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La Corte EDU su libertà di espressione e ritrattazione di dichiarazioni rese
(CEDU, sez. II, sent. 15 novembre 2022, ric. n. 24919/20)

La causa riguarda la decisione delle autorità nazionali con la quale è stato ordinato al ricorrente di ritrattare una dichiarazione resa durante un colloquio, in quanto ritenuta falsa e diffamatoria. Per il ricorrente tale dichiarazione costituiva un giudizio di valore e l'ordine di ritrattarla aveva violato il suo diritto alla libertà di espressione ex art. 10 della Convenzione. La Corte non ha avuto motivo di dubitare che tale ingerenza avesse una base giuridica e che mirasse allo scopo legittimo della protezione della reputazione o dei diritti altrui. Di conseguenza, la questione che ha valutato ha riguardato se l'interferenza fosse necessaria in una società democratica.
Premesso che i principi generali relativi alla necessità di un'ingerenza nella libertà di espressione mirano a riconoscere un elevato livello di protezione della libertà di espressione, qui, nel caso di specie, la Corte ha innanzitutto verificato che la dichiarazione del ricorrente non fosse una dichiarazione di fatto, bensì un giudizio di valore e, quanto al suo dovere di non oltrepassare i limiti di una critica accettabile, ha osservato che il ricorrente essendo un personaggio pubblico e un noto uomo d'affari avrebbe potuto influenzare l'opinione pubblica in misura maggiore rispetto ad una persona sconosciuta al grande pubblico. Ciononostante, la Corte non ha ritenuto le frasi pronunciate dal ricorrente diffamatorie e, pertanto, ha concluso che l'ordine di ritrattare le dichiarazioni rese non possa essere considerato necessario in una società democratica, con conseguente violazione dell'art. 10 CEDU.

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

SECOND SECTION

CASE OF XXX v. LITHUANIA
(Application no. 24919/20)

JUDGMENT
STRASBOURG
15 November 2022

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 XXX v. Lithuania,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Pauliine Koskelo,

Jovan Ilievski,

Gilberto Felici,

Diana Sârcu, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 24919/20) 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 XXX ("the applicant"), on 23 June 2020;

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

the parties' observations;

Having deliberated in private on 11 October 2022,

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

INTRODUCTION

1. The case concerns a decision by the domestic courts ordering the applicant to retract a statement he had made in an interview, after the courts found it to have been false and defamatory. The applicant complained that the statement in question was a value judgment and that the order to retract it had violated his right to freedom of expression, contrary to Article 10 of the Convention.

THE FACTS

2. The applicant was born in XXX and lives in XXX. He was represented by Mr K. Švirinas, a lawyer practising in Vilnius.

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

I. BACKGROUND TO THE CASE

4. The applicant is a founder and shareholder of Vilniaus Prekyba, one of the largest retail companies in the Baltic region.

5. In 2015 he lodged a complaint with the law-enforcement authorities, alleging that Vilniaus Prekyba had, through a series of financial deals, avoided the payment of taxes. He alleged that the deals in question had caused damage to the State and had led to the unjust enrichment of N.N., who was another founder and major shareholder of the company. A pre-trial investigation was opened in August 2015.

6. On 19 August 2016 the prosecutor discontinued the investigation, finding no grounds to believe that the deals in question had been unlawful. The applicant appealed against that decision, but on 21 November 2016 the senior prosecutor upheld it.

7. On 23 November 2016 the applicant asked the prosecutor to reopen the investigation, submitting that new relevant facts had come to light.

8. On 1 December 2016 the applicant replied, in writing, to questions from a journalist of a popular news website, Delfi, for an article about his conflict with N.N. and the ongoing proceedings.

9. On 21 December 2016 the prosecutor dismissed the applicant's request to reopen the pre-trial investigation, finding that the new material provided by the applicant did not demonstrate that the deals in question had been unlawful. The prosecutor forwarded that material to the tax authorities.

10. On 2 January 2017 the pre-trial investigation judge upheld the decision to discontinue the investigation on a subsequent appeal. On the same day Delfi published the article containing the applicant's statements (see paragraph 14 below).

11. On 10 January 2017 the applicant addressed his allegations against N.N. to the tax authorities.

12. On 17 February 2017 the Vilnius Regional Court, in a final decision, upheld the discontinuation of the pre-trial investigation. On 1 March 2017 the senior prosecutor dismissed the applicant's complaint against the refusal to reopen the investigation.

13. On 9 March 2017 the tax authorities launched an inquiry into N.N.'s compliance with his tax obligations. At the time of the latest submissions made by the parties to the Court (on 22 December 2021), that inquiry was still pending.

II. THE ARTICLE OF 2 JANUARY 2017

14. On 2 January 2017 Delfi published an article entitled "The fight between the rich of Lithuania continues: clashing for earned millions". It quoted the applicant, N.N. and several other individuals, and its text included the following:

"While court proceedings between the former members of the so-called top ten of Vilniaus Prekyba continue, [the latter] reveal to the media more and more new circumstances about how and why tens of millions of euros, earned in Lithuania, travelled across companies in the whole of Europe.

[The applicant] and his representatives are convinced that some of the deals concluded by [N.N.], who is considered to be the richest person in the country, caused great damage to the other owners of [Vilniaus Prekyba] and to the State. However, the representatives of [N.N.] affirm that everything was done in accordance with the law and that no damage has been caused.

...

[The applicant's] representatives informed [Delfi] that, while analysing newly obtained documents, they had uncovered one of the schemes demonstrating how ..., allegedly, millions of euros of shareholders' funds had been laundered and taxes avoided.

