

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

FOURTH SECTION

CASE OF KOŽEMIAKINA v. LITHUANIA

(Application no. 231/15)

JUDGMENT

STRASBOURG

2 October 2018

FINAL

02/01/2019

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



In the case of Kožemiakina v. Lithuania,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 231/15) 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, Ms Irina Kožemiakina ("the applicant"), on 9 December 2014.

2. The applicant was represented by Ms S. Baracevičienė, a lawyer practising in Klaipėda. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged that the civil proceedings in which she and her minor son had been ordered to pay damages to a person allegedly assaulted by her son had not been fair, as required by Article 6 § 1 of the Convention.

4. On 13 September 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Klaipėda.

A. Criminal proceedings against V.O.

6. On 19 February 2012 V.M. complained to the Klaipėda police that on that day he had been beaten up in the stairwell of his residential building by

two teenagers, fifteen-year-old A.K. (the applicant's son) and seventeen-year-old V.O. He was examined by a court medical expert, who found bruises and swelling on his face, concussion, contusions in the chest area and a resulting inflammation of the right lung, and a compression fracture of the spine. The injuries were categorised as a minor health impairment (*nesunkus sveikatos sutrikdymas*). The police opened a pre-trial investigation.

7. When interviewed by the police, V.M. stated that at about 5 p.m. on 19 February 2012 he had heard a noise in the stairwell of his residential building and had gone out of his apartment to check. He had seen four teenagers smoking cigarettes and listening to loud music on a mobile phone, and there had been cans of beer at the window. V.M. had asked the teenagers to leave the building and two of them had done so. However, A.K. had refused to leave, so V.M. had threatened to call the police. Then A.K. had approached V.M. and punched him in the face. That had angered V.M., so he had blocked the exit of the stairwell and had tried to grab A.K. He had managed to grab A.K. by the coat, shaken him and told him to leave the building. Then V.O. had approached V.M. and tried to hit him but V.M. had managed to dodge the punches. At that moment A.K. had hit V.M. in the head and kicked him in the back, as a result of which V.M. had fallen down a flight of stairs. While he had been lying down, A.K. and V.O. had kicked him several times in the back and the face. V.M. had screamed for his wife to call the police and had eventually lost consciousness. He had come to in his apartment and the police had soon arrived.

8. The applicant's son, A.K., was interviewed as a witness, with the applicant present during the interview. A.K. stated that on the day in question he and his three friends, including V.O., had entered the stairwell of a residential building in their neighbourhood to get warm. They had stayed in the stairwell for a while, talking and listening to music on a mobile phone, but they had not been smoking or drinking alcohol. After some time, V.M., whom they had not known, had come out of his apartment and had begun yelling at the teenagers. A.K. had asked him to stop yelling, after which V.M. had grabbed A.K. by the neck and kicked him in the legs. A.K. had stood up and tried to leave but had been unable to do so because V.M. had been standing in the way. V.M. had tried to grab A.K. and punch him, so A.K. had punched V.M. twice in self-defence. Then V.M. had grabbed A.K.'s leg and A.K. had fallen down. When he had stood up, he had seen V.M. holding V.O. by the neck and trying to drag him inside the apartment. V.O. had asked A.K. to push V.M. and A.K. had done so. V.O. had managed to free himself and had pushed V.M. as well, and V.M. had fallen on the ground. Then A.K. and V.O. had run away.

A.K. stated that V.M. had been the first to hit him and that he had hit V.M. only in self-defence. As a result, A.K. had broken his right hand,

although he was not sure at which exact moment that had happened. He also stated that he had not seen V.O. hit V.M.

9. V.O.'s mother joined the proceedings as her son's representative and was questioned as a witness. She stated that after finding out about the allegations against her son, she had spoken to V.M. and the latter had told her that the conflict had broken out between him and A.K., whereas V.O. had only intervened later to help A.K. V.M. had also told her that A.K. had punched him first. She further stated that her son had likewise told her that he had not hit V.M. but had only held him.

10. The police held a confrontation between V.M. and A.K., with the applicant present, during which they both essentially repeated their previous statements (see paragraphs 7 and 8 above). The police also accompanied them both to the location of the incident (the stairwell) and they each showed how their claimed version of events had unfolded.

