



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

FOURTH SECTION

CASE OF LEKAVIČIENĖ v. LITHUANIA

(Application no. 48427/09)

JUDGMENT

STRASBOURG

27 June 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lekavičienė v. Lithuania,

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

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Egidijus Kūris,

Iulia Motoc,

Carlo Ranzoni,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 48427/09) 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 Vladislava Ramunė Lekavičienė (“the applicant”), on 21 August 2009.

2. The applicant was represented by Mr T. Veščiūnas, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their then Agent, Ms E. Baltutytė.

3. The applicant complained about the Lithuanian authorities’ refusal to readmit her to the Bar.

4. On 25 November 2010 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1942 and lives in Vilnius.

A. The applicant’s legal practice and her criminal conviction

6. On 27 September 1996 the applicant was admitted to the Bar. She signed an oath “to be faithful to the Republic of Lithuania, to observe its Constitution and laws, to honestly perform her duties as an advocate (a

lawyer who has been admitted to the Bar (*advokatas*)), to observe moral norms, citizen's rights and freedoms, and to protect professional secrets". A couple of months later the applicant registered a law office in her name, and started practising law.

7. At the applicant's request her name was taken off the list of practising advocates on 19 December 2003. As noted by the civil courts afterwards, the applicant had acknowledged that her request had been made owing to the fact that a criminal case had been pending against her (see paragraph 8 below).

8. On 13 August 2004 the applicant was found guilty of forgery of documents (Article 300 § 1 of the Criminal Code) and fraud (Article 182 § 1 of the Criminal Code). The court established that while pursuing her professional practice, the applicant had on more than thirty occasions falsely claimed in writing that she had provided legal services within the framework of the State-paid legal-aid scheme. In addition, the court found that the applicant had forged the signatures of pre-trial-investigation officers on the above documents, submitted them to court officials to receive payment and thereby obtained payment. The crimes she had committed fell into the category of minor intentional crimes (*nesunkus tyčinis nusikaltimas*), because the maximum possible sanction for them was up to three years of deprivation of liberty (Article 11 § 3 of the Criminal Code). In the applicant's case, as a sanction, she was ordered to pay a fine, which she did on 24 August 2004. Her conviction expired three years after she had paid the fine, that is to say on 24 August 2007.

B. Proceedings regarding the applicant's request to be readmitted to the Bar

9. On 12 September 2007 the applicant asked the Bar Association to readmit her to the Bar.

10. On 20 September 2007 the Bar Association refused the applicant's request, *inter alia*, on the grounds that the applicant did not have high moral character (*nepriekaištinga reputacija*). Given that only three years and twenty-four days had passed since the applicant's conviction, and taking into account the nature of the applicant's criminal offence – misappropriation of property for non-existent legal services – as well as the specifics of the professional practice of an advocate, it was reasonable to conclude that the applicant had not regained high moral character within such a short time frame, to meet the requirements set out in Articles 7 § 4 and 8 § 4 of the Law on the Bar (see paragraph 21 below).

1. Decision by the first-instance court

11. The applicant challenged this decision before the Vilnius Regional Court. On 25 April 2008 the court heard the applicant's case. Six witnesses

were questioned in court as to the applicant's reputation; most of them testified to having known the applicant before 1996, when she had been working at the Ministry of Justice. The court partly annulled the Bar Association's decision and ordered the latter to reconsider the applicant's request to be readmitted to the Bar. The court noted that the applicant had been convicted of a minor intentional crime. On the day when the applicant had submitted the request to be readmitted to the Bar, her conviction had expired. Consequently, and relying on Article 8 (1) of the Law on the Bar (see paragraph 21 below), the Vilnius Regional Court found that the Bar Association had erred in finding that the applicant had not met the high-moral-character criterion.

2. Decision by the Court of Appeal

12. The Bar Association appealed. It pointed out that the applicant was not of high moral character as she failed to meet the criteria listed in Article 8 (4) of the Law on the Bar. Refusal to readmit the applicant to the Bar had been based on an evaluation of the nature of actions for which she had been convicted.

