

## La CEDU su giornalismo responsabile (CEDU, sez. II, sent. 19 dicembre 2019, ric. n. 69111/17)

La Corte Edu si pronuncia sul caso di quattro giornalisti russi, destinatari di una decisione di espulsione dalla Lituania e di divieto di rientro per un anno a causa di azioni compiute in occasione di una conferenza tenutasi a Vilnius.

I ricorrenti, impiegati dell'emittente statale russa Rossiya-24, rispettivamente, come reporter, operatore del suono, cameraman e caporedattore, nel marzo 2016 erano stati inviati in Lituania in occasione del *Vilnius Russia Forum*, evento organizzato in collaborazione con il Ministero degli Affari Esteri lituano, nell'ambito del quale erano state affrontate varie questioni relative alla Russia, ivi compresa quella degli attivisti dell'opposizione russa.

Il datore di lavoro aveva assegnato ai ricorrenti il compito di informare sugli eventi del Forum ed intervistare i partecipanti. Pur non avendo l'accreditamento, i giornalisti erano riusciti ad avere accesso alle sedi del Forum. I media lituani avevano successivamente riferito che essi avevano causato incidenti ed interruzioni.

Di qui la decisione del Dipartimento per le migrazioni di espellere i richiedenti e di vietarne il rientro per un anno, adottata sulla base di informazioni del Dipartimento di sicurezza dello Stato lituano, secondo cui i rappresentanti del canale televisivo Rossiya-24 avrebbero potuto rappresentare una minaccia per la sicurezza nazionale.

I ricorrenti lasciarono la Lituania, ma fecero appello contro le decisioni di espulsione, sostenendo di aver svolto pacificamente il loro lavoro giornalistico, cercando di intervistare e filmare i partecipanti al Forum, ma che erano stati attaccati da alcuni organizzatori e partecipanti alla conferenza.

I ricorsi dei ricorrenti erano stati respinti sia dal Tribunale amministrativo regionale di Vilnius che, nel Marzo 2017, dalla Corte amministrativa suprema.

Il Tribunale amministrativo supremo aveva riscontrato, in particolare, che la troupe era giunta senza accreditamento ed aveva ottenuto l'accesso alla sede del Forum con l'inganno, che aveva causato uno scontro con gli addetti alla sicurezza. Peraltro, i forti legami accertati dai rapporti internazionali con il governo russo e i media statali russi, erano stati ritenuti dal Tribunale motivi sufficienti per ritenere che i richiedenti rappresentassero una minaccia alla sicurezza nazionale.

Infine, i tribunali di entrambi i livelli di giurisdizione avevano sottolineato che l'espulsione dei ricorrenti erano conseguenza non della diffusione delle loro idee, ma delle loro azioni provocatorie; che le misure non avevano impedito ai richiedenti di ricevere o impartire informazioni e che, in ogni caso, la libertà di espressione non è un diritto illimitato e che può essere limitato a tutela di altri interessi rilevanti.

La Corte Edu ha, innanzitutto, espresso dubbi sull'applicabilità al caso *de quo* dell'art. 10 invocato dai ricorrenti, atteso che le autorità lituane ne avevano ordinato l'espulsione a causa di azioni

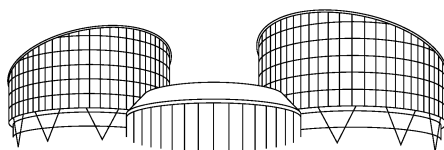
aggressive e provocatorie, non già in ragione di opinioni espresse, di dichiarazioni rese o di pubblicazioni.

I Giudici di Strasburgo, inoltre, hanno rilevato l'assenza di qualunque elemento che facesse pensare ad errori commessi dai tribunali interni nella loro valutazione o ad applicazioni arbitrarie della legge, ragion per cui la Corte non ha ravvisato motivi per non essere d'accordo con la loro conclusione che il divieto di espulsione e di ingresso era stato necessario nell'interesse della sicurezza nazionale.

Infine, la Corte ha ribadito che la protezione offerta dall'art. 10 ai giornalisti è soggetta alla condizione che abbiano agito in buona fede al fine di fornire informazioni accurate ed affidabili, in conformità ai principi del giornalismo responsabile, concetto che non si limita al contenuto delle informazioni, ma riguarda anche la condotta del giornalista.

In questo caso, la Corte ha ritenuto che la condotta dei giornalisti non sia stata ispirata ai principi del giornalismo responsabile, concludendo che le autorità lituane avevano dimostrato che le misure contro i ricorrenti erano state necessarie nell'interesse della sicurezza nazionale ed erano state proporzionate allo scopo legittimo perseguito.

