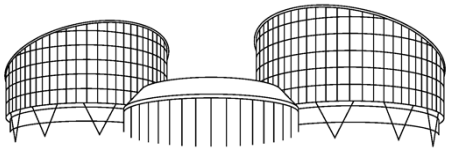

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF EIGIRDAS AND VĮ "DEMOKRATIJOS PLĖTROS FONDAS" v. LITHUANIA

*(Applications nos. 84048/17 and 84051/17)*

JUDGMENT

Art 10 • Freedom of expression • Unjustified obligation to publish decisions of the media self-regulatory body, which disciplined the applicants for breaching requirements of journalists' and publishers' ethics in relation to two articles on matters of public interest • Interferences not "necessary in a democratic society"

STRASBOURG

12 September 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 Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania,**

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 84048/17 and 84051/17) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Eduardas Eigirdas ("the first applicant"), and VĮ "Demokratijos plėtros fondas" ("the second applicant"), on 11 December 2017;

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

the parties' observations;

Having deliberated in private on 11 July 2023,

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

# INTRODUCTION

1. The applicants complained that the requirement to publish decisions of the media self-regulatory body, which had disciplined them for having breached requirements of journalists' and publishers' ethics, had been in breach of their right to freedom of expression.

# THE FACTS

2. The first applicant, Mr Eduardas Eigirdas, is a Lithuanian national who was born in 1970 and lives in Vilnius. He is a journalist, a member of the second applicant's editorial board, and the second applicant's founder. He is also a regular opinion writer in the magazine *Valstybė* (meaning "the State").

The second applicant, VĮ "Demokratijos plėtros fondas", is a non-profit organisation (*viešoji įstaiga*) registered in Vilnius. The second applicant publishes a magazine, *Valstybė*.

Both applicants were represented by Ms V. Eigirdienė, a lawyer practising in Vilnius.

3. The Government were represented by their Acting Agent, Ms L. Urbaitė.

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

## I. THE FIRST ARTICLE

5. In February 2015 an article written by the first applicant was published in the magazine *Valstybė*. The article was entitled "The ten richest and most dangerous oligarchs of Lithuania" (*Įtakingiausių ir pavojingiausių Lietuvos oligarchų dešimtukas*). One of the persons described in the article was the owner of a large business and a politician, V.M., who would later become the mayor of Kaunas.

The article described V.M. as follows:

> "V.M. only stands out in this context, I think, by throwing in the most money of all the entrepreneurs in Lithuania, and in the [upcoming] elections he will also make use of the fact that the business managed by him is one of the biggest advertisers. This is why almost all media publishes only good news about V.M. before these elections. It could be another sign indicating what influence the money received from advertising has on the media today ... We have given V.M. sixth place for [his] great efforts to become one of the representatives of the large capital, who have influence on politics, and for strengthening the positions of the large capital before the upcoming municipal and Seimas elections."
>
> (*V.M. šiame kontekste išsiskiria tik tuo, kad, manau, metė daugiausia pinigų iš visų Lietuvos verslininkų, o rinkimuose pasinaudos ir tuo, kad jo valdomas koncernas – vienas didesnių reklamdavių. Todėl beveik visoje žiniasklaidoje apie V.M. prieš šiuos rinkimus sklinda tik geros žinios. Tai gali būti dar vienas ženklas, demonstruojantis, kokia šiandien reklamos pinigų įtaka žiniasklaidai...V.M. šeštą vietą skyrėme už dideles pastangas įsiliejant į stambiojo kapitalo atstovų, darančių įtaką politikai, gretas ir stiprinant stambiojo kapitalo pozicijas prieš artėjančius savivaldos ir Seimo rinkimus*).

### A. The complaint to the Public Information Ethics Commission

6. V.M. submitted a complaint to the Public Information Ethics Commission (*Visuomenės informavimo etikos komisija*, hereinafter "the Commission", see Articles 46 and 46[1] in paragraph 38 below) stating that the assertions made in the article had no basis and thus damaged his good name and professional reputation (*dalykinė reputacija*), and that no other opinions had been provided in that publication. V.M. noted that for the last four years he had been a member of the Kaunas city municipal council and that he had regularly financially supported various public events and was engaged in philanthropic activity.

On 17 August 2015 the Commission found that the accusations in the publication had no basis and that no specific facts had been provided to substantiate them. The article had therefore breached domestic law, namely Article 3 of the Code of Ethics for Lithuanian Journalists and Publishers

(hereinafter "the Code", see paragraph 39 below), pursuant to which a journalist or producer of public information was under an obligation to provide accurate and precise information and different opinions, and should not disseminate opinions which would be in breach of the law or ethics. The Commission obliged the second applicant to publish its decision in *Valstybė* magazine.

### B. The complaint to the Inspector of Journalistic Ethics

7. V.M. also complained to the Inspector of Journalistic Ethics (*Žurnalistų etikos inspektorius*, hereinafter "the Inspector", see Articles 49 and 50 in paragraph 38 below), who on 20 August 2015 dismissed V.M.'s complaint as unfounded, concluding that the article had not overstepped the margins of freedom of expression and had not damaged V.M.'s honour and reputation.

The Inspector considered that, based on the vocabulary used – the terms "I think" (*manau*) and "could be" (*gali būti*) – the assertions had been presented as speculation about the future (*spėjimai apie ateitį*) and commentary, and not facts (*žinia*). Accordingly, the truthfulness of such statements could not be verified. In the Inspector's view, the opinion that V.M. had spent the most money on the election campaign out of all the entrepreneurs also had a factual basis in the data collected by the Central Electoral Commission, which showed that he had spent more money than two other businessmen. Moreover, the information about the money spent on the election campaign could not damage V.M.'s honour and reputation, because that information had not suggested that V.M. had committed an offence or some other dishonourable act, or that he had acted inappropriately in his private or public life.

### C. The administrative court proceedings against the Commission's decision

#### *1. The Vilnius Regional Administrative Court*

8. The second applicant lodged a claim with the Vilnius Regional Administrative Court against the decision of the Commission of 17 August 2015 (see paragraph 6 above). The first applicant and V.M. participated in the proceedings as interested parties. The first applicant submitted that the connection between two statements in the article – that V.M. was a big advertiser, and that therefore the media in which his companies were advertising were not publishing negative news about him – had been the first applicant's personal opinion, based on his logical thinking and on his life experience as a journalist.

At the court hearing, the Commission's representative pointed out that in accordance with Articles 46, 46[1], 49 and 50 of the Law on the Provision of

Information to the Public (see paragraph 38 below), the Commission and the Inspector had examined the disputed article from different angles: the Commission had verified whether the journalist's actions had complied with the requirements of the Code, whereas the Inspector had examined whether the publication had possibly damaged the honour and dignity of V.M. Accordingly, the fact that no damage to honour and dignity had been established did not mean, in itself, that there had been no breaches of journalists' professional ethics or the Code. The Commission's representative also stated that the statements in the disputed publication had been "flaunting generalised, unfounded and unethical accusations against all other media which held different views" (*mesti apibendrinti, nepagrįsti ir neetiški kaltinimai visai kitokią nuomonę turinčiai žiniasklaidai*). It followed that the Commission's decision to find a breach of Article 3 of the Code had been reasonable.

9. On 29 February 2016 the Vilnius Regional Administrative Court allowed the second applicant's claim.

As regards the merits of the claim, the court held that the first applicant had expressed his opinion because he had used the words "I think", and this was also confirmed by both the words which he had used with regard to the future elections – "in the [upcoming] elections he will make use" – and his supposition – "[i]t could be another sign indicating what influence the money received from advertising has on the media today". Moreover, during the court proceedings he had confirmed that the publication had expressed his opinion.

Furthermore, there was no doubt that V.M. owned companies which produced a large range of food products, and these products were widely advertised in the media. Also, it was not disputed that the companies owned by V.M. had a right to decide on the media outlets with which to conclude advertising agreements. It logically followed that a profit-seeking business entity, in order not to lose a source of income, had an interest in maintaining a big advertiser's orders, and that therefore in such a case, it would not be useful for that entity to disseminate information that did not please the client (the big advertiser). The statement in the article that V.M. was a big advertiser and that the media did not dare to publish negative information about him was not based on false information or information that did not correspond to reality. It was not intended to offend or humiliate V.M., but was instead a logical conclusion drawn by the author of the article. The court thus decided that a balance between the public's interest in receiving information and a person's right to privacy, honour and reputation had been struck.

At the same time, the court dismissed as not relevant the second applicant's complaint regarding the fact that the Commission's decision was contrary to the Inspector's decision. Because those two authorities were independent bodies, they had a right to adopt independent decisions; the legal bases on which they functioned were different, and they had different

functions. Lastly, the court held that there was no basis to hold that the Commission had lacked impartiality when making its decision.

*2. The Supreme Administrative Court*

10. V.M. appealed, and on 26 June 2017 the Supreme Administrative Court overturned the first-instance court's decision. The Supreme Administrative Court also found that there was no basis to quash the Commission's decision on procedural grounds.

As to the merits of the case, the court held that the Commission had correctly found that the publication had breached Article 3 of the Code, which set out the requirement that correct and precise information be provided to the public. The Supreme Administrative Court further held that the mere use of the words "I think" was not enough for a conclusion that the arguments presented in the article were value judgments. The court considered that the Commission had had reason to believe that the statements in the article were news (*žinios*), which meant that the criteria of truth and accuracy had to be applied. Moreover, the accuracy of information had to be proved by the person who had published it. Circumstances whereby information was made public in the context of a political election campaign had no bearing on the evaluation of the accuracy of such information, since such circumstances (the campaign) were not an obstacle to verifying the truthfulness and accuracy of news about real events. However, the second applicant "had not sought to prove" (*niekaip neįrodinėjo*) the accuracy and fairness of the published information, and had simply based its position on the decision of the Inspector. The Supreme Administrative Court held that the fact that V.M. was an entrepreneur and an owner of a company who advertised his brand and products had not been a sufficient basis for the information which had been published. The court pointed out that no sources of information had been included in the publication to support the author's statements. Furthermore, he had not provided the court with any concrete data either.

The Supreme Administrative Court further noted that a criticism, opinion or perception (*vertinimas*) which was unfair and did not have an objective basis could not be disseminated. Moreover, pursuant to the Court's case-law, even if evaluative statements (opinions), unlike statements of fact, could not be proved, they should not also lack a factual basis (the court relied on *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87 *in fine*, ECHR 2005-II). Likewise, when statements were of an evaluative nature (*teiginiai vertinamojo pobūdžio*), the proportionality of an interference could depend on whether there was a sufficient factual basis to support the challenged statement, since even an evaluative statement could exceed the permissible limits when it had no factual basis whatsoever (the court relied on *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, § 82, 12 July 2007).

The Supreme Administrative Court also held that it was important to assess not only whether the information published was accurate and correct,

but also whether other, alternative, opinions existed. Accordingly, even if one agreed with the journalist's argument that he had expressed his opinion, the publication had not contained alternative opinions, thus it had not ensured plurality of opinion. The parties concerned had not been given the right of reply. In any case, this aspect – the lack of alternative opinions – was only supplementary, since, as the Supreme Administrative Court had already established, the statements in the publication fell into the category of facts (news).

