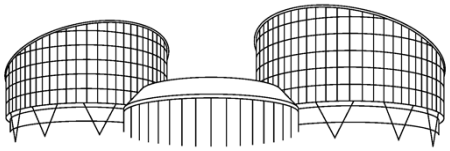

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF UAB KESKO SENUKAI LITHUANIA v. LITHUANIA

(Application no. 19162/19)

JUDGMENT

Art 8 • Home • Correspondence • Absence of e*x post facto* judicial review of the manner in which Competition Council officials carried out inspection of applicant company's office seizing large amounts of documents • Art 8 not to be interpreted as requiring an e*x post facto* judicial review in all such cases, but its availability among elements that might be taken into account when assessing compliance therewith • No adequate and effective procedural safeguards against abuse and arbitrariness • Interference disproportionate and not necessary in a democratic society

STRASBOURG

4 April 2023

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 UAB Kesko Senukai Lithuania 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 Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 19162/19) 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 company incorporated in Lithuania, UAB Kesko Senukai Lithuania ("the applicant company"), on 3 April 2019;

the decision to give notice of the application to the Lithuanian Government ("the Government");

the parties' observations;

Having deliberated in private on 14 March 2023,

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

INTRODUCTION

1. The applicant company complained that an inspection of its registered office by the Competition Council (*Konkurencijos taryba*) had been carried out in an unlawful and disproportionate manner and had not been subjected to any subsequent judicial review. It relied on Article 6 § 1, Article 8 and Article 13 of the Convention.

THE FACTS

2. The applicant company is a limited liability company incorporated under Lithuanian law, with its registered office in Kaunas. It was represented by Mr M. Juonys, a lawyer practising in Vilnius.

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

I. INVESTIGATION BY THE COMPETITION COUNCIL

4. On 17 April 2018 the Competition Council, a public body tasked with overseeing compliance with competition law, opened an investigation against five companies engaged in the production and retailing of construction

material and household goods (see paragraphs 55 and 56 below). The Competition Council suspected that several major producers and retailers, including the applicant company, had agreed to fix the prices of certain goods sold in their stores, thereby breaching the Law on Competition (see paragraph 54 below) and the relevant EU law.

5. The Competition Council applied to the Vilnius Regional Administrative Court for authorisation to enter and inspect the registered offices of the five companies that were the targets of the investigation (see paragraphs 59 and 60 below). On 30 May 2018 the court issued such authorisation in respect of four of those companies – including the applicant company.

6. On 5 June 2018 the Competition Council issued a decision stating that when carrying out inspections and other investigative measures in the course of the investigation in question, it would utilise the services of specialists from the Vilnius police department (see paragraphs 59 and 61 below).

II. INSPECTION OF THE APPLICANT COMPANY'S REGISTERED OFFICE

7. On 6 June 2018 the Competition Council carried out an inspection of the applicant company's registered office in Kaunas. According to the official written record of the inspection, the inspection began at 10.45 a.m. and was carried out by eight officials of the Competition Council. The applicant company's in-house lawyer was present from the start of the inspection. Two high-level managers were present, respectively, from 11.24 a.m. and 11.47 a.m.; a lawyer specialising in criminal law was present from 12.48 p.m. until 1.36 p.m.; and three lawyers specialising in competition law were present from 1.35 p.m.

8. The official record of the inspection stated that the Competition Council had provided the applicant company's representatives with copies of its decisions of 17 April and 5 June 2018 and a copy of the Vilnius Regional Administrative Court's decision of 30 May 2018 (see paragraphs 4-6 above). Moreover, according to the official record, the Competition Council explained to the applicant company's representatives the way in which the inspection would be carried out, the rights and obligations of the Competition Council's officials, and the rights and obligations of the applicant company and its representatives during the inspection. The above-mentioned in-house lawyer, the two managers and the criminal lawyer (see paragraph 7 above) signed the official record to confirm that they had received the aforementioned documents and that they had understood the explanation given.

9. The Competition Council examined the documents stored in the offices of five employees of the applicant company and questioned three of those employees. The official record included a list of documents that had been

seized from the offices – over sixty items, amounting to nearly 400 pages. The Competition Council also examined the computers of those five employees and the mobile phone of one of them, and copied over 250 gigabytes of data.

10. One of the applicant company's lawyers noted in the record that the Competition Council had seized documents and copied information in an indiscriminate manner; it had thus seized certain documents that had not been related to the subject of the investigation. The lawyer gave several examples of such documents contained in the list of the documents that had been seized (see paragraph 9 above). She further stated that the seized and copied documents included information of a personal nature, correspondence with lawyers, and commercial secrets; however, in view of the large amount of the information that had been seized, it was impossible to list each such document. The lawyer also stated that the Competition Council's decision on the launching of the investigation (see paragraph 4 above) had not indicated the period of time in respect of which the Competition Council would target its investigation, nor had that period been specified by the officials carrying out the inspection. As a result, they had examined information dating from an unspecified range of time – including some documents dating from 2012 and 2013. In addition, the offices of the above-mentioned five employees of the applicant company that the Competition Council had examined had housed documents and data pertaining to former employees of the applicant company; these had been seized and examined as well. Lastly, the lawyer stated that the persons who had been present during the inspection had not been informed of their rights and obligations, and that for approximately one hour after the start of the inspection they had not been allowed to telephone a lawyer.

III. COMPLAINTS AND REQUESTS LODGED BY THE APPLICANT COMPANY WITH THE COMPETITION COUNCIL

A. Complaint about the conduct of the inspection

1. The applicant company's complaint

11. On 18 June 2018 the applicant company lodged a complaint with the Competition Council under Article 32 § 1 of the Law on Competition regarding the actions of its officials during the inspection (see paragraph 67 below). The applicant company submitted that the officials of the Competition Council had arrived at its office accompanied by police officers and had not immediately explained to its employees the nature and purpose of the inspection. As a result, the applicant company's employees had been under the impression that the inspection would be carried out by law-enforcement authorities and had accordingly summoned a lawyer specialising in criminal law (see paragraph 7 above). The nature of the inspection had

been explained to them only later, which had resulted in a delay in calling lawyers specialising in competition law (see paragraph 7 above). Moreover, the actions of the Competition Council had caused unnecessary stress to the applicant company's employees. The applicant company also submitted that the presence of police officers had not been recorded in the official written record of the inspection; therefore, it was not clear what actions they had carried out and at what time they had left.

12. The applicant company further submitted that the Competition Council's officials had not properly familiarised it with its rights and obligations. At the start of the inspection, those officials had merely told the applicant company's in-house lawyer, in a very general manner, that an inspection would be carried out and that it was the applicant company's duty to give its full cooperation – without explaining what precise steps would be taken or the specific rights and obligations incumbent on the applicant company. Moreover, the above-mentioned decisions of the Competition Council and the Vilnius Regional Administrative Court, which had been provided to the applicant company's employees, were very concise and did not contain sufficient information to enable the applicant company to understand the investigative measures that were being taken or its rights and obligations (see paragraphs 4 and 5 above). The applicant company contended that the list of rights and obligations should have been provided to its employees in writing.

13. Furthermore, the applicant company submitted that the Competition Council had restricted the rights of its employees in ways that had not been provided by law. In particular, for approximately one hour after the start of the inspection, the employees had not been allowed to make any phone calls – not even to lawyers, which had precluded them from promptly calling lawyers specialising in competition law; this had restricted the applicant company's defence rights. Moreover, after phone calls had been authorised, the Competition Council's officials had insisted on the applicant company's employees conducting calls via speakerphone – thereby infringing on their right to communicate with lawyers in a confidential manner. The applicant company also submitted that the inspection had finished at 10.18 p.m.; its employees had therefore been forced to remain at their workplace for several hours after the end of the working day, when they had been tired. The applicant company contended that, by engaging in such actions, the Competition Council had sought to place its employees under psychological pressure.

14. Lastly, the applicant company submitted that the officials had seized and copied large amounts of information in an indiscriminate manner, without even attempting to assess whether certain documents were related to the investigation in question. In particular, they had copied the entire mailbox contents from the computers of five employees (see paragraph 9 above). The applicant company contended that the Competition Council had the right to

seize and copy only such information that was related to the applicant company's dealings with those other companies that were subjected to the same investigation (see paragraph 4 above) and that the officials should have identified that information by defining precisely the targeted time period and by using relevant keywords. However, the amount of the information that had been seized had in and of itself been indicative of the fact that no such selection had been performed. The applicant company stated that the Competition Council had copied more than 725,400 emails; of those, approximately 31,300 appeared to relate to the companies subjected to the investigation, and the remaining 694,100 did not. Similarly, of the approximately 117,500 documents copied from the above-mentioned five computers and one mobile phone, approximately 4,700 appeared to relate to the aforementioned companies, and the remaining 112,800 did not.

