the constitutional principle of equal rights of persons and the constitutional principle of justice, the imperative of a harmonious civil society enshrined in the Constitution, and, therefore, the constitutional principle of a State under the rule of law, would be violated."

D. Other relevant legislation

72. The relevant part of the Law on the Constitutional Court (*Konstitucinio Teismo įstatymas*) reads as follows:

Article 72.
The consequences of declaring a legal instrument to be in conflict with the Constitution

"A law (or part thereof) ... or another legal instrument (or part thereof) of the *Seimas*, a legal instrument of the President of the Republic, or a legal instrument (or part thereof) of the Government may not be applied from the day of the official publication of the ruling of the Constitutional Court that the legal instrument in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania ...

The rulings of the Constitutional Court shall be binding on all State institutions, courts, enterprises, establishments, and organisations, as well as officials and citizens.

...

Decisions based on legal instruments that have been ruled to be in conflict with the Constitution or laws must not be executed if they had not been executed before the entry into force of the respective ruling of the Constitutional Court.

..."

73. At the material time the relevant part of the Civil Code read as follows:

Article 1.125.
Limitation periods

"...

8. Abridged three-year limitation periods shall be applied with respect to claims for compensation for damage ..."

Article 1.127.
Commencement of limitation period

"1. Limitation periods shall start to run from the day on which the right to bring an action may be enforced. The right to bring an action arises from the day on which a person becomes aware or should have become aware of the violation of his or her right ...

...

5. In the event of a continuous infringement, that is, it happens every day (a person fails to perform the actions he is bound to perform ...), the limitation period for actions brought concerning activity or inactivity that occurred on a concrete day shall start to run afresh every day."

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 14 of the

Convention, that she had been discriminated against on account of the State authorities' not having granted her the annuity of the widow(er) of the President of the Republic and the right to use the house where she and the President had lived.

THE LAW

A. Complaint under Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 14 of the Convention

74. The applicant complained that she had been deprived of her rights to the State annuity and to housing as the widow of a former President of the Republic. She primarily relied Article 1 of Protocol No. 1 to the Convention, and also on Article 14 of the Convention, which read as follows:

Article 1 of Protocol No. 1 (protection of property)

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

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

Article 14 (prohibition of discrimination)

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

1. The parties' submissions

(a) The Government

(i) The scope of the applicant's complaints

75. The Government wished to emphasise the scope of the subject matter in the present case, which was the State authorities' delay in taking the final decisions as regards, firstly, the State annuity of the widow(er) of the President of the Republic under Article 4 § 1 of the Law on the State annuity and, secondly, free housing for the President's widow(er) under Article 23 § 4 of the Law on the President, prior to the Constitutional Court's rulings of 3 July 2014 and 15 December 2017, respectively. The applicant had not applied for social guarantees available under the domestic law after the above rulings of the Constitutional Court. Any complaints by the applicant about the domestic-law developments as regards the State pension for the President's spouse (see paragraph 102 below) or free housing for the

President's spouse (see paragraph 98 below) made after the above-mentioned rulings of the Constitutional Court therefore lay outside the subject matter of this case.

(ii) The State annuity

76. The domestic legal regulation in force prior to the Constitutional Court's ruling of 3 July 2014 did not exclude the applicant from the list of beneficiaries of the State annuity. Accordingly, had the applicant been of the view that the authorities' delay in taking a final decision as regards the State annuity had violated her rights, she could have availed herself of the effective domestic remedy and asked the domestic courts to oblige the Government to act and pay compensation for the damage sustained owing to its failure to act.

77. Yet, the applicant's complaints regarding an alleged violation of her right to the State annuity as the widow of a former President of the Republic for the period from 23 July 2010 to 3 July 2014 had to be dismissed for failure to exhaust domestic remedies. The domestic courts had held that the applicant had failed to submit a claim for pecuniary damage in a timely manner (see paragraphs 23-27, 30 and 31 above).

78. In the alternative, given that the State annuity had never been granted to the applicant by the Government, as the competent State authority, and had never been paid to the applicant, the present case did not concern the applicant's "existing possessions".

79. In that connection, the Government acknowledged that prior to the Constitutional Court's ruling of 3 July 2014 the right to the State annuity had been established by Article 4 § 1 of the Law on the State annuity. Nevertheless, that legal norm had never been implemented before the applicant had lodged her request on 28 July 2010 (see paragraph 8 above). It could hardly be said that a legal norm which had never been applied in practice and which had subsequently been found to be unconstitutional amounted to a "sound legal basis" within the meaning of the Court's case-law.