13. In her defence, the applicant submitted to the appellate court a character reference from a managing director of a private company, where the applicant had worked as marketing director. The reference stated that the applicant performed her duties well; and that she was responsible and had a sense of initiative. As shown from the summary of her arguments by the Court of Appeal, the applicant did not plead that reputation related restrictions on her practising law as an advocate had been more severe than those applied to other law-related professions.

14. On 7 October 2008 the Court of Appeal allowed the Bar Association's appeal and quashed the first-instance court's decision. As to the question of high moral character, the Court of Appeal underlined that higher standards were applicable to advocates, as only persons of untainted reputation could participate in the justice system without discrediting it. Therefore, when evaluating an advocate's conduct it was not sufficient to have regard only to whether the person obeyed the law. It was also pertinent to see a person's behaviour in the context of the legal norms that regulate the ethics of the advocates' profession. In this connection the Lithuanian Code of Professional Ethics for Advocates underlined that an advocate should observe legal and moral duties (point 1.2.), should not discredit advocate's name, the oath he or she swore or the ideal of justice (point 1.3.). An advocate also had duties set out in the Constitution, the Law on the Bar and the Lithuanian Code of Professional Ethics for Advocates (point 2.2) (see paragraph 23 below).

15. The Court of Appeal concurred with the first-instance court's finding that the term of the applicant's conviction had expired and that therefore she could not be reproached under Article 8 (1) of the Law on the Bar.

Nonetheless, taking into account the fact that she had committed the criminal offence in the course of her professional practice and that her professional practice had been aimed at committing crimes, of which there were more than thirty counts, it was reasonable to conclude that the applicant's behaviour did not meet the criteria set out in Article 8 (4) of the Law on the Bar. That the conviction had expired did not mean *ipso facto* that the applicant had regained an irreproachable reputation within the meaning of Article 8 (4) of that Law. For the appellate court, insufficient time had passed from the date when the applicant had committed the crime to when she had asked the Bar Association to readmit her to the Bar.

16. The appellate court also noted that a person could submit a request to be admitted to the Bar and to prove that he or she had regained high moral character. However, it was then for the court to establish, of its own motion, whether sufficient time had passed for a person's rehabilitation to be objectively validated. A person who claimed to have regained high moral character should bring clear and persuasive evidence that he or she had been following the ethical and disciplinary rules. It was then for the court to examine what the nature of the infringements of law was, what personal situation had led to the infringements being committed, and whether those factors still applied. In the present case, despite four years having passed since the date the crime had been committed, there was still no sufficient basis to conclude that the applicant was of high moral character within the meaning of Article 8 (4) of the Law on the Bar.

17. The Court of Appeal lastly dismissed certain arguments by the applicant that the lower court had erred when interpreting some other legal norms unrelated to the matter of the applicant's reputation.

3. Final ruling by the Supreme Court

18. The applicant lodged an appeal on points of law. She raised a number of arguments about the Bar qualification exam and professional reputation, without maintaining that the criminal conviction had placed her in a worse situation than representatives of other law-related professions.

19. By a ruling of 23 February 2009 the Supreme Court dismissed the applicant's appeal on points of law, and left the Court of Appeal decision unchanged. On the question of reputation, the Supreme Court noted its practice to the effect that no breach of law (*joks nusizengimas*) was too serious to unconditionally preclude an individual from ever asking to be reinstated to the Bar (the Supreme Court referred to its earlier ruling in case no. 3K-7-168/2001 of 9 January 2001, see paragraph 30 below).

20. The Supreme Court then held that the expiry of a conviction for a minor intentional crime, as it was indicated in Article 8 (1) of the Law on the Bar, was only one of the criteria when considering the question of a person's reputation. Moreover, Article 8 (4) of that Law read that a person should meet the criteria of ethics applicable to advocates. Under point 1 of

the Code of Professional Ethics for Advocates, advocates were involved in the implementation of justice. The professional practice of an advocate required him or her to carry out his or her duties and obligations towards clients, the courts, the advocate's profession and society. Moreover, an advocate should never discredit the name of the profession, the oath he or she swore and the ideal of justice. On the facts of the applicant's case, the Court of Appeal therefore had been correct in finding that the applicant had not proven that she had regained high moral character, in particular given the nature of the criminal acts she had committed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Laws and other acts concerning “high moral character”

21. At the time of the applicant's conviction and civil court proceedings for her readmittance to the Bar, the Law on the Bar (*Advokatūros įstatymas*), in its relevant parts, read:

Article 7. Requirements for a person who wishes to be admitted to the Bar

“1. A person may be admitted to the Bar if he or she:

...

