

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

SECOND SECTION

CASE OF JAKUTAVIČIUS v. LITHUANIA

(Application no. 42180/19)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Domestic courts' refusal in civil proceedings to reimburse costs and expenses incurred by the applicant in administrative-law violation proceedings in which he had successfully challenged a fine imposed on him for driving under the influence of alcohol • Core of the applicant's complaint concerned a pecuniary claim which was "civil" in nature • Art 6 applicable under its civil limb • "Civil limb" of proceedings remained closely linked to the criminal limb, the outcome of the administrative-law violation proceedings being a decisive factor concerning the applicant's pecuniary expectations • In case circumstances very essence of right to access to a court not impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 February 2024

FINAL

13/05/2024

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



In the case of Jakutavičius v. Lithuania,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Saadet Yüksel,
Lorraine Schembri Orland,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 42180/19) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Saulius Jakutavičius ("the applicant"), on 1 August 2019;

the decision to give notice to the Lithuanian Government ("the Government") of the complaint concerning the right of access to a court under Article 6 § 1 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 16 January 2024,

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

INTRODUCTION

1. The case concerns the issue of the reimbursement of costs and expenses incurred by the applicant in administrative-law violation proceedings in which he successfully challenged a fine imposed on him for driving under the influence of alcohol. The applicant complained that the fact that his costs and expenses had not been reimbursed had violated his right to effectively defend himself, in breach of Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1973 and lives in Vilnius. He was represented by Mr K. Rugys, a lawyer practising in Vilnius.

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

I. ADMINISTRATIVE-LAW VIOLATION PROCEEDINGS

4. On 12 August 2014 the applicant was stopped by the police while driving his car in Palanga and asked to take a breathalyser test. The test detected 1.91 per mille of alcohol (the legal limit for driving was 0.4 per mille). The police drew up a record of an administrative-law violation under Article 126 § 4 of the Code of Administrative Law Violations (see paragraph 52 below). The record stated that the applicant had not disputed the violation.

5. Within one hour after being stopped by the police the applicant went to a hospital where a blood test was performed (see paragraph 53 below). It detected no alcohol in his blood.

6. The applicant challenged the police's decision before the courts. He submitted that on the day in question he had drunk some vodka while having breakfast because he had not had any plans to drive a car that morning. However, he had unexpectedly been called to a meeting which could not be postponed. He had felt sober and fit to drive. While leaving the car park at his residential building, he had honked the horn of his car as a form of greeting to a neighbour. Immediately afterwards he had been stopped by the police, who had been patrolling nearby. The applicant submitted that he had been nervous because he had thought that he might have to take a breathalyser test; therefore, he had impulsively sprayed some perfume in his mouth and on his clothes, without realising that it contained a high concentration of alcohol. Accordingly, he contended that that had been the reason for the result of the breathalyser test. He relied on the results of the blood test (see paragraph 5 above) as proof that he had not been drunk.

7. One of the police officers who had stopped the applicant testified before the court that she had decided to stop his car because he had honked the horn. The officer had detected the smell of alcohol inside the applicant's car and had thus asked him to take the breathalyser test. However, she had been surprised by the high result of the test because the applicant had not appeared to be as drunk as the test had shown.

8. During the court proceedings, doubts were raised as to whether the blood test had been performed on the blood of the applicant, rather than on another person. A DNA analysis was carried out which showed that it had indeed been the applicant's blood.

9. On 20 January 2015 the Vilnius District Court found the applicant liable for the administrative-law violation of driving under the influence of alcohol, gave him a fine of 579 euros (EUR) and withdrew his driving licence for two years. It held that there were no objective reasons to question the accuracy of the results of the breathalyser test. Moreover, in view of the fact that the applicant had admitted that he had drunk alcohol before driving, the court had doubts concerning the accuracy of the blood test (see paragraph 5 above).

10. The applicant lodged an appeal against the above-mentioned decision and on 19 March 2019 the Vilnius Regional Court quashed that decision and remitted the case for a fresh examination on the grounds that the lower court had not properly assessed all the available evidence.

11. After a fresh examination, on 25 May 2015 the Vilnius District Court discontinued the administrative-law violation proceedings on the grounds that no such violation had been committed (see paragraph 51 below). The court held that it had no grounds to question the applicant's account of the events, specifically that he had sprayed perfume into his mouth very shortly before taking the breathalyser test (see paragraph 6 above), which could explain the results of that test, which even the police officer had found surprising (see paragraph 7 above). In such circumstances, the results of the breathalyser test could not be considered reliable. On the other hand, the court found no reason to doubt the accuracy of the blood test (see paragraph 5 above). It therefore concluded that it had not been proved that the applicant had been driving under the influence of alcohol.

12. The police lodged an appeal against the above-mentioned decision, but on 27 July 2015 the Vilnius Regional Court dismissed the appeal and upheld that decision in its entirety.

II. PROCEEDINGS CONCERNING REIMBURSEMENT OF THE APPLICANT'S COSTS AND EXPENSES

13. In April 2017 the applicant instituted civil proceedings against the State in which he claimed compensation in respect of pecuniary damage caused by unlawful actions of the police, under Article 6.271 of the Civil Code (see paragraph 20 below). He sought the reimbursement of EUR 1,502, consisting of EUR 202 which he had paid for the DNA analysis (see paragraph 8 above) and EUR 1,300 in lawyer's fees. He submitted that he had the right to defend himself from an allegation that he had breached the law, and the law entitled him to do so with the assistance of a lawyer (see paragraph 19 below). Although neither the Code of Administrative Law Violations nor any other legal instrument provided for the possibility of a person in respect of whom an administrative fine had been annulled having his or her costs and expenses reimbursed, the Constitutional Court had held that the Constitution required the payment of compensation in respect of any pecuniary and non-pecuniary damage sustained by a person and that there could be no exceptions to this principle (see paragraph 21 below).

14. The applicant further submitted that the police officers had failed to carry out their duties diligently. In particular, they had admitted that the applicant's car had been stopped only because he had honked the horn, and not because he had been driving in a dangerous manner, and that his behaviour had not indicated that he was drunk, even though the results of the breathalyser test had shown a high level of alcohol (see paragraph 7 above).

Moreover, he had told the officers that he had sprayed perfume into his mouth. Despite the contradictions between the results of the breathalyser test and the other circumstances, the officers had not sought to clarify the situation and had acted formalistically by drawing up the record of an administrative-law violation. The applicant also contended that the breathalyser test had not been conducted in accordance with relevant rules. He submitted that the police officers' negligent actions had made it necessary for him to defend himself in court and that his costs and expenses had been justified and properly substantiated. He argued that if the costs and expenses were not reimbursed, that would amount to a violation of his right to defend himself before a court and would be contrary to the Constitution.

15. The applicant also asked the administrative courts to apply to the Constitutional Court for an examination of whether the fact that the Code of Administrative Law Violations did not provide for the reimbursement of the costs and expenses incurred in administrative-law violation proceedings complied with the Constitution.

16. On 6 December 2017 the Vilnius Regional Administrative Court dismissed the applicant's claim. It held that, under Article 6.271 of the Civil Code, compensation for damage could be awarded only when such damage had been caused by the unlawful actions of the State or its officials. The court noted that the law entitled police officers to stop and check drivers, and if a driver had been driving under the influence of alcohol, the police were required to draw up a record of an administrative-law violation. The court considered it immaterial that, as the applicant had argued, the officers had stopped him only because he had honked the horn and not because he had been driving dangerously. It noted that the applicant had been stopped because he had not used the horn for its intended purpose and that after stopping his car, the police officer had detected the smell of alcohol in the car. The breathalyser test had detected an alcohol content of 1.91 per mille and the court found no grounds to believe that the test might not have been administered in accordance with the relevant requirements. It further noted that the applicant had admitted that he had drunk vodka before driving and that, after taking the breathalyser test, he had told the officers that he had sprayed perfume into his mouth. Moreover, he had not disputed the violation at the time (see paragraph 4 above). The court concluded that, in such circumstances, the officers had acted in accordance with the law by drawing up a record of an administrative-law violation. It also observed that even though the administrative-law violation proceedings had eventually been discontinued, the courts in those proceedings had not found that the police officers had committed any unlawful actions. Accordingly, the conditions under Article 6.271 of the Civil Code giving rise to the civil liability of the State had not been met.

17. The Vilnius Regional Administrative Court also dismissed the applicant's request for the matter to be referred to the Constitutional Court. It

held that, according to the Constitutional Court's case-law, courts had the right to refer to it only questions regarding the constitutionality of legal provisions which were to be applied in the proceedings at hand. However, the Code of Administrative Law Violations had not been applied in the proceedings which the applicant had instituted against the State, and therefore the Vilnius Regional Administrative Court did not have the right to ask the Constitutional Court to examine its compliance with the Constitution.