80. Although the applicant's request to be granted the State annuity had been lodged before the legal ground for those social benefits had been declared unconstitutional – Article 4 § 1 of the Law on the State annuity – no final decisions had been taken before the ruling of the Constitutional Court. Since that ruling, the domestic law no longer enshrined a right to the State annuity. A law could not be applied from the day it had been declared unconstitutional (Article 7 and Article 107 § 1 of the Constitution and Article 72 §§ 1 and 2 of the Law on the Constitutional Court), and decisions based on legal instruments that had been ruled to be in conflict with the Constitution were not to be executed if they had not been executed prior to the relevant ruling of the Constitutional Court becoming final (Article 72 § 4 of the Law on the Constitutional Court). It followed that the applicant could not have held a "legitimate expectation" that her claim would be determined

in accordance with Article 4 § 1 of the Law on the State annuity after that provision had been declared unconstitutional. Besides, the provision of the domestic law at issue had not been annulled via an extraordinary, *ad hoc* mechanism. Rather, this had been the result of the normal operation of the machinery for verifying the constitutionality of statute law.

81. The Government referred to the settled case-law of the Constitutional Court according to which the Constitution did not protect and defend the acquired rights of persons which were in essence privileges (see paragraph 71 *in fine* above).

82. The Government also referred to the recent information regarding the applicant having been granted the State annuity of the widow of a signatory (see paragraphs 35-37 above). Given that throughout all the related court proceedings the applicant had been represented by an advocate, she should have known that under the relevant legal regulation only one of the State annuities could be granted (Article 5 § 3 of the Law on the State annuity). Taking into account the applicant's own wish to be granted the State annuity of the widow of a signatory, the Government considered that the matter giving rise to the applicant's complaint regarding the State annuity of the President's widow(er) could therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b) of the Convention.

83. In the alternative, the Government considered that the applicant had failed to inform the Court about this latest development of her having been granted the annuity of the widow of a signatory, thus preventing the Court from determining the case in full knowledge of the facts. Therefore, this part of the application could also be rejected as an abuse of the right of application pursuant to Article 35 §§ 3 and 4 of the Convention.

(iii) Housing

84. The Government wished to note that during the period between 12 October 2015, when the loan-for-use agreement for the house in the Turniškės district came to an end, and 15 December 2017, the date of the Constitutional Court's ruling, the applicant did not wish to accept free housing in accordance with the domestic law. It was only on 11 May 2017 that the applicant had vacated the house in the Turniškės district. Furthermore, regarding the period from 14 April 2017 (the date of the applicant's request) to 15 December 2017 (the Constitutional Court's ruling), she had never complained about the Government having suspended examination of the issue and not having taken a decision regarding granting housing to the applicant. It followed that the applicant had failed to exhaust domestic remedies available.

85. As regards the Government suspending taking a decision on free housing in the applicant's case on 15 May 2017 (see paragraph 61 above), that decision had been justified in the light of the Constitutional Court's ruling of 3 July 2014 which had already found in a similar context that a social

benefit – the State annuity granted to the President's spouse solely on the ground of the fact that that person had been a spouse of the President – was a privilege, and as such not protected by the Constitution.

86. The applicant's counterclaim during the domestic proceedings – in which she had sought to have the loan-for-use agreement extended, had had no basis in domestic law. In addition, the applicant had not agreed to be provided with free housing in another location. Rather, she had insisted on being allowed to stay in the house in question in the Turniškės district, or on being granted housing of analogous characteristics – this request had been dismissed as having no legal basis by the domestic courts. The Government thus saw the complaint to be inadmissible *ratione materiae*: no legitimate expectation could be said to arise where there was a dispute as to the correct interpretation and application of domestic law, and the applicant's submissions had consequently been rejected by the national courts (the Government referred to *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX).

(iv) Alleged discrimination

87. In reply to the applicant's plea that she was the only person to whom the State had not paid the State annuity, the Government wished to note that the legal provision on the State annuity of the President's widow(er) had never been applied in practice. The applicant's request had been the first such request lodged under the Law on the State annuity, and serious doubts as to the constitutionality of that provision had immediately arisen; yet there had been no predisposed bias against the applicant on the part of the Lithuanian authorities. Indeed, as the applicant herself had admitted, certain State authorities, including the Ministry of Social Care and Labour and the then President of the Republic had been in favour of the applicant's position. It had been a debate of public interest, linked to the need to ascertain whether the legal regulation was in compliance with the Constitution, and it had been the examination of the provisions of relevant legislation by the Constitutional Court, and not the status of the applicant, that had prompted the Government to suspend taking final decisions as regards the State annuity and free housing in her case.