15. Accordingly, citing Article 32 of the Law on Competition (see paragraph 67 below), the applicant company asked the Competition Council to find: (1) that its officials had acted unlawfully in copying information from the computers of the applicant company's employees in an indiscriminate manner and that any evidence collected this way was to be considered as having been unlawfully obtained; (2) that its officials had acted unlawfully by failing to properly inform the applicant company's employees about the course of the inspection and their rights and obligations and by restricting their right to contact lawyers, and that all investigative measures carried out before the arrival of the lawyers were to be considered unlawful; and (3) that its officials had acted unlawfully by prohibiting the applicant company's employees from making phone calls, including to lawyers, and by continuing the inspection outside of the applicant company's working hours.

2. The Competition Council's decision

16. On 27 June 2018 the Competition Council dismissed the applicant company's complaint.

17. It stated that the decision on the opening of the investigation had clearly indicated its subject (see paragraph 4 above) and that the applicant company ought to have been able to understand the alleged infringements that were being investigated. According to the relevant case-law of the Court of Justice of the European Union (hereinafter "the CJEU"), the Competition Council had not been required to indicate the precise period of time during which the alleged infringements had been committed.

18. It further stated that the Law on Competition had entitled it to examine, copy and seize any documents which were relevant to the investigation and which might have evidentiary value (see paragraph 59 below). The purpose of an inspection was to obtain information which was not publicly available and which might often constitute the only evidence of infringements of competition law. Anti-competitive actions or agreements could sometimes be identified on the basis of certain coincidences or

indications that, when taken together, and in the absence of any other logical explanation, could constitute evidence of an infringement of competition law; the right to obtain documents included the right to look for information that was not yet known or not precisely identified. Therefore, although the Competition Council's right to obtain information during an inspection was not unlimited, its investigations had to be effective and the limits of such investigations could be broad.

19. The Competition Council disputed the applicant company's allegation that documents had been seized and copied without any selection criteria being applied. It stated that it had only inspected the offices of those employees who worked in the areas concerned by the investigation and that it had not copied any documents that were obviously unrelated to the subject of the investigation. It also rejected the applicant company's argument that its officials should have searched for information by using certain keywords – it submitted that that was only one of the possible ways of finding relevant information, but that it was not sufficient, because the existence of an unlawful agreement could be ascertained by perusing a variety of documents and not only those in which the names of the relevant companies were explicitly mentioned. Moreover, unlawful agreements were typically kept secret, and any reference to such agreements might be made by means of using codewords – the Competition Council referred to examples from past cases where it had identified such actions. It also emphasised that the investigation was still at its initial stage; therefore, it was not yet possible to indicate exactly whether and how each of the seized documents might be instrumental in verifying the existence of any infringements.

20. The Competition Council rejected the applicant company's allegation that its employees had been misled about the nature and purpose of the inspection. It pointed out that having recourse to police officers during such inspections was authorised by law (see paragraph 61 below). In the case at hand, the police officers had not carried out any investigative measures and had left the premises as soon as the inspection had begun. Therefore, it had not been necessary to indicate their presence in the record of the inspection.

21. The Competition Council also stated that, as indicated in the official record, the applicant company's representatives had been informed of their rights and obligations and of the relevant decisions authorising the inspection (see paragraph 8 above). Such information had been provided to them orally. Moreover, the applicant company's in-house lawyer had been present from the start of the inspection, and the applicant company had contacted external lawyers specialising in criminal law and in competition law; the latter had arrived at the applicant company's office shortly after the former (see paragraph 7 above). According to its Rules of Procedure, the Competition Council had not been required to wait for the arrival of the external lawyers in order to begin the inspection (see paragraph 70 below).

22. Lastly, the Competition Council stated that it had restricted the right of the applicant company's employees to make phone calls only at the beginning of the inspection, with a view to ensuring its secrecy. Subsequently, when the employees had been allowed to contact lawyers by telephone, the Competition Council officials had only listened to the beginning of conversations, in order to make sure that the employees were indeed talking to lawyers. It contended that their doing so had been consistent with the relevant case-law of the CJEU.

23. The decision of the Competition Council indicated that an appeal against it could be lodged with the Vilnius Regional Administrative Court within twenty days.

B. Request to remove information from the investigation file

24. On 20 June 2018 the applicant company lodged a request with the Competition Council, asking that any information that was not related to the subject of the investigation be returned to it or removed from the Competition Council's storage devices, or otherwise destroyed.

25. On 3 July 2018 the Competition Council informed the applicant company that the information that had been obtained during the inspection had been assessed by its officials as necessary for the investigation. Information could be removed from the investigation file only following a well-founded request, which should indicate the exact information to be removed and the grounds for its removal. The Competition Council asked the applicant company to clarify its request within seven days: namely, to specify which information was obviously unnecessary for the investigation and to provide precise keywords or other criteria for identifying any such unnecessary information.

26. On 10 July 2018 the applicant company replied to the Competition Council that it was impossible for it to clarify the request within a reasonable time, in view of the very large amount of information that had been seized (see paragraph 9 above). Reviewing each document and each email and indicating a precise reason for deleting any of them from the investigation file would require an excessive amount of time and would not make sense, particularly in view of the fact that the applicant company had not been informed of the period of time in respect of which the Competition Council would target its investigation, or of any other criteria by which could be determined the relevance for the investigation of any piece of information. Therefore, the Competition Council was better placed than the applicant company to identify the information that it needed for the purposes of the investigation. The applicant company asked for an opportunity to meet with the Competition Council and to discuss any possible solutions to the situation.

27. On 20 July 2018 a meeting was held between the representatives of the applicant company and those of the Competition Council, but they did not

manage to reach any agreement on the question of the removal of allegedly irrelevant information from the investigation file.

IV. COURT PROCEEDINGS

A. Proceedings before the Vilnius Regional Administrative Court

1. The applicant company's complaint

28. On 18 July 2018 the applicant company lodged a complaint with the Vilnius Regional Administrative Court against the Competition Council's decision of 27 June 2018 (see paragraph 16 above). It presented essentially the same arguments as those that it had raised with the Competition Council (see paragraphs 11-15 above).

29. In addition, the applicant company submitted that the carrying out of investigative measures in a company's registered office interfered with that company's right to respect for its private life, home and correspondence. Therefore, when carrying out any such measures, the subject of the investigation had to be defined in a clear and precise manner, and only information related to that subject could be seized. Determining which information was relevant for such an investigation was the duty of the Competition Council. However, the applicant company contended that the Competition Council had failed to properly prepare for the inspection of the applicant company's office and to determine the criteria for identifying the relevant information; it had instead copied the entire contents of the mailboxes on the computers of the applicant company's employees, which was contrary to the principles established in the case-law of the CJEU.

30. The applicant company further submitted that, even though the Competition Council had inspected the offices and computers of only five of its employees, the fact that it had copied their entire mailboxes demonstrated that it had not carried out any assessment of which emails were related to the subject of the investigation. Each of those five employees had worked with multiple other companies that were not involved in the investigation; thus, it was obvious that part of the information copied by the Competition Council had not been relevant.

31. The applicant company also submitted that, when copying other information from its employees' computers, the Competition Council had used certain keywords, but that those keywords had been too general and imprecise and overly inclusive. Although the Competition Council had not informed the applicant company of the keywords that it had been using, its employees had noticed that the keywords had included words such as "competitor" or "price", which could have led to the officials obtaining information about all of the applicant company's competitors and all decisions related to prices – including those that had nothing to do with the investigation.

32. Lastly, the applicant company submitted that the Competition Council had not informed its employees of their rights and obligations in writing. As a result, the applicant company's employees, who had been under stress because of the presence of the police and the officials, and who themselves were not experts in competition law, had been unable to clearly understand what the officials of the Competition Council were and were not authorised to do. In particular, without having adequate knowledge of their rights and without being able to promptly consult a lawyer specialising in competition law, the applicant company's employees had not been able to question the officials' actions in restricting their telephone communication and in making them stay in their workplace after working hours. The applicant company argued that the law did not authorise the Competition Council to restrict the rights of its employees in such a way.

33. Accordingly, it asked the court to find: (1) that the Competition Council had acted unlawfully in copying the information found in the offices, computers and mailboxes of the applicant company's employees without first assessing its relevance for the investigation and that any evidence collected this way was to be considered as having been unlawfully obtained; (2) that the officials of the Competition Council had acted unlawfully in failing to properly inform the applicant company of the nature and purpose of the inspection, by exerting psychological pressure on the applicant company, by not properly explaining to the applicant company its rights and obligations, by restricting its employees' right to make phone calls and to consult lawyers, and by keeping its employees in their workplace outside of the working hours.

2. The Vilnius Regional Administrative Court's decision

34. On 30 July 2018 the Vilnius Regional Administrative Court refused to accept the applicant company's complaint for examination.