11. On an unspecified date V.O. was charged with causing a minor health impairment and a breach of public order under Articles 138 § 1 and 284 § 1 of the Criminal Code.

12. On 19 November 2012 the Klaipėda District Court held an oral hearing in which A.K. was questioned as a witness and the applicant did not participate. A.K. essentially repeated his previous testimony (see paragraph 8 above).

13. On 27 November 2012 the Klaipėda District Court convicted V.O. of the charges against him. The court considered that even though V.O. had denied his guilt, it had been proved by other evidence: V.O. had admitted that he had participated in the altercation with V.M. and that he had instructed A.K. to push V.M., and credible witness testimony had shown that "the victim had been assaulted not only by [A.K.] but by [V.O.] as well". The court held that V.O. had committed the criminal offence while acting together with a minor below the age of criminal responsibility (A.K.), that he had encouraged A.K. to assault V.M., and that he had not stopped A.K. from doing so; accordingly he had to assume all the consequences of the criminal activity in question. V.O. was sentenced to one year of restriction of liberty and ordered to study or work during that period. The court allowed in part a civil claim lodged by V.M. for damages in respect of the assault, and ordered V.O. to pay him 240 Lithuanian litai (LTL) (approximately 70 euros (EUR)) in respect of pecuniary damage and LTL 2,000 (approximately EUR 580) in respect of non-pecuniary damage.

14. V.M. appealed against that judgment, asking that the award be increased in respect of non-pecuniary damage. On 21 March 2013 the Klaipėda Regional Court partly allowed his appeal. It upheld V.O.'s conviction and increased the award in respect of non-pecuniary damage to LTL 5,000 (approximately EUR 1,450).

B. Civil proceedings against the applicant and her son

15. In May 2013 V.M. lodged a civil claim against the applicant and her son. V.M. submitted that A.K.'s violent actions had impaired his health and had caused him physical and psychological suffering. He claimed LTL 20,000 (approximately EUR 5,800) in compensation for non-pecuniary damage jointly from the applicant and A.K.

16. The Klaipėda District Court instructed V.M. to amend his claim and to indicate the specific actions of A.K. which had allegedly caused him harm. In June 2013 V.M. lodged an amended claim in which he submitted that A.K. had punched him in the face, arms and head, had kicked him in the back, as a result of which he had fallen down a flight of stairs, and that while he had been lying down, A.K. had kicked him again several times.

17. The applicant and her son contested the claim. They argued that V.M. could not have relied on the courts' findings in the criminal proceedings against V.O. because A.K. had not been convicted in those proceedings and had only had the status of a witness. They also argued that V.M. should have submitted his claim not only against A.K.'s mother (the applicant) but also against A.K.'s father, who they argued was equally responsible for the actions of his minor son. Lastly they submitted that the amount of the claim was excessive because A.K. was a student and did not have any income, and the applicant was unemployed.

18. At an oral hearing held on 8 November 2013, V.M. stated that A.K. had been the one who had started the assault. V.M. submitted that the courts in the criminal proceedings had ruled that V.O. and A.K. had committed the assault together (see paragraph 13 above); thus, even though A.K. could not have been held criminally liable because of his age, his actions had been established by a final court judgment. Meanwhile the applicant and her son's lawyer argued that the judgments given in the criminal proceedings against V.O. did not have a *res judicata* effect (*neturi prejudicinės galios*) in the present civil proceedings because the criminal and the civil proceedings had concerned different parties and the courts in the criminal proceedings had not made any findings as to A.K.'s guilt in the operative part of their judgments. The lawyer also submitted that in the criminal proceedings it had not been identified which injuries had been caused by V.O. and which by A.K.

19. On 28 November 2013 the Klaipėda District Court partly allowed V.M.'s claim. Referring to the material in the criminal case file, the court considered it established that A.K. had punched V.M. in the face, arms and head and had kicked him in the back, as a result of which V.M. had fallen down a flight of stairs, and that while he had been lying down, A.K. had kicked him again several times (see paragraphs 7 and 13 above). It also referred to the findings of the court medical expert who had examined V.M.

and determined the injuries caused to him during the assault (see paragraph 6 above). The court further stated:

> "When questioned during the pre-trial investigation, [A.K.] confessed that he had hit the victim and had pushed him down the stairs, stating that he had done so in self-defence ... As a result of [A.K.'s] actions, the victim had suffered harm. These facts were established in the course of criminal proceedings, during the pre-trial investigation (Article 182 § 5 of the Code of Civil Procedure); the defendants have not provided any facts that could disprove [A.K.'s] guilt, so there is no need to prove these established facts with regard to [A.K.'s] unlawful actions and guilt (*šių nustatytų faktų dėl atsakovo [A.K.] neteisėtų veiksmų ir kaltės nereikia įrodinėti*)."