4) is of high moral character;

...”

Article 8. High Moral Character

“A person shall not be held to be of high moral character and may not be admitted to the Bar if he or she:

1) has been convicted of a serious or very serious crime (*sunkus ar labai sunkus nusikaltimas*), irrespective of whether or not the conviction has expired, or was convicted of any other criminal act and the conviction has not yet expired;

2) has been dismissed from the post of judge, prosecutor, advocate, trainee advocate, notary ... [or] court bailiff ... for professional misconduct or misconduct in office, or dismissed from the civil service as a result of a disciplinary sanction or dismissed for gross professional misconduct and less than three years have passed from the date of dismissal;

3) abuses psychotropic, narcotic or toxic substances, or alcohol;

4) does not meet the requirements laid down for advocates in the Code of Professional Ethics for Advocates which would be applicable to the candidate upon his or her admission to the Bar.”

Article 39. Advocate's duties

“An advocate must:

1) discharge his or her duties honestly. An advocate must comply with the requirements of the Code of Professional Ethics for Advocates and behave in an honest and civic-minded manner;

2) observe the advocate's oath taken by him or her and follow the law in his or her professional practice;

..."

22. Article 8 of the Law on the Bar, after having been amended on 2 July 2013, currently reads as follows:

Article 8. High moral character

"A candidate is not considered to be of high moral character and cannot be admitted to the Bar, if he or she:

1) has been convicted of a serious or very serious crime and until the conviction has expired ..., and less than four years have passed since serving the sentence or being released from serving the sentence;

2) has been convicted of any other intentional crime and the conviction has not expired ..., and less than three years have passed since serving the sentence, a suspension of the sentence, or release from serving the sentence;

3) has been dismissed from his or her position or duties ... because he or she does not meet the requirement of high moral character, or has been dismissed from the post of judge, prosecutor, advocate, trainee advocate, notary, trainee notary [or] bailiff ... for professional misconduct or dismissed from the civil service ... for gross professional misconduct ... and less than two years have passed from dismissal from that post ...;

4) abuses psychotropic, narcotic or toxic substances, or alcohol."

23. The Code of Professional Ethics for Advocates (*Advokatų profesinės etikos kodeksas*), approved at the Lithuanian Bar Association Conference on 8 April 2005 and valid at the time of the applicant's civil court proceedings, stipulated the following:

1. General notions

"1.1 Lithuanian advocates shall participate in the process of implementation of justice, represent and defend legitimate interests of their clients in court, State or municipal institutions or other organisations.

1.2. An advocate's practice requires observation of legal and moral obligations *vis-à-vis*:

1.2.1. clients;

1.2.2. the courts and other institutions where the advocate defends clients' interests or represents clients, or acts on clients' behalf;

1.2.3. the advocate's profession;

1.2.4. society.

1.3. An advocate must always protect the honour and dignity of the profession, and must not discredit the advocate's name, the oath he or she has sworn or the ideal of justice.

1.4. The aim of this Code is to guarantee proper execution of the essential functions of advocates. An advocate who does not adhere to these rules may face disciplinary sanctions.

1.5. When defending a client's interests which are protected by law, or when representing a client and while acting in the interests of justice, an advocate must strive not to breach human rights and fundamental freedoms, which are recognised by international and domestic law."

2. Rights and obligations of an advocate

"...

2.1. When carrying out his or her professional practice an advocate has the rights enumerated in the Constitution, the Law on the Bar, other laws or legal acts, in international legal instruments and in this Code.

2.2. When exercising his or her profession, an advocate has the duties enumerated in the Constitution, the Law on the Bar, other laws or legal acts, in international legal instruments and in this Code."

13. Final remarks

"...