88. As regards the alleged discrimination in the context of housing, the applicant did not fall within the same social group as President Valdas Adamkus, thus these two individuals could be treated differently. The courts at two levels of jurisdiction had concluded that the status of the President of the Republic, as the Head of State, and the status of the applicant, as a former President's spouse, differed. Social guarantees applicable to the President of the Republic were not applicable to his or her family members after the President's death. The applicant's argument that she should have been permitted to continue using the house in question in the Turniškės district had been unreasonable.

89. In the Government's view the complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 was unfounded.

(b) The applicant

(i) The State annuity

90. The applicant considered that she had not had at her disposal effective legal remedies to be able to defend her right to the State annuity. In response to the initiatives by the executive, the *Seimas* had passed new legal regulation and changed the legal provisions that had previously granted social guarantees to the State annuity to the applicant. The laws had been changed, and new conditions had been introduced so that the applicant could not meet them.

91. Given the political and legal situation, the actions of the officials of the executive and legislative powers, public statements by high-level officials, it was plain that the applicant's rights could not have been effectively defended. According to publicly available information (the documents submitted in this case), when the proposals to introduce the new legal provision and to vote on them had been made, it had been acknowledged that the laws were being changed precisely in order to prevent the applicant, calling her "one lady", from demanding the social guarantees that at the time had been guaranteed to her by law.

92. The administrative court proceedings regarding the State annuity had not been and could not be effective. Those court proceedings had been used by the applicant to recover the annuity debt for the period prior to the Constitutional Court's ruling of 3 July 2014. The breach of her guaranteed Convention rights and the neglect of the State's positive duties had manifested themselves not only in the delay in paying the State annuity but also in the amending of the legal regulation with regard to the applicant as its sole subject, thus preventing her from receiving the State annuity of the President's widow(er) in her lifetime. The State had thus completely avoided paying the State annuity to the applicant.

93. The applicant further considered that, under the domestic law, she had had legitimate expectations to receive the State annuity, as social guarantee.

94. The legal expectation to receive the State annuity had been based on the Law on the State annuity, as valid until 3 July 2014, this having been recognised by the national authorities – the Ministry of Social Care and Labour and the then President of the Republic. The applicant's expectation to receive the State annuity had been grounded in law, and she had not expected the legal regulation to be amended at a later date. In addition, when the applicant had applied for the State annuity and for housing, the right to the annuity (and the right to free housing) had been regulated by domestic legal provisions valid at that time.

95. Even so, the applicant acknowledged that the Constitutional Court's ruling of 3 July 2014 had resulted in changes to the legal regulation and thus she no longer satisfied the criteria for the State annuity.

(ii) Housing

96. The applicant pointed out that in September 2015 she had asked the Chancellery to prolong, by ten years, the loan-for-use agreement in respect of the house in the Turniškės district (see paragraph 44 above). Having been refused, she had lodged a counterclaim during the ensuing court proceedings for her eviction, however, the court decisions had been unfavourable to her. It followed that she had used the entire domestic court system, up to the Supreme Court, in order to have the loan-for-use agreement reviewed and to obtain the social guarantee in question – the right to use the housing as the President's widow. The applicant had chosen to defend her rights not by starting new proceedings for damages, but by lodging a counterclaim in the same case. In that civil case the State had had the opportunity to reach a friendly settlement and to remedy the violation of her constitutional rights by granting analogous or the same housing, yet they had not done so.

97. The applicant also considered that she had had a legitimate expectation to receive housing based on domestic law, among others, Article 23 § 4 of the Law on the President, as interpreted by the applicant.

98. The applicant further complained about her eviction from the house in the Turniškės district and that she had not been provided with "analogous housing". It had not been sufficient that she be denied the right to use the house in question: even though the courts of civil jurisdiction had stated that she nevertheless had the right to a social guarantee as the widow of the President – the right to residential premises – following public statements made by President Dalia Grybauskaitė, the Government had asked the Constitutional Court to rule on the constitutionality of Article 23 § 4 of the Law on the President, so that such guarantee in respect of the applicant would be annulled totally.

99. In any event, after the Government had asked the Constitutional Court for an interpretation on 26 April 2017, the applicant's request to be granted residential premises could not be examined. Thus she had had no possibility to defend her rights at the national level, either through court proceedings, or in any other manner.

(iii) Alleged discrimination

100. The applicant referred to the Vilnius Regional Administrative Court's finding regarding a continuous violation of her rights on account of the Government not having fulfilled its obligation to take a decision regarding the applicant's request for the State annuity on the basis of the Law on the State annuity which had been valid between 28 July 2010 and 3 July 2014

(see paragraph 23 above). Even so, it had dismissed the applicant's complaint on formal and unlawful grounds.