11. The Supreme Administrative Court also held that the first-instance court had incorrectly drawn a line between opinions and facts. In particular, the fact that V.M. was involved in politics and was a public figure who was therefore obliged to be tolerant towards critics did not mean that he should also tolerate the publication of information which was not precise and truthful. The mere use of the words "I think" in a phrase, as some sort of cover, was not determinative. Furthermore, the following phrases were declaratory statements (*teiginiai yra konstatuojamojo pobūdžio*), and therefore had to be based on factual data: "throwing in the most money"; "in the [upcoming] elections he will make use of the fact that the business managed by him is one of the biggest advertisers"; "[t]his is why almost all media publishes only good news about V.M. before these elections"; and "[a] sign indicating what influence the money received from advertising has on the media today". Responsibility for the accuracy and precision of those statements lay with the person who published them. Furthermore, even if public figures had to be more impervious (*atsparesni*) to opinions and criticism, when information was published to which news and fact criteria (*žinios ir fakto kriterijai*) applied, the level of protection offered to such persons should not be lowered. Lastly, publishing information that had no factual basis was contrary to the principles of a democratic society, since when such information was presented as accurate and true, it distorted the facts and formed opinions (within society) which had no basis. This was also in breach of the requirements of pluralism, tolerance and liberalism, without which a "democratic society" could not exist. Freedom of expression was not an opportunity to publish information by bypassing the legal and ethical restrictions which aimed to protect society's interest in obtaining information, an interest which also had to be balanced against a person's right to respect for his private life and honour and dignity.

## II. THE SECOND ARTICLE

12. In March 2015 the magazine *Valstybė* published another article, one written by the journalist M.B. The article was entitled "In political marketing – the duel between Paksaitė and Matijošaitukas" (*Politinėje rinkodaroje – Paksaitės ir Matijošaituko dvikova*; Paksaitė is the daughter of the former

President of the Republic, Rolandas Paksas, and Matijošaitukas, which is a diminutive for Matijošaitis, is the son of V.M.).

The article started in the following manner:

> "'His daily life – unlimited possibilities, extreme hobbies, expensive interests and ... loneliness' – this is how romantically and upliftingly, like a would-be Lithuanian Leonardo Di Caprio, the magazine *Žmonės* ["People"] presents Dainius, the son of the businessman V.M., who is a mayoral candidate for Kaunas.
>
> When one opens the Offspring section of *Žmonės* magazine, a well-built young man who is looking at us seriously catches our eye, who could be every middle-aged woman's dream. The title of the article – "I am still searching for the ideal woman" – also gives [us] hope. On another page, a photograph with [his] dad, creating the myth of a serious businessman who is following in his father's footsteps. Without analysing the context, and making a brief assessment, we would call such an article another piece of literary trash [produced] by a tabloid; however, after dwelling on political processes, it is possible to draw other conclusions. If one looks at this interview from the perspective of marketing, if we include the municipal council elections and if we also try to assess how much advertising by V.M. has recently been in the public domain, the conclusions will certainly be different ..."
>
> *""Jo kasdienybė – neribotos galimybės, ekstremalūs pomėgiai, brangiai kainuojančios aistros ir ... vienatvė", - taip romantiškai ir pakylėtai, it lietuvių Leonardo DiCaprio, žurnalas "Žmonės" pristato į Kauno miesto merus kandidatuojančio verslininko V.M. sūnų Dainių.*
>
> *Atsivertus žurmalo skiltį "Atžalos", į akis krenta stuomeningas, rimtai į mus žvelgiantis vyriškis, galintis būti kiekvienos vidutinio amžiaus moters svajone. Vilčių teikia ir straipsnio pavadinimas – "Aš vis dar ieškau idealios moters". Kitame puslapyje – nuotrauka su tėčiu, kurianti rimto verslininko, sėkmingai sekančio tėvo pėdomis, mitą. Neanalizuodami kontekso ir vertindami ūkiškai, tokį straipsnį pavadintume dar viena bulvarinio leidinio rašliava, tačiau šiek tiek pasigilinus į politinius procesus, galima pasidaryti ir kitokias išvadas. Jeigu į šį interviu žvelgsime per rinkodaros prizmę, jeigu pridėsime ir savivaldybių tarybų rinkimus, o jeigu dar ir pabandysime įvertinti, kiek V.M. reklamos pastaruoju metu buvo galima rasti viešojoje erdvėje, išvados tikrai bus kitokios".*

The article then continued to discuss various techniques in political advertising, including the technique of the "successful child story" (*klestinčio vaiko istorija*).

### A. The complaint to the Commission

13. ŽLG, the company which owned the magazine *Žmonės*, lodged a complaint with the Commission, arguing, among other things, that the article in question had been unethical. The company ŽLG also complained that it had not been given the right of reply prior to the publication of that article.

On 17 August 2015 the Commission referred to the parts of the article which had accused the magazine *Žmonės* of hidden political advertising and had called it a tabloid (*įvardijamas bulvariniu leidiniu*) and its articles literary trash (*rašliava*). The Commission also established that the company ŽLG had not been given an opportunity to respond to the criticism levelled against it,

and that the disputed article in *Valstybė* magazine had also failed to state why such an opportunity had not been provided. It followed that there had been a breach of Article 22 § 2 of the Code, which provided that a person who had been criticised "always" had a right of reply (see paragraph 39 below), that is, the right to explain himself or herself, or to refute misleading information. If no such opportunity had been provided, society should be informed about this. The Commission ordered the second applicant to publish its decision in *Valstybė* magazine.

### B. The complaint to the Inspector

14. V.M.'s son D.M. then lodged a complaint with the Inspector, arguing that certain statements in the article had been misleading and had harmed his professional reputation and good name. He stated, among other things, that he had never pursued any political marketing, and that the article had pejoratively referred to him as "Matijošaitukas".

15. By decision no. SPR-71 of 20 August 2015 the Inspector found that the article in question had not damaged D.M.'s honour or dignity or overstepped the boundaries of freedom of speech. Having examined the statements in the article and the context (the municipal elections of February 2015), the Inspector acknowledged that the published information indicating that D.M.'s positive portrayal in the media had been a political marketing technique aimed at promoting his father – who had been a mayoral candidate for Kaunas at the time – had had a negative connotation, although it had not been demeaning (*nėra žeminanti*). That being so, the published information had been related to public interest – hidden political advertising and techniques employed during elections. Moreover, V.M.'s son was a well-known figure in Lithuania; he had been a candidate in the municipal council elections, and therefore he had to withstand a certain level of criticism. It could not therefore be concluded that the second applicant had overstepped the margins of freedom of expression.

16. The Inspector acknowledged that it was "hard to directly prove" that the published information presenting the positive portrayal of D.M. was part of his and his father's political marketing and was aimed at promoting V.M., since in order to do that one would need to evaluate the aims of the interview given to the magazine *Žmonės*. However, according to the Inspector, the disputed article in the magazine *Valstybė* did not make categorical statements. Instead, it suggested that these had been the publisher's insights when it had observed and analysed the factual circumstances. The Inspector also considered that a person's visibility or that of his entire family made them more well known, and that information about a family – such as their hobbies, interests or character – could be classed as political advertising. It followed that the information published in *Valstybė* magazine did not lack a proper factual basis. Furthermore, according to the Inspector, the information in the

relevant article in the magazine had not only been based on real events, but had also been reasonably argued in the text of that publication. A person reading the publication could independently assess the relevance of the arguments presented in it. In other words, the reader might also disagree with the publisher's insights.

17. As to the right of reply, the Inspector referred to Articles 15 and 44 of the Law on the Provision of Information to the Public, which stipulated that a person who was dissatisfied with information which had been made public about him or her had to address the publisher of such information. Accordingly, the fact that the person about whom the publication had been written had not been asked to provide an opinion in response, or the fact that that person had not been informed about the publication beforehand, could not be seen as a breach of the right of reply.

18. As to plurality of opinion, the Inspector referred to Article 16 § 1 and Article 22 § 8 of the Law on the Provision of Information to the Public, which set out the principles of plurality of opinion and tolerance, principles without which a democratic society was not possible (the Inspector also referred to the Supreme Administrative Court's ruling of 11 December 2014 in case no. $A^{502}$-2021/2014). However, those provisions of the law did not establish an obligation that each publication should contain different opinions (the Inspector referred to the Supreme Administrative Court's ruling of 18 June 2015 in case no. $A^{1435}$-624/2015). It also had to be underlined that the producers or disseminators of public information could choose which style of publication they wished to use, how they wished to express their thoughts, and what the aim and content of the publication would be. According to the Inspector, the disputed article in *Valstybė* magazine had not aimed to examine different independent opinions regarding the questions discussed, or provide a platform for the parties involved in a conflict to state their positions. Likewise, the disputed article had not examined situations involving conflict in society or complex issues. Instead, the author of the publication had presented only her own "perceptions" (*įžvalgas*) and conclusions about events, public figures and processes related to the public interest. Many of those perceptions had been presented during a particularly important period, at the time of the municipal elections, when one could expect sharper statements and stricter assessments. In the light of the above factors, one could not hold that there should have been plurality of opinion in the *Valstybė* magazine article and that such plurality had not been ensured.

### C. The opinion of the Public Information Ethics Association

19. On 24 August 2015 the Public Information Ethics Association (the parent body of the Commission, see Articles 46 and $46^1$ in paragraph 38 below) wrote a letter to the second applicant, expressing its concern that the publication at issue contained disrespectful and derogatory reviews about the

work of other media outlets. It was noted in the letter that when writing about one's colleagues, it was necessary to be careful with one's language and avoid derogatory and offensive expressions.

## D. The administrative court proceedings

20. The second applicant lodged a complaint against the decision of the Commission (see paragraph 13 above) with the domestic courts.

### *1. The Vilnius Regional Administrative Court*

21. On 29 March 2016 the Vilnius Regional Administrative Court allowed the second applicant's complaint and quashed the Commission's decision. The court considered that the publication at issue raised questions and sought to draw society's attention to a pertinent problem – hidden political advertising. The author of the publication had expressed "concern about an important issue, [and had] expressed her understanding and thoughts, [and] evaluation of facts and data". Accordingly, the Commission had been wrong to class the journalist's statements as news (*žinia*). The court considered that the journalist's statements were her opinion instead. In the court's view, opinion could rely on facts and reasoned arguments, but usually it was subjective. The court also pointed out that in analytical articles about political and economic processes, as usual, opinions in reply (*atsakomosios nuomonės*) were not being provided. On the contrary, such articles gave the subjective view of their author.

### *2. The Supreme Administrative Court*

22. The interested third party – the company ŽLR – appealed against the first-instance court's decision. ŽLR pointed out that the *Valstybė* journalist M.B. had not denied that that magazine had been critical (*atsiliepė kritiškai*) of the magazine *Žmonės*. ŽLR also argued that since Article 22 § 2 of the Code made no distinction about what "information" was disseminated (see paragraph 38 below), a person who was criticised always had a right of reply, irrespective of whether the information related to an opinion or news. ŽLR also submitted that in the disputed publication in *Valstybė* magazine, the company had essentially been accused of not meeting the requirements of Articles 30 and 31 of the Code (see paragraph 39 above), which demanded that political advertising should be clearly distinguishable from journalists' articles.

23. The Public Information Ethics Association also appealed. The association agreed that the journalist's statements were her opinion. However, it categorically disagreed with the first-instance court's conclusion that the right of reply did not apply to opinion. On the basis of the definitions of the terms "personal criticism", "opinion" and "news" (*žinia*) as set out in

Article 2 of the Law on the Provision of Information to the Public (see paragraph 38 below), the association was of the view that "criticism was not considered news, but rather a certain type of opinion" (*kritika laikytina ne žinia, bet tam tikra nuomonės rūšimi*). The association considered that since the publication in the magazine *Valstybė* had expressed the author's critical opinion about the activities of an interested third party (ŽLG), that third party should have been entitled to a right of reply. The Public Information Ethics Association also specified that whilst a Council of Europe Recommendation (see paragraph 43 below) interpreted the right of reply only as a person's right to refute or specify (*paneigti ar patikslinti*) facts breaching his or her rights, Article 22 of the Code established a journalist's obligation to contact the person who was being criticised before the publication of an article and provide him or her with an opportunity not only to refute news which was possibly incorrect (*galbūt neteisingas žinias*), but also to explain himself or herself as regards the criticism being expressed in relation to him or her.