According to the businessman, such schemes confirm his opinion that the true purpose of transferring money to other countries was not the declared expansion or investment but avoidance of taxes and appropriation of property:

'The opinion expressed a year ago about the schemes carried out in [the company] has only grown stronger. Having obtained previously hidden information through legal means, we are beginning to understand why economically unjustified deals were concluded and who was responsible for

them. We have submitted documents to the court, demonstrating that companies belonging to [Vilniaus Prekyba] were allegedly used for transferring shareholders' money to [N.N.'s] personal accounts, thereby avoiding the payment of taxes in Lithuania and appropriating other shareholders' funds' ...

(*„Prieš metus išsakyta nuomonė apie VP grupėje taikomas schemas tik sustiprėjo. Teisiniu keliu išsireikalavę slėptą informaciją, pradedame suprasti, kodėl buvo daromos ekonomiškai nepateisinamos sandorių schemos ir kas už jas atsakingas. Teismui pateikėme dokumentus, įrodančius, jog VP įmonės galimai naudotos visų akcininkų pinigų išvedimui į asmenines [N.N.] sąskaitas, nesumokant mokesčių Lietuvoje ir pasisavinant kitų akcininkų turtą."*)

... 'One of the companies used in such operations was [T.] ... through which, after complicated deals, more than twenty million euros of shareholders' funds were allegedly laundered and at least three million euros in taxes hidden from the Lithuanian [State's] budget', commented [the applicant] ...

(*„Viena iš tokiose operacijose panaudotų įmonių - ... [T.], per kurią, po sudėtingų sandorių, galimai išplauta daugiau nei 20 mln. Eur akcininkų turto ir nuslėpta bent 3 mln. eurų mokesčių Lietuvos biudžetui", - komentavo M. XXX.*)

When asked what may have been the goal of such a scheme, who had sustained damage and whether the law-enforcement authorities had been contacted, [the applicant] explained:

'In my opinion, the main goal was to appropriate the profit of [the company] without paying taxes in Lithuania. It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage. We addressed the company, spoke about it in shareholders' meetings, and subsequently addressed the prosecutor's office.'

(*„Mano nuomone, pagrindinis tikslas buvo pasiimti VP įmonių pelną, nesumokant mokesčių Lietuvoje. Akivaizdu, kad ne tik mes, bet ir Lietuvos valstybė patyrė milžinišką žalą. Kreipėmės į bendrovę, kalbėjome apie tai akcininkų susirinkimuose, vėliau kreipėmės į prokuratūrą."*)

...

[Representatives of N.N.] do not deny that many of the deals mentioned by their opponents were indeed concluded. However, [they insist that all such deals] were lawful and did not cause damage to anybody ..."

III. PROCEEDINGS BEFORE THE VILNIUS DISTRICT COURT

A. The parties' submissions

15. N.N. lodged a civil claim against the applicant, accusing him of making false and defamatory statements. He complained about the following three statements:

(a) "[C]ompanies belonging to [Vilniaus Prekyba] were allegedly used for transferring shareholders' money to [N.N.'s] personal accounts, thereby avoiding the payment of taxes in Lithuania and appropriating other shareholders' funds" ("the first statement");

(b) "One of the companies used in such operations was [T.] ... through which, after complicated deals, more than twenty million euros of shareholders' funds were allegedly laundered and at least three million euros in taxes hidden from the Lithuanian [State's] budget" ("the second statement");

(c) "[T]he main goal was to appropriate the profit of [the company] without paying taxes in Lithuania. It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage" ("the third statement").

N.N. did not complain about the sentence which followed immediately after the two aforementioned sentences of the third statement ("We addressed the company, spoke about it in shareholders' meetings, and subsequently addressed the prosecutor's office").

16. N.N. submitted that the impugned statements had been formulated as statements of fact – they clearly and unambiguously alleged that he had committed unlawful, possibly even criminal acts and that his actions had caused damage to others. However, those allegations were not supported by any evidence. N.N. contended that the language used by the applicant had been aimed at strengthening the impression that the allegations were based on proven facts – in particular, the applicant had stated that he had submitted documents to the courts proving his allegations, he had indicated concrete amounts of money which had allegedly been laundered or hidden, and had presented the damage caused to the shareholders and to the State as an obvious fact. The fact that readers of the article had considered those statements to contain accurate information was demonstrated by the many negative comments posted on the website in response to the article. N.N. submitted that such accusations of illegal and immoral behaviour were clearly insulting to his honour and dignity and asked the court to order the applicant to publicly retract the three impugned statements.

17. The applicant contested the claim. He submitted that the impugned statements expressed his personal opinion and had been formulated as value judgments, which was clear when they were read in the context of the entire article. The value judgments had been sufficiently supported by documents which the applicant had submitted to the relevant authorities in various pending proceedings. Moreover, the applicant's opinion had not been expressed in a degrading or insulting manner and N.N., who was a public figure, had to display a higher degree of tolerance towards criticism.

18. N.N.'s claim was initially also lodged against the company which owned the Delfi website but, following a friendly settlement, the case against the company was discontinued and it was included in the proceedings as a third party. The company submitted that the website had published the applicant's exact statements and that it was not responsible for their content.

B. Decision of the Vilnius District Court

19. On 22 December 2017 the Vilnius District Court allowed N.N.'s claim against the applicant in part.

20. The court first observed that the right to freedom of expression could be limited and that even when discussing important questions of general interest, it was important to respect the right of others to the protection of their honour, dignity and professional reputation. The right to freedom of expression was applicable not only to information or ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that might offend, shock or disturb. Nonetheless, that right was not absolute and those who exercised it, irrespective of whether or not they were journalists, had the duty to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (the court referred to, *inter*

alia, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II, and *Flux v. Moldova (no. 6)*, no. 22824/04, § 26, 29 July 2008).

21. The court also referred to the general principles regarding the distinction between news (statements of fact) and opinions (value judgments), established in the case-law of the Supreme Court (see paragraph 58 below) and in the case-law of the European Court of Human Rights (it referred to *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, § 82, 12 July 2007). In particular, it reiterated that any statement had to be assessed in the light of the publication as a whole. The court's examination should not be confined to a literal analysis of the text, but should also consider the context of the impugned statement and the circumstances of its dissemination. The court had to assess the publication and the statements in their entirety and not limit its assessment to separate phrases or parts of the publication.