20. The court further held that there had been a causal link between A.K.'s actions and the harm suffered by V.M., so there were sufficient grounds for awarding V.M. damages. It dismissed the defendants' argument that A.K.'s father should have been one of the defendants, taking note of V.M.'s argument that A.K.'s father lived separately from his family and that V.M. did not have any information about him, and stating that the civil claimant had had the freedom to choose the defendants against whom he wished to submit his claim.

21. The court, having regard to A.K.'s young age and the applicant's difficult financial situation, allowed V.M.'s civil claim in part and awarded him LTL 2,000 (approximately EUR 580) in respect of non-pecuniary damage and LTL 1,500 (approximately EUR 435) in legal costs. The court ordered that the above amounts were to be paid by A.K., and that if he did not have sufficient assets they were to be paid by the applicant. The applicant's obligation to pay those amounts would end when A.K. turned eighteen years old or when he obtained sufficient assets (see paragraph 32 below).

22. The applicant and her son appealed against that decision, raising essentially the same arguments as those presented in their initial reply to the civil claim (see paragraph 17 above). V.M. also submitted an appeal in which he asked for his claim to be allowed in full and to be awarded LTL 20,000 (approximately EUR 5,800) in respect of non-pecuniary damage.

23. On 28 April 2014 the Klaipėda Regional Court dismissed the appeal lodged by the applicant and her son. It stated:

> "The defendants in their appeal submitted that the judgment [in the criminal proceedings against V.O.] had not assessed [A.K.'s] guilt in respect of the criminal offence and that the court could thus not have relied on the circumstances established in the judgment of 27 November 2012. This argument cannot be accepted. The Klaipėda District Court's judgment of 27 November 2012 and the Klaipėda Regional Court's judgment of 21 March 2013 established that unlawful actions had been committed by the defendant [A.K.] as well. The first-instance court correctly stated that the circumstances which had been established in the course of the criminal proceedings could be relied on and that there was no need to prove them (*baudžiamojoje byloje nustatytomis aplinkybėmis galima vadovautis ir jų nebereikia įrodinėti*) (Article 182 § 3 of the Code of Civil Procedure). The [court] notes that the

> fact that the defendant has not been prosecuted in criminal proceedings does not preclude his civil liability ... The first-instance court drew the well-founded conclusion that the conditions for the civil liability of the defendants were present: unlawful actions, fault, a causal link determining civil liability, and the damage caused to [V.M.]."

24. The court partly upheld the appeal submitted by V.M. and increased the award in respect of non-pecuniary damages to LTL 8,000 (approximately EUR 2,320). The applicant and A.K. were also ordered to pay the legal expenses incurred by V.M. at the appellate stage, amounting to LTL 300 (approximately EUR 87).

25. Subsequently the applicant and her son lodged two appeals on points of law in which they argued that the decisions of the first-instance and the appellate courts had been contrary to the law and the principles of fairness, reasonableness and good faith. In particular, they submitted that awarding a higher amount in respect of non-pecuniary damage against them (EUR 2,320) than had been awarded against V.O. (EUR 1,450), who had been convicted in criminal proceedings had been contrary to the law and unjustified. However, on 29 May 2014 and 31 July 2014 the Supreme Court declined to examine the appeals as raising no important legal issues.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code

26. Article 138 § 1 of the Criminal Code provides:

Article 138. Minor health impairment

> "1. A person who has injured another person or caused him or her to be ill, if as a result the victim has lost a small part of his or her professional or general working capacity or was ill for a long time but did not suffer the consequences set forth in Article 135 § 1 of this Code, shall be punished by restriction of liberty or by detention or by imprisonment for a term of up to three years."