24. In proceedings on appeal, the second applicant argued that the right of reply was understood in the same manner in Lithuania and in Europe. It submitted that a person who was the subject of a publication had to address the publisher of the information in order to exercise the right of reply, and not the other way around. The second applicant also argued that Article 22 of the Code did not provide that a journalist or another person had to evaluate himself whether the information prepared was erroneous and address in advance the person whom the journalist was about to criticise. It argued that should the right of reply be interpreted in such a manner, this would make journalists' right to freedom of expression nearly impossible, because in reality they would have to act differently from their colleagues working in a democratic world: firstly, a journalist would have to evaluate himself whether the information he was preparing was erroneous, and then he would have to seek out the persons being criticised.

25. On 31 August 2017 the Supreme Administrative Court held that the first-instance court had not properly examined the Commission's decision, in particular as regards the accusations against ŽLG, and it remitted the case to the lower court for a fresh examination.

The Supreme Administrative Court disagreed with the first-instance court's position that the disputed publication had contained no criticism of the company ŽLG, that the journalist's article had merely expressed her concern about an important issue, and that the publication had contained the journalist's opinion. In the Supreme Administrative Court's view, the first-instance court had reached that conclusion without analysing the specific statements referred to by the Commission in its decision, and without analysing the accusations which had alleged hidden political advertising, called the magazine *Žmonės* a tabloid, and called the articles in that magazine literary trash. The first-instance court's finding – that the publication in *Valstybė* magazine had contained no criticism of the company ŽLG and

merely the author's opinion – was not justified, especially taking into account that the accusation about hidden political advertising could be verified on the basis of objective criteria. In this context, the Supreme Administrative Court also referred to the Court's case-law which provided that the right to freedom of expression was not absolute, and that journalists had to act honestly and seek to provide accurate and reliable information. Similarly, even if evaluative statements (opinions), unlike statements of fact, could not be proved, they should not also lack a factual basis (*skirtingai nei faktiniai teiginiai, vertinamieji (nuomonės) negali būti įrodomi, tačiau jiems taip pat neturi trūkti faktinio pagrindo*).

26. As to the right of reply, the Supreme Administrative Court pointed out that the media had a duty to publish objective and correct information. Accordingly, it was a journalist's responsibility to contact the person who was being criticised in order to find out whether that person wished to make use of the right of reply.

*3. The Vilnius Regional Administrative Court*

27. On 16 November 2017 the Vilnius Regional Administrative Court dismissed the second applicant's complaint against the Commission's decision. The court pointed out that the publication in question had expressly mentioned the magazine *Žmonės* which was owned by the company ŽLG, and it had explored matters of political advertising by stating that the magazine *Žmonės* was publishing articles about electoral candidates' children in a manner which was possibly covertly advertising those candidates. The court also pointed out that the disputed publication had examined and assessed the activities of *Žmonės* magazine, and the second applicant had to offer it a right of reply, pursuant to Article 22 of the Code. The right of reply in relation to criticism was provided for in Article 2 § 7 and Article 15 of the Law on the Provision of Information to the Public.

On 14 December 2017 the Vilnius Regional Administrative Court awarded the company ŽLG the sum of 1,681 euros (EUR), to be paid by the second applicant, in respect of the legal costs the company had incurred during the court proceedings at first instance.

*4. The Supreme Administrative Court's final decision*

28. The first and the second applicants appealed, as did the journalist M.B.

29. By a final decision of 13 February 2018, the Supreme Administrative Court upheld the first-instance decision (see paragraph 27 above).

30. The Supreme Administrative Court pointed out that the notion of personal criticism had been defined in Article 2 § 7 of the Law on the Provision of Information to the Public. As regards the case at hand, and without taking a position as to the nature of criticism (*nevertinant kritikos pobūdžio*), the Supreme Administrative Court considered that the information

provided in the article in *Valstybė* magazine had contained an aspect of criticism (critical opinion) (*turėjo kritikos (kritiškos nuomonės) aspektą*) in relation to the company ŽLG. Firstly, the publication had examined and assessed the article printed in *Žmonės*, as well as that magazine's activity, calling it a tabloid, which, according to the Dictionary of Contemporary Lithuanian, meant low-quality literature or press (*prasta literatūra, spauda*). Secondly, the information published in *Žmonės* magazine had been characterised as literary trash, which, according to the same dictionary, also had a demeaning connotation. Thirdly, the disputed article in *Valstybė* magazine had scrutinised the aim and content of the article in *Žmonės* magazine, linking the latter article exclusively to the hidden political advertising of D.M.'s father, and this should also be indirectly evaluated as definite criticism of *Žmonės* magazine.

31. In the light of the above factors, the Supreme Administrative Court upheld the first-instance court's finding that the company ŽLG should have been given an opportunity to make use of the right of reply, in order to give an explanation or refute possibly erroneous information. Article 22 § 2 of the Code provided for this, establishing that a person who was being criticised should always retain the right of reply. If such an opportunity had not been made available (*jei tokios galimybės nėra*), or if the person had refused to exercise the right of reply (*asmuo atsisako pasinaudoti atsakymo teise*), it was necessary to inform society about that fact. However, the publication in *Valstybė* magazine had not explained why that had not been done (why the relevant persons had not been given the right of reply).

32. As to the right of reply, the Supreme Administrative Court also referred to its earlier case-law (ruling of 6 November 2017 in case no. eA-995-1062/2017) which provided that the Code established that the right of reply arose prior to the publication of critical information, and representatives of media outlets had to contact the person who was being criticised and ask whether he or she would like to exercise the right of reply. Conversely, the Code did not place an obligation on the person who was being criticised to contact the media outlet to ask to make use of the right of reply. This meant that once it had been established that a certain publication would contain critical information, the person who was about to be criticised had the right of reply. Moreover, the Supreme Administrative Court's case-law (ruling of 6 November 2017 in case no. eA-1123-1062/2017) also refuted the second applicant's argument that the right of reply could be understood in "only one" way (*yra viena*) and was only set out in the Law on the Provision of Information to the Public, and that the Code did not provide for a person having the right of reply before information was published.

33. The Supreme Administrative Court also pointed out that although the second applicant relied on the Inspector's decision of 20 August 2015 (see paragraphs 15-18 above), the situation in the case which was being examined – the complaint against the decision of the Commission – was different from

that in the case which had been examined by the Inspector. Accordingly, the Inspector's decision was not pertinent.

34. Lastly, the Supreme Administrative Court also stated that the second applicant's reliance on the Committee of Minister's Recommendation of 15 December 2004 on the right of reply (see paragraph 43 below) was irrelevant, since the Recommendation applied to a different situation, namely a situation where erroneous facts were refuted after certain information had already been made public by media outlets. Furthermore, in the Supreme Administrative Court's view, from the provisions of that Recommendation, it could not be concluded that the right of reply arose only after information had been made public.

35. Having upheld the Commission's decision, the Supreme Administrative Court did not deal with the company ŽLG's claim for legal costs at that time, since it had not provided a sufficiently detailed breakdown of those costs. ŽLG was given fourteen days to submit a proper claim.

Afterwards, by a ruling of 26 April 2018 the Supreme Administrative Court granted in part ŽLG's claim for legal costs and expenses that the company had incurred in the proceedings before the appellate court, and awarded it EUR 440 to be paid by the second applicant, EUR 220 to be paid by the first applicant and EUR 220 to be paid by M.B.

### E. Follow-up information

36. As submitted by the Government, the applicants never published the decisions of the Commission (see paragraphs 6 and 13 above, and Article $46^1$ of the Law on the Provision of Information to the Public, cited in paragraph 38 below). According to the Government, on 26 November 2015, at the request of the Public Information Ethics Association, the Commission's decisions were broadcast on Lithuanian national radio. Those decisions were also published on the Commission's Internet site.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. DOMESTIC LAW AND PRACTICE

### A. The Constitution

37. The Constitution reads:

**Article 22**

"Private life shall be inviolable.

...

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 25**

"Everyone shall have the right to have his own convictions and freely express them.

No one shall be hindered from seeking, receiving or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited other than by law, when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious or social hatred, incitement to violence or to discrimination, and defamation and disinformation. ..."

## B. The Law on the Provision of Information to the Public

38. The Law on the Provision of Information to the Public (*Visuomenės informavimo įstatymas*), in so far as relevant, read as follows at the material time (between 1 January 2015 and 30 June 2015):

**Article 2. Definitions**

"7. 'Personal criticism' means the examination and evaluation of a person or his activities without damaging the person's honour and dignity, violating his privacy or damaging his professional reputation.

...

36. 'Opinion' means: a view, understanding, perception, notion, thought or comment on ideas of a general nature; judgments on facts and data, phenomena or events; [or] conclusions or remarks regarding the news related to real events published in the media. An opinion may be based on facts or substantiated arguments and is usually subjective, therefore it is not subject to the criteria of truth and accuracy; however, it must be expressed in good faith and ethically, without deliberate concealment and distortion of the facts and data.

...

84. 'News' means facts or factual (correct) data published in the media. ..."

**Article 3. Basic Principles of the Provision of Information to the Public**

"1. Freedom of information embedded in the Constitution, this Law and other laws and treaties of the Republic of Lithuania shall be guaranteed in the Republic of Lithuania.

2. The producers and disseminators of public information, as well as journalists and publishers in their activities, shall be governed by the Constitution, laws and treaties of the Republic of Lithuania, [and] also by the principles of humanism, equality, tolerance and respect for every human being. [Those persons] shall: respect freedom of speech, creativity, religion and conscience, and diversity of opinion; adhere to the norms of professional ethics and the provisions of the Code [of Ethics for Lithuanian Journalists and Publishers] (hereinafter 'the Code'); contribute to the development of democracy and public openness; promote civil society and State progress; enhance State independence; and nurture the State language, national culture and morality.

3. Public information must be presented in the media in a fair, accurate and impartial manner.

4. The enjoyment of freedom of information may be restricted by the requirements, conditions, restrictions or penalties which are laid down in laws and are necessary in a democratic society: to protect Lithuania’s State security, its territorial integrity, its public order and constitutional system; to guarantee the impartiality of its judicial authority, with a view to preventing violations of the law, crimes and the disclosure of confidential information; and to protect public health and morality, as well as [people’s] private life, dignity and other rights.”

**Article 15. Right of Reply**

“Any natural person whose honour and dignity have been harmed by false, inaccurate or biased information published about him in the media, and any legal person whose professional reputation or other legitimate interests have been damaged by false, inaccurate or biased information, shall have the right of reply, refute the false information or correct the published information, or the right to require that the producer and/or disseminator of the public information issue a retraction of false information. ...”

**Article 16. Ensuring Diversity of Opinion in the Media**

“1. [In] respecting diversity of opinion, the producers and disseminators of public information must present in the media as many opinions as possible that are independent of each other. ...”

**Article 19. Information Not to Be Published**

“2. It shall be prohibited to disseminate disinformation and information which is slanderous and offensive to a person, or which damages his honour and dignity. ...”

**Article 41. Duties of Journalists**

“1. The duties of journalists shall be set out in this Law and in other laws, as well as in treaties of the Republic of Lithuania.

2. Journalists must

1) provide correct, accurate and impartial news, critically assess the sources of their information, check facts closely and attentively, and refer to several sources. If it is impossible to verify the reliability of the source of information, this must be indicated in the published information;

...

4) in their activities, adhere to the basic principles of the provision of information to the public, and observe the norms of journalists’ professional ethics; ...”

**Article 46. The Public Information Ethics Association**

“1. The Public Information Ethics Association (hereinafter ‘the Association’) shall target its activity to ensure compliance with the provisions of [the Code], to foster principles of ethics in the provision of information to the public in public information activities, and to raise public awareness of the evaluation of public information processes and the use of public information.