22. Turning to the circumstances of the case, the Vilnius District Court observed that both the applicant and N.N. were among the richest people in Lithuania and that their economic activities and the legal disputes between them had been widely discussed in the media. Therefore, they both had to be regarded as public figures and N.N. had to display a higher degree of tolerance towards criticism.

23. The court also considered it relevant that the relationship between the applicant and N.N. was hostile and that their conflict had been examined by the courts and addressed in the media. In such circumstances, both parties were likely to express their views in a more emotional way and their statements about one another had to be read in that light.

24. The court emphasised that in the proceedings at hand it was not assessing the lawfulness of any of the deals mentioned in the article or in the parties' submissions. Information about them was relevant only to the extent that it might demonstrate that the opinions expressed by the applicant had had a sufficient factual basis. Having examined various documents submitted by the parties, the court found that the applicant could have had a sufficient factual basis to form an opinion that the shareholders of company T. might have sustained losses because of N.N.'s actions, or that N.N. might have carried out certain actions which could have allowed him to avoid paying income tax and that that could have caused damage to the State.

25. At the same time, the court observed that the applicant had lodged complaints about those same deals with the law-enforcement and tax authorities. The investigation before the tax authorities was still pending (see paragraph 13 above), but the allegations of criminal conduct by N.N. had been dismissed – in decisions taken in August and November 2016, the prosecutor and the senior prosecutor had discontinued the pre-trial investigation, having found that no crime had been committed (see paragraph 6 above). The court noted that, at the time when the article was published, the prosecutors' decisions had not yet become final; nonetheless, in view of the fact that the applicant's allegations had already been dismissed by the authorities at two levels, he ought to have understood that his opinion was likely to be unfounded and ought to have been mindful about the way in which he expressed it.

26. The court further observed that both the applicant and N.N. had submitted to it assessments carried out by two linguistic experts who had reached opposite conclusions with regard to the impugned statements. In its view, the conclusions of both experts had been made without taking

due regard of the article as a whole and neither could be considered reliable. It therefore decided not to rely on either of them.

27. The Vilnius District Court then turned to the text of the article (see paragraph 14 above). It observed that the title indicated that the article discussed a conflict between several persons. Moreover, the first few paragraphs, which referred to the ongoing court proceedings and introduced the opposing views held by the applicant and N.N., made it clear that the aim of the article was to present two sides to the dispute. The article was divided into two major parts, the first of which presented the views of the applicant, and the second those of N.N. When introducing the statements made by the applicant, the article used words such as "allegedly" (*galimai*), "are convinced" (*yra įsitikinę*) or "the opinion ... has grown stronger" (*išsakyta nuomonė ... sustiprėjo*), which demonstrated that those statements expressed the applicant's opinion. Furthermore, the questions posed to the applicant by the journalist had also been formulated in such a way as to refer to a possibility or a likelihood ("what may have been the goal of such a scheme" (*kokiu tikslu galėjo būti vykdoma tokia schema*)). Accordingly, the court was of the view that an average reader ought to be able to understand that the article presented two different opinions about the events in question, and not facts which were indisputably established.

28. The court rejected N.N.'s argument that the negative comments posted on the website in response to the article demonstrated that readers had considered its content to be accurate (see paragraph 16 above). It held that similar comments were regularly posted in response to any publication concerning N.N., the applicant, Vilniaus Prekyba and other related companies – the public held an unfavourable image of them, therefore, negative comments could not be considered a consequence of that particular article.

29. Turning to the impugned statements, the Vilnius District Court found that the first and second statements (see paragraph 15 (a) and (b) above) had been formulated as value judgments, that they had a sufficient factual basis and that they had been expressed in a manner which could not be regarded as insulting to N.N. It considered that the applicant, who was not a lawyer, had used the word "appropriating" (*pasisavinant*) in its general sense and not with the aim of attributing concrete criminal acts to N.N. Moreover, his statements that money had allegedly been laundered or taxes allegedly hidden expressed a doubt. In the court's view, the fact that two experts had provided opposite conclusions with regard to those statements (see paragraph 26 above) also demonstrated that they could not be unambiguously understood as insulting to N.N. Furthermore, N.N. had not proved that those statements had caused him any negative consequences.

30. With regard to the third statement, the court found that it was composed of three sentences: (1) "In my opinion, the main goal was to appropriate the profit of [the company] without paying taxes in Lithuania"; (2) "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage"; and (3) "We addressed the company, spoke about it in shareholders' meetings, and subsequently addressed the prosecutor's office" (see paragraph 14 above). Each sentence was a response to one of the three independent questions posed by the journalist ("what may have been the goal of such a scheme, who had sustained damage and whether the law-enforcement authorities had been contacted" – see paragraph 14 above). In the court's view, the three sentences did not express one single thought but were separate statements which had to be assessed separately. Since N.N. had not complained about the third sentence of

the third statement (see paragraph 15 (c) above), the court only assessed the first and second sentences.

31. The court held that the first sentence constituted a value judgment, that it had a sufficient factual basis and that the manner in which it had been expressed was not insulting to N.N. That sentence was a response to the journalist's question, and the question itself implied a certain level of doubt ("what may have been the goal of such a scheme"). Moreover, the applicant had begun his response with the words "In my opinion". Thus, both the question and the answer indicated that it was the applicant's opinion and not a statement of fact. While the documents available to the court did not demonstrate that the events described in that sentence had actually occurred, the court considered that they nonetheless gave sufficient grounds for forming such an opinion.