18. The applicant lodged an appeal against the above-mentioned decision, in which he relied on essentially the same arguments as those which he had raised in his claim (see paragraphs 13 and 14 above). However, on 3 April 2019 the Supreme Administrative Court dismissed the appeal lodged by the applicant and upheld the lower court's decision in its entirety. The Supreme Administrative Court, referring to its previous case-law, held that although the law did not provide for the reimbursement of legal costs incurred by a person against whom administrative-law violation proceedings had been instituted, when exercising his or her right to legal defence, that person could use the services of a paid lawyer, and according to the principle "loser pays", those costs had to be reimbursed. The costs of legal defence constituted direct expenses and they could amount to damage which had to be compensated for under Article 6.271 of the Civil Code. However, under that provision, it had to be established that the public authorities or officials had acted unlawfully, and according to the consistent case-law of the Supreme Administrative Court, the mere fact that the administrative-law violation proceedings had been discontinued did not suffice to demonstrate the existence of unlawful actions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE RIGHT OF ACCESS TO A COURT, THE RIGHT TO BE REPRESENTED BY A LAWYER AND THE RIGHT TO RECEIVE COMPENSATION FOR DAMAGE

19. The relevant domestic legal framework and practice concerning, *inter alia*, the right of access to a court, the right to be represented by a lawyer in court proceedings and the right to receive compensation for damage inflicted by others, including public authorities, have been summarised in *Černius and Rinkevičius v. Lithuania* (nos. 73579/17 and 14620/18, §§ 23-46, 18 February 2020).

20. In particular, Article 6.271 § 1 of the Civil Code provides that damage caused by unlawful acts of public authorities or officials must be compensated for by the State, irrespective of fault on the part of an individual civil servant or employee. Article 6.249 § 1 of the Civil Code defines damage as, *inter alia*, loss of or damage to property, expenses incurred and loss of income.

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

> "In the course of protection and defence of human rights and freedoms ... particular importance is attributed to the matter of compensation for damage. It is established in Article 30 § 2 of the Constitution that compensation for material and moral damage inflicted upon a person shall be established by law. Thus, the necessity to compensate material and moral damage inflicted upon a person is a constitutional principle ... This constitutional principle is inseparable from the principle of justice entrenched in the Constitution: all the necessary legal preconditions must be created by law in order to justly compensate for the damage inflicted. Thus, the Constitution requires the establishment by law of such legal regulation that a person who has sustained damage as a result of unlawful actions would be able in all cases to claim just compensation for that damage and to receive the relevant compensation. ... [It] should be emphasised that it does not follow from the Constitution that it is possible by law to establish some exceptions under which the moral and/or material damage inflicted upon the person is not compensated, for example, for the reason that it was inflicted by unlawful actions of officials or institutions of the State itself. If the law, let alone another legal instrument, established such legal regulation whereby the State would fully or partially avoid the duty to justly compensate for material and/or moral damage inflicted by unlawful actions of the State institution or [its] officials, it would mean not only that the constitutional concept of compensation for damage would be disregarded, that not being in line with the Constitution (*inter alia*, Article 30 § 2 thereof), but it would also undermine the *raison d'être* of the State itself as a common good of the whole society.
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> ...
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> [It] should be noted that, under the Constitution, a person has the right to claim compensation for damage inflicted by unlawful actions of State institutions and officials, also when the corresponding compensation for damage is not specified in any law, while the courts deciding such cases have the constitutional power, by applying the Constitution directly (the principles of justice, legal certainty and legal security, proportionality, due process of law, the equality of persons and the protection of legitimate expectations, as well as other provisions of the Constitution) and general principles of law, pursuing, *inter alia*, the principle of reasonableness ... , to award the corresponding compensation for damage."

II. REIMBURSEMENT OF COSTS AND EXPENSES

A. Civil proceedings

22. Under Article 93 § 1 and Article 98 § 1 of the Code of Civil Procedure, the party in whose favour a case was decided has the right to be awarded the costs of legal representation and other expenses which it incurred in relation to the case, to be paid by the other party.

B. Proceedings concerning administrative disputes

23. Proceedings concerning administrative disputes – that is to say, disputes between individuals and public administrative entities, or between several public administrative entities, or those concerning the civil service or

elections – are conducted in accordance with the Law on Administrative Proceedings.

24. The Law on Administrative Proceedings provides that the party in whose favour a case was decided has the right to be awarded the costs of legal representation and other expenses which it incurred in relation to the case, to be paid by the other party (from 1 May 1999 to 31 December 2000 that regulation was provided in Article 59 § 1, from 1 January 2001 to 30 June 2016 in Article 44 § 1, and from 1 July 2016 in Article 40 § 1).

C. Criminal proceedings (at the material time and until 30 April 2022)

25. Articles 103 and 104 of the Code of Criminal Procedure provide for reimbursement of procedural expenses to victims, witnesses, experts, specialists and interpreters participating in criminal proceedings.

26. Article 105 establishes the conditions under which expenses incurred by participants in the proceedings may be awarded to be paid by the convicted person, except for expenses related to interpretation, which have to be borne by the State in all cases. Under Article 105 § 5, when the criminal proceedings are discontinued or when the accused is acquitted, the expenses incurred by victims, witnesses, experts or specialists have to be reimbursed by the State.

27. Article 106 § 1 provides that where the suspect, the accused or the convicted person has been granted State-guaranteed legal aid, his or her legal costs have to be borne by the State, whereas in other circumstances those costs have to be borne by the suspect or the accused or convicted person himself or herself.

28. At the material time and until 30 April 2022, the Code of Criminal Procedure did not provide for the reimbursement of costs and expenses incurred by a person who had been acquitted in criminal proceedings or in respect of whom such proceedings had been discontinued.

D. Proceedings concerning administrative-law violations (at the material time and until 30 April 2022)

1. Statutory provisions

29. At the material time and until 31 December 2016, proceedings concerning violations of administrative law were conducted in accordance with the Code of Administrative Law Violations.

30. At the material time, Article 279 of the Code of Administrative Law Violations provided for the reimbursement, from the budget of the court or other entity examining the case, of the expenses incurred by victims, witnesses, experts and interpreters participating in administrative-law violation proceedings.

31. At the material time, Article 302[1] of the Code of Administrative Law Violations provided, *inter alia*, that in cases where a court set aside a decision on an administrative-law violation taken by another entity and discontinued the proceedings, any money or items which had been seized had to be returned and any previously applied restrictions had to be lifted.

32. On 1 January 2017 the Code of Administrative Offences entered into force, and since that date, proceedings concerning violations of administrative law have been conducted in accordance with the provisions of that Code.

33. From its entry into force until 30 April 2022, Article 666 of the Code of Administrative Offences provided that the reimbursement of procedural expenses was to be decided by applying, *mutatis mutandis*, the relevant provisions of the Code of Criminal Procedure.

34. Article 643 of the Code of Administrative Offences lays down essentially the same regulation as that which was previously provided in Article 302[1] of the Code of Administrative Law Violations (see paragraph 31 above).

35. At the material time and until 30 April 2022, neither the Code of Administrative Law Violations nor the Code of Administrative Offences provided for the reimbursement of costs and expenses incurred by a person in respect of whom proceedings concerning a violation of administrative law had been discontinued.

2. Courts' practice

(a) Supreme Administrative Court

36. In a decision of 15 December 2003, in case no. A4-689-03, the Supreme Administrative Court examined a claim against the State lodged by an individual who had been given an administrative fine which had subsequently been annulled. Relying on Articles 6.249 and 6.271 of the Civil Code (see paragraph 20 above), the claimant claimed compensation for his legal costs incurred in the administrative-law violation proceedings. The Supreme Administrative Court firstly held that the fact that a fine had been annulled because the courts had found the evidence to be insufficient did not, in and of itself, constitute grounds to find that the entity or officer who had given that fine had acted unlawfully. It further held that legal costs incurred in administrative-law violation proceedings did not fall within the scope of Articles 6.249 and 6.271 of the Civil Code. Moreover, the Law on Administrative Proceedings was not applicable to proceedings concerning administrative-law violations. Therefore, the question of reimbursement of legal costs incurred in such proceedings had to be decided in accordance with the Code of Administrative Law Violations, which did not provide for reimbursement of legal costs to persons in respect of whom a record of an administrative-law violation had been drawn up (see paragraphs 30 and 35

above). The Supreme Administrative Court further noted that the examination of cases concerning administrative-law violations did not fall within the scope of public administration; therefore, legal instruments which provided for compensation in respect of damage caused in the course of activities of public administration were not applicable in administrative-law violation proceedings. Accordingly, it dismissed the claim.

37. In a decision of 17 September 2007 in case no. A-469-751-07 and a decision of 28 December 2007 in case no. A-556-1197-07, the Supreme Administrative Court reiterated that the fact that an administrative fine had been annulled because the courts had found the evidence to be insufficient did not, in and of itself, constitute grounds to find that the entity or officer who had given that fine had acted unlawfully, and also that the legal costs incurred in administrative-law violation proceedings did not fall within the scope of Articles 6.249 and 6.271 of the Civil Code.