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

## SECOND SECTION

**CASE OF PAVEL ZARUBIN V. LITHUANIA and 3 other applications** (see list appended)

*(Application no. 69111/17)*

JUDGMENT

STRASBOURG

19 december 2019

*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 Pavel Zarubin v. Lithuania and 3 other applications**

The European Court of Human Rights (Second Section), sitting on 26 November 2019 as a

Chamber composed of:

Robert Spano, *President*,

Ganna Yudkivska,

Valeriu Grițco,

Egidijus Kūris,

Ivana Jelić,

Arnfinn Bårdsen,

Darian Pavli, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above applications lodged on 18 September 2017,

Having deliberated, decides as follows:

## **THE FACTS**

1. The first applicant, Mr Pavel Zarubin, was born in 1981. The second applicant, Mr Alexander Makarov, was born in 1988. The third applicant, Mr Andrey Melnikov, was born in 1966. The fourth applicant, Mr Alexey Kazakov, was born in 1978. They are all Russian nationals and they all live in Moscow in the Russian Federation. They were represented by Mr G. Šulija, a lawyer practising in Vilnius.

A. The circumstances of the case

2. All the applicants work at the Federal State Unitary Enterprise “All-Russia State Television and Radio Broadcasting Company” (Федеральное государственное унитарное предприятие “Всероссийская государственная телевизионная и радиовещательная компания”). The first applicant is a reporter, the second applicant is a sound operator, the third applicant is a cameraman, and the fourth applicant is a chief editor.

3. From 8 to 10 March 2016 the Vilnius Russia Forum (Vilniaus Rusijos forumas – hereinafter “the Forum”) was held in Lithuania for the third consecutive year. It was an event co-organised by the Lithuanian Ministry of Foreign Affairs and two research centres based in Vilnius. Its participants included, among others, various political opposition activists from Russia. The Lithuanian Minister of Foreign Affairs also gave a speech during the event. According to the Ministry’s website, the Forum discussed topical issues relating to Russia: its internal and external affairs, economic and political developments, the human rights situation in the country, and future perspectives for its relations with the West.

4. On 8 March 2016 the applicants arrived in Lithuania with an assignment to cover the events of the Forum and to interview its participants. They did not have accreditation for the Forum.

5. On 9 and 10 March 2016 several Lithuanian media outlets reported that the applicants had caused incidents and disruption in Trakai and Vilnius while attempting to gain access to the venues in which the Forum was being held. The Head of the State Security Department (hereinafter “the SSD”) and the Minister of Foreign Affairs stated in press interviews that the applicants had engaged in “provocations” and “hooliganism” and that they had sought to “psychologically terrorise” the members of the Russian political opposition participating in the event.

1. Expulsion of the applicants from Lithuania

6. On 9 March 2016 the Migration Department under the Ministry of the Interior issued decisions to expel the applicants from Lithuania and to ban them from re-entering Lithuania for one year (see

paragraphs 29, 30 and 32 below). All four decisions had essentially the same wording, and read as follows:

“On 9 March 2016 the Migration Department under the Ministry of the Interior received classified information from the State Security Department ... that [the applicant’s] presence in the Republic of Lithuania may, because of his activities (*dėl jo vykdomos veiklos*), threaten national security. [The applicant] is a representative of Rossiya-24, a television channel of the Russian Federation’s Rossiya national television and radio company, and his attacks (*išpuoliai*) during the Vilnius Russia Forum on 8 March 2016 in ... Trakai and on 9 March 2016 in ... Vilnius have been reported on by the media, as well as recorded by the Lithuanian police.

...

Having assessed the information provided by the State Security Department ... it must be concluded that it is necessary to expel [the applicant] from the Republic of Lithuania, in accordance with Article 126 § 1 (3) of [the Law on the Legal Status of Aliens] and to prohibit him from re-entering Lithuania on the grounds provided in Article 133 § 3 of [that Law] ...

When assessing whether the risk to national security posed by [the applicant] is real and evident, it must be noted that this risk is based not on general assumptions but on concrete data – [the applicant’s] actions. Taking into account the totality of information, it must be concluded that [the applicant’s] behaviour creates the possibility of a real and evident threat to national security. It is observed that national security is a value of essential importance to the whole of society, and the restrictions imposed on [the applicant] must thus be considered proportionate and necessary in the public interest.”

The Migration Department also noted that the applicants did not have any family ties in Lithuania and there were therefore no obstacles to banning them from re-entering Lithuania for a year (see paragraph 30 below).

7. The first, second and third applicants were notified of the decisions of the Migration Department on the same day and they left Lithuania on the morning of 10 March 2016 (see paragraph 31 below). The fourth applicant submitted that the decision of the Migration Department had not been presented to him and that he had left Lithuania on the evening of 10 March 2016 of his own free will. He had only found out about the decision in April 2016, when his lawyers had contacted the Migration Department.

## 2. Proceedings before the Vilnius Regional Administrative Court

### (a) The applicants’ appeals and requests

8. The applicants, represented by a lawyer practising in Lithuania, appealed against the decisions of the Migration Department to the Vilnius Regional Administrative Court. The first, second and third applicants lodged a joint appeal, while the fourth applicant lodged a separate appeal, but they all presented essentially the same arguments.