101. The applicant considered that the administrative courts had erred in establishing the time-limit for the statute of limitations, among other, because even after the Constitutional Court's ruling of 3 July 2014 she had not received any timely official response from the Government or from any other State institution regarding her previously lodged request with the Government to be granted the State annuity. It was only from the authorities' letter of 19 March 2015 (see paragraph 17 above) that the applicant had learned about the continuous breach of the law in her regard in respect of the State authorities' refusal to pay her the money owed for the period when she had been eligible to obtain the President's widow(er)'s annuity. Thus it had been only from the date of the letter of 19 March 2015 that the applicant could have taken concrete legal steps to protect her breached rights, and from which the time-limit for the statute of limitations should have started to run.

102. Even after the Constitutional Court's ruling of 3 July 2014, the authorities had delayed taking a decision regarding the President's widow(er)'s annuity for the period preceding that ruling. The applicant had thus been in a situation of legal uncertainty for the following two years, until 16 June 2016 when a new version (*redakcija*) of the Law on the State annuity had been passed, which had come into force on 1 July 2016. In that version, the legislature had annulled the institution of the President's widow(er)'s annuity completely. In parallel, the President's widow(er)'s social guarantees had become regulated by the new version of the Law on State pensions, which had barred the applicant from receiving the annuity. The applicant submitted that that new, discriminatory, legal norm – Article 15^1 of the Law on State pensions – had been "concocted and set up" in full knowledge that she had married President Algirdas Mykolas Brazauskas after his term of office had ended. In such a manner, the applicant had been deliberately distinguished from other individuals, so that the social guarantees would not be applied to her in particular.

103. In the light of the above the applicant considered that the courts' position towards the applicant – their refusal to grant her claim for damages – could be evaluated as a conscious failure to act by the State institutions and the courts directed against a single individual – the applicant. Even though some of the State institutions had acknowledged the fact that the applicant fully complied with the conditions of the annuity under the Law on the State annuity, the initiatives by the politicians and the pressure they had exerted had sought to eliminate the right of one concrete individual – her – to request that a decision complying with the letter of the law be taken.

104. Therefore, as a fair and reasoned decision had not been taken in the administrative courts, the applicant had been barred from enjoying her rights – the right to the President's widow(er)'s annuity for the period from 23 July 2010 to 3 July 2014.

105. It followed that the applicant had been discriminated against by the failure to apply in her respect the legal norms which had been set out in law, and when she had requested that those legal norms be applied, they had been annulled or amended so that her situation would no longer meet the criteria as set out in the new legal norms. In such a manner the applicant's right to benefit from the rights established in law, "that is, the right to the President's widow(er)'s annuity and the right to residential premises", had been breached.

2. The Court's assessment

(a) As to the State annuity

106. The Court turns first to the Government's plea that the applicant's complaint regarding the State annuity of the widow(er) of the President of the Republic was inadmissible as incompatible *ratione materiae*, given that, firstly, the applicant had never been granted that allowance and, secondly, that the Constitutional Court had ruled that the allowance was a privilege (see paragraphs 78, 79 and 81 above).

107. On the question whether the State annuity of the widow(er) of the President of the Republic could have been considered as representing the applicant's possession within the meaning of Article 1 of Protocol No. 1, the Court refers to the relevant principles set out in its case-law on the applicability of this provision to social benefits. These were reiterated and considered in detail in *Béláné Nagy v. Hungary* ([GC], no. 53080/13, §§ 80-89, 13 December 2016). As stated in that judgment, at § 86:

> "Where the person concerned did not satisfy (see *Bellet, Huertas and Vialatte* [*v. France* (dec.), nos. 40832/98 and 2 others, 27 April 1999]), or ceases to satisfy, the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (see *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009) where the conditions had changed before the applicant became eligible for a specific benefit (see *Richardson* [*v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012]). Where the suspension or diminution of a pension was not due to any changes in the applicant's own circumstances, but to changes in the law or its implementation, this may result in an interference with the rights under Article 1 of Protocol No. 1 (see *Grudić* [*v. Serbia*, no. 31925/08], § 77[, 17 April 2012])."