35. It stated that the right of access to a court was guaranteed by the Constitution and by the well-established case-law of the Constitutional Court (see paragraphs 49 and 72 below). At the same time, the Law on Administrative Proceedings provided that the right of access to a court had to be exercised in accordance with the conditions established by law, and that one of the grounds on which a court could refuse to examine a complaint was when such complaints could not be examined by courts (see paragraphs 51 and 52 below). According to the case-law of the Supreme Administrative Court, the administrative courts examined cases concerning the lawfulness of decisions, actions or omissions on the part of public-administration bodies that affected persons' rights or lawful interests. However, a decision that clearly did not give rise to any legal consequences could not be the subject of an administrative case. Were a court to examine a complaint concerning a decision that had not given rise to any legal consequences, it would not be able to defend a person's rights, because even if such a complaint were upheld, the extent of that person's rights and obligations would not change

and the proceedings would be essentially meaningless (see paragraph 73 below). Accordingly, a refusal by a court to examine a complaint concerning a decision that had no legal consequences did not breach the principles of effective legal defence and *ubi ius, ibi remedium*.

36. Turning to the circumstances of the case, the Vilnius Regional Administrative Court stated that the Competition Council's decision of 27 June 2018 had concerned certain procedural aspects of the inspection carried out in the applicant company's registered office – namely, the lawfulness of the actions of the Competition Council's officials. Therefore, that decision had constituted a procedural document of an interim nature (*tarpinio pobūdžio procedūrinis dokumentas*) that had not given rise to any material legal consequences for the applicant company, and complaints against it could not be lodged with the courts (the court referred to the Supreme Administrative Court's decision of 9 September 2015, which is summarised in paragraph 79 below). Legal consequences for the applicant company would arise only when the Competition Council completed the investigation and issued a final decision. The court considered that the proceedings that the applicant company was seeking to institute concerned the lawfulness of the entire procedure conducted by the Competition Council – a procedure that would be concluded upon the issuance of the final decision. The applicant company would have the right to lodge a complaint with the courts against the final decision; in that complaint it would also be able to challenge the actions of the Competition Council's officials during the inspection. Thus, the refusal to examine the applicant company's present complaint did not preclude it from eventually defending its rights and interests before a court.

B. Proceedings before the Supreme Administrative Court

1. The applicant company's appeal

37. On 6 August 2018 the applicant company lodged an appeal against the above-noted decision of the Vilnius Regional Administrative Court. It submitted that Article 32 § 2 of the Law on Competition granted it the right to lodge complaints with the Competition Council concerning the actions of its officials (see paragraph 67 below), and that under Article 32 § 3, appeals against decisions taken by the Competition Council pursuant to such complaints could be lodged with the courts (see paragraph 68 below). According to those legal provisions, the lodging of complaints was subject to only two conditions: (1) the entity in question believed that its rights had been violated; and (2) the complaint had to be lodged within ten days of that entity finding out about the impugned decision. Thus, the applicant company contended that the Vilnius Regional Administrative Court had unjustifiably restricted the rights guaranteed to the applicant company under Article 32 of the Law on Competition. It also submitted that, were it to complain about the

actions of the Competition Council's officials only after the investigation was completed, it would miss the ten-day time-limit established in that Law (see paragraph 67 below).

38. Furthermore, the applicant company disputed the Vilnius Regional Administrative Court's finding that its complaint "concerned the lawfulness of the entire procedure" (see paragraph 36 above). It submitted that an inspection of an entity's registered office constituted a special measure taken by the Competition Council's officers and that it was therefore subject to a special complaint procedure. Unlike the opening of an investigation, which was within the discretion of the Competition Council, an inspection could only be carried out with the authorisation of the Vilnius Regional Administrative Court (see paragraph 60 below); the applicant company contended that, for that reason, it should be for the courts to verify whether the inspection had complied with the law and with the court order. Moreover, during an inspection, a written record had to be drawn up, indicating the times of its start and end, and the exact measures that had been taken; this further demonstrated that it constituted a separate and precisely defined procedure.

39. The applicant company also submitted that the investigation by the Competition Council would not necessarily end in a decision against which the applicant company could appeal – after completing the investigation, the Competition Council might decide to discontinue it or to not impose any penalties (see paragraphs 65 and 66 below). Were that to happen, the applicant company would not have any possibility to challenge the violations of its rights during the inspection.

40. The applicant company pointed out that, in other branches of law, such as criminal law, complaints could be lodged against any investigative measures taken by an investigator or a prosecutor – even when the pre-trial investigation in question was ongoing. It argued that, if the lawfulness of officials' actions could be assessed only at the very end of an investigation, that would not only be unacceptable from the human rights perspective but would also create a risk that the final decision might be based on evidence collected through possibly unlawful actions. That was why the possibility to appeal against the actions of the Competition Council's officials was provided in the Law on Competition. Moreover, the wording of the decision of 27 June 2018 had itself indicated that that decision was subject to appeal (see paragraph 23 above).

41. In addition, the applicant company argued that the impugned decision had given rise to legal consequences. It submitted that the officials of the Competition Council had exceeded their remit and had violated the applicant company's constitutional rights. Those violations were still ongoing and they risked negatively impacting the applicant company's interests because the Competition Council had retained the unlawfully obtained information and was continuing to use it in the investigation. The applicant company reiterated its earlier arguments – namely, that the Competition Council's officials had

seized and copied large amounts of information in an indiscriminate manner and that they had restricted the rights of the applicant company's employees (see paragraphs 11-14 and 30-32 above). In doing so, they had exceeded the powers granted to them under Article 25 § 1 of the Law on Competition (see paragraph 59 below) and had violated the applicant company's right to respect for its private life, the confidentiality of its correspondence and its right of access to a court, as guaranteed by the Constitution (see paragraph 49 below).

42. Lastly, the applicant company contended that the case-law of the Supreme Administrative Court supported its position that its complaint against the Competition Council could be examined by the courts. It submitted that the Supreme Administrative Court had held that Article 32 of the Law on Competition enshrined a special complaint procedure, whereby complaints had first to be lodged with the Competition Council and subsequently with the courts, and that that provision granted the right to lodge complaints against actions or decisions taken by the Competition Council's officials which did not constitute the final decisions in an investigation but which gave rise to independent material legal consequences in respect of their addressees (see the cases to which the applicant company referred in paragraphs 76 and 78 below). The applicant company also contended that the Vilnius Regional Administrative Court had interpreted the Supreme Administrative Court's case-law incorrectly because the decision on which it had based its judgment had been delivered by the Supreme Administrative Court in the light of different factual circumstances – namely, in a situation where the Competition Council had already completed the investigation (see paragraphs 36 above and 79 below).

2. The Supreme Administrative Court's decision

43. On 3 October 2018 the Supreme Administrative Court dismissed the applicant company's appeal. It stated that its case-law regarding the interpretation and application of Article 32 §§ 1 and 3 of the Law on Competition (see paragraphs 67 and 68 below) had not changed: both in its earlier and in more recent case-law, the Supreme Administrative Court had simply noted that those legislative provisions guaranteed the right to lodge complaints against the actions and decisions of the Competition Council's officials; they also laid down the procedure for exercising that right (see paragraphs 76 and 80 below). However, Article 32 §§ 1 and 3 could not be construed as granting the right to lodge complaints against absolutely any decisions taken by the Competition Council, including those that did not give rise to any legal consequences – instead, they had to be read in the light of the legal instruments concerning the right of access to a court.

44. In this connection, the Supreme Administrative Court referred to its case-law and reiterated that the administrative courts could examine only such complaints that were lodged against decisions, actions or omissions that

gave rise to legal consequences; were it otherwise, the court proceedings would have no effect on the extent of the complainant's rights and obligations and would therefore be meaningless (see paragraph 73 below). Moreover, even when it could not be concluded that a decision had no legal consequences, that decision had to be assessed within the context in which it had been taken, and it had to be determined whether the complainant's interests would be actually defended; it was also important to consider whether the complainant would be entirely precluded from defending his or her interests before a court (see paragraph 74 below).

45. Turning to the circumstances of the case, the Supreme Administrative Court observed that the applicant company had asked the courts to find that the Competition Council's officials had acted unlawfully when carrying out the inspection and obtaining evidence (see paragraph 33 above). However, were the courts to allow that complaint, the extent of the applicant company's rights and obligations would not change. The court further held that the impugned actions of the officials could be assessed after the Competition Council completed the investigation and issued a final decision; moreover, there was a possibility to lodge a civil claim for damages against the State, provided that the conditions allowing the State's civil liability to arise had been met (see paragraph 50 below). Therefore, the Supreme Administrative Court was satisfied that the refusal to examine the applicant company's complaint had not deprived it of access to a court.

C. Application for the reopening of the proceedings

46. On 26 October 2018 the applicant company lodged an application for the reopening of the proceedings. It argued, in particular, that the Supreme Administrative Court's decision of 3 October 2018 had contradicted that court's case-law in similar cases, including in some very recent ones, where it had been acknowledged that complaints concerning the lawfulness of actions of Competition Council officials relating to the collection of evidence could be lodged under Article 32 § 3 of the Law on Competition, irrespective of whether the investigation in question had been concluded by the issuance of a final decision (see paragraphs 80 and 81 below).

47. On 18 December 2018 the Supreme Administrative Court rejected the applicant company's application. It stated that there was no possibility, under domestic law, to reopen proceedings in which the administrative courts had refused to accept a complaint for examination.