9. The applicants submitted that they had arrived at the Forum as journalists and had approached its participants in a polite and peaceful manner, seeking to interview and film them, but that some

of the organisers and participants had attacked the applicants and their equipment. In particular, on 9 March 2016 the applicants had been waiting at a hotel in Vilnius, where the events of the Forum had been scheduled to take place, and they had seen the well-known Russian political opposition activist, Garri Kasparov, and had wished to interview him. However, two other participants in the Forum had attempted to take away the applicants' microphones and video cameras and had asked the hotel reception to call the police.

10. The applicants argued that the decisions of the Migration Department had not indicated with sufficient detail which of their actions had represented a threat to national security. They pointed out that they had not been suspected of any criminal activity and had not received any penalties from the police or any other law-enforcement authorities. They also submitted that the decisions in respect of all the applicants had been almost identical, despite the fact that they had had different journalistic roles and had not participated in all the events together.

11. The applicants furthermore argued that the Forum had concerned itself solely with questions relating to Russia and that the individuals whom they had tried to interview had all been Russian public figures, so the applicants' actions with regard to the Forum could not have affected the national security of Lithuania. In addition, they contended that the measure imposed on them had disproportionately restricted their right to freedom of expression. Lastly, they submitted that the decisions of the Migration Department had been based on classified information provided by the SSD, to which they had not had access, and that accepting such information as evidence had thus violated their right to a fair hearing.

12. On various dates the applicants also asked the court to apply interim measures and to suspend the decisions of the Migration Department in order to enable them to attend court hearings. The applicants submitted that the Migration Department had adopted the impugned decisions without hearing them in person, and that they should thus be granted the right to be heard in court. However, the Vilnius Regional Administrative Court and the Supreme Administrative Court refused the requests. They held that the purpose of interim measures was to ensure the smooth execution of courts' decisions and not parties' procedural rights. The courts found that the applicants were represented by a lawyer practising in Lithuania, that they had the opportunity to access the case file and submit requests or appeals electronically, and that none of the grounds for ordering interim measures provided for by law were present.

(b) Decision concerning the first, second and third applicants

13. On 28 October 2016 the Vilnius Regional Administrative Court dismissed the first, second and third applicants' appeal against the decisions of the Migration Department. It noted that it was not in dispute that the applicants were representatives of Rossiya-24, a television channel of the Russian Federation's Rossiya national television and radio company, that they had arrived to Lithuania with the purpose of meeting and filming the participants in the Forum, and that they had not obtained the required accreditation for the Forum.

14. The court considered it reliably established that on 8 and 9 March 2016 the applicants had behaved violently at the Forum venues in Trakai and Vilnius. It observed that information to that effect had been provided by the SSD and corroborated by official reports and testimony given by

police officers. An officer who had been present at the Forum venue in Trakai had testified before the court that on 8 March 2016 the applicants had gained access to the secure area in which the Forum was being held by deceiving security staff into believing that they had been invited. They had then attempted to enter Forum events and had provoked confrontation with some participants and security guards, for which reason the police had been called. Another officer had testified that on 9 March 2016 she had been called to the hotel in Vilnius in which participants in the Forum were staying because the applicants had been filming the residents of the hotel, which had ultimately led to a confrontation between the applicants and those residents. The court pointed out that even though the applicants had received warnings from the police on 8 March 2016, they had continued to act in a provocative manner and had caused a conflict in the hotel in Vilnius the following day.

15. When assessing the threat posed by the applicants to national security, the court also noted that, according to partly declassified material provided by the SSD, they belonged to “the President’s pool” – a group of Russian journalists accredited to regularly cover the activities of the President of Russia and the top Russian government officials.

16. The court pointed out that part of the information provided by the SSD had been declassified. However, declassifying it in its entirety would have been harmful to the public interest and national security. The court observed that a representative of the SSD had been questioned at the hearing and had confirmed the veracity of the information which had not been declassified.

17. The court emphasised that the applicants had arrived in Lithuania together and they had had a common purpose, they all worked for the same media company and had acted in a coordinated manner. It was therefore justified to assess the threat that they had posed to national security as a group, without establishing the degree to which each of them had contributed to their joint activities.

18. The court therefore found, referring to the evidence as a whole, that the applicants’ presence in Lithuania had constituted a real and evident threat to national security.

19. It lastly held that the decisions of the Migration Department had not precluded the applicants from expressing their opinions and convictions, or from obtaining and disseminating information and ideas. The expulsion and entry ban had been imposed on them not because of the dissemination of any ideas but because of their specific, deliberate and provocative actions, which had been incompatible with national security. Accordingly, the measures in question had not been contrary to Article 10 of the European Convention of Human Rights. The court also considered that the one-year entry ban had not disproportionately restricted the applicants’ rights, as they did not have any family, social, economic or other ties in Lithuania.

#### (c) Decision concerning the fourth applicant

20. On 3 November 2016 the Vilnius Regional Administrative Court dismissed the fourth applicant’s appeal against the decision of the Migration Department. It examined the information provided by the SSD and heard two police officers who had been called to the hotel in Vilnius on 9 March 2016, where the fourth applicant had been present. The court reached similar conclusions to those made in the proceedings concerning the first, second and third applicants (see paragraphs 13-19 above). In addition, when assessing the threat posed by the applicant to national security, the court noted that, according to the information collected by the SSD, the four applicants had been

ordered by their employer, a State broadcasting company, to gather information about the members of the Russian political opposition attending the Forum, that they had caused confrontations on 8 and 9 March 2016 with the aim of provoking the participants in the Forum, and that they had likely planned to carry out another provocation on the last day of the Forum.