13.2. When the actions or behaviour of an advocate are not compatible with the Law on the Bar, the by-laws of the Bar, this Code or other legal acts regulating the professional activity of advocates and where such actions or behaviour are not described in this Code, the advocate must follow the traditions and customs which are in line with the common principles of ethics and decency."

24. The Code of Professional Ethics for Advocates (*Advokatų profesinės etikos kodeksas*), adopted by the Lithuanian Bar Association on 15 April 2016, and currently in force, reads:

Article 6. Honesty and behaviour beyond reproach (*nepriekaištingas elgesys*)

"1. An advocate's professional honour and honesty are traditional values which must be adhered to as part of the professional duties of an advocate and as a necessary condition for belonging to the body of advocates.

2. An advocate must always:

1) maintain his or her professional honour and dignity, abstain from discrediting the name of an advocate, the oath given and the notion (*idėja*) of justice;

2) be of high moral character and keep it;

3) behave honestly, politely and fairly;

...

3. An advocate must not abuse his or her professional name.

...

5. An advocate is prohibited from engaging in any acts or conduct which are incompatible with honesty, other generally accepted norms of ethics and morality or which undermine society's confidence in advocates, harm the reputation of the Lithuanian Bar Association or undermine advocate's professional name."

Article 7. Lawfulness of practice

"1. Lawfulness of an advocate's professional practice is one of the most important principles that determine the role of advocate in the legal system of the State and guarantees for an advocate's professional activities, therefore an advocate must aspire to the ideals (*idealai*) of justice and lawfulness and defend his or her client's rights and lawful interests only in lawful ways and by lawful means, while not violating the prohibitions imposed by legal acts, without exceeding the powers granted to him or her and respecting others' rights.

2. An advocate must always respect the law and act so as not to violate principles of justice.

...

5. An advocate must ensure that his or her place of work and the conditions for professional practice meet requirements of the Law on the Bar and the Lithuanian Bar Association ..."

25. The Law on Courts (*Teismų įstatymas*), at the time of the applicant's civil proceedings for readmittance to the Bar read, and also currently reads:

Article 52. High moral character

"A person may not be held to be of high moral character and may not be appointed as a judge, if he or she:

1) has been convicted of a crime by a court judgment which has taken effect...

2) has been dismissed from the post of judge, advocate, notary ... or the civil service for professional misconducts and less than five years have passed since dismissal;

...

4) does not meet other requirements of the Code of Ethics for Judges."

26. The Law on Prosecutor's Office (*Prokuratūros įstatymas*) at the time of the applicant's civil proceedings for readmittance to the Bar read, and also currently reads:

Article 25. Requirements for a person who wishes to become a prosecutor

"1. A person may be admitted to the prosecutor's service if he or she is of high moral character ...

...

3. A person shall be regarded as being of high moral character, if ... he or she has not been convicted of a criminal act by a court judgment which has taken effect, or has not been dismissed from service or a post for gross misconduct, or if less than five years have passed after his or her dismissal and provided that his or her behaviour conforms with the provisions set out in the Code of Ethics for Prosecutors."

B. Domestic courts' practice concerning "high moral character"

27. In civil case no. 3K-3-584/1999, decided on 4 November 1999, the Supreme Court held:

"... Assessing from the legal point of view, the actions of an advocate or trainee advocate's, the specific function of the Bar and its role within the legal system of the State should be taken into consideration. The role of an advocate is to defend the rights and legitimate interests of the client by lawful ways and means and to seek the implementation of justice. The profession of an advocate is one of the professions whose representatives must comply with higher and stricter standards of conduct. Not only the common standards of conduct but also special requirements established both by the laws regulating the activity of the Bar and the rules of professional ethics are applicable in respect of an advocate's practice. The necessity for the requirements established by the rules of professional ethics is an objective one: only a person of high moral character can be trusted to participate in the process of administration of justice. Permitting anyone to participate in this process, without regard for his or her conduct, would discredit the idea of administration of justice.

... Point 3 of the Code of Professional Ethics for Advocates requires that an advocate or a trainee advocate must obey the law precisely and without circumventing it, and must be of high moral character and of irreproachable behaviour. Therefore, it is not enough to assess an advocate's actions only by having regard to the law; they must also be assessed in the context of the rules regulating professional ethics. Finding that actions of an advocate or trainee advocate do not amount to a crime and therefore may not be reproached from the point of view of criminal law does not automatically mean that the requirements of professional ethics have not been violated.