V. OTHER RELEVANT FACTS

48. On 24 March 2020 the Competition Council discontinued its investigation (see paragraph 66 below). It stated that, after carrying out inspections in the registered offices of the companies concerned and

obtaining and examining relevant information, it had found no grounds to believe that the said companies had committed any infringements of competition law. No appeals against that decision were lodged. It appears that the information obtained from the applicant company's office was eventually destroyed (see paragraph 107 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution

49. The relevant provisions of the Constitution read:

Article 22

"Private life shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

Information concerning the private life of a person may be collected only upon a justified court decision and only in accordance with the law.

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity."

Article 30

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

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

Article 46

"The economy of Lithuania shall be based on the right of private ownership, freedom of individual economic activity, and economic initiative.

...

The law shall prohibit the monopolisation of production and the market and shall protect freedom of fair competition. ..."

B. Civil Code

50. Article 6.271 § 1 of the Civil Code provides, *inter alia*, that compensation for damage caused by unlawful acts of public authorities must be afforded by the State, irrespective of whether an individual civil servant or employee was at fault. Article 6.271 § 3 provides, *inter alia*, that, for the purposes of that Article, "acts" mean any actions or omissions on the part of a public authority or its employees that directly affect the rights, freedoms and interests of other persons, such as legal instruments or decisions issued

by State institutions, administrative decisions or physical actions, except for judgments, decisions or rulings adopted by courts. Article 6.271 § 4 provides, *inter alia*, that the State shall incur civil liability under that Article in the event that public authorities or their employees fail to act in the manner required by law.

C. Law on Administrative Proceedings

51. Article 5 § 1 of the Law on Administrative Proceedings provides that everyone has the right to lodge a complaint with a court, in accordance with a procedure established by law, in order to defend rights or lawful interests which have been violated or which are disputed.

52. Article 33 § 2 (1) provides that the president or a judge of an administrative court shall refuse to accept a complaint, a request or a claim for examination where the said complaint, request or claim cannot be examined by the courts in accordance with the provisions of the Law on Administrative Proceedings; a reasoned decision shall be issued to that effect.

D. Law on Competition

53. Article 2 § 1 of the Law on Competition states that economic entities are prohibited from carrying out any actions that limit, or may limit, competition, irrespective of the economic field in which they operate, save for exceptions provided by legal instruments in respect of specific economic fields.

54. Article 5 § 1 provides that all agreements that limit or seek to limit or may limit competition are prohibited and shall be considered void *ab initio*, including agreements to directly or indirectly fix prices or other conditions in respect of the purchase or sale of certain goods.

1. Rights and functions of the Competition Council

55. Article 17 § 1 provides, *inter alia*, that the Competition Council is an independent public authority that reports to the *Seimas*. It implements the national competition policy and oversees compliance with the Law on Competition.

56. Article 22 § 1 (2) provides that the Competition Council has the right to investigate agreements that may limit competition.

(a) Protection of commercial secrets

57. At the material time, Article 21 § 1 provided that the Competition Council and its administrative staff had to protect commercial secrets of which they learned in the course of exercising their functions and that they could only use information containing such secrets for the purposes for which

such information had been obtained, unless the relevant economic entity consented to it being used in other ways.

58. At the material time, Article 21 § 3 provided, *inter alia*, that if an economic entity believed that the Competition Council had obtained documents or other information containing its commercial secrets, it had the right to lodge a request with the Competition Council for that information to be protected. Such a request had to clearly identify which information it was that contained commercial secrets. The Competition Council was to decide on such requests and inform the entity in question. Under Article 21 § 4, if the request did not indicate precisely which exact information contained commercial secrets, the entity in question could be required to provide a clarification within a time-limit set by the Competition Council, which could not be shorter than one working day. If the entity failed to provide such a clarification within the given time-limit, it would be deemed that the information in the Competition Council's possession did not contain any commercial secrets.

(b) Investigative measures

59. At the material time, Article 25 § 1 provided, in its relevant part:

"1. When carrying out an investigation, authorised officials of the Competition Council have the following rights:

1) to enter and inspect the premises, territory and vehicles used by an economic entity;

...

3) to examine the documents necessary for the investigation, irrespective of the type of device in which they are stored, obtain copies thereof and extracts therefrom, examine work-related notes taken by the entity's employees and make copies thereof, copy the information stored on computers and any other storage devices;

...

6) to obtain – from economic entities, other persons and legal entities or public-administration bodies – such documents, data and other information available to [those persons and entities] as are necessary for the investigation. The aforementioned persons and entities have the right to provide such information to the authorised officials of the Competition Council on their own initiative;

...

8) to seize documents and objects that may have evidentiary value in the case under investigation;

...

10) to have recourse to specialists and experts;

..."

60. At the material time, Article 25 § 2 provided, *inter alia*, that the entering and inspection of an entity's premises could be carried out only with the authorisation of a court.

61. At the material time, Article 25 § 3 provided that, for the purpose of ensuring public order, officials of the Competition Council could have recourse to assistance from police officers.

62. At the material time, Article 25 § 4 provided that, before carrying out the measures indicated in that Article, the officials of the Competition Council had to provide the persons or entities concerned with a document issued by the Competition Council certifying their authority to carry out those measures and the aims and time-limits of the investigation.

63. At the material time, Article 25 § 5 stated that, when exercising their rights under the Law on Competition, the officials of the Competition Council had to draft official written records of the investigative measures taken by them, using the template forms issued for this purpose.

64. At the material time, Article 25 § 6 provided that the orders given by officials of the Competition Council when exercising their functions under Article 25 § 1 (see paragraph 59 above) were legally binding. Failure to comply with such orders gave rise to legal liability under the Law on Competition and the Code of Administrative Offences.

(c) End of an investigation

65. Article 28 § 2 provides, *inter alia*, that an investigation shall be deemed completed when the Competition Council is satisfied that a breach of competition law has been committed. After reaching this conclusion, it shall notify the entity in question, which may then access the investigation file and make submissions to the Competition Council (Article 29 §§ 1 and 2). Subsequently the Competition Council may decide to impose one of the penalties provided for by law, or not to impose any penalties, or to discontinue the investigation, or to carry out an additional investigation (Article 30 § 1).

66. Article 28 § 3 (1) states that if during an investigation it becomes clear that no infringement of competition law has been committed, the Competition Council shall discontinue that investigation.

2. Complaints against the decisions of the Competition Council

67. Article 32 § 1 provides that economic entities and other persons who believe that their rights have been violated have the right to lodge complaints with the Competition Council concerning the actions and decisions taken by its authorised officials and other staff during an investigation into alleged infringements of the Law on Competition. Such complaints must be lodged no later than ten days after the day on which the entity or person concerned found out about the impugned actions or decisions. The Competition Council must take a decision regarding any such complaint within ten days of

receiving it. Under Article 32 § 2, the ten-day time-limit for lodging complaints may be extended for important reasons.

68. Article 32 § 3 provides that if the entity or person who lodged a complaint disagrees with the decision taken by the Competition Council, or if the Competition Council fails to take a decision within ten days, that entity or person has the right to lodge an appeal with the Vilnius Regional Administrative Court. However, the lodging of such an appeal will not have the effect of suspending any investigation into alleged infringements of the Law on Competition.

69. Article 33 § 1 provides, *inter alia*, that economic entities and other persons who believe that their rights have been violated have the right to lodge complaints with the Vilnius Regional Administrative Court concerning decisions of the Competition Council that preclude the further conduct of the investigation.

E. Rules of Procedure of the Competition Council

70. Paragraph 42 of the Rules of Procedure of the Competition Council, issued by the Competition Council, provides that an entity that is being inspected may ask an attorney or an assistant attorney to participate in an inspection; however, their absence will not preclude the Competition Council from starting or carrying out the inspection.

71. Paragraph 46 provides that if the officials carrying out an inspection believe that certain documents are protected by attorney-client privilege, they cannot seize or copy such documents. If an entity that is inspected later informs the Competition Council that documents protected by attorney-client privilege were seized, the officials must satisfy themselves that the said documents are indeed so protected; if that is the case, they must return them to the entity in question or delete or otherwise destroy them.

F. Case-law of the Constitutional Court

72. The Constitutional Court has ruled numerous times on the right of access to a court and has held, *inter alia*, that the law could not provide a regulation that would preclude a person who believed that his or her rights and freedoms had been violated from defending them in court (see, among many others, the Constitutional Court's rulings of 30 June 2000, 2 July 2002, 4 March 2003, 29 December 2004, 28 March 2006, 24 October 2007 and 13 May 2010). In the ruling of 13 May 2010 the Constitutional Court summarised its earlier case-law as follows:

> "Article 30 § 1 of the Constitution enshrines the constitutional principle of judicial defence. This principle is universal: every person who thinks that his or her rights or freedoms have been violated has the right to judicial defence ... An individual's rights and legitimate interests must be defended in court, regardless of whether or not they are directly provided by the Constitution. The right of access to a court is absolute; it may

not be limited or denied, or artificially restricted, and exercising it may not be made unreasonably burdensome. If the constitutional right of access to a court has not been ensured, the generally recognised legal principle of *ubi ius, ibi remedium* – where there is a certain right (or freedom), there must be a measure available for its protection – will also have been disregarded. A situation where a certain right or freedom may not be defended, including by means of judicial procedure, even though the individual himself or herself believes that that right or freedom has been violated, is not allowed or tolerated under the Constitution ..."