27. At the material time, Article 284 § 1 provided:

Article 284. Disturbing public order

> "1. A person who, in a public place, by aggressive conduct, threats, taunting or acts of vandalism showed disrespect to other persons or to [his or her] surroundings and thereby disturbed the public peace or order shall be punished by [the imposition of] community service or by a fine or by restriction of liberty or by detention or by imprisonment for a term of up to two years."

28. Article 13 § 1 establishes the age of criminal responsibility at sixteen years, except in respect of certain particularly serious crimes listed in Article 13 § 2 (such as murder, rape, or severe health impairment), in respect of which the age of criminal responsibility is fourteen years.

B. Code of Criminal Procedure and relevant courts' practice

29. Article 53 §§ 2, 3 and 5 of the Code of Criminal Procedure provides that the parents or guardians of a witness who is a minor may, at their written or oral request, act as the minor's representatives in criminal proceedings. The representative typically participates in procedural actions together with the minor. A pre-trial investigation officer, prosecutor or court may refuse a request to act as a minor's representative in cases where that would be contrary to the minor's interests.

30. Article 255 § 1 provides that a court shall examine a case only in respect of those accused and those criminal acts which have been referred to it for examination.

31. In its review of the domestic courts' case-law, issued on 25 June 2009, the Supreme Court concluded that the requirement set forth in Article 255 § 1 of the Code of Criminal Procedure for a court to examine a criminal case only in respect of those accused who had been referred to it for examination did not prohibit that court from examining whether acts of third parties complied with the law to the extent necessary for determining the criminal responsibility of the accused. However, a judgment could not include any phrases which established third parties' guilt of criminal acts, except for individuals who had already been convicted or exempted from criminal responsibility.

C. Civil Code

32. Article 6.276 § 1 of the Civil Code provides that a minor between fourteen and eighteen years of age shall be held liable for damage caused by his or her actions, in line with the general rules provided by the Code. Article 6.276 § 2 provides that when such a minor does not have sufficient assets or income to provide compensation for the damage, then compensation for the corresponding part of the damage has to be provided by his or her parents or guardians, unless they prove that they were not at fault for the damage caused. Article 6.276 § 3 provides that the parents' or guardians' obligation to provide compensation for damage caused by a minor ends when he or she turns eighteen years old or if by that date he or she obtains sufficient assets or income with which to provide full compensation for the damage.

33. Article 6.248 § 1 provides that civil liability arises only if a person is at fault, save for exceptions provided by law or contract. A debtor's fault is presumed, except for cases where law provides otherwise.

D. Code of Civil Procedure and relevant courts' practice

34. Article 185 § 1 of the Code of Civil Procedure provides that a court must assess all the evidence available in a case in accordance with its inner conviction, on the basis of a comprehensive and objective examination of the circumstances which have been examined during the proceedings, and in accordance with the law. Article 185 § 2 provides that no evidence has a predetermined effect, save for exceptions stipulated in the Code.

35. At the material time, Article 182 provided:

> "It is not necessary to prove the following circumstances:
>
> 1) those which have been recognised by a court as generally known;
>
> 2) those which have been established by a final court decision in another civil or administrative case concerning the same parties, except when the court decision creates legal consequences for other persons as well ... ;
>
> 3) consequences of a person's criminal activity which have been established by a final court judgment in a criminal case ... ;
>
> 4) legal presumptions which have not been refuted;
>
> 5) those which are based on facts acknowledged by the parties (as set forth in Article 187 of this Code)."

36. In its ruling of 20 February 2007 in civil case no. 3K-3-56/2007, the Supreme Court held that, pursuant to Article 182 § 3 of the Code of Civil Procedure, a court examining a civil case was not required to establish afresh the circumstances referred to in that provision where they had been established by a final court judgment. However, material of a pre-trial investigation did not have that same legal effect and the court examining a civil case was entitled to assess such material as it would any other written documents which might be relevant for determining the circumstances of the case.