32. However, the Vilnius District Court reached a different conclusion with regard to the second sentence. It held as follows:

"In the second sentence, [the applicant] states that the shareholders and the State obviously sustained damage. As it has already been found, the second sentence is not a continuation of the opinion provided in the first sentence because it is presented as a response to the second independent question posed by the journalist. Therefore, the second sentence is an independent statement. That statement is not based on the facts established in the case (deals examined in the dispute and the transfer of money to [N.N.'s] bank account) but on [the applicant's] opinion, which he formed on the basis of the disputed deals. The use of the word 'obvious' (*akivaizdu*) in the second sentence implies [the existence of] an indisputable, established fact. The statement is presented as an affirmation – it publicly declares the existence of certain actions which have supposedly been carried out and completed by [N.N.] – [and which caused] damage to the shareholders and the State. If on the basis of actual facts, the actions of a person are presented by attributing to him or her other concrete actions, which are clearly named, and it may be verified if they correspond to reality, that means that new information has been disseminated. [The applicant] knew that, during the pre-trial investigation, two officials had refused to confirm his opinion, therefore, he should not have expressed this opinion as an indisputable fact. In this case, the second sentence of the impugned statement, that the shareholders and the State sustained damage, is to be considered a statement of fact which can be verified. There is no information in the case, nor did [the applicant] seek to prove or has he proved, that the shareholders or the State did sustain any damage (Article 178 of the Code of Civil Procedure). In the light of the foregoing circumstances, it must be concluded that the second sentence of the third statement made by [the applicant] – 'It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage' – is false and insulting to [N.N.'s] honour and dignity (Article 2.24 of the Civil Code)."

33. Therefore, the Vilnius District Court ordered the applicant to publicly retract the second sentence of the third statement.

IV. PROCEEDINGS BEFORE THE VILNIUS REGIONAL COURT

A. The parties' submissions

34. The applicant lodged an appeal against the Vilnius District Court's decision. He submitted that, as acknowledged by that court, the article had sought to present two different opinions, but not established facts (see paragraph 27 above). He argued that the court had unjustifiably singled out

the second sentence of the third statement from the entire article and had disregarded its context. The three sentences together had constituted the applicant's response to the journalist's question. They had all concerned the same subject and formed a coherent whole. In the first sentence, the applicant had expressed his opinion regarding the possible aim of the schemes in issue. In the second sentence, he had further developed that opinion, indicating the potential consequences of the allegedly unlawful schemes. In the applicant's view, were it to be found that some unlawful schemes had been carried out, it would be logical to assume that the shareholders and the State had sustained a certain amount of damage. In the third sentence, the applicant had indicated the actions he had taken as a result of the suspicions presented in the first and second sentences. By stating that he had addressed the relevant authorities it was made clear that the allegations expressed in the first two sentences had not yet been confirmed and had only been his opinions. The applicant contended that, since the three sentences had to be assessed together, the use of the words "In my opinion" in the first sentence indicated that the second sentence expressed his opinion as well. He also argued that the word "obvious" in the second sentence could not, in context, be understood as meaning that the damage was an established fact.

35. The applicant submitted to the court a new assessment by a linguistic expert which supported his above arguments. He contended that differentiating between statements of fact and value judgments was a question which required specialist knowledge and which the court could not decide on its own.

36. He further stated that he had given his answers to the journalist for the article on 1 December 2016 and that the well-foundedness of his opinions had to be assessed on the basis of the information which had been available to him on that date. He stated that in November 2016 he had provided new documents to the prosecutor, asking to reopen the previously discontinued pre-trial investigation in respect of N.N., and on 1 December 2016 no decision with regard to his request had yet been taken (see paragraphs 6-9 above). Moreover, the investigation before the tax authorities was still ongoing (see paragraph 13 above). Therefore, the applicant contended that, at the material time, he had had a sufficient factual basis to form the opinions which he had expressed in the article and that the court had erred when finding that he ought to have known that his opinion was likely to be ill-founded.

37. The applicant also submitted to the court the conclusions adopted in June 2018 by the Parliamentary Committee on National Security and Defence after a parliamentary inquiry into the possible unlawful influence of private individuals, business entities and other interest groups over State institutions and political processes. According to that document, Vilniaus Prekyba might have avoided some of its tax obligations.

38. N.N. also lodged an appeal against the decision of the first-instance court, disputing that court's findings regarding the first two statements and the first sentence of the third statement. Furthermore, N.N. contested the arguments which the applicant had presented in his appeal. He submitted that the second sentence of the third statement constituted a statement of fact which could be verified – that is to say, it could be verified if the shareholders and the State had sustained any damage because of N.N.'s actions. However, the applicant had failed to prove the accuracy of that allegation.

B. Decision of the Vilnius Regional Court

39. The Vilnius Regional Court adopted a decision on 18 February 2019. At the outset, it observed that in the proceedings the applicant and N.N. had submitted the conclusions reached by different linguistic experts (see paragraphs 26 and 35 above). The court considered that those conclusions were biased because each one reflected exclusively the position of the party which had commissioned it. The court was also of the view that the questions that had been addressed by the experts were within the competence of the court. Therefore, it decided not to rely on any of their conclusions.

40. The Vilnius Regional Court dismissed the appeal lodged by N.N. It upheld the findings of the first-instance court to the effect that N.N. was a public figure and therefore had to display a higher degree of tolerance towards criticism (see paragraph 22 above). It also noted that the dispute in question had arisen not between an individual and a media outlet but between two individuals of equivalent social status: both the applicant and N.N. had been known to the public for a long time because of their business activities and they played an important role in the economic and public life of the country. Therefore, N.N. could not claim to enjoy the protection of his right to private life to the same extent as a purely private individual.

41. The Vilnius Regional Court also upheld the lower court's conclusions that it was clear from the general tone of the article that it sought to present two conflicting viewpoints, that the first two statements and the first sentence of the third statement made by the applicant had been formulated as value judgments, and that they had not been insulting to N.N. (see paragraphs 27 and 29-31 above).