108. The Court reiterates that the applicant married President Algirdas Mykolas Brazauskas in 2002 after his term of office as President of the Republic had ended in 1998 (see paragraphs 5-6 above). After President Algirdas Mykolas Brazauskas's death in June 2010, the applicant asked the Ministry of Social Care and Labour to be granted the State annuity of the President's widow(er). In her request the applicant referred to a domestic law provision, Article 4 § 1 of the Law on the State annuity, which had been part of the domestic law for a number of years, including on the date when the applicant's request of 28 July 2010 had been lodged (see

paragraphs 8 and 65 above). Under that legislative provision, the fact of being the spouse of a deceased President gave the person the right to receive the President's widow(er)'s annuity. Thus, it was the amendment to the legal regulation as a result of the Constitutional Court's finding of 3 July 2014 that Article 4 § 1 of the Law on the State annuity was in breach of Article 52 of the Constitution (see paragraph 16 above), rather than any change in the applicant's personal situation, that saw her lose her entitlement to the benefit. The Court thus finds that the facts of the present case correspond to the second of the situations set out in § 86 of the judgment in *Béláné Nagy* (cited above). The applicant's situation is thus similar to that described in § 89 of *Béláné Nagy*:

> "89. [W]here the domestic legal conditions for the grant of any particular form of benefits or pension have changed and where the person concerned no longer fully satisfies them due to the change in these conditions, a careful consideration of the individual circumstances of the case – in particular, the nature of the change in the requirement – may be warranted in order to verify the existence of a sufficiently established, substantive proprietary interest under the national law. Such are the demands of legal certainty and the rule of law, which belong to the core values imbuing the Convention."

109. In the instant case the applicant underscored that not only had the legislative provision qualifying her for the State annuity been declared invalid by the Constitutional Court, but subsequently, in 2016, the *Seimas* had tailored another piece of legislation in order to exclude her specifically from the potential recipients of the President's survivor's annuity (see paragraphs 66 and 69 above). That is to say, although at the time of President Algirdas Mykolas Brazauskas's death under Article 4 § 1 of the Law on the State annuity the mere fact of being in a marital relationship had been sufficient to be granted the President's survivor's annuity, after the introduction of Article 15^1 to the Law on State pensions the right to that annuity had been limited to those individuals who had performed the role of the President's spouse for no less than three years during the President's term of office (see paragraph 66 above).

110. The Court thus finds that the applicant's complaint could be divided into two parts: first, regarding the State annuity not being granted or paid for the period between 28 July 2010 and 2 July 2014, and, secondly, regarding the annuity not being granted or paid after the latter date, which would also include any considerations related to the legislative amendment of 2016.

(i) As to the period between 28 July 2010 and 2 July 2014

111. The Court reiterates that while the notion of "possessions" is an autonomous one (see, among many other authorities, *Béláné Nagy*, cited above, § 73), when the interest in question is a social security benefit, the individual's claim to it is necessarily governed by the domestic legal framework. For this reason, the domestic courts' analysis of the nature of such

an interest cannot be overlooked (see *P.C. v. Ireland*, no. 26922/19, § 48, 1 September 2022). The Court refers to the Vilnius Regional Administrative Court's finding that, starting from the day when the applicant lodged a request for the State annuity on 28 July 2010 and did not receive any response from the State authorities, she should have been aware of the breach of her rights (see paragraph 23 above). That court went as far as to hold that on account of the non-payment of the State annuity to the applicant during the period that preceded the Constitutional Court's ruling of 3 July 2014, when the applicant "had lost the right to be granted and paid the State annuity", "there had possibly been a continuous breach of her rights" as a result of the Government's failure to fulfil its obligation to take a decision regarding the applicant's request (see paragraph 24 above). For its part, the Supreme Administrative Court spoke of the fact that the applicant's request had been set in motion, yet the decision had not been implemented, "even though the applicant had such expectation" (see paragraph 32 *in fine* above). This assessment of the applicant's pecuniary interest corresponds to that of the Court. The Court also observes that the applicant's request received support from two State authorities – the Ministry of Social Care and Labour and the Ministry of Justice – and a draft resolution of the Government was prepared (see paragraph 9 above).

112. In the light of the foregoing, and as far as Article 1 of Protocol No. 1 is concerned, the Court finds that with regard to the State annuity payments that were withheld from the applicant between 28 July 2010 and 2 July 2014, during which time she was statutorily qualified to receive the State annuity on account of her status as the President's widow, the applicant could have entertained at least a "legitimate expectation" that those payments would be granted and paid to her on the basis of Article 4 § 1 of the Law on the State annuity, as it stood at the time when she lodged her request (see *Kopecký*, cited above, § 35). It follows that the Government's assertion (see paragraph 79 above) that this part of the complaint is incompatible *ratione materiae* with Article 1 of Protocol No. 1 within the meaning of Article 35 § 3 (a) and should be rejected in accordance with Article 35 § 4 of the Convention must be dismissed.