G. Case-law of the Supreme Administrative Court

1. On the right of access to a court

73. The Supreme Administrative Court has held on numerous occasions that decisions, actions or omissions by entities of public administration that do not give rise to any legal consequences may not be examined by the administrative courts. In the event that it is clear, at the time that a complaint is lodged, that the impugned decision, action or omission does not give rise to any legal consequences, the court in question must refuse to examine it, since examining such a complaint would not lead to the defence of the claimant's rights, and the proceedings would be essentially meaningless (see, among many others, a decision of 25 September 2008 in case no. AS525-540/2008, a decision of 22 October 2010 in case no. AS143-560/2010, and a decision of 17 March 2011 in case no. A-442-1238/2011).

74. In a decision of 9 September 2015 in case no. eAS-884-858/2015 and a decision of 30 September 2015 in case no. eAS-1138-858/2015, the Supreme Administrative Court held that any impugned decision had to be assessed within the context in which it had been taken; in particular, it had to be determined whether such a decision could be the subject of independent court proceedings and whether instituting such proceedings would actually defend the complainant's interests. On the one hand, that depended on the particular factual circumstances and the link between the complaint and the various procedures provided by law; on the other hand, it had to be taken into account whether the complainant would otherwise be entirely precluded from defending his or her interests before a court.

75. In a decision of 27 September 2012 in case no. A-662-2003/2012 and a decision of 30 September 2015 in case no. eAS-1138-858/2015, the Supreme Administrative Court held that, when carrying out an administrative procedure, a public-administration body could draft various documents before issuing its final decision in respect of the matter in hand. Such documents typically served an auxiliary, interim or accessory role in an administrative procedure and did not contain final decisions on the issue that was the subject of the procedure. They could decide on various procedural questions that were not directly related to the beginning or end of (or a change in) the rights or obligations of the person in question. For that reason, such

documents often – albeit not always – did not give rise to any material legal consequences.

2. On complaints lodged under Article 32 of the Law on Competition

76. A decision of 24 July 2014 in case no. A[146]-1000/2014 concerned a request lodged by the claimants with the Competition Council for it to open an investigation against another company. An official of the Competition Council informed them that their request was unsubstantiated. The claimants complained about that official's actions to the Competition Council, but the latter found that they had missed the ten-day time-limit for lodging such a complaint and that there were no grounds for extending it. The administrative courts dismissed an appeal lodged by the claimants against the Competition Council's decision. The Supreme Administrative Court stated in particular that the Law on Competition provided a special complaints procedure under which complaints concerning actions and decisions taken by Competition Council officials had first to be lodged with the Competition Council itself, and only after that with the courts. However, the claimants had not complied with that procedure.

77. A decision of 14 August 2014 in case no. A-858-1626/2014 concerned the refusal by the Competition Council to provide to the claimant certain documents on which it had based the final decisions issued against the claimant in several investigations. The first-instance court found that the Competition Council's refusal to provide those documents had not been sufficiently reasoned, and the Supreme Administrative Court upheld that conclusion. It also held that, in the case at hand, the claimant had not been required to first lodge a complaint with the Competition Council under Article 32 of the Law on Competition because the procedure under the latter provision was applicable only in respect of ongoing investigations, whereas the investigations against the claimant had already been completed.

78. A decision of 20 May 2015 in case no. eAS-249-822/2015 concerned a request lodged by the claimant with the courts asking them to annul a decision taken by the Competition Council to carry out investigative measures, including an inspection, in the course of an ongoing investigation. The complaint was lodged under Article 33 of the Law on Competition (see paragraph 69 above). The administrative courts refused to accept the complaint for examination, on the grounds that the impugned decision had not given rise to legal consequences for the claimant. The Supreme Administrative Court stated that the refusal to examine the complaint did not amount to a denial of the claimant's right of access to a court, because there were other avenues available to it by which to defend its rights. In particular, under Article 32 of the Law on Competition, it had the right to complain about decisions or actions of Competition Council officials or employees taken during an inspection, where such decisions or actions were not directly linked

to the issuance of the final decision in the proceedings but nonetheless gave rise to independent material legal consequences for the claimant.

79. A decision of 9 September 2015 in case no. eAS-884-858/2015 concerned a complaint about a decision issued by Competition Council officials to deem parts of the investigation file to be confidential and to restrict the claimant's access to them. The claimant first lodged a complaint with the Competition Council and subsequently with the Vilnius Regional Administrative Court, submitting that the impugned decision had violated its defence rights. The administrative courts discontinued the proceedings, having found that the Competition Council had already completed the investigation and had imposed a penalty on the claimant. The Supreme Administrative Court stated that the claimant's complaint concerned the lawfulness of the entire investigation but that that question would be addressed in the proceedings concerning the final decision taken by the Competition Council, in respect of which proceedings were pending. The court stated that it would be contrary to the principle of judicial economy to institute two sets of parallel proceedings concerning essentially the same facts.

80. In a decision of 14 August 2018 in case no. eAS-564-629/2018, a decision of 14 August 2018 in case no. eAS-565-575/2018, a decision of 28 August 2018 in case no. eAS-566-556/2018 and a decision of 9 October 2018 in case no. eAS-671-1062/2018, the Supreme Administrative Court examined cases that concerned requests lodged with the Competition Council by claimants seeking the return to them of certain documents that had been seized during an inspection or the removal of documents from the investigation file. The Competition Council had refused the claimants' requests. In all four cases, the Vilnius Regional Administrative Court had refused to accept the claimants' complaints for examination, on the grounds that the impugned decisions of the Competition Council had been procedural documents of an interim nature that had not given rise to material legal consequences for the claimants. The Supreme Administrative Court quashed the decisions of the lower court and remitted the cases for fresh examination. In all four cases, it held:

> "A literal interpretation of [Article 32 §§ 1 and 3 of the Law on Competition] leads to the conclusion that decisions taken by the Competition Council with regard to actions and decisions taken by its employees can be appealed against before the courts, and a different interpretation of these legislative provisions would be contrary to the Law on Competition. Such legal regulation guarantees compliance with the principles of justice, equality of parties, and other fundamental legal principles.
>
> The panel of judges notes that the Supreme Administrative Court, when interpreting the aforementioned legislative provisions, has held: "... The Law on Competition establishes a special complaints procedure, under which complaints concerning actions and decisions taken by the Competition Council's officials and employees have first to be lodged with the Competition Council itself – and only then with the courts ..." (decision of 24 July 2014 in case no. A[146]-1000/2014). Accordingly, the Law on

> Competition, being *lex specialis*, establishes a special procedure for complaining about the actions of the Competition Council's employees and provides for an out-of-court settlement.
>
> Therefore, the first-instance court, when adopting [the impugned decision], disregarded not only the fact that a [decision issued by the Competition Council] can be appealed against, in accordance with the general rules for lodging appeals against administrative decisions, but also the fact that the Law on Competition establishes a special procedure for complaining about actions and decisions of the Competition Council's employees and explicitly provides that such decisions of the Competition Council can be appealed against before the courts."

81. In addition, in the above-mentioned decision of 9 October 2018 in case no. eAS-671-1062/2018, the Supreme Administrative Court noted that the claimants had argued that, by virtue of the fact that the Competition Council had seized certain documents unrelated to the investigation in question, their right to use those documents had been restricted, which had affected the claimants negatively. The Supreme Administrative Court noted that Article 25 § 1 (6) of the Law on Competition entitled Competition Council officials to obtain any documents and information necessary for an ongoing investigation (see paragraph 59 above). Therefore, the claimants had complained about precise actions taken by the investigating officials that could have given rise to legal consequences for them.

82. A decision of 21 July 2020 in case no. eA-1003-822/2020 concerned a request lodged by the claimants for the removal of certain documents from the investigation file. The Competition Council refused that request. The Vilnius Regional Administrative Court examined the reasons provided by the Competition Council to justify its decision and found them to be relevant and sufficient; it accordingly dismissed the claimants' complaint against the Competition Council. The Supreme Administrative Court reiterated that, according to its well-established case-law, only decisions that gave rise to legal consequences could be examined by the courts and that Article 32 of the Law on Competition could not be interpreted as granting the right to complain against decisions that did not give rise to such consequences (see paragraphs 73 and 74 above). It stated that, in the case in question, there were doubts as to whether administrative proceedings would have served any purpose, in view of the fact that allowing the claimants' complaint would not change the extent of their rights and obligations; moreover, the claimants would be able to complain of any alleged violations of their rights when the Competition Council's investigation was completed. The Supreme Administrative Court noted that the claimants had not presented sufficient reasoning for their argument that the refusal to remove certain information from the investigation file would have serious consequences or cause them irreparable damage: they had requested the courts to interfere with the ongoing investigation, but they had not specified what legal consequences they would suffer if the courts refused their request. At the same time, the Supreme Administrative Court stated that it was important to strike a fair

balance between, on the one hand, the effective application of competition law, and on the other hand, the fundamental rights of the entities that were being investigated. The court then went on to examine the investigative measures carried out by the Competition Council, and found that the latter had acted in accordance with the law. It therefore held that there were no grounds to allow the appeal lodged by the claimants.