37. In its ruling of 1 March 2010 in civil case no. 3K-3-53/2010, the Supreme Court held:

> "[T]he *res judicata* effect (*prejudicinė galia*) of facts which have been established in a final court judgment in a criminal case is set forth in Article 182 § 3 of the Code of Civil Procedure ... Accordingly, facts established in a final court judgment have a limited *res judicata* effect in a civil case. Actions of an accused in criminal proceedings are examined and assessed in accordance with criminal laws and procedures. In civil proceedings, actions of the same individual are assessed in accordance with civil laws and procedures. Criminal and civil proceedings usually require different matters to be proved. Under Article 182 § 3 of the Code of Civil Procedure, a court examining a civil case does not need to establish afresh criminal acts and the consequences thereof which have already been established by a final judgment in a criminal case, nor whether those acts were committed by the individual with respect to whom that judgment was given; by contrast, other facts established in a court judgment [in criminal proceedings] do not have a *res judicata* effect in a civil case ... According to the Supreme Court's case-law, court judgments which establish facts that do not have a *res judicata* effect in civil proceedings have to be assessed as

written evidence, in accordance with the general rules on the assessment of evidence ...”

38. In its ruling of 7 May 2010 in civil case no. 3K-3-213/2010, the Supreme Court reiterated its case-law on Article 182 § 3 of the Code of Civil Procedure (see paragraph 37 above) and stated that facts which had been determined in a criminal case but were not related to criminal activity (*faktai, nesusiję su nusikalstamais veiksmais*) could be disputed in civil proceedings, and the court examining the civil case could determine them differently than the court which had examined the criminal case.

THE LAW

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

39. The applicant complained that the civil proceedings in which she and her son, A.K., had been ordered to pay damages to V.M. had been unfair because they had relied on the criminal proceedings, in which A.K. had only had the status of a witness. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties’ submissions

40. The Government firstly submitted that in her appeals on points of law the applicant had not raised the questions which she had subsequently raised before the Court – namely, that she had not had a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention. They also submitted that at the domestic level the applicant had never argued that because of her status in the criminal case she had not had a fair hearing in the civil case.

41. The Government further submitted that the applicant had failed to lodge her appeals on points of law, in line with the requirements set forth in the domestic law, because in those appeals she had mainly raised factual and not legal issues. Furthermore, her second appeal on points of law had been identical to the first one, despite the Supreme Court’s decision to decline to examine it as raising no important legal issues.

42. The applicant did not comment on those points.

(b) The Court's assessment

43. The Court reiterates that the rule on exhaustion of domestic remedies under Article 35 § 1 of the Convention requires that complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014). In the present case, in the proceedings before the first-instance and appellate courts the applicant argued, both in her written and oral submissions, that those courts should not have relied on the judgments given in the criminal proceedings, in which her son had only had the status of a witness (see paragraphs 17, 18 and 22 above), whereas in her appeals on points of law she contested, in a more general manner, the lawfulness and fairness of the decisions adopted in the civil proceedings (see paragraph 25 above). In such circumstances, the Court is of the view that the applicant gave the domestic courts sufficient opportunity to redress the alleged breach of her rights. Furthermore, the Supreme Court did not indicate that her appeals on points of law had not complied with the formal requirements or time-limits laid down in domestic law. It follows that the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies must be dismissed.

2. Conclusion

44. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant submitted that the courts in the civil proceedings against her and her son had breached her right to a fair hearing by relying on the judgments in the criminal proceedings against V.O., in which her son had been a witness and she had not had any procedural status. She also submitted that V.M. should not have been allowed to lodge a civil claim against her and her son because he had already lodged such a claim against V.O. and that claim had been partly allowed, so he should not have been entitled to double compensation. The applicant lastly argued that it was unfair that she and her son had had to pay more in compensation for non-pecuniary damage than V.O., the person who had been convicted of assaulting V.M.

46. The Government firstly submitted that the applicant had had sufficient opportunity to exercise her rights in the criminal proceedings against V.O. She had had the right to be officially recognised as her son's representative (see paragraph 29 above), and even though she had not asked to be so recognised, she had acted as his *de facto* representative – she had participated in her son's interview, as well as in the confrontation between her son and the victim, V.M., and she had asked V.M. some questions; she had also had the right to participate in court hearings had she so wished.

47. The Government further submitted that, in line with the case-law of domestic courts, the absence of criminal liability did not prevent the establishment of an individual's civil liability in relation to the same acts on the basis of a less strict burden of proof. In such instances, the outcome of a civil case was not determined by the outcome of the criminal proceedings; however, the circumstances established in the latter proceedings could be referred to in the examination of the civil claim. The Government contended that such practice was consistent with the Court's case-law.