### 3. Proceedings before the Supreme Administrative Court

#### (a) The applicants' appeals

21. The applicants lodged appeals against the decisions concerning them, all submitting essentially the same arguments. They contended that the Forum had been a private event concerning issues relating exclusively to Russia and not to the national security of Lithuania. They also submitted that they had not been able to obtain accreditation for the Forum because the accreditation procedure had been biased. The applicants further argued that the information provided by the SSD and the police officers' statements had been inaccurate and contradictory. In the applicants' view, the impugned decisions of the Migration Department had been issued in order to prevent them from disseminating information and ideas differing from the official position of the Lithuanian authorities, and had thereby constituted an unacceptable interference with their freedom of expression.

#### (b) Decision concerning the first, second and third applicants

22. On 21 March 2017 the Supreme Administrative Court dismissed the appeal lodged by the first, second and third applicants. It observed that the domestic law provision allowing the expulsion of aliens on national security grounds did not specify what constituted a threat to national security (see paragraph 29 below). However, the European Court of Human Rights in its judgment *C.G. and Others v. Bulgaria* (no. 1365/07, §§ 40 and 43, 24 April 2008) had held that Article 8 of the Convention did not compel States to enact legal provisions listing in detail all conduct that might prompt a decision to expel an individual on national security grounds; that threats to national security might vary in character and might be unanticipated or difficult to define in advance; and that the notion of "national security" was not capable of being comprehensively defined and might be very wide, with a large margin of appreciation left to the executive to determine what is in the interests of that security.

23. The Supreme Administrative Court emphasised that the expulsion of an alien was not a sanction under criminal law and that the existence of a threat to national security did not have to be assessed in accordance with criminal law standards. Therefore, it was immaterial whether an individual in respect of whom an expulsion decision had been issued had been convicted of any criminal offence or whether his or her relevant actions were punishable under criminal law.

24. The court noted that the applicants had arrived in Lithuania with an assignment, given by their employer, to cover the Forum but that they had not obtained the required accreditation for the event, nor had they provided any proof that they had applied for such accreditation and that it had been refused. Instead, they had gained access to the site of the event by deception, which had caused a conflict with security guards. The court also noted that during the incident at the hotel on 9 March

2016 (see paragraph 9 above) the applicants had not used professional video equipment but had been filming with a mobile phone – as submitted by the Migration Department, that had also demonstrated that the applicants' real purpose had not been to obtain information and prepare a video report, but to carry out provocative actions.

25. In the court's view, the applicants' actions also had to be seen within their wider context. According to publicly available information provided by UNHCR and Human Rights Watch, there was a strong link between the Russian Government and the Russian State media – those media were controlled by the Government and pressured to mirror the Government's position. In addition, the SSD, in an assessment of threats to the national security of Lithuania that it had issued in 2016, had stated that "the Russian media [remained] a primary tool for disseminating the official position of the Russian Government and pro-Russian propaganda, aimed primarily at internal audiences, but also available in all the Baltic states". Moreover, the television network at which the applicants worked was owned by the same company as another Russian television network that had been previously suspended in Lithuania on the grounds of incitement to war, discord and national hatred.

26. In such circumstances, the court was of the view that the applicants' actions during the Forum had given sufficient grounds for the Lithuanian authorities to consider that they had posed a threat to national security. The court emphasised that its conclusion was based on publicly available information; although the court had examined classified information and considered it to be of evidentiary value as well, the classified information only supplemented the publicly available data and "[did] not have a decisive and independent significance in this case" (*lemiamos ir savarankiškos reikšmės šioje byloje neturi*).

27. Lastly, the court stated that freedom of expression was not absolute but could be restricted in order to protect other important interests, even when the expression in question concerned matters of general concern. Taking into account, on the one hand, the importance of protecting national security, and on the other hand, the applicants' actions in Lithuania, their aims which could be deduced from the overall context, and the fact that they had not obtained the required accreditation for the event, the court considered that the measure imposed on the applicants had not disproportionately restricted their rights. It also emphasised that the impugned decisions had not precluded the applicants from expressing their opinions and convictions, or from obtaining and disseminating information.

(c) Decision concerning the fourth applicant

28. On 27 March 2017 the Supreme Administrative Court dismissed the appeal lodged by the fourth applicant, arriving at similar conclusions as those in the proceedings concerning the first, second and third applicants (see paragraphs 22-27 above). When assessing the context of the fourth applicant's actions, the court additionally referred to a resolution adopted by the European Parliament in November 2016, which "argue[d] that Russian strategic communication [was] part of a larger subversive campaign to weaken EU cooperation and the sovereignty [of the Union and its Member States]" (see paragraph 40 below). The court also emphasised that it had been familiarised with the classified information in the case but that the information did not have a decisive value and that its decision was based on the evidence as a whole.