113. Next, the Court turns to the Government's objection that this part of the complaint should be rejected for failure to exhaust the domestic remedies (see paragraphs 76 and 77 above; on general principles regarding exhaustion of domestic remedies see *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 others, § 72, 25 March 2014, and the cases cited therein).

114. The Court also reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court is not a court of appeal from the national courts and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so

far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, with further references).

115. In the instant case, the Court notes that the Vilnius Regional Administrative Court, having applied the standard of an intelligent, prudent and considerate person, considered that the applicant should have known that her right was being breached from the day she had lodged a request for the State annuity and until the day of the Constitutional Court's ruling of 3 July 2014 (see paragraph 24 above). The Vilnius Regional Administrative Court also reasoned that the applicant should have learned about her breached rights not when the institution of the President's widow(er)'s State annuity had been abolished, but rather during the period when Article 4 § 1 of the Law on the State annuity should have been applied (see paragraph 25 above). It also considered that the applicant, having received no response from the State authorities regarding her request for the State annuity, should have realised that her right to this annuity was being breached (see paragraph 25 above; see also the Supreme Administrative Court's similar position in paragraph 30 above). The Vilnius Regional Administrative Court also held that as of February 2015 the applicant had been represented by a professional lawyer, and thus already in February 2015 she could have lodged a complaint with an administrative court regarding the Government's delay in taking the decision within its competence (granting the State annuity), or she could have lodged a claim for damages (see paragraph 26 above).

116. Be that as it may, given the applicant's grievance regarding legal nihilism (see paragraph 21 above) and in the light of the principle of the rule of law, the Court, with all due deference to the domestic court's competence to establish the questions of fact and the domestic law, does not find it persuasive that in the light of the political turmoil which clearly surrounded the applicant's request for the State annuity (see paragraphs 12-15 above), and given the domestic courts' own apparently disparate interpretation as to when the statute of limitations had begun (see paragraphs 24, 27 and 31 above), it had been foreseeable for the applicant that she should have lodged a claim for damages by a particular date and that that date should have been clear to her. The question of the application of the statute of limitations in respect of the applicant's claim was not devoid of uncertainty. Therefore, the Court cannot share the Government's contention that it was as a result of the applicant's oversight that her right to the State annuity had not been implemented, or the damage caused by the Government's failure to act had not been compensated (compare and contrast, *mutatis mutandis*, *Kardišauskas v. Lithuania*, no. 62304/12, § 49, 7 July 2015). The Court thus dismisses the Government's plea on non-exhaustion of domestic remedies.

(ii) As to the period between 3 July 2014 to this day

117. In its ruling of 3 July 2014 the Constitutional Court held that Article 4 § 1 of the Law on the State annuity was in breach of the Constitution, since that provision of the law had created a privilege on the grounds of social status (see paragraphs 16 and 69 above). Noting that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and to decide on issues of constitutionality (see *R & L, s.r.o., and Others v. the Czech Republic*, nos. 37926/05 and 4 others, § 115, 3 July 2014), and having regard to the wide margin of appreciation given to the States in the field of social policy (see, *mutatis mutandis*, *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 103, 24 June 2014, with further references), the Court does not find the Constitutional Court's findings to be arbitrary or manifestly unreasonable.

118. The applicant, for her part, appears to have also acknowledged that as of the date of the Constitutional Court's ruling of 2014 she had lost the right to the State annuity as the widow of President Algirdas Mykolas Brazauskas (see paragraphs 22 and 95 above). She complained, nevertheless, that the request to the Constitutional Court to examine the constitutionality of the provision had been lodged specifically with her in mind (see paragraphs 14, 15 and 95 above). While giving certain weight to the applicant's grievance, the Court also notes the Government's argument that to that date there had not been a comparable situation and that the applicant's case had been prompted by her being the first individual in such circumstances (see paragraph 79 above). In any case, the Court considers that the applicant's situation has been resolved for the reasons described below.

(iii) Final considerations

119. The Court observes that in 2021 the applicant requested and was granted another kind of social benefit – the annuity of the widow of a signatory (see paragraphs 35-38 above). As explained by the Government, and not contested by the applicant, under Lithuanian law the signatory's annuity is paid as a social benefit, and, under Article 4 § 4 of the Law on the State annuity, an individual who has a right to both the annuity of the widow(er) of the President of the Republic and another type of State pension must choose between those social benefits (see paragraph 37 above). Thus, even though the applicant's claim for damages owing to the annuity of the widow(er) of the President of the Republic being withheld was rejected by the courts on procedural grounds (see paragraphs 23-27, 30 and 31 above), in 2021 she was granted the annuity as the widow of President Algirdas Mykolas Brazauskas – a signatory of the Act of Independence – and paid the sum of EUR 35,150 and that part of that payment – EUR 10,485 – related to the period between 28 July 2010 and 2 July 2014, which was precisely the period

during which the President's widow(er)'s annuity under Article 4 § 1 of the Law on the State annuity had not been paid to the applicant.