48. They further argued that the domestic courts' decisions in the civil proceedings had not imputed criminal liability to the applicant or her son – the courts had clearly stated that the applicant's son could not have been held criminally liable because of his age. However, the Government submitted that "in the criminal case it [had been] established beyond reasonable doubt" that the applicant's son had assaulted V.M. In particular, he had himself confessed to having beaten V.M., and that had also been confirmed by witness testimony; furthermore, in the civil proceedings the applicant and her son had not disputed V.M.'s account of the assault. The Government contended that the courts in the civil proceedings had assessed A.K.'s actions in the light of civil law, that they had "distanced their reasoning" from the criminal case and that the outcome of the criminal case had not been "decisive for the issue of compensation". Those courts had assessed the harm caused to the victim specifically by A.K.'s actions, distinguishing them from the actions of V.O.

49. The Government lastly submitted that the applicant had been able to participate effectively in the civil proceedings, she had been represented by a lawyer and had had the possibility to reply to the other party's submissions, so those proceedings had complied with the requirements of Article 6 § 1 of the Convention.

2. The Court's assessment

50. The Court observes at the outset that in cases concerning civil proceedings for compensation which followed an acquittal or the discontinuation of criminal proceedings, it has usually examined applicants' complaints from the perspective of Article 6 § 2 of the Convention. One of the key questions in such cases was whether courts in civil proceedings had made any statements imputing criminal liability to individuals who had not

been held liable in criminal proceedings (see *Y v. Norway*, no. 56568/00, § 42, ECHR 2003-II (extracts); *Diacenco v. Romania*, no. 124/04, § 60, 7 February 2012; and *Vella v. Malta*, no. 69122/10, §§ 55-57, 11 February 2014).

51. In the present case, however, the applicant complained that her civil liability for the acts of her minor son had been established on the basis of the findings of courts in criminal proceedings in which her son had only been a witness and she had not had any procedural status. It was not alleged, either in the criminal or in the civil proceedings, that the applicant herself had committed any unlawful acts. The present case therefore does not concern her right to the presumption of innocence guaranteed by Article 6 § 2 of the Convention. Nonetheless, the Court considers that the principles developed in its case-law under that provision (see paragraph 50 above) are of relevance to the present situation.

52. In this connection, the Court reiterates that in cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, it has emphasised that while exoneration from criminal liability ought to be respected in civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see *Vella*, cited above, § 56, and the cases cited therein). The Court is of the view that the same principle is applicable in situations such as the present one, in which the applicant's minor son could not be held criminally liable because of his age. Consequently, establishing the applicant's and her son's joint civil liability arising out of the assault in respect of which her son had not been held criminally liable was not in itself incompatible with Article 6 of the Convention. However, the Court will examine whether the civil proceedings were conducted in line with the requirements of a fair hearing set forth in that provision.

53. The courts which examined the civil claim relied on the case-file material of the criminal proceedings in which the applicant's son, A.K., had been questioned as a witness. In those proceedings he had admitted to having hit the victim but had claimed to have done so in self-defence (see paragraph 8 above). Since A.K. had not been the accused, the courts in the criminal proceedings had not been allowed by law to establish his guilt in respect of any criminal acts (see the relevant domestic law and the case-law of the Supreme Court of Lithuania in paragraphs 30 and 31 above).

54. Nonetheless, the courts which examined the civil claim referred to A.K.'s actions as "established in the course of criminal proceedings" (see paragraphs 19 and 23 above). The Klaipėda District Court stated that in the criminal proceedings A.K. had "confessed" and that his "guilt" had been proved; at the same time, it held that "the defendants [had] not provided any facts" challenging A.K.'s role in the assault and made a reference to Article 182 § 5 of the Code of Civil Procedure, which allows a court to

dispense with proving circumstances acknowledged by the parties and therefore does not appear to concern a *res judicata* effect of judgments adopted in different proceedings (see paragraphs 19 and 35 above). In any event, the decision of the Klaipėda District Court was appealed against, and the Klaipėda Regional Court which examined the appeals made it explicit that in that court's view it was not necessary to carry out a fresh assessment of the applicant's son's role in the assault against V.M. because it had already been established (see paragraph 23 above; see, *mutatis mutandis*, *Erkol v. Turkey*, no. 50172/06, § 41, 19 April 2011). In particular, while the applicant explicitly argued that the judgments given in the criminal proceedings should not have had a *res judicata* effect in the civil proceedings because they had not concerned her son's criminal liability (see paragraphs 17, 18 and 22 above), the Klaipėda Regional Court rejected that argument. It held that the courts in the criminal proceedings had "established that unlawful actions [had been] committed by the defendant A.K. as well" and that thus, in line with Article 182 § 3 of the Code of Civil Procedure, those actions did not need to be proved (see paragraphs 23 and 35 above).