42. However, the court allowed the appeal lodged by the applicant and quashed the decision of the first-instance court regarding the second sentence of the third statement (see paragraph 32 above). It held as follows:

"... Although the impugned phrase contains statements formulated in a more categorical manner, it is important to assess it in the light of the subsequent phrases. In the following sentence it is indicated that [the applicant] raised the issue of damage ... in shareholders' meetings and subsequently with the prosecutor's office. The fact that [the applicant] contacted the prosecutor's office means that the above-mentioned damage is only his subjective opinion which has yet to be confirmed by the relevant authority – the prosecutor's office. Any average reader, having read the article, would understand that the fact whether damage has been caused is still to be determined by the State authorities. Damage to the State is presented in an abstract manner because it is not specified what damage has been caused. In the court's view, from the context of the entire article it may be understood that [the applicant] meant pecuniary damage, but that sentence is rather abstract and unspecified, since it is not explained how the 'huge' damage was caused, who caused it, or who will have to compensate for it. It must also be taken into account that the expression 'huge damage' (*milžinišką žalą*) is itself exaggerated and indicates the subjectivity of [the applicant's] opinion and that he is assessing the situation purely from his personal perspective."

43. The court also took note of the conclusions adopted by the Parliamentary Committee on National Security and Defence, which had found that Vilniaus Prekyba might have avoided some of its tax obligations (see paragraph 37 above). The court stated that it was not assessing the accuracy of the Committee's conclusions, but that they nonetheless showed, albeit *ex post facto*, that the applicant's opinion had had a factual basis.

44. Furthermore, the court stated that, in view of the fact that N.N. was known to the public as the richest person in Lithuania, it was understandable that the applicant, as well as the public and the media, had an interest in the origins of his wealth and the taxes which he paid to the State. Therefore, N.N. should not take personally, or feel offended by, the exaggerated statements made by the applicant. The court further noted that the applicant was a businessman and not a State official, and therefore his statements about the damage allegedly caused to the State necessarily had to be assessed with certain criticism. It also considered that him making allegations about damage sustained by the shareholders was justified in the light of the dispute between him and N.N., in which the applicant saw himself as a victim.

V. REMITTAL OF THE CASE AND FRESH PROCEEDINGS BEFORE THE VILNIUS REGIONAL COURT

45. Following an appeal on points of law lodged by N.N., on 2 October 2019 the Supreme Court quashed the decision of the Vilnius Regional Court. It found that the lower court had included in the case file new documents submitted by the applicant (see paragraphs 35 and 37 above) but had not granted N.N. sufficient time to familiarise himself with and comment on them, thereby breaching the principle of equality of the parties. The case was remitted to the Vilnius Regional Court for a fresh examination.

46. During the fresh proceedings before the Vilnius Regional Court, the applicant submitted in addition financial reports of several companies, arguing that they demonstrated the financial damage which had been caused by the deals in question.

47. The Vilnius Regional Court adopted a decision on 25 February 2020. It first noted that new evidence could be accepted in the appellate proceedings only if at least one of the following conditions was met: (1) if the first-instance court had refused to accept that evidence without sufficient grounds; or (2) if the necessity to present such evidence arose only after the first-instance decision had been adopted. It found that neither of those conditions had been met in the present case and therefore refused to accept the new documents submitted by the applicant (see paragraphs 35, 37 and 46 above).

48. The Vilnius Regional Court upheld the decision of the Vilnius District Court. It first reiterated the relevant general principles established in the case-law of the Supreme Court with regard to the protection of one's honour and dignity and the distinction between statements of fact and value judgments (see paragraphs 57 and 58 below). It also found that the assessments by the linguistic experts, submitted by the applicant and N.N. (see paragraph 26 above), could not be considered reliable because they had been delivered with the interest of the party which had commissioned them in mind. It then upheld the findings of the first-instance court that the statements made by the applicant had to be assessed in the context of the entire article and in the light of the hostile relationship between him and N.N.; the first two statements and the first sentence of the third statement had been formulated as value judgments and N.N., being a public figure, had to display a higher degree of tolerance towards criticism (see paragraphs 22-31 above).

49. The Vilnius Regional Court also reiterated and upheld the findings made by the first-instance court with regard to the second sentence of the third statement (see paragraph 32 above). It stated as follows:

"The judges of the appellate court agree with the conclusion of the first-instance court that the publicly expressed opinion, in the form of the phrase 'It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage', is of an affirming nature. Such an expression of opinion leads the reader to believe that this fact has occurred. Therefore, it was justified for the court to conclude that [the applicant], without presenting any concrete facts to substantiate such an expression of opinion, denigrated [N.N.'s] honour and dignity, because that statement does not correspond to reality."

50. On 4 March 2020 the Delfi website published a retraction, which indicated that the second sentence of the third statement made by the applicant had been found by a court to be erroneous and denigrating to N.N.'s honour and dignity.

VI. PROCEEDINGS BEFORE THE SUPREME COURT

51. The applicant lodged three appeals on points of law, in which he argued essentially that the lower courts had not followed the principles established in the relevant case-law of the Supreme Court. In particular, he submitted that the Vilnius Regional Court had found the second sentence of the third statement to constitute "an expression of opinion", but nonetheless considered it to be susceptible of proof (see paragraph 49 above). He also repeated the arguments made in his previous appeal to the effect that it had been unjustified to single out that sentence and to assess it separately from the rest of the article (see paragraph 34 above).

52. On 12 March, 29 April and 27 May 2020 the Supreme Court refused to accept the appeals on points of law lodged by the applicant for examination on the grounds that they did not raise any important legal issues.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTIONAL AND STATUTORY PROVISIONS

53. The relevant parts of Article 25 of the Constitution read as follows:

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

No one must 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, as well as defamation and disinformation...."