38. In a decision of 14 July 2011 in case no. A-63-2176-11, the Supreme Administrative Court examined a claim against the State lodged by an individual who had been given an administrative fine by the police for a violation of road traffic rules. That fine had subsequently been annulled, and the courts in the administrative-law violation proceedings had found that the police record had not been properly drawn up. The Supreme Administrative Court noted that, according to the well-established case-law of the Constitutional Court, the Constitution required that a person who had sustained pecuniary or non-pecuniary damage as a result of the unlawful actions of other persons or public authorities had to be able to claim compensation. In line with that principle, damage sustained by a person had to be compensated for, despite the fact that such a possibility was not explicitly provided for in the Code of Administrative Law Violations. The Supreme Administrative Court further held that pecuniary damage which a person had sustained in administrative-law violation proceedings had to be compensated for where the conditions laid down in Article 6.271 of the Civil Code had been met, including that the unlawfulness of the actions of public authorities or officials had to be established (see paragraph 20 above). In that case, it was found that the police officers had not properly drawn up the report in respect of fining the claimant. Accordingly, the Supreme Administrative Court concluded that their unlawful actions had been established and that the claimant's legal costs incurred in the proceedings in which he had challenged that decision had to be reimbursed.

39. In a decision of 29 November 2016 in case no. eA-1615-261/2016, the Supreme Administrative Court examined a claim against the State lodged by an individual who had been given an administrative fine by the police, which had subsequently been annulled because the courts had considered the evidence to be insufficient. The Supreme Administrative Court found that, despite the fact that the Code of Administrative Law Violations did not provide for the reimbursement of the legal costs incurred by person

challenging a fine for an administrative-law violation, that Code entitled such a person to use the services of a paid lawyer; therefore, the legal costs incurred had to be reimbursed in line with the "loser pays" principle. The court further stated that the costs of legal defence constituted direct expenses and could amount to damage within the meaning of Article 6.249 of the Civil Code, which had to be reimbursed under Article 6.271 of the Civil Code (see paragraph 20 above). It also reiterated that the Constitution required that a person who had sustained damage as a result of unlawful actions on the part of other persons or public authorities had to be able to claim compensation (see paragraph 38 above). On the basis of those considerations, the Supreme Administrative Court concluded that the claimant's legal costs incurred in the administrative-law violation proceedings had to be reimbursed. The claimant had also sought compensation for non-pecuniary damage, but the Supreme Administrative Court dismissed that part of the claim. It reiterated that the annulment of a fine because of insufficient evidence did not constitute grounds to find that the entity which had imposed that fine had acted unlawfully, and in the case at hand there was no indication that the police officers had been biased or that they had restricted the claimant's fundamental rights.

40. In a decision of 26 June 2018 in case no. A-442-756/2018, the Supreme Administrative Court examined a claim against the State lodged by an individual who had been given an administrative fine by the police. That fine had subsequently been annulled and the courts in the administrative-law violation proceedings had found that the police had not properly followed the relevant procedure. The Supreme Administrative Court reiterated that the legal costs incurred by a person challenging a fine for an administrative-law violation had to be reimbursed in line with the "loser pays" principle (see paragraph 39 above). It also reiterated that the annulment of a fine on the basis of insufficient evidence did not constitute grounds to find that the entity which had given that fine had acted unlawfully. However, in the case at hand, it had been established that the police officers had failed to properly follow the relevant procedure when drawing up the disputed decisions, and thus their unlawful actions had been established and the claimant's legal costs, incurred when he had challenged those decisions, had to be reimbursed under Article 6.271 of the Civil Code.

(b) Supreme Court

41. In a decision of 26 November 2012 in case no. 2AT-17-2012, the Supreme Court examined the question of reimbursement of legal costs in administrative-law violation proceedings. The claimant had been given an administrative fine which had subsequently been annulled by the courts. In those same proceedings, he had asked the courts to order the other party to cover his legal costs. The first-instance court had dismissed that request on the grounds that the law did not provide for such reimbursement, whereas the

appellate court had quashed that decision and awarded the claimant his legal costs, to be paid by the other party (the appellate court's decision was summarised in *Černius and Rinkevičius*, cited above, § 39). The Supreme Court reopened the administrative-law violation proceedings and quashed the appellate court's decision. It held that the Code of Administrative Law Violations did not provide for the reimbursement of legal costs incurred by a person in respect of whom administrative-law violation proceedings had been discontinued (see paragraph 35 above). Such costs could constitute damage, for which compensation could be granted under Article 6.271 of the Civil Code (see paragraph 20 above), but compensation for damage caused by the unlawful actions of public authorities fell outside the scope of administrative-law violation proceedings. Thus, the Supreme Court concluded that the claimant had the right to institute new proceedings before the administrative courts, seeking compensation under Article 6.271 of the Civil Code, and that in the administrative-law violation proceedings his claim for the reimbursement of legal costs should be left unexamined.

E. The Constitutional Court's ruling of 19 March 2021

42. In its ruling of 19 March 2021, the Constitutional Court examined whether Article 302[1] of the Code of Administrative Law Violations (see paragraph 31 above) was compatible with the Constitution, and in particular with the right of access to a court, in so far as it did not provide for the reimbursement of legal costs to a person in respect of whom administrative-law violation proceedings had been discontinued on the grounds that no such violation had been committed.

43. The Constitutional Court referred to the Court's judgment in *Černius and Rinkevičius* (cited above, §§ 68 and 74). In that judgment, the Court had held, *inter alia*, that the Convention was intended to guarantee not rights that were theoretical or illusory but rights that were practical and effective; that the possibility of bringing legal proceedings did not, in and of itself, satisfy all the requirements of Article 6 § 1 of the Convention; that the applicants' intention in going to court had not been to participate in court proceedings as an academic exercise, but rather to obtain a result; that going to court to defend their rights was pointless if in the end they were in a worse situation than they had been before litigating; and that the *ex post facto* refusal to reimburse the applicants' costs had constituted a hindrance of their right of access to a court.

44. The Constitutional Court also referred to its extensive case-law regarding the right of access to a court, in particular that any person who believed that his or her rights had been violated had the right to defend those rights before a court; that the defence of rights had to be practical and effective; that the right of access to a court could not be artificially restricted or its exercise made unjustifiably difficult; and that a person's right to legal

defence, including the right to be defended by a lawyer, could not be denied or restricted on any grounds or by any means (see, for a summary of some of the relevant case-law, *Černius and Rinkevičius*, cited above, §§ 28-30 and 33).

45. In the light of the foregoing, the Constitutional Court concluded that the fact that the Code of Administrative Law Violations did not provide for the reimbursement of legal costs incurred by a person in respect of whom administrative-law violation proceedings had been discontinued on the grounds that no such violation had been committed was not consistent with the right of access to a court guaranteed by the Constitution. In particular, that legal regulation meant that a person who had successfully challenged an administrative fine with the help of a lawyer might find himself or herself in a worse situation than he or she would have been in without having defended his or her rights, which amounted to an unjustifiable burden on the exercise of the right of access to a court.

46. The Constitutional Court also noted that, similarly, Article 106 of the Code of Criminal Procedure did not provide for the reimbursement of legal costs incurred by an acquitted person (see paragraphs 27 and 28 above) and that that regulation was not in compliance with the Constitution either.

F. Legal amendments following the Constitutional Court's ruling of 19 March 2021

47. After the adoption of the Constitutional Court's ruling of 19 March 2021, the provisions of the Code of Criminal Procedure and the Code of Administrative Offences regarding reimbursement of legal costs were amended. The amendments were enacted on 12 April 2022 and entered into force on 1 May 2022.

48. Following the amendment of the Code of Criminal Procedure, Article 106 § 3 states that if a person is acquitted, the court must decide on the reimbursement of his or her legal costs, provided that those costs were necessarily incurred and properly substantiated, and taking into account the circumstances of the case.

49. Following the amendment of the Code of Administrative Offences, Article 666 § 2 provides that if the proceedings against a person are discontinued on the grounds that a violation of administrative law has not been committed, that person's legal costs are to be reimbursed by applying, *mutatis mutandis*, the relevant provisions of the Code of Criminal Procedure.

III. OTHER RELEVANT CASE-LAW OF THE CONSTITUTIONAL COURT

50. In a ruling of 13 December 2004, the Constitutional Court held as follows:

> "Legal instruments (or parts thereof) are considered to be in compliance with the Constitution and legitimate until the moment when, following the procedure established by the Constitution and the Law on the Constitutional Court, they are ruled to be in conflict with the Constitution ... Thus, until the moment when a legal instrument (or parts thereof) ... is ruled to be in conflict with the Constitution ... the legal regulation established therein is compulsory for the subjects of the legal relationship in question."