120. In the light of the above, and in view of the particular circumstances of the instant case, the Court considers that the matter regarding the applicant's complaint of not having been granted and paid the State annuity as the widow of President Algirdas Mykolas Brazauskas has been effectively resolved and that this part of the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention (see, *mutatis mutandis*, *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 48, 7 December 2007).

(b) As to housing

121. The Court first notes that during the civil court proceedings concerning her removal from the house in question the applicant lodged a counterclaim, asking to be allowed to reside in that house (see paragraph 48 above). It follows that she exhausted the domestic remedies, and the Government's objection in this respect (see paragraph 84 above) must be dismissed.

(i) As to the period prior to the Constitutional Court's ruling of 15 December 2017

122. The Court first reiterates that an entitlement to free accommodation may be capable of attracting the protection of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Pařízek v. the Czech Republic*, no. 76286/14, § 41, 12 January 2023). Therefore, in the present case, the Court must first determine whether prior to the Constitutional Court's ruling of 15 December 2017 the applicant had a legitimate expectation that she would be permitted to use the house in the Turniškės district beyond the initial five-year time-limit (see *Kopecký*, cited above, § 35). In this connection, it observes that, after the death of President Brazauskas in June 2010, acting on the applicant's request, on 7 July 2010 the Government passed Resolution no. 1002 granting the applicant the use of the house in which she had previously lived with President Algirdas Mykolas Brazauskas (see paragraph 40 above). The Government resolution made reference to several legal provisions, including Article 23 § 4 of the Law on the President, and to points 1.7 and 6.6 of the Circular (see, respectively, paragraphs 67 and 68 above). Although the Government resolution did not set out a time-limit until which the house was being transferred for the applicant's use, the Court would note that point 6.6 of the Circular prescribed that State property could be granted to individuals, such as the applicant, for no longer than a five-year period, unless the legislation provides otherwise (see paragraph 68 above). Three months later, in October 2010, the Chancellery of the President of the Republic and the applicant entered into an agreement, under which the applicant received the house in question for "a five year period" (see paragraph 41 above).

123. As subsequently established by the domestic courts at two levels of jurisdiction, the applicant "had had no basis to expect" that, after the expiry of the time-limit for the loan-for-use agreement, she would continue to have a right to use the house in question (see paragraphs 51 *in fine* and 55 above). Such a finding was reached by the domestic courts based on the facts that the agreement had prescribed a five-year time-limit for the loan-for-use, that no possibility of prolonging the length of the agreement had been provided for, and that the applicant had signed it without objecting to its conditions (see paragraphs 51 and 55 above). In addition, as noted by the Vilnius City District Court and the Vilnius Regional Court, throughout the duration of the agreement the applicant had made no claims that the time-limit in the agreement had been concluded erroneously, which demonstrated that she had agreed to it (see paragraphs 51 and 55 above).

124. Although the Court will revert to this below (see paragraphs 129-134 below), at this point the Court finds persuasive the Vilnius City District Court's finding regarding the difference in the status of the applicant, who was the widow of a former President of the Republic, on the one hand, and of the President of the Republic, Valdas Adamkus, on the other hand (see paragraph 52 above). The same point regarding the particular status of the President of the Republic was persuasively made by the Vilnius Regional Court (see paragraph 56 above). In view of those arguments, no issue arises with regard to the fact that, unlike President Valdas Adamkus, who in Government Resolution no. 725 had been granted residence for life (see paragraph 42 above), the applicant was not entitled to the same social guarantee. The difference in treatment had its basis in their different social statuses, this also having been subsequently explained by the Constitutional Court (see paragraph 70 above), and therefore no issue regarding the applicant's alleged discrimination arises.

125. In that connection the Court also refers to the Vilnius Regional Court's finding that the house in question was located in the district of *Turniškės*, a secured area, whereas the applicant was not entitled to State protection (see paragraph 57 above).

126. Lastly, the Court cannot overlook the fact that in 2015 alternative residential housing was proposed to the applicant for use under a loan-for-use agreement, which the applicant refused as not being up to her standards (see paragraphs 46 and 47 above). The Court therefore finds that, at that time, the State authorities demonstrated a willingness to provide social assistance to the applicant, which the latter declined.