... An advocate or trainee advocate who has violated imperative legal norms cannot plead either ignorance of law or ignorance of rules of professional ethics, or that a law is not sufficiently detailed. An advocate or trainee advocate must know the law and the rules of professional ethics as part of their job."

28. In civil case no. 3K-3133/2000, decided on 7 February 2000, the Supreme Court held:

"... while admitting the former judges to the Bar, not only should their behaviour but also their professional activity be evaluated ... Serious breaches of law by a judge do not comply with the requirement of high moral character of a person wishing to be admitted to the Bar. Respect for the law and its perfect execution are very important characteristics in a person wishing to become an advocate..."

29. In civil case no. 2A-220/2000, on 5 September 2000 the Court of Appeal held:

"... commission of a crime has significant importance when evaluating a person's character ..."

30. In civil case no. 3K-7-168/2001, decided on 9 January 2001 and concerning readmittance to the Bar, the enlarged chamber of the Supreme Court noted that there was no breach of the law which could permanently impede a person from being readmitted to the Bar. Even so, a lawyer who wished to be readmitted to the Bar and who was trying to prove having regained high moral character, should provide clear and persuasive

evidence, that he or she had followed all the rules of ethics and discipline and did not lose skills. The court, which heard such a case, then had to verify: 1) what was the nature of the breaches of law, which led to the advocate's disbarment; 2) what personal, family or other circumstances were influential in the breach of law being committed; 3) how the person behaved during the time when he or she was disbarred; 4) whether the person had been rehabilitated; 5) whether his or her competence was sufficient.

III. RELEVANT INTERNATIONAL MATERIALS

31. Recommendation R (2000) 21 of the Council of Europe's Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (adopted on 25 October 2000) states as follows:

“The Committee of Ministers ...

...

... Underlining the fundamental role that lawyers and professional associations of lawyers also play in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the Rule of Law, in which lawyers take part, in particular in the role of defending individual freedoms;

...

Recommends the governments of member States to take or reinforce, as the case may be, all measures they consider necessary with a view to the implementation of the principles contained in this Recommendation.

...

Principle I – General Principles on the freedom of exercise of the profession of lawyer

...

2. Decisions concerning the authorisation to practice as a lawyer or to accede to this profession should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.

...

Principle II – Legal education, training and entry into the legal profession

...

2. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers...”

32. The Council of Bars and Law Societies of Europe (“the CCBE”) has adopted two foundation texts: the Code of Conduct for European Lawyers,

which dates back to 28 October 1988 and has undergone a number of amendments, and the Charter of Core Principles of the European Legal Profession, which was adopted on 24 November 2006. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession, amongst which the following principles are enumerated:

“ ...

(d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;

...

(h) respect towards professional colleagues;

(i) respect for the rule of law and the fair administration of justice; and

(j) the self-regulation of the legal profession.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the domestic authorities’ decisions to the effect that she had not been of high moral character and therefore not to allow her to be reinstated to the Bar were in breach of her right to respect for her private life and discriminatory. She relied on Articles 8 and 14 of the Convention.

In the light of the materials in the file the Court however considers that the applicant’s complaints fall to be examined on the basis of Article 8 alone, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. *Submissions by the parties*

(a) **The Government**

34. The Government firstly argued that the applicant’s complaint was incompatible *ratione materiae* with the provisions of Article 8. They

contended that the refusal to readmit the applicant to the Bar had not had such a big influence on her professional life, and had not affected her relationships with the outside world to such an extent as to have had an adverse effect on her private life. The Government also relied on the Court's judgment in *Bigaeva v. Greece* (no. 26713/05, § 39, 28 May 2009), where the Court held that advocate's profession had certain aspects of public service, which, in the Government's view, had further supported a finding that a right to be admitted to the Bar did not fall within the sphere of private life within the meaning of Article 8.

(b) The applicant

35. The applicant submitted that the prohibition on her to practice law as an advocate had without doubt affected her private life. Although she had sufficient qualifications and working practice, she was precluded from "properly using her knowledge and professional experience".