B. Relevant domestic law and practice

1. As concerns the expulsion of aliens on the grounds of national security

29. Article 126 § 1 (3) of the Law on the Legal Status of Aliens provides that an alien has to be expelled from Lithuania if his or her presence constitutes a threat to its national security or public order.

30. Article 128 § 1 provides that when adopting a decision to expel an alien, the following circumstances have to be taken into consideration: (1) the duration of his or her presence in Lithuania; (2) his or her family ties in Lithuania; (3) his or her social, economic and other ties in Lithuania, as well as whether he or she has minor children in Lithuania who are enrolled in an educational institution; (4) the nature and scale of the offence committed by the alien.

31. Article 127 § 2 provides that a decision to expel an alien has to be executed immediately, unless there are grounds to suspend its execution.

32. Article 133 § 2 provides that an alien who has been expelled from Lithuania is prohibited from re-entering it for a period not exceeding five years.

33. In a ruling of 23 June 2010 in administrative case no. A-858-1810-10 the Supreme Administrative Court held:

“The court cannot disregard the possibility of a potential threat to national security ... However, the content and scope of such potential threats cannot be unjustifiably and disproportionately extended (see, for example, the European Court of Human Rights’ judgment *C.G. and Others v. Bulgaria*, no. 1365/07, 24 April 2008) ...

In summary, the court concludes that ... it is essential in each case to assess whether the potential threat to national security is real – that is to say, a certain possibility of such a threat must be objectively and actually present, and not merely hypothetical, speculative or simply imaginary. Furthermore, the existence of a threat to national security must be assessed with regard to the time in question – the possibility of a threat must exist at the moment when the relevant decision is adopted ... In any event, it is imperative to strike a fair balance between the interests of the State and the rights and lawful interests of the alien.

...

[I]ndividual administrative acts ... cannot be based on speculation or suspicion, or personal likes and dislikes. A potential threat to national security ... has to be proved ... [I]t is necessary to assess whether the potential threat to national security is real and obvious (from the points of view of time and sufficiency of evidence).

Nonetheless, it is important to emphasise that when deciding whether the presence of an alien in Lithuania poses a threat to national security, the assessment is necessarily predictive (*perspektyvinis*) – i.e. it is aimed at the future. As a result, a certain anticipation of the situation (*tam tikras situacijos prognozavimas*) is unavoidable. However, [a decision] cannot be based solely on speculation and suspicion. It has to rely on established facts, especially the individual’s previous actions and character thereof. It is those circumstances which allow the drawing of a conclusion as to whether a potential threat to national security is sufficiently real and obvious ...”

2. As concerns the use of classified information in court proceedings

34. Article 56 § 3 of the Law on Administrative Procedure states that classified information may not, as a rule, be used as evidence in an administrative case until it is declassified in accordance with the relevant legal provisions.

35. Article 140 § 5 of the Law on the Legal Status of Aliens provided at the material time that when examining administrative cases concerning the expulsion of aliens on the grounds of national security, classified information could be used as evidence and that the relevant provisions of the Law on Administrative Procedure (see paragraph 34 above) were not applicable in such cases.

36. In a ruling of 15 May 2007 the Constitutional Court held:

“[The Constitution] ... enshrines the duty of courts to examine cases fairly and objectively and to adopt reasoned and substantiated decisions. Therefore, there cannot be a situation where a court is not able to become familiarised with case material that contains classified information. In its ruling of 19 December 1996 the Constitutional Court held that ‘the right of a judge who examines a case to familiarise himself or herself with classified information is based on [Articles 109 and 117 of the Constitution]’ and that ‘the right of a judge to familiarise himself or herself with [classified] information that is necessary for the examination of a case stems from the function of the court as a State institution designed to implement justice ...’

...

[I]t must be emphasised that no court decision may be based entirely on classified information that is unknown to the parties (or one party) to the case.

...

The question of whether factual data that is classified will be regarded as evidence in an administrative case has to be decided by the court after taking into account all the circumstances of the case ... Whether certain classified information may be admitted as evidence in a case (and if so, to what extent) depends on many factors, including whether the court finds that there is sufficient evidence (material) that is not classified for it to adopt a decision in the case and to administer justice as required by the Constitution – [when that is the case], then classified information should not be accepted as evidence in that case, in order to protect the public interest ...

The court may decide whether the said factual data can be accepted as evidence only after it has taken into account the entire material of the case and after it has assessed whether it would be able to administer justice without relying on classified information ...”

C. Relevant international and European material

37. On 1 July 1993 the Council of Europe Parliamentary Assembly adopted Resolution 1003 (1993) on ethics of journalism, the relevant parts of which read:

“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.

...

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

...

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.

..."

38. On 24 June 2015 the Council of Europe Parliamentary Assembly adopted Resolution 2066 (2015) on media responsibility and ethics in a changing media environment, the relevant parts of which read:

"1. The Parliamentary Assembly recalls that freedom of expression in the media is a necessary precondition for a democratic society and constitutes an indispensable requirement for a society's progress and for the development of every individual. Freedom of expression is comprehensively applicable, subject only to the conditions and restrictions foreseen in the European Convention on Human Rights (ETS No. 5).