127. In the light of all foregoing, the Court is unable to find that, in accordance with the domestic law in force at the material time, the applicant had a legitimate expectation that she would be permitted to use the house in question in the Turniškės district beyond the initial five-year time-limit. It follows that this part of the complaint is inadmissible as being incompatible

ratione materiae with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4.

128. That being so, the Court does not overlook the applicant's grievance that the final decision in depriving her of State guaranteed housing was brought about by the Constitutional Court's ruling of 15 December 2017, which she saw as the result of rule-making process strongly influenced by the particular circumstances (on that see, *mutatis mutandis*, *Paksas v. Lithuania* [GC], no. 34932/04, § 111, ECHR 2011 (extracts)), and ensuing in her discrimination, the issue to which the Court turns next.

(ii) As to the period after the Constitutional Court's ruling of 15 December 2017

129. The Court notes that in April 2017 the applicant asked the Government for a list of available housing which could be granted to her under a loan-for-use agreement (see paragraph 59 above). She pointed out that her right in this respect had not been contested either by the Chancellery, or by the Government during the civil litigation (ibid.). Subsequently, the issue of the constitutionality of Article 23 § 4 of the Law on the President having been referred to the Constitutional Court by the Government (see paragraphs 61 and 62 above), that legal norm was declared unconstitutional (see paragraphs 63 and 70 above).

130. In the applicant's view, she had been discriminated against by this finding of the Constitutional Court, which was not open to appeal.

131. The Court has held that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently. However, not every difference in treatment will amount to a violation of Article 14. Firstly, the Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. Secondly, a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017, and the case-law cited therein).

132. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see *Molla Sali v. Greece* [GC], no. 20452/14, § 136, 19 December 2018). In that regard, the Court has stated, albeit in the context of general measures of

economic or social strategy, that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the State's policy choice unless it is "manifestly without reasonable foundation" (see *Muñoz Díaz v. Spain*, no. 49151/07, §§ 48-49, ECHR 2009).

133. The Court's role, however, is not to assess and review in abstract the State's policy in this field or to rule on which interpretation of the domestic legislation is the most correct, but to consider the consequences that the authorities' decisions had for the applicant (see, *mutatis mutandis*, *Ádám and Others v. Romania*, nos. 81114/17 and 5 others, § 98, 13 October 2020, and *Molla Sali*, cited above, § 142, with further references). Its task is thus to decide whether there was any objective and reasonable justification for the difference in treatment that affected the applicant, and which had its basis in the application of domestic law. More precisely, the Court must determine whether the reasons put forward by the authorities to justify the treatment applied to the applicant were relevant and sufficient (see, *mutatis mutandis*, *Napotnik v. Romania*, no. 33139/13, § 78, 20 October 2020).

134. In the present case the Court finds it sufficient to refer to the Constitutional Court's arguments, which underscored such aspects as the individual and particular status of the President of the Republic, which differs from the legal status of all other citizens; to the purpose of the residence, as a social guarantee of the incumbent and former Presidents which is in line with the dignity and exceptional legal status of the President as the Head of State; and to the constitutional prohibition on equating the President's status to that of any other person's when providing material or social guarantees, including those related to housing (see paragraph 70 above). The particularity of the President of the Republic status has also been underlined by the Vilnius City District Court and the Vilnius Regional Court, when dismissing the applicant's complaint regarding housing (see paragraphs 52 and 56 above). Finding nothing arbitrary or manifestly unreasonable in the Constitutional Court's and the civil courts' reasoning, the Court cannot hold that the applicant is in a relevantly similar situation to that of the President of the Republic, given the significant legal and factual differences between them. She therefore cannot claim to have been discriminated against *vis-à-vis* such persons.

135. In the light of the foregoing, even assuming that the applicant had a legitimate expectation to obtain free accommodation (see paragraph 127 above), the Court takes the view that the applicant's complaint that she was not granted State housing as the widow of President Algirdas Mykolas Brazauskas subsequent to the Constitutional Court's ruling of 15 December 2017 did not amount to discrimination within the meaning of Article 14 of the Convention. Accordingly, this complaint is inadmissible under Article 35

§ 3 (a) of the Convention as manifestly ill-founded, and it must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* that the matter giving rise to the applicant's complaint under Article 1 of Protocol No. 1 to the Convention, insofar it is related to the State annuity for the President's widow, has been resolved, and *decides* to strike the application out of its list of cases in so far as it relates to that complaint;

2. *Declares* the remainder of the application inadmissible.

Done in English and notified in writing on 18 January 2024.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President