54. The relevant parts of Article 2.24 of the Civil Code read as follows:

"1. A person shall have the right to demand the retraction, in judicial proceedings, of information which has been made public and which denigrates his or her honour and dignity and is erroneous, in addition to the right to compensation for pecuniary and non-pecuniary damage incurred by the placing in the public domain of the above-mentioned information ... Information which has been made public shall be presumed to be erroneous, unless the publisher proves the opposite to be true.

2. Where erroneous information has been made public by the mass media (including the press, television and radio), the person who is the subject of the publication shall have the right to

provide a proposed retraction, and to demand that the media source concerned publish that retraction free of charge or make it public in some other way ..."

55. Under Article 2 § 31 of the Law on the Provision of Information to the Public (*Visuomenės informavimo įstatymas*), an opinion is a viewpoint, understanding, perception, comprehension, thoughts or comments about general ideas, the evaluation of facts, information, phenomena or events, or conclusions or remarks about actual events, disseminated in the media. An opinion may be based on facts or well-founded arguments and it is usually subjective, therefore it is not subjected to the criteria of truth and accuracy. Nonetheless, it has to be expressed in good faith and in an ethical manner, without intentionally concealing or distorting facts and information.

56. Under Article 2 § 82 of the Law on the Provision of Information to the Public, a statement of fact (*žinia*) is a fact or true and correct information disseminated in the media.

II. CASE-LAW OF THE SUPREME COURT

57. According to the established case-law of the Supreme Court, when examining claims lodged under Article 2.24 of the Civil Code concerning the protection of one's honour and dignity (see paragraph 54 above), the court has to establish the following four circumstances: first, that certain statements of fact have been disseminated; secondly, that those statements were about the claimant; thirdly, that the statements were erroneous; and, fourthly, that they were insulting to the claimant's honour and dignity (see, among others, the Supreme Court's decision of 23 September 2016 in case no. e3K-3-394-684/2016 and its decision of 15 March 2018 in case no. e3K-3-127-403/2018).

58. In a decision of 27 January 2015 in case no. 3K-3-1-219/2015, the Supreme Court held as follows:

"According to the case-law of the Supreme Court, in order to determine whether a given statement is a statement of fact or an opinion, it must be kept in mind that a statement of fact conveys facts and information ... A statement of fact affirms, ascertains, states or presents something as a thing that objectively exists ... [w]hereas an opinion is a person's subjective assessment of facts and information ... The European Court of Human Rights in its practice also distinguishes 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. 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 *Kwiecień v. Poland*, no. 51744/99, § 53, 9 January 2007). Accordingly, a statement of fact is subjected to the criterion of truth, it may be verified with proof and [its existence may be] objectively established. An opinion must have a sufficient factual basis, but it is subjective and therefore not subjected to the criteria of truth and accuracy, the correctness of an opinion is not susceptible of proof.

... In order to distinguish between a statement of fact and an opinion, [the court's assessment] cannot be limited to a literal examination of separate phrases, therefore, the mere fact that some impugned phrases contain more statements than considerations does not lead to a conclusion that they constitute statements of fact and not opinions. In such cases it is essential to assess the context of the article in question, the phrasing used by the author, and whether the statements are to be understood as presenting undisputed facts or as a personal assessment of certain factual circumstances. A distinction between statements of fact and opinions is a question of fact which is

to be determined on the basis of the entirety of the evidence in the case ... When determining the nature of a given statement it is essential to have regard to the entire context in which it has been presented [and] the way in which it is formulated, which may indicate whether the author is seeking to provide information about facts by stating or affirming something, or whether he or she is presenting his or her own subjective assessment or understanding of the information. Opinions and statements of fact can be distinguished by determining whether the sentences are presented as affirmations or as suggestions, hesitations, doubts, questions, or in any other form.

...

When distinguishing a statement of fact from an opinion it is also important to consider the understanding of an average recipient of information, that is to say whether the statement in question may have led an average reader or listener to understand that it contained undisputed facts about a person which may be verified and proved, or that it presented the author's opinion about certain facts relating to that person ...

In the case-law of the Supreme Court it has been emphasised that an opinion must be expressed in good faith and in an ethical manner, without intentionally concealing or distorting facts and information; well-founded and objective criticism is protected if it is expressed in an appropriate way – without insulting the person, without seeking to denigrate or humiliate him or her, but with a positive aim – to highlight the shortcomings of the person or his or her activities and to seek to eliminate them. Subjective speculations are considered to denigrate the person's honour and dignity (to be insulting) when they are made in bad faith, without any objective factual basis, and presuppose negative social attitudes towards that person ... An opinion which is unethical, dishonest, not based on any arguments or facts, or which conceals certain facts, may be found to denigrate a person's honour and dignity.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

59. The applicant complained that he had been ordered by the courts to retract his opinion, which had violated his right to freedom of expression under Article 10 of the Convention. That provision 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. 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."

A. Admissibility

60. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

61. The applicant submitted that, just like all the other statements he had made in the article, the second sentence of the third statement had been his subjective opinion. However, the domestic courts had erroneously applied the criterion of truth to the sentence in question. He contended that the courts had failed to provide an adequate explanation why the second sentence of the third statement had to be assessed separately from the rest of the article, which had been found to contain two different opinions – his and N.N.'s (see paragraph 27 above). He reiterated the submissions he had made in the domestic proceedings, namely that the three sentences of the third statement had been interrelated and formed a coherent whole, and that the words "In my opinion" had referred to all three of them (see paragraph 34 above). The applicant pointed out that the courts had refused to rely on the linguistic assessments he had submitted in the proceedings (see paragraphs 26, 47 and 48 above).

62. He further submitted that the opinion which he had expressed in that sentence had had a sufficient factual basis. The courts had acknowledged that certain deals and transactions which had been carried out could have led him to believe that some unlawful acts might have been committed (see paragraph 24 above). He also reiterated the arguments he had made in the domestic proceedings regarding the information which had been available to him at the time when he had made the impugned statements (see paragraph 36 above).