3. On compensation for damage allegedly caused by the Competition Council

83. A decision of 14 July 2011 in case no. A-502-3034-11 concerned a claim for compensation in respect of damage that had allegedly been caused by the Competition Council's decision to impose a fine on the claimant. The Competition Council's decision was eventually annulled by the courts. The claimant submitted that, before the annulment, it had paid a fine of more than 9,000,000 euros (EUR), which had precluded it from using that money in its business activities; it also claimed to have sustained damage to its reputation. The administrative courts dismissed the claim. The Supreme Administrative Court stated that the Competition Council had a certain discretion when assessing complex questions of fact and law, including the choice of investigative measures and the assessment of evidence in each particular case. Although the Competition Council was not exempt from judicial review, in order to find that it had acted unlawfully within the meaning of Article 6.271 § 4 of the Civil Code (see paragraph 50 above), it had to be established that it had manifestly and seriously overstepped the limits of the discretion accorded to it. In the case at hand, the Competition Council had conducted an investigation in accordance with the relevant law and there had not been any serious procedural irregularities. Therefore, the fact that its decision had been eventually annulled did not warrant the conclusion that it had manifestly and seriously overstepped the limits of its discretion.

84. In a decision of 24 November 2011 in case no. A-756-1454-11, the Supreme Administrative Court examined a claim lodged by several dairy companies who argued that they had sustained damage as a result of an unlawful decision taken by the Competition Council to fine them. The claimants submitted that the impugned decision had concerned multiple dairy companies; some of those companies (the claimants not among them) had appealed against the impugned decision, and the courts in those proceedings had quashed it, finding, *inter alia*, that the Competition Council had failed to properly explain how certain agreements concluded between different dairy companies had had the effect of limiting competition. The claimants argued that the unlawfulness of the Competition Council's decision had been established in those proceedings, and that that fact warranted their being afforded compensation for the damage that they had sustained by paying the fines imposed on them. The administrative courts dismissed the claim. The Supreme Administrative Court stated that the claimants had not appealed

against the impugned decision, nor had they participated in the proceedings instituted by other dairy companies; therefore, that decision remained valid in respect of the claimants.

II. EUROPEAN UNION LAW AND PRACTICE

85. The relevant legal instruments and case-law of the EU have been summarised in *DELTA PEKÁRNY a.s. v. the Czech Republic* (no. 97/11, §§ 52-55, 2 October 2014) and *Vinci Construction and GTM Génie Civil et Services v. France* (nos. 63629/10 and 60567/10, §§ 25-27, 2 April 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

86. The applicant company complained that the inspection of its office by Competition Council officials had violated its right to respect for its home and correspondence under Article 8 of the Convention. That provision reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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. The parties' submissions

(a) The Government

87. The Government submitted that the present complaint should be dismissed for failure to exhaust effective domestic remedies.

88. They firstly argued that the applicant company had failed to properly avail itself of the complaint procedure under Article 32 of the Law on Competition (see paragraphs 67 and 68 above). Under domestic law, it had the possibility to request the removal from the investigation file of information which was unrelated to the subject of the investigation or which contained commercial secrets or employees' personal data (see paragraphs 58 and 71 above). After the inspection, the officials of the Competition Council had provided the applicant company with a copy of the electronic data that had been seized. Thus, it had been aware of the information that had been taken and it had been in a position to lodge specific requests for the removal of particular items. However, the request that the applicant company had lodged with the Competition Council had been very abstract (see

paragraph 24 above). The Government argued that in lodging that request, the applicant company had essentially sought to give instructions to the Competition Council regarding the investigative methods that the latter should use (for example, that it should search for relevant information by using keywords), which was fundamentally incompatible with the nature and purpose of the infringement procedure. They also contended that shifting onto the Competition Council the responsibility of excluding from the file documents that were unrelated to the investigation, as suggested by the applicant company (see paragraph 26 above), would undermine the success of the investigation.

89. In this connection, the Government pointed out that in a decision adopted in 2020 the Supreme Administrative Court had held that an entity requesting the removal of certain information from the investigation file was required to demonstrate that a refusal to remove that information would lead to serious consequences or to irreparable damage being caused to it (see paragraph 82 above).

90. In addition, the Government submitted that the applicant company could have raised its complaints regarding the lawfulness of the officials' actions by means of lodging an appeal against the final decision taken by the Competition Council after it had completed its investigation. They provided examples of cases that concerned decisions issued by the Competition Council in which infringements of competition law had been found; in those cases, the Supreme Administrative Court had examined the claimants' complaints regarding each respective investigation – such as the claimants having been afforded only restricted access to the investigation file or the Competition Council having taken documents which the law did not authorise it to take. The Government noted that in the instant case, the investigation against the applicant company had been discontinued (see paragraph 48 above). However, they argued that the applicant company had nonetheless had the right to appeal against the latter decision.

91. Lastly, the Government submitted that, as indicated by the Supreme Administrative Court in its decision of 3 October 2018, the applicant company had the right to claim damages from the State for any unlawful actions on the part of the Competition Council's officials (see paragraph 50 above). Had it lodged such a claim, the courts would have assessed the lawfulness of the officials' actions. The Government referred to two such cases that had been examined by the administrative courts (see paragraphs 83 and 84 above).

(b) The applicant company

92. The applicant company submitted, firstly, that the burden should be on the Competition Council to determine which documents were related to the investigation and that that duty should not be shifted onto the applicant company – particularly in view of the large quantity of documents that had

been seized and the short time-limit given to it by the Competition Council (see paragraphs 9 and 25 above). The applicant company further submitted that it had not been in a position to indicate which specific information fell outside the scope of the investigation, because it had not been informed of the time period targeted by the investigation or about keywords or any other criteria according to which the relevance of information could be determined.

93. Moreover, the applicant company submitted that it agreed with the Competition Council's decision to discontinue the investigation against it (see paragraph 48 above). Therefore, it would not have been logical to expect it to appeal against that decision, as suggested by the Government (see paragraph 90 above).

94. Lastly, the applicant company submitted that a claim for damages did not constitute an effective remedy in respect of its complaints, because it was not seeking monetary compensation. Its aim was the protection of those of its rights that had been violated by the large-scale and indiscriminate seizure of its data, and that issue would not be resolved by a monetary award.

2. The Court's assessment

95. The general principles concerning the requirement under Article 35 § 1 of the Convention to exhaust effective domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and the cases cited therein).

96. In the present case, the Court observes that the applicant company lodged a complaint with the Competition Council regarding the actions of its officials, as provided in Article 32 § 1 of the Law on Competition (see paragraph 67 above). The Competition Council dismissed its complaint and held that the officials had acted in accordance with the law and that their actions had been proportionate to the aims pursued (see paragraphs 16-23 above). The applicant company then lodged a complaint against the decision of the Competition Council with the administrative courts, relying on Article 32 § 3 of the Law on Competition; however, the courts refused to examine it on the grounds that the impugned decision had not led to any legal consequences for the applicant company, and its complaint could thus not be examined by the courts (see paragraphs 36 and 43-45 above). The Court notes that neither the Competition Council nor the administrative courts based their decisions on the argument that the applicant company's complaint had not been sufficiently specific or that it had otherwise failed to properly use the procedure provided by Article 32 of the Law on Competition (compare and contrast the Supreme Administrative Court's decision, summarised in paragraph 82 above). Accordingly, it rejects the Government's arguments in this regard.

97. As to the possibility for the applicant company to appeal against the Competition Council's decision, the Court observes that the Government

essentially suggested that the applicant company should have contested the decision that was favourable to it (see the applicant's arguments in paragraph 93 above). Be that as it may, the Court finds, firstly, that that remedy only became available to the applicant company almost two years after the inspection which cannot be considered promptly enough (see, *mutatis mutandis*, *Société Canal Plus and Others v. France*, no. 29408/08, § 40, 21 December 2010, and *Compagnie des gaz de pétrole Primagaz v. France*, no. 29613/08, § 28, 21 December 2010); secondly, the Government did not provide any case-law examples showing that the domestic courts would have assessed the lawfulness and proportionality of investigative measures even after the Competition Council's investigation had been discontinued. Thus, it finds that it has not been demonstrated that this remedy was effective and available to the applicant company in theory and in practice.

98. Lastly, as to the possibility of lodging a claim seeking a civil-law remedy, the Court observes that the Government provided only two examples of cases, dating from 2011, neither of which concerned the manner in which the Competition Council's officials had conducted inspections (see paragraphs 83 and 84 above). Moreover, in one of those decisions, the Supreme Administrative Court established a high threshold for the civil liability of the State to arise – namely, it had to be demonstrated that the Competition Council had "manifestly and seriously overstepped the limits of the discretion accorded to it" (see paragraph 83 above). Accordingly, the Court finds that the Government have failed to convincingly establish that instituting civil proceedings and claiming compensation from the State would have had a reasonable prospect of success in the circumstances of the applicant company's case.