2. The Association shall consist of organisations uniting public information producers, disseminators and journalists, with the norms of the Code applying to the activities of the members of such organisations: the Lithuanian Journalists’ Union, the Society of Lithuanian Journalists, the Internet Media Association, the Lithuanian Radio and Television Association, the Regional Television Association, the Lithuanian Cable Television Association, the National Regional and City Publishers Association ...

3. The Association shall be an independent legal person – an association established by the organisations specified in paragraph 2 of this Article ...

4. The Association shall act in compliance with the Constitution, the Law of the Republic of Lithuania on Associations, this Law and other laws, international agreements of the Republic of Lithuania and other legal acts. ...”

**Article 46[1]. The Public Information Ethics Commission**

“1. The Public Information Ethics Commission (hereinafter ‘the Commission’) shall be a collegial body making decisions on behalf of the Association by virtue of the remit provided for in paragraph 3 of this Article.

...

3. The Commission shall perform the following functions:

1) fostering the ethics of producers and disseminators of public information;

2) examining violations of professional ethics committed by producers or disseminators of public information in the provision of information to the public;

3) examining persons’ complaints with regard to the activities of producers and disseminators of public information who have allegedly infringed the provisions of [the Code], and examining disputes between producers and disseminators of public information regarding violations of the Code;

...

5. In its work, the Commission shall be guided by the Constitution, this Law and other laws, international agreements of the Republic of Lithuania [and] other legal acts, as well as the Code, [and] the Resolution of the Parliamentary Assembly of the Council of Europe on the ethics of journalism.

6. The Commission shall operate pursuant to the rules of procedure approved by the Commission. When taking decisions, the Commission shall have the right to consult independent experts. Decisions of the Commission regarding infringements of professional ethics or other violations must immediately be announced in the media [outlet] in which the Commission has established that there were such violations, as well as in accordance with the procedure for publishing a retraction ... If a producer and/or disseminator of public information fails to announce within two weeks a decision of the Commission regarding an infringement of professional ethics or some other violation in its media outlet, that decision of the Commission regarding the infringement of professional ethics or some other violation shall be announced on the first channel of Lithuanian national radio, and the costs of such an announcement shall be covered by the producer and/or disseminator of the public information in respect of whom the decision has been taken. This decision shall also be announced on the website of the Association.

7. Producers and/or disseminators of public information who do not accept the decisions of the Commission may apply to the Vilnius Regional Administrative Court;

however, they must still announce the relevant decisions in accordance with the procedure laid down in paragraph 6 of this Article. ..."

**Article 49. Inspector of Journalistic Ethics**

"1. The Inspector of Journalistic Ethics (hereinafter 'the Inspector') shall be a State official who supervises the implementation of the provisions of this Law.

2. The Inspector shall be appointed by the Seimas for a five-year term of office ...

5. The Inspector shall act in accordance with the Constitution of the Republic of Lithuania, this Law and other laws, treaties ratified by the Republic of Lithuania, EU legal acts, [the Code] and other legal acts.

...

10. The activities of the Inspector shall be ensured by the Office of the Inspector of Journalistic Ethics. The Office of the Inspector of Journalistic Ethics shall be a State budgetary body headed by the Inspector.

11. The Office of the Inspector of Journalistic Ethics shall be a public legal entity and have a seal bearing the coat of arms of the State of Lithuania with the name of the Office of the Inspector of Journalistic Ethics inscribed thereon. ..."

**Article 50. Inspector's Remit**

1. The Inspector shall perform the following functions:

1) investigating the complaints (applications) of persons whose honour and dignity have been harmed in the media;

2) examining the complaints (applications) of persons in relation to the violation of their right to the protection of privacy in the media; ..."

## C. The Code of Ethics for Lithuanian Journalists and Publishers

39. The Code of Ethics for Lithuanian Journalists and Publishers (*Lietuvos žurnalistų ir leidėjų etikos kodeksas*), approved on 15 April 2005 at a meeting of the representatives of journalists' and publishers' organisations, in so far as relevant, reads as follows:

**Article 3**

"With respect to the human right to obtain fair information, journalists and producers and disseminators of public information shall present accurate and correct information and various opinions. When presenting various opinions, journalists and producers and disseminators of public information may not publish opinions that are contrary to the law and ethics."

**Article 22**

"Journalists and producers and disseminators of public information have to comply with the rule that the limits of criticism in respect of a private person are much narrower than those in respect of a public figure. Therefore, when providing information about a private person, priority has to be given to the protection of private life, and providing information about a public figure has to be in the public interest.

Furthermore, a person who is being criticised must always be given a right of reply, that is, an opportunity to justify himself or herself, to explain, or to refute misleading information. If there is no such opportunity, or if the person refuses to make use of the right of reply, it is necessary to inform society about this."

**Article 30**

"In media advertisement (including political advertisement) must be clearly distinguished from the journalists' works..."

**Article 31**

"It is not allowed to portray advertisement as impartial information or to disguise it otherwise."

## D. The position of the Lithuanian Journalists' Union as to the right of reply

40. According to an opinion of the Ethics Commission of the Lithuanian Journalists' Union, published on 3 April 2013, any person who has been portrayed in a negative light, criticised, or had incorrect or partial information published about him, has the right of reply, as established in Article 15 of the Law on the Provision of Information to the Public. However, the Union's Ethics Commission noted that persons did not always make use of that right, and instead of contacting the publisher of the information in question, they contacted the institutions in charge of media self-regulation in order to defend their rights. This also showed distrust as regards publishers acting in good faith in resolving disputes.

## E. The Lithuanian Journalists' Union's reply to the first applicant as regards the right of reply

41. In reply to a request by the first applicant of 23 November 2015, on 4 January 2016 the Chairman of the Lithuanian Journalists' Union wrote that although Article 22 § 2 of the Code clearly spoke of the right of reply, it had not established any particular procedure setting out when and how that should be provided. Accordingly, taking into account that journalists and publishers, in their activities, had to be systemically guided by the principles of both the Law on the Provision of Information to the Public and the Code, in the event of doubt, they should rely on the principles of reasonableness and honesty, that is, provide a person with a right of reply where that was possible. It was also plain that the right of reply meant the right of a person who was being criticised to provide opinion and information in response, if that person so wished. Lastly, the right to provide opinion or information in response arose only when the person who was being criticised asked the publisher if he could provide this.

# II. INTERNATIONAL MATERIAL

## A. The Council of Europe

42. Resolution 1003 (1993) on ethics of journalism, adopted by the Parliamentary Assembly of the Council of Europe (PACE) on 1 July 1993, in so far as relevant, reads:

> "News and opinions
>
> 1. In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society which must be underlined at the present time, when information and communication play a very important role in the formation of citizens' personal attitudes and the development of society and democratic life.
>
> 2. The journalist's profession comprises rights and obligations, freedoms and responsibilities.
>
> 3. The basic principle of any ethical consideration of journalism is that a clear distinction must be drawn between news and opinions, making it impossible to confuse them. News is information about facts and data, while opinions convey thoughts, ideas, beliefs or value judgments on the part of media companies, publishers or journalists.
>
> 4. News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumour must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.
>
> 5. Expression of opinions may entail thoughts or comments on general ideas or remarks on news relating to actual events. Although opinions are necessarily subjective and therefore cannot and should not be made subject to the criterion of truthfulness, we must ensure that opinions are expressed honestly and ethically.
>
> ...
>
> The function of journalism and its ethical activity
>
> 17. Information and communication as conveyed by journalism through the media, with powerful support from the new technologies, has decisive importance for the development of the individual and society. It is indispensable for democratic life, since if democracy is to develop fully it must guarantee citizens participation in public affairs. Suffice it to say that such participation would be impossible if the citizens were not in receipt of the information on public affairs which they need and which must be provided by the media.
>
> ...
>
> 21. Therefore journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen's fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests.

22. In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still sub judice, and must refrain from making judgments.

23. The right of individuals to privacy must be respected. Persons holding office in public life are entitled to protection for their privacy except in those cases where their private life may have an effect on their public life. The fact that a person holds a public post does not deprive him of the right to respect for his privacy.

24. The attempt to strike a balance between the right to respect for private life, enshrined in Article 8 of the European Convention on Human Rights, and the freedom of expression set forth in Article 10, is well documented in the recent case-law of the European Commission and Court of Human Rights.

25. In the journalist’s profession the end does not justify the means; therefore information must be obtained by legal and ethical means.

26. At the request of the persons concerned, the news media must correct, automatically and speedily, and with all relevant information provided, any news item or opinion conveyed by them which is false or erroneous. National legislation should provide for appropriate sanctions and, where applicable, compensation.

...

Ethics and self-regulation in journalism

36. Having regard to the requisite conditions and basic principles enumerated above, the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions.

37. In order to supervise the implementation of these principles, self-regulatory bodies or mechanisms must be set up comprising publishers, journalists, media users’ associations, experts from the academic world and judges; they will be responsible for issuing resolutions on respect for ethical precepts in journalism, with prior commitment on the part of the media to publish the relevant resolutions. This will help the citizen, who has the right to information, to pass either positive or negative judgment on the journalist’s work and credibility. ...”

43. Recommendation Rec (2004) 16 of the Committee of Ministers to member States on the right of reply in the new media environment, in so far as relevant, reads as follows:

“The Committee of Ministers ...

Reaffirming that the right of reply should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights, and considering consequently that the dissemination of opinions and ideas must remain outside the scope of this Recommendation;

...

Considering that it is also in the interest of the public to receive information from different sources, thereby guaranteeing that they receive complete information;

Acknowledging that the right of reply can be assured not only through legislation, but also through co-regulatory or self-regulatory measures;

...

Emphasising that the right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been violated in the media,

Recommends that the governments of the member states should examine and, if necessary, introduce in their domestic law or practice a right of reply or any other equivalent remedy, which allows a rapid correction of incorrect information in online or off-line media along the lines of the following minimum principles, without prejudice to the possibility to adjust their exercise to the particularities of each type of media.

**Definition**

For the purposes of this Recommendation:

The term 'medium' refers to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services.

**Minimum principles**
**1. Scope of the right of reply**

Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his/her personal rights."

### B. Other international material

44. See also *Melnytchuk v. Ukraine* ((dec.), no. 28743/03, 5 July 2005).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

45. Having regard to the similar subject-matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicants complained under Article 10 of the Convention that the requirement to publish the Commission's decisions in the magazine *Valstybė* had violated their freedom of expression. That provision, in so far as relevant, reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ..."

## A. Admissibility

47. The Court finds that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

## B. Merits

### *1. The submissions by the parties*

#### (a) The applicants

##### *(i) The first article*

48. The applicants submitted that the public declaration by the Commission that the publication in the magazine *Valstybė* had been unethical had amounted to disproportionate interference with their freedom of expression.

49. The applicants also submitted that they had acted within the bounds of journalists' ethics, and their understanding of the domestic law was that Article 3 of the Code therefore could not have served as a basis for justified interference with their right to freedom of expression.

50. The applicants argued that the aim of the article in question had been to inform the public about the influence of oligarchs and their means of operating, thus raising issues of a pressing social need. However, the Supreme Administrative Court had not dealt with those circumstances adequately. The applicants also submitted that the publication had not defamed V.M., and therefore there had been no pressing social need to interfere with their right to freedom of expression. The first applicant also claimed that journalists should be independent and have a right to perform their duty to protect the values of democracy to the best of their ability.

51. Furthermore, the applicants argued that the Supreme Administrative Court had incorrectly classed the statements in question as news and had not properly distinguished between news and opinion. They pointed out that the Inspector and the first-instance court had found that those statements were opinion with a sufficient factual basis. Moreover, the applicants considered that the Commission had also admitted that the statements were opinion. The applicants also pointed out that in its case-law the Court had already criticised domestic courts for their inability to distinguish between facts and opinions (they referred to *Redaktsiya Gazety Zemlyaki v. Russia*, no. 16224/05, § 46, 21 November 2017).