IV. OTHER RELEVANT LEGAL INSTRUMENTS

51. At the material time, Article 302 § 1 of the Code of Administrative Law Violations provided that a court examining a complaint against a decision on an administrative penalty could take one of the following decisions: (1) to dismiss the complaint and uphold the impugned decision; (2) to quash the decision and discontinue the proceedings; (3) to change the decision and impose a different administrative penalty; (4) to quash the decision and remit the case for additional investigation; (5) to change the decision and impose a more lenient penalty or no penalty at all.

52. At the material time, Article 126 § 4 of the Code of Administrative Law Violations provided, *inter alia*, that driving under the influence of alcohol with a medium level of intoxication (between 1.51 and 2.5 per mille) or a high level of intoxication (2.51 per mille and above) was punishable by a fine of 2,000 to 3,000 Lithuanian litai (approximately EUR 579 to EUR 869) and the withdrawal of the driving licence for a period of two to three years, or by ten to thirty days' administrative detention and the withdrawal of the driving licence for a period of two to three years.

53. At the material time, the Rules on determining the level of intoxication of persons driving motor vehicles and other persons, adopted by the government on 12 May 2006 and subsequently amended several times, provided, *inter alia*, that a person who disagreed with the results of an alcohol test administered by the police had the right to present himself or herself at a healthcare facility and carry out a medical examination at his or her own expense (point 27).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant complained that his right to effectively defend himself had been violated on account of the fact that the costs and expenses which he had incurred in the administrative-law violation proceedings had not been reimbursed. He relied on Article 6 § 1 of the Convention.

The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the main issue arising in the present case is whether the lack of the

reimbursement of the applicant's costs and expenses was compatible with the right of access to a court guaranteed under Article 6 § 1 of the Convention.

That provision reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

55. At the outset, the Court considers it necessary to determine whether the present case falls to be examined under the civil or the criminal limb of Article 6 of the Convention. It reiterates that the applicability *ratione materiae* of the Convention defines the scope of the Court's jurisdiction. Therefore, it is not prevented from examining this question of its own motion (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 71, 13 December 2016, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 59, 3 November 2022).

56. The applicant was involved in two sets of proceedings before the domestic courts: administrative-law violation proceedings, in which he challenged the penalty imposed on him for driving under the influence of alcohol, and civil proceedings, which he instituted against the State, seeking reimbursement of his costs and expenses incurred in the administrative-law violation proceedings.

57. In a number of previous cases, the Court has found that road-traffic offences punishable by fines or driving restrictions fell within the scope of the criminal limb of Article 6 of the Convention, irrespective of their classification under domestic law, in view of the general character of the legal provisions regulating such offences and the fact that the penalties served a purpose which was both deterrent and punitive (see *Lutz v. Germany*, 25 August 1987, §§ 51-55, Series A no. 123; *Malige v. France*, 23 September 1998, §§ 35-40, *Reports of Judgments and Decisions* 1998-VII; and *Igor Pascari v. the Republic of Moldova*, no. 25555/10, §§ 20-23, 30 August 2016).

58. However, in the present case, the applicant did not complain about the fairness of the proceedings concerning the administrative-law violation of driving under the influence of alcohol. Instead, he complained about the fact that, after those proceedings had been terminated, he had not been reimbursed for his costs and expenses (see, *mutatis mutandis*, *Topolovčan v. Croatia* (dec.), no. 67405/10, §§ 19-22, 11 December 2012). The Court is mindful that the costs at issue originated in proceedings which fell under the criminal limb of Article 6 (see the Government's argument in paragraph 66 below). However, it considers that the core of the applicant's complaint concerned a pecuniary claim, which is "civil" in nature (see *Leuska and Others v. Estonia*, no. 64734/11, § 51, 7 November 2017, and *Kamenova v. Bulgaria*, no. 62784/09, § 41, 12 July 2018). At the same time, having in mind that the

outcome of the administrative-law violation proceedings, which fell within the scope of the criminal limb of Article 6 (see paragraph 57 above), was the decisive factor concerning the applicant's pecuniary expectations, the Court is of the view that this "civil limb" of the proceedings remained closely linked to the criminal limb (see, *mutatis mutandis*, *Topolovčan*, cited above, § 19).

59. The Court has consistently held that the Convention does not grant a person who is "charged with a criminal offence" but subsequently acquitted a right to reimbursement of costs incurred in the course of criminal proceedings against him or her, however necessary those costs might have been (see *Lutz*, cited above, § 59; *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327 A; *Yassar Hussain v. the United Kingdom*, no. 8866/04, § 20, ECHR 2006 III; *Ashendon and Jones v. the United Kingdom* (revision), nos. 35730/07 and 4285/08, § 49, 15 December 2011; and *Allen v. the United Kingdom* [GC], no. 25424/09, § 98 (c), ECHR 2013; see also the Government's submissions in paragraph 67 below). It follows that the question whether such a right can be said to exist in any particular case must be answered solely with reference to domestic law (see *Masson and Van Zon*, cited above, § 49).

60. At the material time, the Code of Administrative Law Violations did not provide for the reimbursement of costs and expenses incurred by a person in respect of whom proceedings concerning a violation of administrative law had been discontinued (see paragraph 35 above). However, the Supreme Administrative Court, relying on the case-law of the Constitutional Court and the principle "loser pays", recognised that such costs had to be reimbursed (see paragraphs 38-40 above). The Court observes that the reimbursement of costs and expenses was not an automatic consequence of the discontinuation of administrative-law violation proceedings but it had to be established that the relevant public authorities or officials had acted unlawfully. It also observes that there appeared to be some inconsistency in the practice of the administrative courts as to whether the very fact that the administrative-law violation proceedings had been discontinued was sufficient to find such unlawfulness (see paragraphs 38-40 above). Be that as it may, the Court is satisfied that the right for persons in respect of whom administrative-law violation proceedings had been discontinued on the grounds that no such violation had been committed could arguably be said to be recognised by the Lithuanian law, and the fact that the exercise of that right was subject to certain conditions does not lead to a different conclusion. Accordingly, it finds that Article 6 § 1 of the Convention is applicable in the present case under its civil head.

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

B. Merits

1. The parties' submissions

(a) The applicant

62. The applicant submitted that the absence of the possibility of having his costs and expenses reimbursed had interfered with his ability to defend his rights: despite the fact that the decisions in the administrative-law violation proceedings had been in his favour, he had had to bear the financial burden of challenging the administrative fine. He contended that such legal regulation put individuals and public authorities in unequal positions. He also argued that the right to have one's costs and expenses reimbursed should not depend on the unlawfulness of the officers' actions.

63. Moreover, the applicant argued that, in his case, the police officers who had given him a fine for driving under the influence of alcohol had, in fact, acted unlawfully (see paragraph 14 above). He also contended that the case-law of the administrative courts was inconsistent, as there had been cases in which those courts had awarded claimants their legal costs for the sole reason that the administrative-law violation proceedings had been discontinued, without requiring any additional proof of unlawful actions on the part of other persons or public authorities (see paragraph 39 above).

64. The applicant disputed the Government's argument that the Court's judgment in *Černius and Rinkevičius v. Lithuania* (nos. 73579/17 and 14620/18, 18 February 2020) should be distinguished from the present case (see paragraph 66 below) and asked the Court to reach the same conclusions as in that case. He argued that the conclusions reached in *Černius and Rinkevičius* should be applicable to all administrative-law violation proceedings, irrespective of the particular violation, as finding otherwise would create an unfair distinction between persons based on the administrative-law violation which was imputed to them.

65. Lastly, he contended that the judgment in *Černius and Rinkevičius* had not ruled out the possibility that the domestic courts could refuse to award legal costs which were excessive or unreasonable; however, no such proportionality assessment had been made in his case.

(b) The Government

66. At the outset, the Government submitted that the present case should be distinguished from *Černius and Rinkevičius* (cited above). Firstly, that case had concerned the civil limb of Article 6 § 1 of the Convention (ibid., § 50), whereas in the Government's view, the present case fell under the criminal limb of that provision. Secondly, they submitted that, in contrast to *Černius and Rinkevičius*, the present applicant had been given not only a monetary fine, but had also risked having his driving licence withdrawn for two years (see paragraph 9 above); thus, they contended that the applicant's

litigation costs had not substantially exceeded the consequences which he would otherwise have suffered. Accordingly, the Government argued that the conclusions which the Court had reached in *Černius and Rinkevičius* could not simply be transposed to the present case and that there was a need for the Court to clarify how the principles set out in that case would apply in the context of proceedings that were considered "criminal" under Article 6 § 1 of the Convention.