99. The Government's objection on non-exhaustion of domestic remedies must therefore be rejected.

100. The Court further notes that this complaint 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 company

101. The applicant company submitted that the actions of the Competition Council's officials during the inspection had interfered with its right to respect for its home and correspondence. It did not dispute that the interference had had a legal basis and that it had sought a legitimate aim. However, it argued that the officials' actions had not been proportionate to the aim pursued. In particular, they had seized and copied a very large amount

of information without any selection criteria or assessment of its relevance to the investigation, including personal data of the applicant company's employees. Moreover, the officials had misled the applicant company with regard to the purpose of the inspection, had restricted its employees' right to contact a lawyer, and had not properly familiarised the applicant company and its employees with their rights.

102. The applicant company further submitted that the courts had refused to examine its complaints, which meant that there had not been any judicial scrutiny of the officials' actions. It argued that the absence of a prompt assessment of the lawfulness of the collection of evidence enabled the Competition Council to get acquainted with unlawfully obtained information, which risked damaging the applicant company's interests. Such a situation also created a risk of the Competition Council issuing a decision based on unlawfully obtained evidence and the ensuing costly court proceedings, which would have otherwise been avoided.

(b) The Government

103. The Government did not dispute the fact that the inspection of the applicant company's registered office and the seizure and copying of its documents had constituted an interference with its right to respect for its home and correspondence within the meaning of Article 8 of the Convention. Nonetheless, they argued that that interference had been in accordance with the Law on Competition, that it had sought a legitimate aim in the interests of the economic well-being of the country and the prevention of crime, and that it had been necessary in a democratic society and proportionate to the aims pursued.

104. In particular, the Government submitted that there had been adequate safeguards to protect the applicant company from any abuse and arbitrariness. According to domestic law, an inspection of an entity's registered office could only be carried out with the authorisation of a court (see paragraph 60 above). The Government submitted that the Vilnius Regional Administrative Court had assessed the existence of a reasonable suspicion against the applicant company, the nature of the alleged infringement and the scope of the investigation. The fact that it had allowed only in part the Competition Council's application for authorisation to enter and inspect the registered offices of the five target companies (see paragraph 5 above) demonstrated, in the Government's view, that the courts did not take such decisions automatically but that they carried out a proper assessment in each case.

105. Moreover, according to the case-law of the Supreme Administrative Court, it was important to strike a fair balance between, on the one hand, the effective application of competition law, and on the other hand, the fundamental rights of the entities that were being investigated (see paragraph 82 above). In the case at hand, a number of procedural guarantees, provided by law, had been respected: the applicant company's representatives

had been provided with copies of relevant decisions and informed of the suspicions against the applicant company and their duties during the inspection (see paragraph 8 above); lawyers representing the applicant company had been present during the inspection (see paragraph 7 above); the applicant company's representatives had been able to raise their objections regarding various aspects of the inspection (see paragraph 10 above); and the applicant company had subsequently availed itself of the complaint procedure provided by law (see paragraphs 11-15 and 67 above).

106. The Government further submitted that the Competition Council had searched the offices and computers of only five of the applicant company's employees, out of more than 800 – namely, only those whose work had been related to the investigation. All the actions carried out by the officials and all the documents that had been seized or copied had been recorded in writing and the applicant company had been provided with a copy of the record (see paragraph 9 above). The Government contended that the officials had seized the information that they had considered relevant for the investigation. In particular, the copying of the five employees' entire mailboxes had been necessary in order to make it possible to recover any data that may have previously been deleted from them. The Government also pointed out that domestic law provided certain restrictions on the types of information that the Competition Council could not seize; thus, its powers were not absolute (see paragraphs 57, 58 and 71 above).

107. The Government also submitted that the information that had been seized during the inspection had been stored with the Competition Council and it had not been disclosed to any third parties. After discontinuing the investigation (see paragraph 48 above), that information had been destroyed. Accordingly, the Government contended that the applicant company had not suffered any actual negative consequences.

108. Lastly, regarding the possibility of an *ex post facto* judicial review of the officials' actions, the Government submitted that the decisions of the administrative courts in the present case had been consistent with the case-law of the Supreme Administrative Court. They argued that the cases that the applicant company had cited in the domestic proceedings (see paragraphs 42 and 46 above) had not been identical to the case at hand. In particular, in those cases, the claimants had lodged specific requests, clearly identifying the information seized by the Competition Council that had to be removed from the file or returned to the claimants, in contrast to the abstract request lodged by the applicant company. The Government further submitted that it was well established by the case-law of the Supreme Administrative Court that decisions of public authorities that did not give rise to any legal consequences could not be examined by the courts (see paragraphs 73-75 above). That principle had been applied not only in cases concerning competition law, but also those concerning administrative procedures relating to taxation or public procurement, and it was consistent with the case-law of the CJEU. As for

cases brought under Article 32 of the Law on Competition, the Government stated that, from the time of the adoption of that legislative provision (in May 2012) until 2020, the Supreme Administrative Court had examined ten such cases (including the present one), and the claimants' complaints had been upheld in five of them (see paragraphs 43-45 and 76-82 above). In the Government's view, this constituted further proof that the court decisions in the applicant company's case had not diverged from the well-established case-law.

2. The Court's assessment

(a) Whether there was an interference

109. According to the Court's well-established case-law, searches and seizures carried out on the premises of a commercial company constitute an interference with the rights protected by Article 8 of the Convention – more specifically, its right to respect for its "home" and "correspondence" (see *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, §§ 45-46, 23 June 2022, and the cases cited therein).

110. In the present case, the Government acknowledged that the inspection of the applicant company's registered office and the copying and seizure of its documents had constituted an interference with its right to respect for its home and correspondence (see paragraph 103 above), and the Court has no reason to find otherwise.

(b) Lawfulness and legitimate aim

111. The applicant company did not dispute that the interference had had a legal basis and that it had sought a legitimate aim (see paragraph 101 above). The Court notes that the inspection and the copying and seizure of the applicant company's documents were based on the Law on Competition (see paragraphs 56 and 59 above). Moreover, it is satisfied that the interference sought a legitimate aim in the interests of both "the economic well-being of the country" and "the prevention of crime" (see *Vinci Construction and GTM Génie Civil et Services v. France*, nos. 63629/10 and 60567/10, § 72, 2 April 2015, and the cases cited therein).

(c) Necessity in a democratic society

(i) General principles

112. The general principles concerning searches and seizures in the premises of commercial companies have been summarised in *DELTA PEKÁRNY a.s. v. the Czech Republic* (no. 97/11, §§ 82-83, 2 October 2014) and *Vinci Construction and GTM Génie Civil et Services* (cited above, §§ 65-67).

113. In particular, the Court reiterates that, within the context of searches and seizures, domestic legislation and practice must afford adequate and effective safeguards against any abuse and arbitrariness (see *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 57, ECHR 2007-IV, and *Naumenko and SIA Rix Shipping*, cited above, § 50, and the case-law cited therein). These safeguards must include the existence of "effective scrutiny" of measures encroaching on Article 8 of the Convention (see *Modestou v. Greece*, no. 51693/13, § 43, 16 March 2017, and the case-law cited therein).

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

114. Turning to the circumstances of the present case, the Court firstly notes that the applicant company did not complain about the investigation against it or the inspection of its registered office *per se*. Instead, its complaint concerned the manner in which the said inspection had been carried out and the absence of a subsequent judicial review (see paragraphs 101 and 102 above).

115. The applicant company first raised its complaints about the inspection with the Competition Council itself, and after the latter dismissed them, the applicant company lodged a complaint with the domestic courts. However, the courts refused to examine its complaint, finding that the Competition Council's decision "had constituted a procedural document of an interim nature that had not given rise to any material legal consequences for the applicant company" (see paragraphs 36 and 45 above).

116. The Court is of the view that its role in the present case is not to assess whether the actions of the Competition Council's officials during the inspection were lawful and proportionate, because it considers that the main issue is whether the refusal by the domestic courts to examine the complaints raised by the applicant company was justified.

117. The Court considers that Article 8 of the Convention cannot be interpreted as requiring an *ex post facto* judicial review in all cases concerning a search or seizure carried out in the premises of a commercial company. However, according to its case-law, the availability of such a review may be taken into account, among other elements, when assessing the compliance of searches and seizures with Article 8 (see *DELTA PEKÁRNY a.s.*, cited above, §§ 87 and 92; and *Cacuci and S.C. Virra & Cont Pad S.R.L. v. Romania*, no. 27153/07, § 102, 17 January 2017; see also, in the context of a search carried out in the home of an individual, *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 223-25, ECHR 2013 (extracts)).