52. The applicants further submitted that the Supreme Administrative Court had not only unjustifiably classed the opinion as facts, but had, in the applicants' words, "even demanded [that they] prove it", and that they "prove the unprovable, for example, the influence of money in the elections". In this context, the applicants referred to the Court's practice whereby it was

particularly important for courts to examine the evidence adduced by a defendant very carefully, so as not to render it impossible for him or her to reverse the burden of proof and make out the defence of truth (they referred to *Kasabova v. Bulgaria*, no. 22385/03, § 62, 19 April 2011).

53. The applicants placed much emphasis on the Inspector's conclusions and considered that the Supreme Administrative Court had erred in not taking them into account. They acknowledged that, as pointed out by the Government (see paragraphs 67 and 68 below), the Commission and the Inspector had different remits. However, they disagreed that the Inspector's assessment of the content and purpose of the publication – including his assessment of whether the statements were facts or opinions – and his conclusions regarding the limits of freedom of expression should be rejected when deciding if there had been a breach of the Code. Whilst sharing the Government's view that national institutions should distinguish between news and opinions, the applicants considered that, irrespective of who carried out the assessment (the Inspector, the Commission or a court), their assessment should be identical, in the light of the general principle that restrictions on freedom of expression should be interpreted particularly narrowly. In their case, it had been obvious that the State had failed to properly implement this criterion, since it had been possible for a court or another institution to class words expressing an opinion – such as "I think" and "could be" – as a "cover-up" for the dissemination of information which contradicted reality. A situation like this allowed censorship to become institutionalised, and professional activities would become particularly difficult and hard to predict.

54. Lastly, the applicants argued that the sanctions imposed on them could not be seen as insignificant. They submitted that they had been involved in publishing for the benefit of the public interest, and that the magazine *Valstybė* was one of only a few magazines in Lithuania, perhaps the only magazine, which did not receive any State subsidies. The applicants asserted that in a particularly opaque media market, the magazine did not publish paid articles as a matter of principle, and no business groups or individuals related to Russia supported the magazine. In the applicants' words, the magazine survived in the market "only due to [their] altruistic patriotism" and their tireless work and efforts. The applicants also stated that in the twenty years that it had operated professionally, the second applicant had never been sanctioned for violating anyone's dignity and reputation. Accordingly, the Government had failed to assess that sanctions like the ones imposed in their case would favour individuals such as V.M. and the "constantly criticised ruling class in power", whereas the outcome for the applicants would be hard to predict. Furthermore, the public announcement of the Commission's decisions on national radio and on the Commission's Internet site, despite all the applicants' attempts to avoid this, had significantly damaged the reputation of the first applicant as editor and journalist. In the applicants'

view, not only had the imposed sanctions been groundless, for the applicants had not violated any norms of ethics or law, but they might also significantly impact on their professional activities.

*(ii) The second article*

55. The applicants submitted that as an integral part of journalists' mission to act as public watchdog, the magazine *Valstybė* had to inform the public about political advertising techniques employed in elections. It was apparent that such articles had great value in the democratic process. This fact had also been examined by the Inspector, who had concurred. The courts, however, had not considered this aspect sufficiently. The applicants further submitted that the journalist M.B. had not exceeded the levels of permissible criticism and had not unfairly published any defamatory, unverified, untrustworthy or inaccurate statements, but had instead provided her insights, and this final point had also been confirmed by the Inspector.

56. Regarding the language used in the article, the applicants maintained that expressions such as "tabloid" and "literary trash" were attributable to authors' prerogatives, their individual writing styles, irony, and hyperbole, that is, tools of artistic expression. The applicants were also dissatisfied that although the Supreme Administrative Court had considered that the accusations presented in their article could be verified by objective criteria, it had not indicated how that could be done.

57. As to the right of reply, the applicants disagreed that they had been obliged to provide the company ŽLG with such an opportunity. They argued that there had been a dispute as to whether such a right arose before information was published or only after publication. There was also a difference of opinion as to when such a right arose, depending on the type of information published – whether the right of reply applied only to news, or also where a journalist merely intended to express a critical opinion.

58. The applicants also did not agree that the journalist had been obliged to ask the company ŽLG for an explanation, since it had been unlikely that the company would admit that it had published an article about electoral candidates in return for payment. Moreover, a person having the right of reply before the publication of an article which could contain critical opinion or news was not only an unjustified restriction on freedom of expression, but also difficult to accomplish, since, for example, it could be hard to find such a person in order to contact him.

59. The applicants lastly submitted that their arguments regarding the Inspector's remit and the sanction which had been imposed in respect of the second article had already been detailed in their arguments relating to their complaint regarding the first article (see paragraphs 53 and 54 above). Regarding the sanction imposed on them, they added that the Commission's letter expressing concern (see paragraph 19 above) had been more proof that

the Commission had imposed another, excessive, sanction, which had obviously been in breach of the right to freedom of expression.

**(b) The Government**

*(i) General observations*

60. At the outset, the Government pointed out that the first applicant was a journalist and a member of the second applicant's editorial board and its founder, and that M.B. also was a journalist. It could be stated that, as professionals in their field, they could have been expected to take particular care in assessing the risks that such activity entailed (*Chauvy and Others v. France*, no. 64915/01, §§ 44-46, ECHR 2004-VI). Besides, it was incumbent on them to apprise themselves of the relevant legal provisions and case-law in such matters, even if that meant taking legal advice (see, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 42, ECHR 2007-IV).

61. The Government also stated that some of the facts presented by the applicants in their observations, such as those about V.M.'s and D.M.'s personalities, as well as the alleged risk that V.M. posed as an oligarch, had been purely subjective, irrelevant and misleading, and therefore the Government would refrain from commenting on them.

62. The Government also wished to highlight that the proceedings in the administrative courts had not been defamation proceedings as such. Instead, they had concerned an assessment of the applicants' activity – the two publications which they had produced – in order to ascertain whether those publications had complied with the provisions of the Code. The courts had examined whether the journalists – the first applicant and M.B. – and the publisher – the second applicant – had observed the requirements [of ethics] applicable to journalism, also taking into account the provisions of domestic law and international standards.

63. Lastly, the Government did not contest that the decisions of the Commission, which had been upheld by the Supreme Administrative Court, had constituted an interference with the applicants' right to freedom of expression. Even so, the conditions prescribed in Article 10 § 2 of the Convention had been met, since the interference had had a legal basis and had been necessary and proportionate to the several legitimate aims pursued.

*(ii) The first article*

64. The Government submitted that although the first article had been directed against V.M., who at that time had been a member of the Kaunas municipal council and a mayoral candidate for Kaunas, and therefore a public figure, he should not have been expected to tolerate information provided in breach of journalists' ethics. The interference with the applicants' right to freedom of expression, which had been based on Article 3 of the Code, had

pursued the legitimate aim of protecting the rights of others, namely the right of a democratic society to receive accurate information as well as V.M.'s right to professional reputation. In this case, protecting individuals from erroneous and defamatory statements had been necessary in a democratic society and had corresponded to a pressing social need.

65. The Government emphasised that the Supreme Administrative Court, referring to the jurisprudence of the Court and the principles set out therein, had performed a balancing exercise between journalists' freedom of expression, the right of a democratic society to receive accurate information, and the need to protect a politician's reputation, but it had not overstepped the margin of appreciation afforded to it. In particular, having analysed the expressions used in the publication, it had arrived at the conclusion that the disputed article had not contained mere value judgements, but rather statements of fact, for which no proof had been provided. In that connection, the Government also referred to the Court's position that the classification of a statement as a fact or as a value judgment was a matter which, in the first place, fell within the margin of appreciation of national authorities (they referred to *Lindon, Otchakovsky-Laurens and July*, cited above, § 55). The Government also did not wish to speculate as to what the reasons had been for the applicants not taking measures to provide facts which could have confirmed the accuracy and fairness of the information presented in the article. That being so, the Government cited the Supreme Administrative Court's position that the mere use of vocabulary such as "I think" could not serve as camouflage for statements such as those expressed in the article.

66. Furthermore, the Government disputed the applicants' view that the Commission had classed the impugned statements as opinion (see paragraphs 10 and 51 above). In the Government's view, the Commission's decision showed that the statements had not been substantiated and no concrete facts had been indicated, and that therefore the Commission had referred to those statements as statements of facts, and not value judgments.

67. As to the applicants' suggestion that the decisions of the Inspector and the Commission had to be identical, it was noteworthy that the domestic courts had provided relevant and sufficient reasons and had explained that the Commission and the Inspectorate had used different approaches in assessing the publication at issue, and that the Commission did not have to refer to the decision of the Inspectorate. The Government also emphasised that the Inspector and the Commission were different institutions, which acted on the basis of different legal provisions and had different functions and remits, as specified in Articles 46, 46[1], 49 and 50 of the Law on the Provision of Information to the Public (see paragraph 38 above). Specifically, the Inspector was a State official who supervised how the provisions of the Law on the Provision of Information to the Public were implemented and, *inter alia*, examined individuals' complaints concerning alleged violations of their right to dignity and reputation, right to private life and right to data protection.

However, the Commission was a collegial media self-regulatory body of the Public Information Ethics Association which, among other things, examined possible violations of professional ethics, as set out in the Code. Therefore, the fact that published information was accurate and did not damage someone's reputation did not mean that the information met all the requirements of public-information ethics which were applicable to the publishers of such information. The Government also submitted that complaints lodged with the Inspector and the Commission had different backgrounds; the Inspector and the Commission examined those complaints independently, and a decision by one did not prejudice a decision by the other. Moreover, when a person applied to the Inspector, that person was not obliged to inform another institution about his complaint. Thus, the Inspector in this case had not been informed about the Commission's examination of V.M.'s complaint.

68. In sum, having regard to the fact that the complaints submitted to the Inspector and the Commission were not the same, both institutions carried out examinations within the limits of their own remits, and pronounced on violations of different legal acts. Thus, it went without saying that their decisions could be different in their assessment of the legitimacy of journalistic activity, as in the case at hand. Furthermore, it should be taken into account that the decisions of the Commission and those of the Inspectorate had been adopted on almost the same day – on 17 August 2015 and 20 August 2015 respectively.

69. Lastly, the Government stated that the interference had been proportionate, since the case had not involved either civil proceedings for damages or criminal proceedings. Accordingly, one could not hold that the applicants had been discouraged from continuing to work in the field of journalism.

*(iii) The second article*

70. The Government pointed out that the interference with the applicants' right to freedom of expression had had a basis in law, namely Article 22 § 2 of the Code. Besides, the interference had pursued the legitimate aim of protecting the reputation or rights of others, namely the reputation of the magazine *Žmonės*.

71. Furthermore, the Government saw no reason to disagree with the domestic courts' analysis of the case or find that they had construed the principle of freedom of speech too restrictively by emphasising that journalists had a duty to comply with the ethics of journalism. In particular, having examined the definition of "criticism", the domestic courts had found that the statements in the disputed article had been of such a nature. In making that assessment, the domestic courts had also taken into account not only the full context of the publication, but also the specific references to *Žmonės* magazine being a "tabloid" (in Lithuanian language – see paragraph 30

above) and "literary trash", as both of those terms had negative connotations. In the Government's view, such statements by M.B. and the second applicant hardly demonstrated "the author's good faith" (*Chauvy and others*, cited above, § 73) or satisfied the requirement that "reliable and precise information be provided in accordance with the ethics of journalism" (*Lindon, Otchakovsky-Laurens and July*, cited above, § 67). One also had to take into account that the Public Information Ethics Association had acknowledged that the statements in the second article were derogatory and disrespectful to colleagues (see paragraph 19 above). As the applicants had failed to act in good faith, they could not invoke the safeguards afforded by Article 10 of the Convention (*Fatullayev v. Azerbaijan*, no. 40984/07, § 95, 22 April 2010).