2. The Court's assessment

36. The Court reiterates that Article 8 of the Convention "protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world" (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III), and that the notion of "private life" does not in principle exclude activities of a professional or business nature (see *C. v. Belgium*, 7 August 1996, § 25, *Reports of Judgments and Decisions* 1996-III). Although no general right to employment can be derived from Article 8, the Court has previously had occasion to address the question of the applicability of Article 8 to the sphere of employment (see *Travaš v. Croatia*, no. 75581/13, § 52, 4 October 2016). It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Mateescu v. Romania*, no. 1944/10, § 20, 14 January 2014). It would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his or her own personal life as he or she chooses and to exclude therefrom entirely the outside world not encompassed within that circle (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B, and *Fernández Martínez v. Spain* [GC], no. 56030/07, § 109, ECHR 2014 (extracts)).

37. The Court has further held that restrictions on registration as a member of certain professions (for instance, lawyer or notary), which could to a certain degree affect the applicant's ability to develop relationships with the outside world, undoubtedly fall within the sphere of his or her private life (see *Campagnano v. Italy*, no. 77955/01, § 54, ECHR 2006-IV). In the case of *Bigaeva* (cited above, §§ 23-25) the Court held that Article 8 could also cover employment, including the right of access to a profession, specifically that of lawyer.

38. In the present case, the Court observes that from September 1996 to December 2003 the applicant practised law as an advocate (see paragraphs 6 and 7 above). Taking into account her prior professional experience, the Court considers that the Lithuanian authorities' refusal, in 2007, to readmit the applicant to the Bar (see paragraph 10 above) undeniably affected the applicant's ability to pursue her professional practice as an advocate and that there were consequential effects on her enjoyment of the right to respect for her "private life" within the meaning of Article 8 (ibid; see also, *mutatis mutandis* and regarding a ban to be reinstated as a civil servant, *Naidin v. Romania*, no. 38162/07, § 34, 21 October 2014, with further references). The Government's objection that the complaint is inadmissible *ratione materiae* must therefore be dismissed.

39. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

40. The applicant submitted that the refusal to readmit her to the Bar after her conviction had expired had been an unduly stringent measure, and had thus been disproportionate. It was the applicant's view that the crime which she had committed had been a minor one, and therefore should not have prevented the Bar from holding that she had been of high moral character, under Article 8 of the Law on the Bar. The applicant also relied on the Court's judgment in *Sidabras and Džiautas v. Lithuania* (nos. 55480/00 and 59330/00, §§ 57 and 58, ECHR 2004-VIII) to the effect that State-established restrictions in the private sector could not be justified to the same extent as restrictions on employment in the civil service. She therefore doubted whether reputational standards for judges, who administered justice in the name of the State, and prosecutors, who represented the public interest, could be applied in the same manner to advocates who practised a liberal profession. The domestic court's findings against the applicant had therefore been unfair and erroneous.

41. Lastly, and in reply to the Government's argument about the latest legislative amendments (see paragraph 45 below), the applicant noted that that amendment could not apply retroactively and thus remedy the situation in which she had been before that legislative change took effect.

(b) The Government

42. The Government submitted that the refusal to readmit the applicant to the Bar had been based on Article 8 (4) of the Law on the Bar, as well as on point 13 § 2 of the Code of Ethics for Advocates (see paragraphs 21 and 23 above). This was also relied on by the domestic courts. Furthermore, high professional requirements for advocates, including a requirement of high moral character, had been laid down with the legitimate aim of safeguarding the interests of the public. Taking into account the special nature of advocates' practice – specifically the protection of the rights of others in need, such as safeguarding the right to defence – the State had a legitimate aim to set out requirements for persons wishing to practise law as advocates, since they participated in the administration of justice.