63. Lastly, the applicant submitted that, as established by the domestic courts, N.N. was a public figure and the relationship between him and the applicant was hostile (see paragraphs 22, 23 and 47 above). In addition, the impugned statements had concerned an issue which was important to society. However, the domestic courts had decided to protect N.N.'s reputation over the applicant's right to freedom of expression.

(b) The Government

64. The Government acknowledged that the court decisions and the obligation imposed on the applicant to retract part of his statements had amounted to "interference" with his right to freedom of expression guaranteed under Article 10 of the Convention. However, they submitted that that interference had been prescribed by law, namely, Article 2.24 of the Civil Code (see paragraph 54 above), and that it had pursued the legitimate aim of protecting the reputation or the rights of others.

65. The Government further contended that the interference had been necessary in a democratic society and that the domestic courts had provided relevant and sufficient reasons to justify it. They had examined the case in line with the principles established in the Court's case-law and carried out a balancing exercise between two competing rights – the right to freedom of expression and the right to the protection of one's reputation – in the light of all the circumstances of the case, including the content of the impugned statements and the context in which they had been made.

66. The Government referred to the case-law of the domestic courts regarding the distinction between statements of fact and value judgments (see paragraph 58 above). With regard to the

second sentence of the third statement, which had been found to constitute a statement of fact, the Government pointed out that the courts had taken into account its wording ("It is obvious"), the way in which it had been formulated – that is to say, as an assertion which could be verified – and the fact that, at the time when the applicant had made that statement, his allegations against N.N. had already been dismissed by two prosecutors (see paragraphs 6 and 8 above).

67. The Government further contended that the applicant, as a public figure (see paragraph 22 above), had to be more careful about the statements he made in public and about his choice of words. They argued that, similar to journalists, influential businessmen resolving their conflicts in public were also under an obligation to act in good faith and to provide accurate and reliable information.

68. Lastly, the Government emphasised the minor severity of the penalty imposed on the applicant – he had only been ordered to retract the offending statement but not to pay any damages to N.N., nor had he been held criminally liable for defamation. Accordingly, the interference with his right to freedom of expression could not be considered disproportionate.

2. *The Court's assessment*

(a) Existence of an interference, its legal basis and the aim pursued

69. There was no dispute between the parties that the order for the applicant to retract part of the statements he had made in the interview constituted an interference with his right to freedom of expression. The Court has no reason to doubt that that interference had a legal basis, namely, Article 2.24 of the Civil Code (see paragraph 54 above) and that it sought the legitimate aim of the protection of the reputation or rights of others. Accordingly, the issue which the Court must assess in the present case is whether that interference was necessary in a democratic society.

(b) Necessity of the interference in a democratic society

(i) Relevant general principles

70. The general principles concerning the necessity of an interference with freedom of expression, reiterated many times by the Court since its judgment in *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), were summarised in, among many other authorities, *Morice v. France* ([GC], no. 29369/10, § 124, ECHR 2015, and the cases cited therein).

71. In particular, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest. A degree of hostility and the potential seriousness of certain remarks do not obviate the right to a high level of protection, given the existence of a matter of public interest (ibid., § 125, and the cases cited therein).

72. Moreover, when examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012, and the cases cited therein). The general principles applicable

to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 of the Convention have been summarised in, among many other authorities, *Perinçek v. Switzerland* ([GC], no. 27510/08, § 198, ECHR 2015 (extracts), and the cases cited therein).

73. The Court has identified, in so far as relevant for the present case, the following criteria in the context of balancing competing rights: the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, the method of obtaining the information and its veracity, and the severity of the sanction imposed (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 93, ECHR 2015 (extracts), and the cases cited therein).

74. The Court further reiterates that a distinction needs to be drawn between statements of fact and value judgments. The existence of facts can be demonstrated, whereas 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 of the Convention. 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, and the cases cited therein).

75. Lastly, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts. It has, however, held that such elements exist in cases where the decisions of the domestic authorities were not based on "an acceptable assessment of the relevant facts" (see *Mesić v. Croatia*, no. 19362/18, § 81, 5 May 2022, and the cases cited therein).

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

76. At the outset, the Court considers it necessary to clarify the margin of appreciation accorded to the State in the present case. It observes that the subject of the article of 2 January 2017 was the conflict between the founders and shareholders of Vilniaus Prekyba, which was one of the largest retail companies in the Baltic region (see paragraph 14 above). The article, including the statements made by the applicant, discussed his allegations that N.N., who was a major shareholder of that company and one of the richest persons in Lithuania, might have avoided paying large amounts of taxes. The Court is satisfied that questions of taxation, including allegations of large-scale tax evasion, concern a matter of public interest – particularly so in the present case, in view of the economic importance of the activities of the companies and individuals discussed in the article (see, *mutatis mutandis*, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 171-72, 27 June 2017, regarding matters of taxation, and *Petro Carbo Chem S.E. v. Romania*,

no. 21768/12, §§ 41-44, 30 June 2020, regarding questions related to the management of large companies).

77. The Court takes note of the Government's observation that the applicant and N.N. were resolving their conflicts in public (see paragraph 67 above), which may be seen as implying that the applicant's statements were motivated by reasons other than his wish to inform the public. Be that as it may, the Court considers that that does not, in and of itself, negate the general importance of the issues addressed in the applicant's statements and their contribution to a debate of public interest. Accordingly, those statements attracted a high level of protection under the Convention and the authorities' margin of appreciation was therefore narrow (see the relevant general principles in paragraph 71 above).