72. As to the right of reply, the Government referred to the courts' finding that the article in the magazine *Valstybė* had criticised the magazine *Žmonės* for hidden political advertising, which meant that it had been all the more important for the author of the article in *Valstybė* to provide the other party – *Žmonės* – with a right of reply before the publication of that article. The Government also argued that Article 10 of the Convention did not guarantee a wholly unrestricted freedom of expression, even in respect of press coverage of matters of serious public concern. Moreover, the exercise of freedom of expression carried with it "duties and responsibilities" (the Government referred to *Wizerkaniuk v. Poland*, no. 18990/05, § 61, 5 July 2011). Likewise, Article 10 of the Convention did not prohibit the imposition of prior restraints on publications (they referred to *Chauvy and Others*, cited above, § 66). Regarding the Lithuanian law, the Government considered that the right of reply, as established in Article 22 § 2 of the Code, complied with Article 15 of the Law on the Provision of Information to the Public. In the Government's view, this meant that a person who was criticised always had a right of reply, "even before [the publication of] certain information".

73. The Government reiterated their arguments that the Commission and the Inspectorate were different bodies, which explained why their decisions differed (see paragraphs 67 and 68 above). Lastly, given the sanction imposed, the interference had been proportionate (see paragraph 69 above).

### *2. The Court's assessment*

#### (a) The first article

74. It is common ground between the parties that the obligation to publish the Commission's decision (see paragraph 6 above) amounted to an "interference" with the applicants' right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. The Court has no reason to find otherwise.

75. It follows that the Court needs to examine whether the interference was justified in accordance with Article 10 § 2 of the Convention, that is,

whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims (see, among other authorities, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 151, 5 April 2022).

*(i) Whether the interference was prescribed by law and pursued a legitimate aim*

76. The Court finds that it was "prescribed by law", namely Article 3 of the Code (see paragraph 39 above). Furthermore, the Court shares the Government's view that the interference pursued the legitimate aim of the protection of the rights of others – namely the reputation of V.M. and society's right to receive accurate information (see paragraph 64 above).

*(ii) Whether the interference was necessary in a democratic society*

77. It remains to be determined whether the interference was "necessary in a democratic society".

(α) General principles

78. The Court refers to the general principles set out in its case-law for assessing the necessity of an interference with freedom of expression (see *Morice v. France* [GC], no. 29369/10, §§ 124-27, ECHR 2015; *Baka v. Hungary* [GC], no. 20261/12, §§ 158-61, 23 June 2016; and *Balaskas v. Greece*, no. 73087/17, §§ 37-39, 5 November 2020, with further references).

79. In addition, the Court reiterates that by reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis, and that they provide reliable and precise information in accordance with journalistic ethics (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I, and *Falter Zeitschriften GmbH v. Austria (no. 2)*, no. 3084/07, § 37, 18 September 2012), or, in other words, in accordance with the tenets of responsible journalism (see *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016). Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest (see, among other authorities, *Erla Hlynsdóttir v. Iceland (no. 3)*, no. 54145/10, § 62, 2 June 2015).

80. Whilst it is true that editorial discretion is not unbounded, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Perna v. Italy* [GC], no. 48898/99, § 39 (a), ECHR 2003-V,

and *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 214, 13 April 2021) and the methods of objective and balanced reporting may vary considerably; it is therefore not for this Court, or for the national courts, to substitute their own views for those of the press as to what reporting techniques should be adopted (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III, and *Falter Zeitschriften GmbH*, cited above, § 38).

81. The Court reiterates that it has already had occasion to lay down the relevant principles which must guide its assessment in cases where it needs to balance a person's right to "respect for his private life" against the public interest in protecting freedom of expression (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-99, ECHR 2012, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)). It has held that in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017; *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; *Kunitsyna v. Russia*, no. 9406/05, § 42, 13 December 2016; *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020; and *Balaskas*, cited above, §§ 37 and 40). It has also identified a number of criteria in the context of balancing the competing rights (see *Von Hannover*, §§ 109-13, and *Axel Springer AG*, §§ 90-95, both cited above). The relevant criteria thus defined – in so far as they are pertinent in the present case – include the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the content, form and consequences of the publication, the way in which the information was obtained and its veracity, and the severity of the sanction imposed on the journalists or publishers (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 93).

82. In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Axel Springer AG*, cited above, § 86).

83. The Court reiterates that a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right

secured by Article 10 (see *Mika v. Greece*, no. 10347/10, § 31, 19 December 2013). However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement: if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice*, cited above, § 126, with further references).

84. The Court lastly emphasises that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are interrelated and operate to reinforce each other. For that reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see *Rungainis v. Latvia*, no. 40597/08, § 53, 14 June 2018).

(β) Application of those principles in the present case

85. At the outset, the Court notes the Government's statement (see paragraph 62 above) that the present case does not concern defamation proceedings *stricto sensu*: rather, it relates to the applicant's complaint regarding the decision of the Commission, a media self-regulatory body (compare and contrast, for example, *Lingens v. Austria*, 8 July 1986, §§ 24–28, Series A no. 103). Nevertheless, the Court does not fail to observe that the Commission's decision was the result of an initial complaint by V.M of damage to his professional reputation, and that afterwards V.M. participated in the related court proceedings as a third party and appealed against the first-instance court's decision in the second applicant's favour (see paragraphs 6, 8 and 10 above). The Court therefore holds that the principles set out in its case-law related to defamation cases (see, for example, *Rungainis*, cited above, § 55) apply in this case.

86. Indeed, as the domestic courts also acknowledged (see paragraphs 9 and 11 above), the present case concerns a conflict between competing rights – on the one hand, respect for the applicants' right to freedom of expression, and on the other, V.M.'s right to respect for his privacy, honour and reputation – requiring an assessment in conformity with the principles laid down in the Court's relevant case-law, summarised in paragraphs 81-83 above. The Court will therefore examine the domestic proceedings from this perspective.

– *Contribution to a debate of public interest*

87. The Court has already held that the public interest relates to matters which affect the public to such an extent that it may legitimately take an

interest in them, which attract public attention, or which concern the public to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case regarding matters which can give rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 171, 27 June 2017).

88. The weight of the public interest in the disclosed information will vary depending on the situations encountered. Information concerning unlawful acts or practices is undeniably of particularly strong public interest. Information concerning acts, practices or conduct which, while not unlawful in themselves, are nonetheless reprehensible or controversial may also be particularly important. That being so, although information capable of being considered of public interest concerns, in principle, public authorities or public bodies, it cannot be ruled out that it may also, in certain cases, concern the conduct of private parties, such as companies, which also inevitably and knowingly lay themselves open to close scrutiny of their acts. The Court would also emphasise that the public interest in information cannot be assessed only on a national scale (see, *mutatis mutandis*, *Halet v. Luxembourg* [GC], no. 21884/18, §§ 131-43, 14 February 2023, and the case-law cited therein).

89. In its final decision of 26 June 2017, the Supreme Administrative Court did not deny that the applicants had written on a subject of general interest, but questioned the accuracy and fairness of the published information (see paragraph 10 above).

90. The Court cannot but observe that the applicants' article concerned a matter of public interest, notably the purported influence of a large amount of capital – in the form of business advertising – in the upcoming municipal and Seimas elections, and V.M.'s alleged role in that regard.

– *How well known is the person concerned and what is the subject of the publication*

91. The Court notes that V.M. was the owner of a large business and a politician who was active in the social life of the community, and he would later become the mayor of Kaunas (see paragraph 5 above). It can thus be inferred that V.M. was, on account of his position, a public figure in the local community where the article in question was available (see, *mutatis mutandis*, *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, § 36, 14 December 2006), a fact on which he himself relied in his application to the Commission (see paragraph 6 above). He was therefore subject to wider limits of acceptable criticism than ordinary individuals (see, *mutatis mutandis*, *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 98).

92. Further, the publication at issue referred to the influence that money received from advertising allegedly had on the media (see paragraph 5

above). The Court can accept that this matter also fell within the public interest (see, *mutatis mutandis*, *Rungainis*, cited above, §§ 55 and 56).

– *The content, form and consequences of the publication, the way in which the information was obtained and its veracity*

93. In the context of Article 10 of the Convention, the Court must take account of the circumstances and overall background against which the statements in question were made (see, among many other authorities, *Lingens*, § 40, and Bladet Tromsø *and Stensaas*, § 62, both cited above; see also, *mutatis mutandis*, *Marcinkevičius v. Lithuania*, no. 24919/20, § 85, 15 November 2022). In the instant case, the background can be explained not only by the conduct of V.M. and/or the business managed by him, but also by the specific topic the magazine *Valstybė* was covering – the influence of a large amount of capital in upcoming municipal and Seimas elections (see paragraph 5 above; see also *Morice*, cited above, § 162).

94. The Court has reiterated that a fundamental distinction needs to be made between reporting details of the private life of an individual and reporting facts capable of contributing to a debate in a democratic society – relating to politicians in the exercise of their official functions, for example (see *Couderc and Hachette Filipacchi Associés*, cited above, § 118). In the present case, the article in question did not concern aspects of V.M.'s private life. Rather, it referred to his behaviour as the owner of a large business and a politician who was "throwing in the most money of all the entrepreneurs in Lithuania" so that "all the media publish[ed] only good news about [him]" before the upcoming municipal and Seimas elections (see paragraph 5 above). There is no doubt that the behaviour of a politician and the possible consequences of that behaviour, if any, on the public and third parties, are matters of public interest. Indeed, questioning the behaviour of a politician and holding him or her to account undoubtedly contributes to a debate of general interest for Lithuanian society as a whole. In this connection, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate concerning questions of public interest (see *Bédat*, cited above, § 49; *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 144, ECHR 2016 (extracts); and *Falzon v. Malta*, no. 45791/13, § 58, 20 March 2018).

95. Examining further, the Court reiterates that the classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts (see, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July*, cited above, § 55).

96. That being so, the Court cannot turn a blind eye to the fact that the Commission and the Inspector reached opposite conclusions regarding the impact of the statements in question: the Commission considered that the assertions made in the article had had no basis and had thus damaged V.M.'s

professional reputation (see paragraph 6 above), whereas the Inspector, when dismissing V.M.'s complaint, was of the view that the article had not overstepped the margins of freedom of expression and had not damaged V.M.'s honour and reputation (see paragraph 7 above). The Court acknowledges that, as explained by the Government, the Inspector (who found in favour of the applicants) and the Commission (which found against the applicants, and whose decision was upheld by a final decision of the Supreme Administrative Court) were two different bodies with different remits, and this fact was also confirmed by the domestic courts (as regards this issue, see paragraphs 8, 9 *in fine* and 33 above; see also, *mutatis mutandis*, *Povilonis v. Lithuania* (dec.), no. 81624/17, § 99 *in limine*, 15 March 2020, where the Court noted that it would in principle defer to the national courts' interpretation and application of domestic law). Nevertheless, the Court finds that the discrepancy in how the Commission and the Supreme Administrative Court, on the one hand, and the Inspector and the Vilnius Regional Administrative Court, on the other hand, qualified the statements in question calls the Court to make its own assessment regarding the qualification of those statements.

97. In its decision of 29 February 2016, referring to the fact that the companies owned by V.M. were large advertisers in the media and that they could decide on which media outlets to use for advertising, the Vilnius Regional Administrative Court did not find that the statement regarding the media not daring to publish negative information about V.M. had been based on false information (see paragraph 9 above). Whilst it is not for the Court to state its view as to whether that conclusion was accurate (see *Axel Springer AG*, cited above, §§ 85 and 86), the Court is satisfied that when making its assessment, the Vilnius Regional Administrative Court followed the criteria laid down in the Court's case-law. The first-instance court established that the remarks in question had been the author's opinion, rather than statements of fact (see paragraph 9 above). Similarly, the first-instance court underscored the need to strike a balance between the public's interest in receiving information and a person's right to privacy, honour and reputation, a balance which had been struck in the case of V.M. (see paragraph 9 above).