67. The Government further submitted that, according to the Court's case-law, the Convention did not guarantee a person who was charged with a criminal offence and subsequently acquitted a right to reimbursement of the costs incurred in the course of criminal proceedings against him or her, however necessary those costs might have been (the Government referred to, among other authorities, *Masson and Van Zon* and *Ashendon and Jones*, both cited above). The Government also referred to *Shimidzu and Berllaque v. the United Kingdom* ((dec.), no. 648/06, 30 March 2010), in which the Court had found that to interpret Article 6 as including the right to reimbursement of legal costs in criminal proceedings would be in conflict with Article 6 §§ 1 and 3 (c), which guarantees free legal assistance to those without sufficient means to pay for it. In that case, the Court had concluded that the inclusion of that guarantee in Article 6 had to imply that a trial would not be unfair simply because a State required those with sufficient means to pay for their own representation.

68. Accordingly, the Government contended that the question whether a right to reimbursement or compensation existed in a particular case had to be answered solely with reference to domestic law. They submitted that neither the Code of Civil Procedure nor the Law on Administrative Proceedings were applicable when examining the issue of reimbursement of legal costs in administrative-law violation proceedings. That issue had to be decided solely in accordance with the Code of Administrative Law Violations, which had not, at the material time, provided for the reimbursement of legal costs to persons in the applicant's situation (see paragraph 35 above).

69. The Government submitted that a requirement to reimburse the legal costs in all administrative-law proceedings, and by extension also in criminal proceedings, would impose a disproportionate financial burden on the State.

70. Furthermore, they stated that, in the present case, the applicant had been able to defend his rights effectively before a court, with the help of a lawyer of his own choosing, and if he had not had sufficient funds to hire a lawyer, he would have had the right to receive State-guaranteed legal aid. Lastly, domestic law provided for the possibility of awarding compensation for any damage caused by unlawful actions of public authorities (see paragraph 20 above). However, no such unlawful actions had been identified in the applicant's case because the mere fact that an administrative fine had subsequently been annulled by the courts did not mean that the officers who imposed it had acted unlawfully.

2. The Court's assessment

(a) Preliminary considerations

71. At the outset, the Court observes that the Constitutional Court of Lithuania, in a ruling of 19 March 2021, found that the domestic legal regulation which had been in force at the material time was not compatible with the right of access to a court guaranteed by the Constitution (see paragraphs 42-46 above). As a result, the domestic law has been amended: since 1 May 2022 it has provided that persons who have been acquitted in criminal proceedings, as well as those in respect of whom administrative-law violation proceedings have been discontinued on the grounds that no such violation was committed, have the right to have their legal costs reimbursed; there is no longer a requirement to demonstrate the unlawfulness of the authorities' actions (see paragraphs 47-49 above). Therefore, the current Lithuanian legal regulation resembles that of many of the Contracting States whose domestic legal systems the Court has previously had occasion to survey, where compensation is essentially automatic following a finding of not guilty, the quashing of a conviction or the discontinuation of criminal proceedings (see, for a summary of the relevant comparative law, *Allen*, cited above, § 76).

72. At the same time, the Court notes that the mere fact that the relevant domestic law was later amended does not give grounds to question its legitimacy at the time when it was applied in respect of the applicant (see, *mutatis mutandis*, *Kosaitė-Čypienė and Others v. Lithuania*, no. 69489/12, § 110, 4 June 2019, and *Galakvoščius v. Lithuania* (dec.), no. 11398/18, § 60, 7 July 2020; see also the case-law of the Constitutional Court cited in paragraph 50 above to the effect that a legal instrument is presumed to be in compliance with the Constitution and therefore valid until the Constitutional Court declares it to be otherwise).

73. In this connection, the Court reiterates that it is not its task to express a view on whether the policy choices made by the Contracting Parties with regard to access to a court are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the Convention. Therefore, what the Court needs to ascertain in the present case is whether the application of the rule which was in force at the material time hindered the applicant's right of access to a court and was therefore incompatible with Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Dragan Kovačević v. Croatia*, no. 49281/15, § 69, 12 May 2022, concerning the reimbursement of legal costs incurred in the proceedings before the Constitutional Court).

(b) General principles on the right of access to a court

74. The general principles on the right of access to a court were summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018, and the cases cited therein).

75. In particular, the Court reiterates that the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is not part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., § 78, and the cases cited therein).

(c) Application of the above principles in the present case

(i) Whether the applicant's right of access to a court was restricted

76. The Court notes that the applicant had the possibility of instituting court proceedings and challenging his administrative liability. However, it has previously held that this could not be considered to satisfy, in and of itself, all the requirements of Article 6 § 1 of the Convention, taking account of the fact that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Černius and Rinkevičius*, cited above, § 68, and the case-law cited therein).

77. In a number of previous cases, the Court found that there had been a restriction on the applicants' right of access to a court where, after the conclusion of proceedings, they had been ordered to pay a considerable amount in court fees (see *Stankov v. Bulgaria*, no. 68490/01, § 54, 12 July 2007) or to reimburse the costs incurred by the other party (see *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013), or where the applicants' own requests for the reimbursement of their legal costs had been refused (see *Černius and Rinkevičius*, cited above, § 68). It sees no reason to reach a different conclusion in the present case.

78. Accordingly, the Court finds that the obligation for the applicant to bear the costs of his legal defence and his other expenses incurred in the proceedings, despite having obtained a court decision in his favour, amounted to a restriction on his right of access to a court.

(ii) Whether the restriction pursued a legitimate aim

79. The Court acknowledges that public interest-related financial considerations may sometimes play a part in the State's policy to decrease State expenses (see *Černius and Rinkevičius*, cited above, § 69, and the cases cited therein). Taking account of the Government's argument concerning the financial burden that an obligation to reimburse defendants' legal costs in administrative-law proceedings would impose on the State (see paragraph 69 above), it accepts that the impugned restriction pursued a legitimate aim.

(iii) Whether the restriction was proportionate to the aim pursued

80. The Court considers that in order to determine whether, in the circumstances of the present case, the impugned interference amounted to a disproportionate restriction of the applicant's right of access to a court, the relevant criteria are: the importance of what was at stake for the applicant in the proceedings, the complexity of the relevant law and procedure, and his personal situation (see, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 61, ECHR 2005-II; *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 48, 20 December 2007; and *Dragan Kovačević*, cited above, §§ 79-80).

81. What was at stake for the applicant in the administrative-law violation proceedings was a monetary fine of EUR 579 and the withdrawal of his driving licence for two years (see paragraph 9 above). The Court is prepared to accept that those proceedings, in particular as concerns the latter measure, were of considerable importance to him (see *Malige*, cited above, § 39, and *Varadinov v. Bulgaria*, no. 15347/08, § 39, 5 October 2017).

82. At the same time, the Court is unable to find that the proceedings were particularly complex. They concerned a single question of fact – whether or not it had been credibly established that the applicant had driven under the influence of alcohol. The police relied on the results of the breathalyser test, whereas the applicant relied on the blood test, and the courts had to determine which of those pieces of evidence should be given greater weight (see paragraphs 4-6 above). The applicant did not contend, for example, that in order to effectively defend himself, he needed the services of a lawyer specialising in a certain field (contrast *Černius and Rinkevičius*, cited above, § 70), nor did he make any other arguments with regard to the complexity of the proceedings.

83. The Court further notes that in the administrative-law violation proceedings the applicant incurred a total of EUR 1,502 in costs and expenses, consisting of lawyer's fees and the cost of the DNA analysis (see paragraph 13 above). He did not allege, either in the domestic proceedings or in his submissions before the Court, that the payment of that amount had imposed a disproportionate burden on him in view of his financial situation (see, *mutatis mutandis*, *Derbuc and Others v. Croatia* (dec.), nos. 53977/14

and 41902/15, § 36, 15 March 2022; contrast *Dragan Kovačević*, cited above, § 80). Moreover, in view of the fact that in those proceedings he risked not only a monetary fine but also the withdrawal of his driving licence for two years, it cannot be considered that the domestic courts' refusal to reimburse him made his going to court to defend his rights pointless or that in the end he was in a worse situation than he had been before litigating (compare and contrast *Černius and Rinkevičius*, cited above, § 68; compare also *Stankov*, § 58, and *Klauz*, § 92, both cited above).

84. Lastly, as the Court has already noted, at the material time, domestic law provided for the reimbursement of legal costs incurred in administrative-law proceedings only in cases in which it was established that the relevant public authorities or officials had acted unlawfully (see paragraphs 20, 38, 40 and 41 above, although there appeared to be some inconsistency in the domestic case-law as to what constituted such unlawfulness – see the case summarised in paragraph 39 above). In the applicant's case, the courts which rejected his claim found that the police officers had acted within their remit when stopping him, administering the breathalyser test and drawing up a record of an administrative-law violation on the basis of the results of that test, and that the subsequent evidence by which the applicant refuted the charge of driving under the influence of alcohol did not render their actions at the time of the incident unlawful (see paragraphs 16-18 above). The Court, taking account of the rather unusual circumstances of the incident in question and the applicant's own actions which substantially contributed to the decision of the police to fine him (see paragraph 6 above), is unable to find that he was made to bear the mistakes of the State authorities (see *Zustović*, cited above, § 100, and the cases cited therein) or that the domestic courts' findings to that effect might be characterised as manifestly erroneous or arbitrary (see, *mutatis mutandis*, *Rupp v. Germany* (dec.), nos. 60879/12 and 2 others, §§ 55-58, 17 November 2015).