43. The Government submitted that in the applicant's case prohibiting her readmittance to the Bar had been necessary. It was common practice among the Contracting States to require high professional standards in respect of the legal profession, including the requirement of irreproachable behaviour or high moral character. Prior conviction had an inevitable impact on the person's ability to meet such requirements. Sometimes, a criminal conviction could have a permanent impact and a person might never be considered as being of the required high moral character. To the Government's knowledge, such was the legal regulation as established in Latvia, Estonia and Turkey; in Poland, disbarment might be permanent following disciplinary proceedings. In other countries, presumption of the lack of high moral character might be valid for up to ten years (the Government referred to Belgium, Croatia and Portugal). There was also a common practice that the expiry of the conviction did not automatically mean that a person could not be reproached from a professional-ethics point of view. Usually the question of regaining one's good name was left to the discretion of certain authorities, which also took into account the gravity of the offence and whether it had been committed while performing a professional activity (the Government referred to practice in France, Austria, Slovenia and the Czech Republic).

44. For the Government, the finding that the applicant had not yet regained high moral character at the time she had asked to be readmitted to the Bar had not been unreasonable, in particular taking into account the nature of her crimes. The Court of Appeal and the Supreme Court had come to the same conclusion. Moreover, the applicant could always reapply for readmission to the Bar in the future, or apply to the courts to have the question of whether she had regained high moral character reconsidered. This only confirmed the proportionality of the interference.

45. Lastly, by a letter of 5 March 2014 the Government informed the Court that since the Law on the Bar had been amended in 2013 (see paragraph 22 above), there had been no formal statutory ban in respect of the applicant to the carrying out professional practice as an advocate.

However, to the Government's knowledge, the applicant had not addressed the Lithuanian Bar Association in this connection.

2. *The Court's assessment*

(a) **Whether there was an interference**

46. The Court is prepared to accept that the Bar Association's refusal to readmit the applicant to the Bar affected a wide range of her relationships with other persons, including relationships of a professional nature. It is also clear that this refusal, based on the findings by the Bar Association, the Court of Appeal and the Supreme Court that the applicant's prior criminal conviction had cast a shadow on her name (see paragraphs 10, 15 and 20 above), must have had affected her professional reputation (see, *mutatis mutandis*, *Milojević and Others v. Serbia*, nos. 43519/07 and 2 others, § 60, 12 January 2016, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 166, ECHR 2013).

47. That being so, the Court acknowledges that the refusal to accept the applicant to the Bar constituted an interference with her right to respect for her private life within the meaning of Article 8 of the Convention.

(b) **Whether the interference was justified**

48. The above-mentioned interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 89, CEDH 2011).

(i) *Whether the interference was in accordance with the law*

49. The Court observes that the Bar Association and the Court of Appeal relied on Article 8 (4) of the Law on the Bar (see paragraph 21 above) when holding that the applicant had not regained irreproachable reputation. The Bar Association and the appellate court also noted numerous other provisions of the Law on the Bar, as well as the Code of Ethics for Advocates as the bases of their conclusion that the applicant did not meet the criteria set out for the Bar (see paragraphs 10, 14 and 15 above). The Court therefore finds that the interference was prescribed by law within the meaning of Article 8 § 2 of the Convention.

(ii) *Whether the interference pursued a legitimate aim*

50. The Court also accepts the Government's argument (see paragraph 42 above) that the interference in question served the aim of protecting the rights of others. This was also noted by the Court of Appeal and the Supreme Court, which underlined the advocates' obligations

towards clients, courts and society and the need to safeguard the good functioning of the justice system overall (see paragraphs 14 and 20 above).

(iii) *Whether the interference was “necessary in a democratic society”*

51. At the outset the Court reiterates the most important role played by the lawyers in the administration of justice (see, on this point, *Schöpfer v. Switzerland*, 20 May 1998, §§ 29-30, *Reports* 1998-III; *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002-II; *Amihalachioaie v. Moldova*, no. 60115/00, § 27, ECHR 2004-III; *Kyprianou v. Cyprus* [GC], no. 73797/01, § 173, ECHR 2005-XIII; and *André and Another v. France*, no. 18603/03, § 42, 24 July 2008; all cited in *Morice v. France* [GC], no. 29369/10, § 132, ECHR 2015). The Court has also held that for members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (see *Kyprianou*, cited above, § 175).

52. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties and restrictions, particularly with regard to their professional conduct, which must be discreet, honest and dignified (see *Casado Coca v. Spain*, 24 February 1994, § 46, Series A no. 285-A; *Steur v. the Netherlands*, no. 39657/98, § 38, ECHR 2003-XI; *Veraart v. the Netherlands*, no. 10807/04, § 51, 30 November 2006; and *Morice*, cited above, § 133).

53. The Court has also held that any criminal proceedings entail certain consequences for the private life of an individual who has committed a crime. They are compatible with Article 8 of the Convention provided that they do not exceed the normal and inevitable consequences of such a situation (see *Karov v. Bulgaria*, no. 45964/99, § 88, 16 November 2006).

54. Turning to the circumstances of this case the Court notes that the domestic courts’ findings that the applicant had not yet regained high moral character are in line with their consistent case-law, which underlines high standards applicable to the advocate’s profession (see paragraphs 27–29 above). In fact, the domestic authorities emphasised the nature of the applicant’s crime – forgery of documents and misappropriation of State funds while ostensibly providing legal aid services and submitting forged documents to the court, as well as the fact that the applicant had more than thirty times used her professional practice to commit a crime – which obviously contradicted the requirements of professional ethics (see paragraphs 10 and 15 above).

In this connection the Court notes that in its Recommendation R (2000) 21, the Committee of Ministers of the Council of Europe has emphasised that Bar admitted lawyers must carry out their practice in order to strengthen the rule of law (see paragraph 31 above). Furthermore, the principles applicable to lawyer’s profession contain such values as the dignity and honour of the legal profession, the integrity and

good standing of the individual lawyer, respect towards professional colleagues, as well as respect for the fair administration of justice (see paragraph 32 above). Before being accepted to the Bar for the first time, the applicant swore an oath to observe the laws and to honestly perform her duties as an advocate (see paragraph 6 above), but later committed a grave breach of these duties. It is true that because of the size of the criminal sanction the offences for which the applicant was convicted were not categorised as serious crimes, and the applicant was let off with a fine (see paragraph 8 above). That notwithstanding, it is not unreasonable to hold that the applicant's behaviour when systematically cheating the court system and the State out of sums of money also showed her disrespect for her colleagues and peers, thus undermining the entire ideal of justice. The Court therefore inclines to the view that the reasons given by the Court of Appeal and the Supreme Court not to hold the applicant as being of high moral character (see paragraphs 14, 15 and 20 above) can be regarded as relevant in terms of the legitimate aims pursued.

55. The Court further notes that, in line with the Lithuanian courts' practice, absence of conviction, or its expiry do not mean *ipso facto* that a person has or has regained high moral character (see paragraphs 15 and 30 above). In this particular case the Court of Appeal and the Supreme Court considered that insufficient time – four years – had passed since the applicant's conviction for forgery of documents and fraud (see paragraph 8 above). It is not for the Court to substitute its view of what would be the appropriate interval until the applicant could claim to have regained her good name. Even so, the Court of Appeal underlined that this in no way prevented the applicant from reapplying for admission to the Bar in future, or from asking a court to reconsider whether she had regained high moral character (see paragraphs 16, 19 and 30 above). The Court therefore is satisfied that in the present case the domestic courts carried out a careful analysis and sought to strike a balance between the protection of the applicant's private life and the need to protect the rights of others and the justice system as a whole.

56. Lastly, and in reply to the applicant's argument that demands on her to have a good name were too high compared to representatives of other law-related professions (see paragraph 40 above), the Court notes that reputation-related restrictions, as applied in Lithuania to judges and prosecutors, are even stricter than those applicable to advocates. In particular, a person, who has been convicted of any crime, irrespective of its seriousness or whether that crime was intentional or negligent, cannot become a judge or a prosecutor (see paragraphs 25 and 26 above). The standard applicable to a person wishing to be admitted to the Bar is less exacting, in that prior convictions are not permanently considered to be a stain on the high moral character criterion (see paragraphs 19, 22 and 30 above).

57. In these circumstances, the Court considers that the interference with the applicant's right to respect for her professional activity, as part of her private life, did not exceed what was "necessary in a democratic society" for pursuing the legitimate aim of protecting the rights of others by ensuring the good and proper functioning of the justice system.

(c) Conclusion

58. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President