98. In its final decision of 26 June 2017, the Supreme Administrative Court took into account the fact that V.M. was a politician and had to be more tolerant of criticism. Nonetheless, it overturned the first-instance court's finding, and arrived at the conclusion that the applicants' article contained statements of fact and that they had failed to demonstrate the existence of a factual basis for their assertions (see paragraphs 10 and 11 above).

99. The Court is unable to entirely share the Supreme Administrative Court's conclusion.

100. It observes that the impugned expressions discussed by the Supreme Administrative Court in its ruling of 26 June April 2017 may be described as value judgments: "I think", "throwing in the most money", "in the

[upcoming] elections he will make use of the fact that the big business managed by him is one of the biggest advertisers", "[t]his is why almost all media publishes only good news about V.M. before these elections"; and "[a] sign indicating what influence the money received from advertising has on the media today" (see paragraph 11 above). The Court must also reiterate that in appropriate circumstances, assertions about matters of public interest may constitute value judgments rather than statements of fact (see *Morice*, cited above, § 126) and that, in any event, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI, and the case-law cited in paragraph 80 above). In the light of the nature and content of the impugned expressions, as well as the fact that they were used in an ongoing debate of public interest concerning V.M.'s alleged role in hidden political advertising during elections, the Court considers that they were not of such a nature as to overstep the limits of what is considered to be acceptable criticism.

101. Furthermore, the Court reiterates that where allegations are made about the conduct of a third party, it may sometimes be difficult to distinguish between assertions of fact and value judgments. Nevertheless, even a value judgment may be excessive if it has no factual basis to support it (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 99, ECHR 2004-XI). It has likewise held that directly accusing specific individuals of a specific form of misconduct entails an obligation to provide a sufficient factual basis for such an assertion (see *Fatullayev*, cited above, § 95). The Court has also previously held that a newspaper cannot be exempted from the duty to exercise control over the articles published in it, and bears responsibility for their content (see, *mutatis mutandis*, *Sallusti v. Italy*, no. 22350/13, § 57, 7 March 2019).

102. The Court has held that even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see, among many other authorities, *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II, with further references). That being so, the Court takes issue with the fact that the Supreme Administrative Court appears to have attached considerable weight to what it considered to be the applicants' failure to substantiate the statements underlying the views expressed in the article. As considered by the Supreme Administrative Court, the second applicant did not "[seek] to prove" the accuracy and fairness of the published information either in the article or even before that court (see paragraph 10 above). However, the Court cannot but note that the second applicant referred to the findings of the Inspector, who had observed that the fact that V.M. had spent the most money in the election campaign out of all the entrepreneurs had a factual basis in the data collected by the Central Electoral Commission (see

paragraphs 7 and 10 above). In the Court's view, such material may have been relevant to show a *prima facie* case that the value judgment expressed by the applicants was fair comment (see, *mutatis mutandis*, *Jerusalem*, cited above, § 45). Moreover, bearing in mind the content of the article in question and the submissions made by the applicants in the domestic proceedings in which the first applicant explained his choice of terms and reasoning (see paragraph 8 above), the Court cannot find that the applicants acted in bad faith. That being so, the Court cannot hold that the applicants, by using a style which may have involved a certain degree of exaggeration, expressed their concerns on a matter of public interest frivolously without making any attempt to verify the authenticity of their claim prior to reporting (see, *mutatis mutandis*, *Falzon*, cited above, § 65). The Court therefore finds that the applicants were denied the protection of Article 10 and held to standards which were different from those applied to any other journalist, in particular given that they reported on matters of public interest (see paragraph 90 above and, *mutatis mutandis*, *Falzon*, cited above, §§ 6 and 57 *in fine*, and *Gelevski v. North Macedonia*, no. 28032/12, §§ 6 and 22, 8 October 2020). Indeed, in the present case, as the first applicant was a regular opinion writer in the magazine *Valstybė* (see paragraph 2 above), the interference must therefore be scrutinised in the context of the essential role of a free press in ensuring the proper functioning of a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July*, cited above, § 62).

103. As to the consequences of the article in question, the Court notes that none of the domestic authorities pointed to any specific negative impact or effects which the article might have had on V.M.'s reputation or his political life or career (see paragraph 5 above). Even assuming that his reputation did suffer because of that article, the Court doubts that the consequences suffered by him were sufficiently serious to override the public's interest in receiving the information contained in it (see, *mutatis mutandis*, *Ţiriac v. Romania*, no. 51107/16, § 98, 30 November 2021; *Stancu and Others v. Romania*, no. 22953/16, § 147, 18 October 2022; *Matalas v. Greece*, no. 1864/18, § 58, 25 March 2021; and *Balaskas*, cited above, § 60).

– *Severity of the sanction imposed on the applicants and the outcome of the proceedings*

104. Lastly, the Court reiterates that the nature and severity of the relevant penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10. The Court must also exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern (see *Cumpănă and Mazăre*, cited above, § 111, and the case-law cited therein).

105. In the instant case, the Court acknowledges that the sanction imposed on the second applicant – namely the obligation to publish the Commission's decision, an obligation which, moreover, it never fulfilled – could not be seen as severe or having an impact on the first applicant's opportunity to work as a journalist or as the editor of the magazine *Valstybė*. Even so, the Commission's decision was nevertheless made public, and the Court does not disregard the applicants' argument regarding the impact of that decision on the first applicant's reputation (see paragraph 54 above). The Court also recognises that the instant case must be distinguished from those where the imposition of a custodial sentence (even a suspended sentence) has led the Court to find a violation of Article 10, emphasising that such a sanction, by its very nature, will inevitably have a chilling effect (see *Sallusti*, cited above, §§ 61 and 61). Similarly, the present case also differs from those where serious sanctions of a civil nature, such as an obligation to pay damages, have been imposed on applicants (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 96 and 97, ECHR 2005-II; and compare and contrast *Medžlis Islamske Zajednice Brčko and Others*, cited above, §§ 119 and 120). That notwithstanding, the Court does not fail to note that in connection with the proceedings regarding the reasonableness of the Commission's decision, the second applicant incurred legal costs, the sum of which cannot be considered to be insignificant (see paragraph 137 below).

– *Conclusion*

106. In the light of the foregoing considerations, the Court considers that in the proceedings regarding the reasonableness of the Commission's decision, the Supreme Administrative Court did not appropriately perform a balancing exercise between, on the one hand, the need to protect V.M.'s reputation and society's interest in receiving the information, and, on the other hand, the Convention standard, which requires very strong reasons for justifying restrictions on debates on questions of public interest. The Supreme Administrative Court's decision thus cannot be considered to have fulfilled the obligation incumbent upon the courts to adduce "relevant and sufficient" reasons that could justify the interference at issue.

107. There has accordingly been a violation of Article 10 of the Convention with regard to the first article.

**(b) The second article**

*(i) Existence of an interference, lawfulness and legitimate aim*

108. It is common ground between the parties that the obligation to publish the Commission's decision amounted to an "interference" with the applicants' right to freedom of expression (see paragraph 63 above). The Court also finds that the Supreme Administrative Court's decision upholding that of the Commission restricted the second applicant's editorial power to

decide whether to include contributions from individuals in the magazine *Valstybė* (see, *mutatis mutandis*, *Eker v. Turkey*, no. 24016/05, § 47, 24 October 2017). Accordingly, there has been an interference with the second applicant's freedom of expression. However, the Court finds that the interference was "prescribed by law", namely Article 22 § 2 of the Code (see paragraph 39 above). Furthermore, the Court shares the Government's view that the interference pursued the legitimate aim of the protection of the rights of others, namely the reputation of the magazine *Žmonės* (see paragraph 70 above). What remains to be established is whether the interference was "necessary in a democratic society".

*(ii) Whether the interference was necessary in a democratic society*

109. The general principles regarding freedom of expression have been set out in *Morice*, §§ 124-25, and *Karácsony*, § 132, both cited above.

110. The Court has also held that the right of reply, as an important element of freedom of expression, falls within the scope of Article 10 of the Convention. This flows from the need not only to be able to contest untruthful information, but also to ensure a plurality of opinion, especially in matters of general interest such as literary and political debate (see *Eker*, cited above, § 43). The Court further reiterates that a legal obligation to publish a retraction or a reply is a normal element of the legal framework governing the exercise of freedom of expression by the print media, and it cannot, as such, be regarded as excessive or unreasonable. Such an obligation makes it possible, for example, for a person who feels aggrieved by a press article to present his or her reply in a manner compatible with the editorial practice of the newspaper concerned (see *Kaperzyński v. Poland*, no. 43206/07, § 66, 3 April 2012, and *Rusu v. Romania*, no. 25721/04, § 25, 8 March 2016).

111. The Court notes that, as a general principle, newspapers and other privately owned media must be free to exercise editorial discretion in deciding whether to publish articles, comments and letters submitted by private individuals. However, there may be exceptional circumstances in which a newspaper may legitimately be required to publish, for example, a retraction, an apology or a judgment in a defamation case (see *Melnychuk* and *Eker*, both cited above, with further references).

112. Turning to the circumstances of the instant case, the Court finds that the applicants' complaint can be seen as twofold. Firstly, they complained that there had been no basis for the courts' finding that the statements made in the second publication had been unethical (see paragraphs 55 and 56 above), and thus no sanction by the Commission had been merited. Secondly, they complained that they should not have provided the magazine *Žmonės* with the right of reply (see paragraphs 57 and 58 above). The Court will address these issues in turn.

(α) As to the Commission's finding that the article had been unethical

113. The Court firstly notes that, as with the first article, the applicants were sanctioned by the Commission for publishing statements which the Commission found critical, this time towards another magazine, *Žmonės* (see paragraph 13 above). Turning to the language used in the second article, the Court cannot but find that the expressions such as "tabloid" and "literary trash" which were used in relation to the magazine *Žmonės* could reasonably be seen as not merely critical, but demeaning. The Supreme Administrative Court reached the same conclusion (see paragraph 30 above), and the Court sees no grounds to dispute its findings. In this context, the Court also refers to the conclusions of the media self-regulatory body – the Public Information Ethics Association – which expressed concern over the disrespectful and derogatory language employed in the article as regards the work of other media outlets (see paragraph 19 above). That being so, the Court cannot overlook that the statements in the publication concerned matters of public importance – alleged hidden political advertising – and that this fact was noted by the Vilnius Regional Administrative Court (see paragraph 21 above). In this context, the Court takes the view that the applicants' allegations and, in particular, the expressions used, albeit perhaps inappropriately strong, could be viewed as polemical, involving a certain degree of exaggeration (see *Monica Macovei v. Romania*, no. 53028/14, § 92, 28 July 2020). The Court has also held that persons taking part in a public debate on a matter of general concern are allowed to have recourse to a degree of exaggeration or even provocation, or, in other words, to make somewhat immoderate statements (see *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 43, 4 October 2016, and *Monica Macovei*, cited above, § 93).

114. Under these circumstances, given the status of V.M. as a politician and elected representative of the people, the collective nature of the applicants' insights, the overall context reflected by the publication, namely that a person's visibility or that of his entire family made them more well known, and that information about a family – such as their hobbies, interests or character – could be classed as political advertising, and the existence of at least a certain factual background to those statements and allegations taken collectively (see paragraphs 15 and 16 above), the Court considers that the applicants' comments did not amount to an ill-fated gratuitous personal attack against either against D.M. (the son of V.M.) or the magazine *Žmonės* (see, *mutatis mutandis*, *Monica Macovei*, cited above, § 94).