85. In the light of all the above-mentioned considerations, the Court has no grounds to find that, in the circumstances of the present case, the fact that the applicant had to bear his own costs in the administrative-law violation proceedings restricted his right of access to a court to such an extent as to impair the very essence of that right.

86. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kūris is annexed to this judgment.

A.B.
H.B.

CONCURRING OPINION OF JUDGE KŪRIS

1. My views differ from those of the majority not with regard to the outcome of the case, with which I agree, but with regard to the angle from which the applicant's complaint under Article 6 § 1 has been examined.

I

2. The applicant was involved in two sets of proceedings: (i) administrative-law violation proceedings, in which he challenged the fine imposed on him (and the loss of his driving licence, a sanction which is not discussed in this opinion), and (ii) civil proceedings, in which he sought reimbursement of the legal costs incurred in the first set of proceedings. He complained about the outcome of the second set of proceedings, namely, the non-reimbursement of the legal costs he had incurred in the administrative-law violation proceedings. The majority have held that this complaint falls under the civil limb of Article 6, in view of the pecuniary, and therefore civil, nature of this claim, despite the fact that the administrative-law violation proceedings in question were of a criminal nature within the autonomous meaning of the said Article.

3. The applicant phrased his complaint as an allegation that there had been a violation of his "right to effectively defend himself, contrary to Article 6 § 1", but, as rightly noted by the Chamber, he complained not about the fairness of the administrative-law violation proceedings, but rather about the fact that, after those proceedings had been terminated, his legal costs were not reimbursed. His "right to effectively defend himself", as he perceived it, constitutes one aspect of his broader right of access to a court. The Chamber, to the extent that it has examined this case in terms of "access to a court", has faithfully followed the Court's case-law to the effect that, where, despite court decisions in their favour, applicants' claims for reimbursement of their legal costs are refused, there has been a restriction on their right of access to a court. Plainly and simply, access to a court is inhibited if it is financially more disadvantageous to apply to a court than not to apply.

4. As convincingly demonstrated by such authors as Daniel Kahneman and Amos Tversky, human beings tend to avoid risks; when faced with the need to make a decision in conditions of uncertainty, they prefer to choose a guaranteed "win" of smaller value over one of greater value, if the latter encompasses an element of risk. A high risk that legal costs might not be reimbursed may induce them to avoid the attendant feeling of insecurity by resigning themselves to a controllable loss, even if they perceive the situation as unjust.

5. It is only natural (not to mention guaranteed by the Convention) that an individual on whom a fine has been imposed by any authority or official may consider challenging this imposition in a court, alleging that it is unlawful. If

this individual is able to prove the unlawfulness of the measure, he or she should be absolved from the obligation to pay the fine. In such a scenario that individual would consider it as only just that his or her legal costs be reimbursed (to the extent that they were reasonable). But if the potential litigant is uncertain about such reimbursement (far less certain of *non*-reimbursement), he or she will think twice before applying to a court and will have to choose between two options: either (i) to challenge the imposition of a fine or (ii) to leave things as they stand. The rational choice of one option over the other will depend on a weighing up of costs, as explained in numerous publications on the economic analysis of law and the psychology of decision-making. The first option would be chosen where legal costs, even if not reimbursed, are lower than the fine that is lifted, and the second option would be chosen where it would be financially disadvantageous for the individual to litigate, because the residual legal costs, that is, those costs which are either not reimbursed or remain payable after partial reimbursement, exceed the fine. In the latter scenario, success in court would still amount to a financial loss for the litigant and, if that loss is significant, this victory would be no more desirable than the Pyrrhic victory of a proverbial eccentric who "unexpectedly won" a contest to lean further than his competitors out of the window of a skyscraper. Needless to say, the rational choice falls on the second option if the potential applicant is certain that, under the applicable legislation and judicial practice, his legal costs will not be reimbursed.

What is decisive in favouring one choice over the other is the amount of financial loss which would be sustained in a case where the residual legal costs incurred by the litigant are higher than the fine. This is a "lose-lose" situation, and the rational choice between the two options is a bargain-basement one.

6. Speaking of the reimbursement of legal costs incurred in criminal proceedings, the Convention, for good or, more likely, for ill, allows for the above "lose-lose" situation. The Court has consistently held that the Convention does not grant a person who is charged with a criminal offence but is subsequently acquitted a right to reimbursement of costs incurred in criminal proceedings against him or her, however necessary those costs might have been (see *Lutz v. Germany*, 25 August 1987, § 59, Series A no. 123; *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A; *Yassar Hussain v. the United Kingdom*, no. 8866/04, § 20, ECHR 2006-III; *Shimidzu and Berllaque v. the United Kingdom* ((dec.), no. 648/06, 30 March 2010; *Ashendon and Jones v. the United Kingdom* (revision), nos. 35730/07 and 4285/08, § 49, 15 December 2011; and *Allen v. the United Kingdom* [GC], no. 25424/09, § 98 (c), ECHR 2013).

II

7. As correctly reiterated in the judgment, the question whether there exists in a particular case a right to reimbursement of costs incurred in criminal proceedings must be answered solely with reference to domestic law.

8. In the present case, the respondent Government have demonstrated that important changes were introduced into Lithuanian legislation in 2022. However, even before those changes, Lithuanian statutory law was following the trend characteristic of a number of member States and already noted by the Court, to the effect that "compensation is essentially automatic following a finding of not guilty, the quashing of a conviction or the discontinuation of proceedings" (see *Allen*, cited above, § 76). At the same time, the Court has always presumed that it is within the margin of appreciation of member States to opt for, in its own words (ibid.) "compensation schemes", which may be "far more generous" than those in other countries and it has never perceived that trend as an embodiment of Convention requirements (in *Allen* it found no violation of Article 6 § 2).

9. In Lithuania, reimbursement of legal costs incurred in criminal proceedings was possible even under the previous statutory regulations. It was, however, conditional, that is, dependent on whether or not the authorities' or officials' actions had been lawful. If they were unlawful, the imposed sanction had to be quashed and the litigant's claim for reimbursement of legal costs had to be satisfied; if they were lawful, the unsuccessful litigant paid, irrespective of whether the sanction was maintained. In the present case the Chamber, like the domestic courts, did not discern anything unlawful in the actions of the police officials and other authorities, particularly given the applicant's own substantial contribution to his predicament. I agree with this assessment.

10. The above-mentioned statutory amendments were adopted in the wake of the Constitutional Court's ruling of 19 March 2021. The Constitutional Court held that one provision of the Code of Administrative Law Violations was not in compliance with the right of access to a court, guaranteed by the Constitution, in so far as it did not provide for reimbursement of legal costs to persons who had been acquitted. In 2017, that is, already after the events examined in the present case, the Code of Administrative Law Violations was replaced by the Code of Administrative Offences. The latter text referred to the Code of Criminal Procedure, which was to be applied, *mutatis mutandis*, in deciding on claims for reimbursement of legal costs. The Constitutional Court *ex proprio motu* also found unconstitutional the relevant provision of the Code of Criminal Procedure, because it too failed to provide for reimbursement of legal costs to persons who had been acquitted. As of 1 May 2022, persons acquitted in criminal proceedings, as well as persons in respect of whom administrative-law

violation proceedings have been discontinued on the grounds that no such violation was committed, are entitled to have their legal costs reimbursed (to the extent that they were necessarily incurred and properly substantiated). It is no longer necessary for such litigants to demonstrate the unlawfulness of the authorities' or officials' actions.

11. The Constitutional Court relied heavily on the Court's judgment in *Černius and Rinkevičius v. Lithuania* (nos. 73579/17 and 14620/18, 18 February 2020). In that case, the applicants had received administrative fines for labour-law violations. They successfully challenged the fines before a court, but were refused reimbursement of their legal costs. The Court examined that case under the civil limb of Article 6 and found a violation of the applicants' right of access to a court, particularly in view of the fact that their legal costs had been several times greater than the fines which had been annulled, with the result that the applicants were ultimately in a worse situation than they would have been without litigating.

12. At the same time, the Constitutional Court, although drawing heavily on *Černius and Rinkevičius* (cited above), made no distinction whatsoever in its 2021 ruling between legal costs incurred in civil and in criminal proceedings. The case under its examination concerned the contestation of a fine imposed for alleged driving under the influence of alcohol (and was thus comparable to the present case), which fell within the scope of the domestic law on administrative violations and which would fall under the criminal limb of Article 6. The Constitutional Court's findings of unconstitutionality extended also to the legislation on criminal procedure, on account of the fact that, under the domestic legislation, claims for reimbursement of legal costs in cases concerning administrative-law violations were to be decided upon in accordance with the provisions of the Code of Criminal Procedure.