2. As the exercise of this freedom carries with it duties and responsibilities, the Assembly welcomes the Declaration of Principles on the Conduct of Journalists adopted by the International Federation of Journalists, as well as codes of ethics adopted by journalists and the media at national level in all member States. Such codes are a voluntary expression of professional diligence by quality-conscious journalists and media outlets to correct their mistakes and to make themselves accountable to the public.

3. Welcoming practical initiatives by journalists and their professional organisations to foster high ethical standards, such as the Ethical Journalism Initiative by the International Federation of Journalists adopted by its World Congress in Moscow in 2007 and supported by the European Union and the Council of Europe, the Assembly recalls its Resolution 1003 (1993) on the ethics of journalism and notes with concern that the changing media environment challenges journalistic ethics and that codes of ethics are not stringently adhered to by all journalists ..."

39. On 5 May 2003 the International Federation of Journalists adopted the Declaration of Principles of the Conduct of Journalists, the relevant parts of which read:

"This international Declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.

1. Respect for truth and for the right of the public to truth is the first duty of the journalist.

2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.

3. The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.

4. The journalist shall use only fair methods to obtain news, photographs and documents.

...

9. Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others."

40. On 23 November 2016 the European Parliament adopted a resolution on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)), the relevant parts of which read:

"The European Parliament,

...

Recognising and exposing Russian disinformation and propaganda warfare

...

8. Recognises that the Russian Government is employing a wide range of tools and instruments, such as think tanks and special foundations (e.g. Russkiy Mir), special authorities (Rossotrudnichestvo), multilingual TV stations (e.g. RT), pseudo news agencies and multimedia services (e.g. Sputnik), cross-border social and religious groups, as the regime wants to present itself as the only defender of traditional Christian values, social media and internet trolls to challenge democratic values, divide Europe, gather domestic support and create the perception of failed states in the EU's eastern neighbourhood; stresses that Russia invests relevant financial resources in its disinformation and propaganda instruments engaged either directly by the state or through Kremlin-controlled companies and organisations; underlines that, on the one hand, the Kremlin is funding political parties and other organisations within the EU with the intent of undermining political cohesion, and that, on the other hand, Kremlin propaganda directly targets specific journalists, politicians and individuals in the EU;

9. Recalls that security and intelligence services conclude that Russia has the capacity and intention to conduct operations aimed at destabilising other countries; points out that this often takes the form of support to political extremists and large-scale disinformation and mass media campaigns; notes, furthermore, that such media companies are present and active in the EU;

...

11. Argues that Russian strategic communication is part of a larger subversive campaign to weaken EU cooperation and the sovereignty, political independence and territorial integrity of the Union and its Member States; urges Member State governments to be vigilant towards Russian information operations on European soil and to increase capacity sharing and counterintelligence efforts aimed at countering such operations;

...

13. Is seriously concerned by the rapid expansion of Kremlin-inspired activities in Europe, including disinformation and propaganda seeking to maintain or increase Russia's influence to weaken and split the EU; stresses that a large part of the Kremlin's propaganda is aimed at describing some European countries as belonging to 'Russia's traditional sphere of influence'; notes

that one of its main strategies is to circulate and impose an alternative narrative, often based on a manipulated interpretation of historical events and aimed at justifying its external actions and geopolitical interests; notes that falsifying history is one of its main strategies; in this respect, notes the need to raise awareness of the crimes of communist regimes through public campaigns and educational systems and to support research and documentation activities, especially in the former members of the Soviet bloc, to counter the Kremlin narrative; ...”

## COMPLAINTS

41. The applicants complained under Article 6 § 1 of the Convention that they had not been heard in person either by the Migration Department or by the courts which examined their cases, that the decisions to expel them from Lithuania had been based on classified information to which they had not had access, and that the courts had been biased.

42. They further complained under Article 10 of the Convention that their expulsion and the one-year entry ban had been imposed on them because of their journalistic activities and had thereby breached their freedom of expression.

43. They also complained that the proceedings before the administrative courts had not constituted an effective remedy against their expulsion within the meaning of Article 13 of the Convention.

44. The applicants further complained under Article 14 of the Convention that their expulsion had been ordered because of their “association with a Russian media company” and had thus amounted to discrimination.

45. They also complained that the “interests of national security” had been used as an excuse to repress their freedom of expression, contrary to Article 18 of the Convention.

46. They lastly complained under Article 4 of Protocol No. 4 to the Convention that all the impugned decisions of the Migration Department had used essentially the same wording, and that each applicant had been expelled without a prior assessment of their individual situation.

## THE LAW

### A. Joinder of the applications

47. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

### B. Complaint under Article 6 § 1 of the Convention

48. The applicants complained that they had not been heard in person either by the Migration Department or by the courts which had examined their cases, that the impugned decisions had been based on classified information to which they had not had access, and that the courts had been biased. They relied on Article 6 § 1 of the Convention, the relevant part of which reads:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...”