55. In this connection the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see, among many other authorities, *Lagardère v. France*, no. 18851/07, § 41, 12 April 2012, and the cases cited therein). It nonetheless observes that the Supreme Court of Lithuania has held in its case-law that not all facts established in final judgments in criminal proceedings have a *res judicata* effect in subsequent civil cases. The Supreme Court has ruled that a court examining a civil case does not need to establish afresh the criminal acts, their consequences and whether they were committed by the individual with respect to whom the judgment was given; by contrast, any other facts established in criminal proceedings have been found to not have a *res judicata* effect in a subsequent civil case (see paragraph 37 above).

56. The Court therefore finds that the Klaipėda Regional Court, by confirming the first instance court's decision on the basis of Article 182 § 3 of the Code of Civil Procedure and considering A.K.'s actions to be definitively established in the criminal proceedings in which he had been a witness, made it impossible for the applicant to question the facts on which her civil liability was based – an opportunity which she had not had in the criminal proceedings either, since those proceedings had not concerned the actions of her son (see, *mutatis mutandis*, *Vulakh and Others v. Russia*, no. 33468/03, § 49, 10 January 2012, and *Lagardère*, cited above, §§ 47 and 49). In such circumstances, the Court cannot accept that the civil proceedings against the applicant were "fair" within the meaning of Article 6 § 1 of the Convention.

57. The Court therefore concludes that there has been a violation of Article 6 § 1 of the Convention. In the light of this conclusion, the Court considers that it is not necessary to address the applicant's remaining arguments (see paragraph 45 above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

59. The applicant claimed 2,920 euros (EUR) in respect of pecuniary damage consisting of the amount which she and her son had been ordered to pay to V.M., and the bailiff's fees. She also claimed EUR 3,000 in respect of non-pecuniary damage for the stress and frustration caused by the violation of her rights.

60. The Government submitted that there was no causal link between the pecuniary damages claimed by the applicant and the violation of her rights under Article 6 § 1 of the Convention. They argued that the Court should not speculate what the outcome of the civil proceedings would have been. The Government submitted that the reopening of the proceedings would be an appropriate way of redressing the violation. As for the applicant's claim in respect of non-pecuniary damage, the Government considered it to be excessive and unsubstantiated.

2. The Court's assessment

61. The Court has found a violation of Article 6 § 1 of the Convention in the present case on account of the fact that domestic courts established the applicant's civil liability for the actions of her minor son on the basis of the findings in criminal proceedings in which her son had been a witness and she had not had any procedural status. However, it does not follow that had that violation not occurred, the courts would have rejected the civil claim lodged against the applicant. Therefore, the Court considers that the applicant did not sufficiently establish that the pecuniary damage alleged can be directly linked to the violation found (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV, and the cases cited therein).

62. On the other hand, the Court considers that the applicant must have suffered distress and frustration in view of the violation found. It therefore awards her EUR 3,000 under this head.

B. Costs and expenses

63. The applicant also claimed EUR 1,521 for the costs and expenses incurred before the Court, consisting of EUR 876 for the lawyer's fees and EUR 645 for the translation of documents from English into Lithuanian and from Lithuanian into English. She provided copies of receipts for the relevant payments.

64. The Government submitted that the costs and expenses claimed by the applicant were excessive and that the receipts provided by her did not indicate what specific documents had been translated.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court observes in particular that the applicant did not submit any documents which had been translated from Lithuanian into English, nor had she explained why the translation from English into Lithuanian had been necessary; it therefore rejects that part of the claim (see *Fridman v. Lithuania*, no. 40947/11, § 40, 24 January 2017). As to the lawyer's fees, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 876.

C. Default interest

66. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 876 (eight hundred and seventy-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Ganna Yudkivska
President