13. Accordingly, the statutory amendments adopted in the wake of the Constitutional Court's ruling expanded the possibilities for reimbursement of legal costs incurred in the most diverse types of criminal proceedings. These possibilities not only follow the above-mentioned trend but solidify it further, and even surpass it. However, as rightly reiterated by the Chamber, the Court's task is not to express a view on whether or not the policy choices made domestically with regard to access to a court are appropriate, but to determine whether their choices in this area produce consequences that are compatible with the Convention. In my opinion, nothing in this judgment should be interpreted in such a way as to discourage the protection of the right of access to a court from being extended beyond Convention requirements.

14. Still, it remains open whether or not the statutory amendments adopted by the Lithuanian parliament went even further than what was required by the Constitutional Court's ruling. Be that as it may, it is not for the Strasbourg Court to provide any answer to that question.

What is essential is that the 2022 statutory amendments were introduced too late to be of any avail to the present applicant. The domestic proceedings

at issue took place in 2014-19, and the application was lodged with the Court in August 2019. Although the statutory provisions which were applied in this case, providing for no reimbursement of legal costs to persons who had been acquitted, were subsequently found not to have been in compliance with the Constitution, under Lithuanian law (as interpreted by the Constitutional Court as far back as 2004) a legal instrument is presumed to be in compliance with the Constitution and therefore valid until such time as the Constitutional Court declares it otherwise.

III

15. In Article 6 § 1, only the "determination of [a person's] civil rights and obligations" and "of any criminal charge" is mentioned. Other proceedings are left outside the ambit of this provision. Consequently, in order for the proceedings concerning reimbursement of legal costs to be examined by the Strasbourg Court, they must concern either the "determination of [one's] civil rights and obligations" or "of any criminal charge". If this condition is not met, the complaint should be declared incompatible *ratione materiae* with Convention provisions and therefore inadmissible. While at times this appears to be problematic (where the impugned measure concerns neither "civil rights and obligations", nor a "criminal charge"), in many cases the issue under consideration oscillates only between these two poles, and the Court must determine whether the complaint under consideration falls under the civil or the criminal limb of Article 6. In the present case the issue is not whether Article 6 is applicable to the applicant's complaint, but whether it is applicable under its civil or criminal limb.

16. The majority have held that the applicant's complaint falls under the civil limb of Article 6, because its "core" concerned a pecuniary claim, which is civil in nature. This approach was decisive in qualifying the applicant's complaint as one which must be examined under the civil limb of Article 6.

I disagree.

In my opinion, the applicant's complaint should have been examined under the criminal limb of this Article.

The applicability of Article 6 under its criminal limb may be substantiated as follows.

17. While the applicant disagreed with the outcome of the civil proceedings, he did not allege that in those proceedings there had been any procedural shortcomings or that they had been unfair for any other reason (compare and contrast *Topolovčan v. Croatia* (dec.), no. 67405/10, §§ 14 and 22, 11 December 2012; *Rupp v. Germany* (dec.), nos. 60879/12 and 2 others, §§ 53-58, 17 November 2015; and *Makrylakis v. Greece*, no. 34812/15, §§ 27 and 48, 17 November 2022). The core of his complaint concerned the state of the domestic law at the material time, namely, the fact that it provided for

only a limited possibility of reimbursement of the legal costs incurred by persons in respect of whom administrative-law violation proceedings had been discontinued. Accordingly, although I am mindful of the pecuniary aspect of the applicant's complaint, the main issue arising in the present case relates to the applicant's right to defend himself in the administrative-law violation proceedings and thus to his access to a court in that case. As a result, the question of whether the case falls to be examined under the civil or the criminal limb of Article 6 of the Convention has to be answered with reference to those proceedings (for a similar approach, see *Černius and Rinkevičius v. Lithuania*, cited above, § 50).

18. The offence imputed to the applicant, of driving under the influence of alcohol, was classified under domestic law as an administrative-law violation. The Court has previously considered different violations provided in the Lithuanian Code of Administrative Law Violations to fall either under the criminal limb of Article 6 (see *Kuzmickaja v. Lithuania* (dec.), no. 27968/03, 10 June 2008, and *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, §§ 53-61, 4 November 2008; see also *Šimkus v. Lithuania*, no. 41788/11, §§ 41-45, 13 June 2017, which was examined under Article 4 § 1 of Protocol No. 7) or under the civil limb of that Article (see *Černius and Rinkevičius*, cited above, § 50) on the basis of their nature and the applicable penalties.

19. In this connection, as the majority does not fail to note, the Court has found in a number of previous cases that road-traffic offences punishable by fines or driving restrictions fell within the scope of the criminal limb of Article 6 of the Convention, irrespective of their classification under domestic law, in view of the general character of the legal provisions regulating such offences and the fact that the penalties served a purpose which was both deterrent and punitive. References are made to the relevant paragraphs of *Lutz v. Germany*, cited above; *Malige v. France*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VII; *Igor Pascari v. the Republic of Moldova*, no. 25555/10, 30 August 2016; and *Marčan v. Croatia*, no. 40820/12, 10 July 2014, and the cases cited therein.

20. Similarly to these cases, the legal provision applied in the present case, that is, Article 126 § 4 of the Code of Administrative Law Violations, was directed at all citizens rather than a group possessing a special status, and its primary aims were punishment and deterrence, which are recognised as characteristic features of criminal penalties (see, *mutatis mutandis*, *Šimkus*, cited above, § 43, and the cases cited therein). Moreover, at the material time, driving under the influence of alcohol with a medium or high level of intoxication, the offence imputed to the applicant, was punishable by, *inter alia*, administrative detention. Although the applicant was not given the penalty of detention, what should have been decisive for determining the applicability of the criminal limb of Article 6 § 1 is the potential penalty rather than that actually imposed (see *Igor Pascari*, cited above, § 22).

21. In the light of the foregoing, I am of the opinion that Article 6 § 1 should have been applied in the present case under its criminal limb.

IV

22. More generally, it is only logical that proceedings concerning the reimbursement of legal costs are inherently linked to the proceedings in which they were incurred. What is central for determining the nature of a first set of proceedings is the importance of what was at stake for the person who took part in them. And that was nothing other than a specific right which he or she considered to have been violated. The costs which such a person would incur and for which, if he or she won the case in a court, reimbursement would be requested are those related to the defence of that particular right. As mentioned, a rational potential litigant who is uncertain that those legal costs would not be lower than the damage sustained by him or her because of the alleged violation (let alone one who is certain that they will not be reimbursed) would refrain from applying to a court, in which case that particular right would remain undefended. The certainty of reimbursement of legal costs affects a potential litigant's ability effectively to access a court – the court which decides on the right which he or she wished to defend in the original proceedings.

23. Thus, the Court's finding that there has been a violation of the right of access to a court would mean that the right which has been violated is the right of access to a court in the original proceedings. It is this right which had to be secured by the reimbursement of legal costs, and not some "new", autonomous right of access to a court regarding the reimbursement of legal costs. The point is that the right of access to a court regarding the reimbursement of legal costs has not been violated in any way, because the applicant had access to a court, to which he presented his pecuniary claim, and had made use of that right, albeit unsuccessfully.

24. As to the second set of proceedings, they do not occur "in and of themselves", as if the applicant, with nothing better to do, seeks a dubious pleasure in litigating. The second set of proceedings are intrinsically related to and, thus, a "continuation" of the first set of proceedings, that is, the proceedings which concern the right asserted and defended by the applicant. They are not freestanding. Their nature is determined by the nature of the first proceedings.

25. To compare, when a criminal (in the autonomous meaning of Article 6) sanction imposed on an applicant is found to have violated his or her right of access to a court because a case was not decided within a reasonable time, or by a court or tribunal which was not impartial or not established by law, and so on, his or her claim for reimbursement of the legal costs incurred in those criminal proceedings is nothing other than a claim that the right of an access to a court in those criminal proceedings must be not

inhibited, but instead secured. It would be preposterous to assert that, after the finding of a violation of his or her right as guaranteed by Article 6 under its criminal limb, this right somehow transforms itself into a "new" right to be defended under the civil limb of the same Article. It is unclear when and under what conditions such a metamorphosis could take place.

26. If the first set of proceedings concerned the "determination of [one's] civil rights and obligations", the right to have the legal costs incurred in those first proceedings reimbursed is intended to secure that right of access to a court in the "determination of [one's] civil rights and obligations". Consequently, the respective complaint should be examined under the civil limb of Article 6 § 1. This is the methodology that the Court not only employed, but also elucidated, in *Černius and Rinkevičius* (cited above, § 50).