49. The Court has previously concluded that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him or her, within the meaning of Article 6 § 1 of the Convention (see *Tatar v. Switzerland*, no. 65692/12, § 61, 14 April 2015, and the case-law cited therein). It follows that the applicants' complaint under Article 6 § 1 is incompatible *ratione materiae* with the provisions of the Convention or the Protocols thereto, and must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### C. Complaint under Article 10 of the Convention

50. The applicants complained that they had been expelled from Lithuania and banned from re-entering it because of their activities as journalists. They submitted that their actions during the Forum had been respectful and had not overstepped the acceptable limits of journalistic activity, and that they thus could not have posed a threat to the national security of Lithuania. They relied on Article 10 of the Convention, which reads:

"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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

51. The Court accepts, in the light of the particular circumstances of the case, that there can be some doubt as to whether Article 10 of the Convention is applicable. It observes that the Lithuanian authorities ordered the applicants' expulsion on account of their aggressive and provocative actions (*išpuoliai*) during a high-level political event, as established by the domestic courts, rather than any opinions, statements or publications (compare *Piermont v. France*, 27 April 1995, §§ 51-53, Series A no. 314; *Women On Waves and Others v. Portugal*, no. 31276/05, § 30, 3 February 2009; and *Cox v. Turkey*, no. 2933/03, §§ 30-31, 20 May 2010). However, the Court considers it unnecessary to decide on the applicability of Article 10 of the Convention, because even assuming that that provision is applicable, the present complaint is in any event inadmissible.

52. The Court is thus prepared to proceed on the assumption that the expulsion of the applicants from Lithuania and the ban on their re-entering for one year constituted an interference with their right to freedom of expression. It is satisfied that those measures were prescribed by law (see paragraphs 29-32 above) and that they were carried out in the interests of national security (see paragraph 6 above). It therefore remains to be assessed whether the interference was necessary in a democratic society.

53. The applicants were expelled from Lithuania and banned from re-entering for one year because the domestic authorities concluded that their presence in Lithuania constituted a threat to national security. It was found that they had behaved aggressively and provocatively at a high-level political event co-organised by the Ministry of Foreign Affairs. In particular, the applicants had arrived in Lithuania with an assignment from their employer to gather information about participants in the Forum, who included prominent political opposition activists from Russia; they had not obtained or attempted to obtain accreditation for the Forum; on 8 March 2016 they had gained access to the venue of the Forum by deception, provoked confrontations with security guards and participants in the Forum and had been warned by the police; despite that warning, on 9 March 2016 they had attempted to film the participants in the Forum on a mobile phone, thereby provoking further confrontation; and they had likely planned to cause another confrontation on the last day of the Forum (see paragraphs 5, 6, 14, 20, 24 and 28 above).

54. It is not for the Court to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty. However, considerations concerning the fairness of proceedings may need to be taken into account in examining a case of interference with the exercise of Article 10 rights (see *Stoll v. Switzerland* [GC], no. 69698/01, § 137, ECHR 2007-V).

55. In the present case, the domestic courts found that the applicants posed a threat to national security on the basis of various items of evidence, including classified information provided by the SSD. The courts stated that that information had been declassified in part, but that declassifying it in its entirety would have been harmful to the public interest and national security (see paragraphs 16 and 35 above). The Court observes that, in accordance with the domestic law, the courts had full access to the classified information and were therefore able to exercise their power of scrutiny (see paragraph 36 above, see also *Regner v. the Czech Republic* [GC], no. 35289/11, § 152, 19 September 2017). Furthermore, they emphasised that the classified information had not been of decisive value in the proceedings and that it had been corroborated by publicly available data, such as the statements of the police officers who had been present during the events in question and public documents relating to the general context surrounding the Russian media (see paragraphs 14, 20, 26 and 28 above). In such circumstances, the Court is satisfied that the domestic courts did not rely to a decisive extent on classified information and that the applicants had adequate opportunity to challenge the factual grounds for the decisions against them (compare *Regner*, cited above, §§ 153 and 160).

56. The Court furthermore notes that there is nothing in the case file to suggest that the domestic courts erred in their assessment of the relevant facts or applied domestic law in an arbitrary or manifestly unreasonable manner. It therefore sees no grounds to disagree with their conclusion that the applicants' expulsion and entry ban were necessary in the interests of national security.

57. As to the proportionality of the impugned measures, the Court notes that the applicants were not prohibited from making statements or disseminating information about the Forum or any related matters (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 93, ECHR 2015, and *Brambilla and Others v. Italy*, no. 22567/09, § 61, 23 June 2016). The domestic courts emphasised that the expulsion and entry ban had been imposed on the applicants not because of dissemination of any ideas but because of their aggressive and provocative actions (see paragraphs 19 and 27 above; see also

Pentikäinen, cited above, § 108). Furthermore, the courts explicitly addressed the issue of proportionality and weighed the interests of national security, on the one hand, against the applicants' actions and the severity of the impugned measures, on the other hand (compare and contrast *Butkevich v. Russia*, no. 5865/07, §§ 137-38, 13 February 2018). The Court sees no reason to depart from the conclusion reached by the domestic courts that the measures imposed on the applicants had not been disproportionate, also taking into account the fact that they did not have any family, social or economic ties in Lithuania (see paragraphs 6 and 19 above).