118. In the present case, the Court notes that a number of safeguards were provided in domestic law with regard to how an inspection of a company's registered office had to be authorised and conducted. In particular, the inspection of the applicant company's office was subject to a prior authorisation by a court (see paragraph 5 above and *Cacuci and S.C. Virra &*

Cont Pad S.R.L., cited above, § 92). Moreover, domestic law did not confer on the Competition Council's officials unfettered discretion when conducting inspections – limits were set on the types of information that officials could seize or copy (see paragraphs 57-61 and 71 above; see also *Bernh Larsen Holding AS and Others v. Norway*, no. 24117/08, § 164, 14 March 2013). The Government also pointed to various other procedural safeguards that had been available (see paragraphs 104-106 above and compare *Naumenko and SIA Rix Shipping*, cited above, § 60). Indeed, the applicant company did not complain about the adequacy of the domestic legal framework. What it argued was that the officials of the Competition Council had overstepped their remit and had not complied with the safeguards provided in the law (see paragraph 101 above).

119. In the Court's view, the complaints that the applicant company raised with regard to the inspection cannot be characterised as ill-founded or unsubstantiated. On the contrary, it complained that the Competition Council had seized or copied a large number of physical and electronic documents, including the entire mailboxes of five of the applicant company's employees (see paragraphs 9 and 14 above), and the Court has previously acknowledged that the large amount of the information seized was a factor militating in favour of strict scrutiny (see *Bernh Larsen Holding AS and Others*, § 159, and *Naumenko and SIA Rix Shipping*, § 51, both cited above). Moreover, the applicant company raised various allegations regarding the restrictions of the rights of its employees during the inspection, including the allegations that they had not been informed of their rights and obligations in writing, that their ability to contact lawyers or make any phone calls had been limited, and that the Competition Council's officials had not respected their right to consult lawyers in private (see paragraphs 12 and 13 above). The Competition Council did not deny the facts as described by the applicant company, but argued that those restrictions had been lawful and justified (see paragraphs 21 and 22 above).

120. Accordingly, the Court has no reason to doubt that the inspection of its registered office affected the applicant company and that it had a justified interest in obtaining a review of whether the officials' actions had complied with its rights under Article 8 of the Convention (see, *mutatis mutandis*, *Lindstrand Partners Advokatbyrå AB v. Sweden*, no. 18700/09, § 124, 20 December 2016). In this connection, the Court observes that the availability of a subsequent judicial review could have, in the circumstances of the present case, been a means of ensuring that the safeguards provided in domestic law (see paragraph 118 above) were complied with and consequently effective in practice.

121. The Court further notes that Article 32 § 3 of the Law on Competition expressly provides that, where a complaint is made to the Competition Council regarding the lawfulness of the actions of its officials and the complainant is dissatisfied with the decision taken by the Competition

Council, that decision can be appealed against before the administrative courts (see paragraph 68 above). It reiterates that interpreting the domestic legislation is the prerogative of the national authorities, notably the courts (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, and the cases cited therein). In that connection, the Court takes note of the examples of relevant domestic case-law submitted to it by the parties. It appears that in the period 2012-2020 the Supreme Administrative Court examined six cases that concerned complaints against the Competition Council regarding the amount of information seized during an inspection. Of those six cases, that of the applicant company was the only one in which the Supreme Administrative Court stated that the impugned decision of the Competition Council had not given rise to any legal consequences and could therefore not be examined by the courts (see paragraphs 43-45 and 80-82 above).

122. The Government argued that the applicant company's case was different from the others, in view of the fact that it had failed to precisely indicate the documents which had been irrelevant to the investigation or which had contained its commercial secrets or personal information (see paragraph 108 above). However, the Court reiterates that the domestic courts refused to examine the applicant company's complaint not because they found it insufficiently specific but because they considered that such complaints could not be examined by the courts at all (see paragraph 96 above).

123. Moreover, taking account of the very large amount of the information which had been seized during the inspection (see paragraphs 9 and 14 above), the Court is of the view that placing the task of examining each document and providing justification for its exclusion from the investigation file solely on the applicant company could not be considered proportionate. While it is not the role of the Court to determine how that burden should be distributed between the Competition Council and the entity under inspection in each individual case, in the present case there is no indication that the Competition Council considered the possibility of sharing the burden with the applicant company (see paragraph 25 above), and the courts did not address that issue at all.

124. The Court further observes that the Government did not argue that the availability of judicial review of the Competition Council's actions might have any negative effects on the investigations into alleged infringements of competition law. Nor can any such arguments be discerned in the court decisions taken in the applicant company's case or in the domestic case-law which the parties submitted to the Court.

125. Lastly, the Court finds that the need for a judicial review of the inspection was rendered all the more important in the present case by the fact that the investigation against the applicant company was eventually discontinued (see paragraph 48 above); as a result, no proceedings were

conducted in respect of the final decision of the Competition Council in which the applicant company could have raised its complaints regarding the alleged violations of its rights. It was therefore never assessed at the domestic level by an independent and impartial authority whether all the documents seized during the inspection had been relevant to the investigation and whether the restrictions on the rights of the applicant company and its employees had been lawful and proportionate (see, *mutatis mutandis*, *Modestou*, cited above, § 52).

126. In the light of the foregoing, the Court finds that, in the circumstances of the present case, the absence of an *ex post facto* judicial review of the manner in which the Competition Council's officials carried out the inspection of the applicant company's office meant that there were no adequate and effective safeguards against abuse and arbitrariness. Consequently, the interference with its right to respect for its home and correspondence could not be considered proportionate to the aim pursued or necessary in a democratic society, as required by Article 8 of the Convention.

127. There has therefore been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. The applicant company also complained that the absence of judicial review had violated its rights under Article 6 § 1 and Article 13 of the Convention.

129. The Court observes that it has already found that the absence of an *ex post facto* judicial review of the inspection of the applicant company's office constituted a violation of Article 8 of the Convention. In its remaining complaints, the applicant company argued that the absence of an *ex post facto* judicial review had also breached its right of access to a court and its right to an effective remedy. However, the Court considers that, in the circumstances of the present case, the latter complaints were absorbed by the complaint under Article 8 of the Convention. Accordingly, it finds that there is no need to separately examine the applicant company's complaints under Article 6 § 1 and Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant company did not submit any claims for pecuniary or non-pecuniary damage. Accordingly, the Court makes no award.

B. Costs and expenses

1. The parties' submissions

132. The applicant company claimed 51,421 euros (EUR) for the costs and expenses incurred before the domestic courts and before the Court. It provided invoices concerning the following amounts:

- EUR 9,888 for the legal services provided during the proceedings before the Vilnius Regional Administrative Court;
- EUR 2,210 for the legal services provided during the proceedings before the Supreme Administrative Court;
- EUR 3,756 for the preparation of the application for the reopening of the administrative proceedings;
- EUR 14,479 for the legal services provided during the proceedings before the Court;
- EUR 4,587 for unspecified legal expenses.

133. The Government submitted that the applicant company's claim in respect of costs and expenses was excessive and that it had failed to properly substantiate that those expenses had been necessarily incurred. They submitted that the total amount claimed by the applicant company did not correspond to the amounts indicated in the invoices, and that moreover, from some of those invoices it could not be determined whether the legal services had been related to the present case. Lastly, the Government contended that the expenses related to the attempted reopening of the domestic proceedings had not been necessary, given that reopening such proceedings did not constitute a remedy that the Court required applicants to exhaust.

2. The Court's assessment

134. 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 were actually and necessarily incurred and are reasonable as to quantum (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

135. The Court observes that the total amount claimed by the applicant company exceeds the amount for which proper justification has been provided. Having regard to the above-noted criteria, the Court will only consider those claims that are substantiated by relevant documents.

136. The Court notes that the claim in the amount of EUR 4,587 was submitted without any description of the legal services that had been

provided. As a result, it is unable to find that those expenses were related to the present case and that they were necessarily incurred. It therefore rejects the applicant company's claim in that part.

137. Turning to the costs and expenses that the applicant company claimed in respect of the domestic proceedings, the Court firstly reiterates its extensive case-law to the effect that an application for the reopening of proceedings is not, as a general rule, a remedy that the Convention requires the applicants to pursue (see *Nicholas v. Cyprus*, no. 63246/10, § 37, 9 January 2018, and the cases cited therein). Therefore, it rejects the applicant company's claim with regard to the expenses incurred in its attempt to have the domestic proceedings reopened.

138. By contrast, the Court is satisfied that the costs and expenses that the applicant company sustained in the proceedings before the Vilnius Regional Administrative Court and the Supreme Administrative Court were necessarily incurred and that they cannot be considered excessive. It therefore awards the applicant company EUR 12,098, plus any tax that may be chargeable to it, for the costs and expenses incurred in the domestic proceedings.

139. As regards the costs and expenses incurred in the proceedings before the Court, it considers that, taking into account the legal issues raised by the present case, the amount claimed by the applicant company can be considered reasonable as to quantum. It therefore grants that part of the claim in full and awards the applicant company EUR 14,479, plus any tax that may be chargeable to it.

140. In sum, the Court awards the applicant company a total amount of EUR 26,577 in respect of costs and expenses.

C. Default interest

141. 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 complaint concerning Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine separately the complaints under Article 6 § 1 of the Convention and Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 26,577 (twenty-six thousand five hundred seventy-seven euros), plus any tax that may be chargeable to the applicant company, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 4 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President