However, if the first set of proceedings were criminal in the autonomous meaning of Article 6 § 1 (even if, as in the present case, they are not qualified as criminal under the domestic law), then the right to have the legal costs incurred in the first set of proceedings reimbursed is a "continuation" of the right of access to a court in the "determination ... of criminal charge". *Ergo*, the respective complaint must be examined under the criminal limb of Article 6 § 1, because the right to have legal costs reimbursed is part of the right of access to a court, which otherwise may remain theoretical and illusory.

To reiterate, what is decisive for the angle from which the complaint regarding the reimbursement of legal costs must be examined is the nature of the first proceedings.

This is somewhat reminiscent of the Midas touch.

27. In *Černius and Rinkevičius* the applicants' complaints were examined under the civil limb of Article 6 not because their "core" complaint concerned a pecuniary claim, but because the first set of proceedings were of a civil nature both under domestic law and according to the Court's methodology. In that case the "pecuniary nature of the dispute" was not a decisive but an additional criterion for examining these complaints under the civil limb of that provision (ibid., § 50).

This was the touch of "civil King Midas".

In contrast, the present case originated in administrative-law violation proceedings which are qualified as falling under the criminal limb of Article 6. The applicant's claim regarding the second set of proceedings was not of a different nature from that in the first set of proceedings, even if it has a second, "weaker" and non-determinative aspect of being pecuniary in nature.

This should have been enough to put "criminal King Midas" to work.

One might wonder whether the majority have misunderstood *Černius and Rinkevičius*. Without going into this futile speculation, it is hard not to notice that, in the present case, the approach taken in *Černius and Rinkevičius* has been abandoned.

28. What have indeed been misunderstood by the majority are the two cases from which they have imported the idea that the "core" of the present applicant's complaint is civil in nature. These two cases are *Leuska and Others v. Estonia* (no. 64734/11, 7 November 2017) and *Kamenova v. Bulgaria* (no. 62784/09, 12 July 2018). The essential difference between the present case on the one hand, and *Leuska and Others* and *Kamenova* on the other, is that the applicants in the latter two cases were not the persons against whom criminal charges had been brought and who had been acquitted or in respect of whom criminal proceedings had been discontinued. They were victims of the criminal activities of other persons. It is in that capacity that they had brought civil claims in criminal proceedings against the alleged perpetrators of criminal offences.

Given that they are so different in this respect, these two cases are the least apt to be relied upon in the present case.

29. Moreover, in a number of jurisdictions claims for the reimbursement of legal costs may be lodged in the same, rather than in a separate, set of criminal proceedings.

It seems undisputed that the possibility of reimbursement of an applicant's legal costs will affect his or her ability effectively to access the court deciding on his or her rights in single proceedings, so long as the costs are reimbursed within those first and sole set of proceedings and without the need to institute separate proceedings. Indeed, it would be very strange to hold that one part of the applicant's claim, by which he or she challenges the measure imposed, constitutes an element of the right of access to a court which falls under the criminal limb of Article 6, whereas another part, by which it is requested that the legal costs necessary to defend oneself in those criminal proceedings be reimbursed, is an element of the same right which falls under the civil limb of the same Article.

It is difficult to see why the approach should be any different in those legal systems in which two sets of proceedings take place, because, as noted above, the second set of proceedings are intrinsically related to and thus a "continuation" of the first set of proceedings, and not something which occurs "in and of themselves" and are freestanding.

30. It appears that the majority have been mindful of the fact that splitting the right of access to a court into two parts, one being a right of access to a court proper, and the other a right not to be subjected to financial disincentives to apply to a court, is artificial. Thus, following *Topolovčan* (cited above, § 19), they have considered it important to point out that the outcome of the administrative-law violation proceedings, which fell within the scope of the criminal limb of Article 6, was the "decisive factor concerning the applicant's pecuniary expectations", therefore this "civil limb" of the proceedings remained "closely linked to the criminal limb".

There are not a few similarities between *Topolovčan* and the instant case, just as there are some important structural differences. In both these cases

there is what may be called a metamorphosis of "criminal" to "civil". The question is, to what extent can such a metamorphosis be justified. Although there might have been some justification for it in *Topolovčan* (in particular because in that case, in contrast to the present one, the applicant had been found guilty of a criminal offence), I am not convinced that it is justified in the present case. On the contrary.

For what conclusion is to be drawn from the "decisive factor" and "close link [of the civil limb] to the criminal limb" theses? Do they mean that what has become "civil" is still a bit "criminal"? Or that whenever there is a pecuniary element, the criminal-law-related origins of a dispute no longer matter? If these *dicta* are not empty words, what constructive function do they perform in the Chamber's reasoning?

I fail to see any.

V

31. On 25 January 2024, while this opinion was still in the process of being written, the Court (sitting as a different Chamber) delivered its decision in the case of *Rousounidou v. Cyprus* ((dec.), no. 38744/21, 12 December 2023). In that case criminal proceedings were brought against the applicant, but the charges were dismissed by a court because the prosecution had failed to make out a *prima facie* case against her.

Specifically, the Court found that the issue of the domestic courts' inability to award costs following the applicant's acquittal did not fall under the notion of a "criminal charge" within the autonomous meaning of Article 6 § 1 and, further, that the civil limb was inapplicable *ratione materiae* because the Cypriot legal framework did not recognise a right to recover costs from public funds for a person acquitted in a summary trial.

32. In *Rousounidou*, although the first set of proceedings were criminal, the applicability of the criminal limb of Article 6 was dismissed (by a majority) on the grounds that the question of reimbursement of legal costs did not concern the determination of a criminal charge, without any explanation as to why it was the second and not the first set of proceedings which should have determined the limb of applicability of Article 6. In this regard, *Rousounidou* found some support in two earlier cases, namely, *Mamič v. Slovenia (no. 2)* (no. 75778/01, 27 July 2006, where the criminal proceedings against the applicant had been discontinued on account of being time-barred, and no violation of Article 6 § 1 was found), and *Topolovčan* (cited above), wherein it is similarly stated that the reimbursement of legal costs does not concern the determination of a criminal charge. Be that as it may, neither *Rousounidou*, nor *Mamič (no. 2)*, nor *Topolovčan* contain any explanation of the chosen approach.

To compare and contrast, in *Černius and Rinkevičius* the Chamber unanimously accepted that the applicable limb of Article 6 had to be determined with regard to the nature of the main proceedings.

Rousounidou is a new manifestation of the lack of consistency in the Court's case-law on the reimbursement of legal costs as regards the question of how the applicable limb of Article 6 is to be determined.

33. The present judgment diverges from the line of reasoning taken in *Černius and Rinkevičius*. However, in one regrettable respect it follows in the steps of *Rousounidou*, namely, in that it provides no convincing explanation as to the methodology underpinning the approach in which it is the second and not the first proceedings which determine the limb of applicability of Article 6, although the second set of proceedings are intrinsically linked to the first set of proceedings.

In addition, the present judgment obfuscates that methodological basis (assuming that it exists) by, in particular, repeating the "decisive factor" and "close link [of the civil limb] to the criminal limb" *dicta* from *Topolovčan* (cited above).

34. In the Court's own words, "while it is not formally bound to follow any of its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases" (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, *Reports* 2001-I, and *Herrmann v. Germany* [GC], no. 9300/07, § 78, 26 June 2012).

I wonder what "good reason" has trumped in the present case, as well as in *Rousounidou*, over the commitment not to depart from precedents in previous cases, in particular from *Černius and Rinkevičius*.

35. For, to sum up, as things now stand there are at least three lines of reasoning in the Court's case-law concerning claims for reimbursement of legal costs incurred in civil or criminal proceedings, all of them reconfirmed within a four-year period:

(i) the *Černius and Rinkevičius* line of reasoning, according to which a complaint concerning the non-reimbursement of legal costs is seen as intrinsically related to the first set of proceedings and is examined under the same limb of Article 6 as that under which the first set of proceedings fall;

(ii) the *Rousouinidou* line of reasoning, according to which such a complaint is always seen as a pecuniary claim and is therefore "civil" in nature, and is examined under the civil limb of Article 6, no matter the nature of the first set of proceedings and irrespective of whether there had been only one set of proceedings, or more;

(iii) the *Topolovčan*, or perhaps from now on the *Topolovčan-Jakutavičius*, line of reasoning, which is the most obscure, because a complaint concerning the non-reimbursement of legal costs is examined under the civil limb of Article 6; at the same time, however, it is pointed out that it has a "close link" to the first, criminal, set of proceedings because the

outcome of the criminal proceedings (or, as in the present case, administrative-law violation proceedings, which fall within the scope of the criminal limb of Article 6) was the "decisive factor concerning the applicant's pecuniary expectations", whatever purpose this proviso may serve (if any).

It is high time to have a consistent case-law, isn't it? And a consequential one, too.