58. Lastly, the Court reiterates that the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. The concept of responsible journalism, as a professional activity which enjoys the protection of Article 10 of the Convention, is not confined to the content of information which is collected and/or disseminated by journalistic means. It also embraces the lawfulness of the conduct of a journalist, and the fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (see *Pentikäinen*, cited above, § 90, and *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016).

59. In view of the domestic authorities' findings concerning the applicants' conduct (see paragraph 53 above) and in the absence of any evidence to the contrary, the Court is unable to accept that that conduct was compatible with the concept of responsible journalism.

60. In the light of the aforementioned circumstances, the Court is satisfied that the domestic authorities credibly demonstrated that the expulsion and entry ban imposed on the applicants were necessary in the interests of national security, and that they were proportionate to the legitimate aim pursued. Accordingly, the applicants' complaint under Article 10 of the Convention is manifestly ill-founded and must be declared inadmissible, in accordance with Article 35 §§ 3 and 4 of the Convention.

#### D. Complaint under Article 4 of Protocol No. 4 to the Convention

61. The applicants complained that all the impugned decisions of the Migration Department had contained essentially the same wording and that each applicant's individual situation had not been assessed before expelling them. They relied on Article 4 of Protocol No. 4 to the Convention, which reads:

*"Collective expulsion of aliens is prohibited."*

62. The Court draws attention to its case-law, whereby collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien in the group. Thus, the fact that a number of aliens are subject to similar decisions does not of itself lead to the conclusion that there is a collective expulsion if each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis (see *Sultani v. France*, no. 45223/05, § 81, ECHR 2007-IV (extracts), and the case-law cited therein).



63. In the present case, the Migration Department issued a decision in respect of each applicant to expel him from Lithuania and to ban him from re-entering Lithuania for one year (see paragraph 6 above). Each of those decisions stated that the applicant in question was a representative of one of the television channels of the Russian Federation's national television and radio company, that his attacks during the Forum had been reported on by the media and recorded by the police, and that classified information provided by the SSD had indicated that the applicant's presence in Lithuania might threaten national security; the wording of the decisions also addressed the family situation of each applicant (see paragraph 6 above). Although the four decisions employed essentially the same wording, the Court observes that the circumstances of each applicant's situation were also essentially the same, as they had all acted together at the same event and with a common purpose (see paragraph 17 above). In such circumstances, it considers that each of the decisions issued by the Migration Department indicated the individual grounds for expulsion in respect of each applicant. The Court is therefore unable to accept that the wording of those decisions was indicative of a lack of a reasonable and objective examination of the particular case of each individual applicant.

64. Furthermore, the domestic courts that examined the applicants' complaints against the expulsion decisions found that the applicants had arrived in Lithuania together, with a common purpose, that they had all been working for the same media company, and that their actions had been coordinated, and that for those reasons it had been justified to assess the threat that they had posed to national security as a group, without establishing the degree to which each of them had contributed to their joint activities (see paragraph 17 above). The Court observes that the applicants were given the opportunity to submit arguments against their expulsion and the one-year entry ban at two levels of jurisdiction, and that their arguments were addressed in sufficient detail. The Court sees no strong reasons to disagree with the findings of the domestic courts that the joint nature of the applicants' activities had justified assessing the threat to national security posed by them as a group. In its view, the present case cannot be compared to those cases in which large groups of aliens were expelled without any kind of examination of each applicant's individual situation (see, for instance, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 185, ECHR 2012; *Georgia v. Russia (I)* [GC], no. 13255/07, §§ 172-76, ECHR 2014 (extracts); and *Shioshvili and Others v. Russia*, no. 19356/07, § 71, 20 December 2016). Accordingly, the applicants' complaint under Article 4 of Protocol No. 4 is manifestly ill-founded and must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

#### E. Other complaints

65. The applicants also complained, relying on Articles 13, 14 and 18 of the Convention, that the proceedings before the administrative courts had not constituted an effective remedy against their expulsion, that the expulsion had been ordered because of their "association with a Russian media company", and that the "interests of national security" had been used as an excuse to repress their freedom of expression.

66. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions invoked.

It follows that this part of the applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

**For these reasons, the Court, unanimously,**

Decides to join the applications;

and by a majority,

Declares the applications inadmissible.

Done in English and notified in writing on 19 December 2019.

Stanley Naismith  
Registrar

Robert Spano  
President

## APPENDIX

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	69111/17	18/09/2017	07/09/1981 Pavel ZARUBIN Moscow	Gintautas ŠULIJA
2.	69112/17	18/09/2017	25/05/1988 Alexander MAKAROV Moscow	Gintautas ŠULIJA
3.	69113/17	18/09/2017	26/05/1966 Andrey MELNIKOV Moscow	Gintautas ŠULIJA
4.	69114/17	18/09/2017	07/09/1978 Alexey KAZAKOV Moscow	Gintautas ŠULIJA