115. That being so, and given that the Court has already examined the applicants' complaints regarding the first article, which, like the second article, concerned matters of political advertising (see, in particular, paragraphs 87-106 above), the Court finds it appropriate to scrutinise the second limb of the applicants' complaint, namely that giving the company ŽLG the right of reply prior to publication (see paragraph 13 *in limine* above;

compare and contrast *Gülen v. Turkey* (dec.), nos. 38197/16 and 5 others, § 67, 8 September 2020) would have amounted to an unjustified restriction on the applicants' right to freedom of expression.

(β) As to the right of reply

116. The Court reiterates that a legal obligation to publish a retraction or a reply is a normal element of the legal framework governing the exercise of freedom of expression by the print media, and it cannot, as such, be regarded as excessive or unreasonable. Such an obligation makes it possible, for example, for a person who feels aggrieved by a press article to present his or her reply in a manner compatible with the editorial practice of the newspaper concerned (see *Rusu*, cited above, § 25).

117. The right of reply not only protects the reputation of the person exercising it, but also ensures plurality of opinion, especially in matters of general interest. The Court further considers that alleged hidden political advertising is a matter of general interest, particularly during an election period. The Court therefore agrees with the Supreme Administrative Court's view that the company ŽLG should have been given an opportunity to make use of the right of reply, as such, in order to give an explanation or refute the disputed accusations (see paragraphs 30 and 31 above).

118. Given the language used and the accusations made in the disputed article in the magazine *Valstybė*, the Court also considers that the right of reply should have afforded the company ŽLG an opportunity to protect itself against disseminated statements that it saw as injurious to its reputation (see, *mutatis mutandis*, *Eker*, cited above, § 47). The Court also notes the conclusions of the Commission and the Supreme Administrative Court as to the need to provide the company ŽLG with the right of reply which would have enabled that company, which was also a publisher, to exercise its own right to freedom of expression (ibid). In assessing the proportionality of the interference, the Court also observes that the second applicant was not obliged to amend the original article.

119. That being so, the Court notes that the parties in the instant case disagreed about when the right of reply arose – the second applicant argued that this right arose only after the publication of information (see paragraph 57 above), whereas the Government submitted that a person who was being criticised always had the right of reply, "even before [the publication of] certain information" (see paragraph 72 above). Having regard to the principle of subsidiarity – that the domestic courts are better placed to interpret and apply the domestic law – the Court observes the Vilnius Regional Administrative Court's and the Supreme Administrative Court's position on this issue – the right of reply arises prior to the publication of critical information (see paragraphs 26, 27 and 32 above). Moreover, according to the latter court, under the domestic legal regulation it is the

obligation of the journalist or media outlet to ask the person who is being criticised for his or her opinion in response (see paragraph 32 above).

120. Be that as it may, the Court has consistently emphasised the need to look beyond the facts of the present case and consider the broader impact of a pre-notification requirement. The limited scope under Article 10 for restrictions on the freedom of the press to publish material which contributes to debate on matters of general public interest must be borne in mind. Thus, having regard to the chilling effect to which a pre-notification requirement risks giving rise, to the significant doubts as to the effectiveness of any pre-notification requirement and to the wide margin of appreciation in this area, the Court is of the view that Article 8 does not require a legally binding pre-notification requirement (see *Mosley v. the United Kingdom*, no. 48009/08, § 132, 10 May 2011).

121. In the present case, the Court notes the applicants' explanation as to why the company ŽLG was not given such an opportunity prior to the publication of the information (see paragraph 58 *in limine* above), and the Court does not find that argument implausible. It also observes that, as pointed out by the Public Information Ethics Association, there is a discrepancy between Lithuanian law and the Council of Europe Recommendation (see paragraph 23 above), one which the Court finds difficult to reconcile with the requirements of Article 10, at least in the circumstances of this particular case (see *Kaperzyński*, cited above, § 66).

(γ) Severity of the sanction imposed on the applicants and the outcome of the proceedings

122. On this last point, the Court reiterates its findings regarding the first article (see paragraphs 104 and 105 above). It also observes that the case file indicates that, besides their own legal costs, the first and second applicants were obliged to cover the legal costs of the company ŽLG (see paragraphs 27 *in fine* and 35 *in fine* above, and paragraphs 127 and 129 below; see also, *mutatis mutandis*, *Steel and Morris*, cited above, §§ 96 and 97). Reiterating its view on the chilling effect that the fear of sanctions may have on the exercise of freedom of expression (see, for instance, *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII), and even though the applicants have not shown whether or not they struggled to cover those legal costs, the Court is nevertheless of the view that, under the circumstances, the sanction imposed was capable of having a chilling effect on the exercise of the applicants' right to freedom of expression (see, for instance and *mutatis mutandis*, *Lombardo and Others v. Malta*, no. 7333/06, no. 7333/06, § 61, 24 April 2007).

(δ) Conclusion

123. In the light of the preceding considerations the Court is unable to find that the interferences complained of corresponded to a "pressing social

need", that they were proportionate to the legitimate aim pursued, and that the reasons given by the national authorities to justify them were relevant and sufficient.

124. There has accordingly been a violation of Article 10 of the Convention with regard to the second article.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. Article 41 of the Convention provides:

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

### A. Damage

#### *1. The parties' submissions*

##### (a) The first applicant

126. As is apparent from the parties' submissions, the first applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage, explaining that such damage had been caused to his professional reputation and honour.

127. The first applicant also stated that he had suffered pecuniary damage in the sum of EUR 440 on account of being obliged to compensate the company ŽLG for its legal costs (see paragraph 35 *in fine* above).

##### (b) The second applicant

128. In respect of non-pecuniary damage, the second applicant claimed EUR 5,000 in respect of each article. It explained that the non-pecuniary damage had been caused by the unfounded complaints by V.M. and the company ŽLG, the publication of the Commission's decisions (which had damaged the second applicant's reputation), and the time lost during the hearings before the Commission and the courts.

129. The second applicant also claimed EUR 2,121 in respect of pecuniary damage, in relation to the sum which it had paid to the company ŽLG in connection with its litigation costs (see paragraphs 27 *in fine* and 35 *in fine* above).

##### (c) The Government

130. The Government considered that the applicants' claims for just satisfaction in respect of non-pecuniary damage were excessive and unsubstantiated. In addition, given the circumstances of the present case – where the applicants had never complied with the relevant decisions of the Supreme Administrative Court and had not published the relevant decisions

of the Commission in their magazine – a finding of a violation of Article 10 of the Convention should be considered sufficient just satisfaction for any non-pecuniary damage which they had suffered.

131. In connection with the second article, the Government also noted that the first applicant, together with the author of the second article, M.B., had been ordered to pay the company ŽLG EUR 440 for litigation costs (see paragraph 35 *in fine* above). Accordingly, even if the documents in the file showed that that entire sum had been paid, the Government considered that only a claim for the sum of EUR 220 could be considered reasonable and properly substantiated, in the event that a violation of Article 10 of the Convention was found with respect to the circumstances concerning the second article.

132. The Government accepted that should the Court find a violation of Article 10 of the Convention in respect of the circumstances of the case concerning the second article, the second applicant's claim in respect of pecuniary damage in the sum of EUR 2,121 (see paragraph 129 above) was reasonable and properly substantiated.

*2. The Court's assessment*

133. As to the first applicant, the Court notes that he paid the sum of EUR 220 to the company ŽLG (see paragraph 35 *in fine* above). Having regard to the violation found (see paragraph 106 above), it considers that that amount should be reimbursed by the respondent State. It therefore awards the first applicant EUR 220 in respect of pecuniary damage (see, *mutatis mutandis*, *Becker v. Norway*, no. 21272/12, § 88, 5 October 2017).

134. As to the second applicant, the Court notes that the sums of EUR 1,681 and EUR 440 were paid in connection with the court decisions regarding the costs of the company ŽLG (see paragraphs 27 *in fine* and 35 *in fine* above). Having regard to the violation found (see paragraph 123 above), it considers that those amounts should be reimbursed by the respondent State. It therefore awards the second applicant EUR 2,121 in respect of pecuniary damage (ibid.).

135. Furthermore, the Court considers that the applicants must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards each applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

## B. Costs and expenses

### *1. The parties' submissions*

#### (a) The first applicant

136. As is apparent from the parties' submissions, the first applicant claimed EUR 300 in respect of his representation before the domestic courts by the lawyer R.M. in the proceedings concerning the second article.

#### (b) The second applicant

137. The second applicant requested the sum of EUR 1,008 in respect of its legal assistance in the domestic proceedings concerning the first article, an amount which included the sum of EUR 560 paid in responding to the Commission regarding V.M.'s complaint, the sum of EUR 420 paid for the drafting of a complaint to the Vilnius Regional Administrative Court, and the sum of EUR 28 paid for court fees.

138. Further, the second applicant requested the sum of EUR 2,320 in respect of its legal assistance in the domestic proceedings concerning the second article, an amount which included the sum of EUR 640 paid in responding to the Commission regarding the complaint of the company ŽLG, the sum of EUR 700 paid for the drafting of a complaint to the Vilnius Regional Administrative Court, and the sum of EUR 980 paid for the drafting of a response to the appeals lodged with the Supreme Administrative Court by ŽLG and the Commission.

139. Lastly, the second applicant requested EUR 3,700 for the costs incurred in the proceedings before the Court, in addition to EUR 1,640 for related translation expenses.

#### (c) The Government

140. At the outset, the Government noted that in the domestic litigation, the second applicant had been represented by the first applicant's wife, and they therefore invited the Court to assess the second applicant's claim for costs and expenses with care.

141. The Government also considered that both the applicants had failed to properly and fully justify the amounts claimed in respect of costs and expenses, and that therefore their claims, or at least parts of them, should be considered excessive and unsubstantiated. The Government therefore invited the Court to not fully reimburse the applicants for the costs and expenses they claimed to have incurred.

##### *(i) The first applicant's claim*

142. The Government considered that the first applicant's claim for EUR 300 in respect of his representation before the domestic courts had not been properly substantiated: although he had enclosed an invoice and a

payment order, he had not submitted a contract for legal representation in support of his claim. Moreover, the litigation costs incurred during the domestic proceedings in their entirety could not be considered to be directly linked to the attempts to prevent a violation of Article 10 of the Convention, because the scope of the domestic proceedings had been larger.

*(ii) The second applicant's claim*

143. The Government considered that although the second applicant's claims regarding domestic legal costs had been substantiated by certain documents such as invoices and payment orders, the second applicant had not submitted copies of its contracts with the lawyer. The Government also considered that the scope of the domestic proceedings in which the litigation costs had been incurred had been larger, and therefore the costs were not directly linked to the attempts to prevent a violation of Article 10 of the Convention.

144. Lastly, the Government considered that the second applicant's claim regarding the costs of the proceedings before the Court was reasonable and substantiated. However, they argued that the claim for translation costs was not entirely justified and substantiated.

*2. The Court's assessment*

145. 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, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023).

146. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300 to the first applicant, covering costs under all heads, plus any tax that may be chargeable to him, and the sum of EUR 7,028 to the second applicant, plus any tax that may be chargeable to it.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention in connection with the first article in the magazine *Valstybė*;

4. *Holds* that there has been a violation of Article 10 of the Convention in connection with the second article in the magazine *Valstybė*;

5. *Holds*

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

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;

(ii) EUR 220 (two hundred and twenty euros), plus any tax that may be chargeable, to the first applicant in respect of pecuniary damage;

(iii) EUR 2,121 (two thousand one hundred and twenty-one euros), plus any tax that may be chargeable, to the second applicant in respect of pecuniary damage;

(iv) EUR 300 (three hundred euros) to the first applicant and EUR 7,028 (seven thousand and twenty-eight euros) to the second applicant, plus any tax that may be chargeable to the first applicant and the second applicant respectively, in respect of costs and expenses;

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

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Dorothee von Arnim<br>Deputy Registrar | Arnfinn Bårdsen<br>President |