78. The Court further notes that it was recognised by the domestic courts that the case concerned two conflicting rights – on the one hand, the applicant's right to freedom of expression and, on the other hand, N.N.'s right to the protection of his reputation. While they did not explicitly refer to the criteria established in the Court's case-law with regard to the balancing of the competing rights (see paragraph 73 above), it is satisfied that the courts addressed, at least in substance, those criteria which were relevant in the case at hand. In such circumstances, there are no grounds for the Court to perform its own balancing exercise (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 139, ECHR 2015, and the cases cited therein). Instead, the question before it is whether the domestic courts, when finding that part of one of the applicant's statements amounted to a statement of fact and not a value judgment, relied on an acceptable assessment of the relevant facts (see the case-law cited in paragraph 75 above).

(*α*) Whether the statement in question was a statement of fact or a value judgment

79. The Court turns to the decision adopted by the Vilnius District Court, which was eventually upheld by the Vilnius Regional Court. It notes, in particular, that the Vilnius District Court held that any publication or statement had to be assessed in its entirety and that such assessment could not be limited to separate phrases or parts of the publication (see paragraph 21 above) – an approach which is in line with the Court's case-law (see *Standard Verlags GmbH v. Austria*, no. 13071/03, §§ 53-55, 2 November 2006; *Morice*, cited above, § 156; *Egill Einarsson v. Iceland*, no. 24703/15, § 49, 7 November 2017; and *Balaskas v. Greece*, no. 73087/17, § 58, 5 November 2020). Having examined the structure and general tone of the article, the domestic court considered that an average reader ought to be able to understand that it presented two different opinions about the events in question – that of the applicant and that of N.N. – but not facts which were indisputably established (see paragraph 27 above).

80. The courts concluded that the following statements made by the applicant were value judgments which had a sufficient factual basis and which had been expressed in a manner that had not been insulting to N.N. (see paragraphs 29-31 and 48 above):

"... [C]ompanies belonging to [Vilniaus Prekyba] were allegedly used for transferring shareholders' money to [N.N.'s] personal accounts, thereby avoiding the payment of taxes in Lithuania and appropriating other shareholders' funds";

"One of the companies used in such operations was [T.] ... through which, after complicated deals, more than twenty million euros of shareholders' funds were allegedly laundered and at least three million euros in taxes hidden from the Lithuanian [State's] budget";

"In my opinion, the main goal was to appropriate the profit of [the company] without paying taxes in Lithuania".

81. Neither the applicant nor the Government disputed the domestic courts' findings regarding the general tone of the article or the statements quoted in the preceding paragraph. The Court does not see any reason to do so either.

82. By contrast, the courts considered that the second sentence of the third statement ("It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage") had to be assessed separately from the other sentences and characterised as a statement of fact (see paragraphs 32 and 49 above).

83. The part of the article in which that statement was made read as follows (see paragraph 14 above):

"When asked what may have been the goal of such a scheme, who had sustained damage and whether the law-enforcement authorities had been contacted, [the applicant] explained:

'In my opinion, the main goal was to appropriate the profit of [the company] without paying taxes in Lithuania. It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage. We addressed the company, spoke about it in shareholders' meetings, and subsequently addressed the prosecutor's office.'"

84. The Court observes that the applicant's statement, which consisted of three sentences, was given in response to the three questions posed by the journalist. The domestic courts considered that each of the three questions and answers had to be assessed independently (see paragraphs 32 and 49 above). The Court is of the view that, since the article as a whole was found to present two different opinions and not established facts (see paragraph 79 above), it was incumbent on the domestic courts to provide a convincing explanation for singling out one particular sentence and treating it differently from the rest of the article. However, it is unable to find that the reasoning of the domestic courts in this respect was adequate. Moreover, the applicant raised that argument in his appeal to the Vilnius Regional Court and made detailed submissions regarding the links between those three sentences (see paragraph 34 above), but the appellate court did not address those submissions in any way.

85. The Court further observes that the domestic courts' conclusion that the second sentence of the third statement was a statement of fact and not a value judgment was based essentially on the use of the words "It is obvious" in that sentence (see paragraphs 32 and 49 above). It acknowledges that, when read on its own and understood in its literal sense, such phrasing would give a strong indication of the impugned statement amounting to a statement of fact. However, the Court reiterates the importance of reading each statement in context (see *Morice*, cited above, § 156), which has been recognised in the case-law of the Lithuanian Supreme Court as well (see paragraph 58 above). It considers that the phrase "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage" presented the alleged damage in an abstract and exaggerated manner and that it was sufficiently clear from the other statements made by the applicant that the question of whether any damage had been sustained was still to be decided by the relevant authorities (see also the reasoning of the Vilnius Regional Court, in a decision which was quashed by the Supreme Court on purely procedural grounds, in paragraphs 42 and 45 above). Accordingly, the Court considers that, in this case, the use of the word "obvious", when

read together with the applicant's other statements and the article as a whole, was not sufficient to demonstrate that the sentence in question amounted to a statement of fact.

86. Lastly, the Court cannot fail to notice a certain contradiction in the reasoning of the domestic courts: they accepted that the applicant's allegations that N.N. might have concluded unlawful deals and avoided paying taxes were value judgments which fell within the limits of acceptable criticism of a public figure, but came to the opposite conclusion with regard to the sentence which concerned the potential consequences – damage to the State and the shareholders – of those same alleged actions.

87. In the light of the foregoing, the Court concludes that the domestic courts' finding that the second sentence of the third statement made by the applicant amounted to a statement of fact was not based on an acceptable assessment of the relevant facts and that that sentence has to be characterised as a value judgment.

(β) Whether the statement in question had a sufficient factual basis

88. The Court emphasises that the issue before it is not whether any of the individuals or companies mentioned in the article or in the applicant's statements committed any unlawful acts – it is not its role to rule on such matters. What must be assessed is whether the statement "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage", which the Court has found to amount to a value judgment, had a sufficient factual basis (see the relevant general principles in paragraph 74 above).

89. The domestic courts which decided on N.N.'s claim against the applicant also stated that, in those proceedings, they were not assessing the lawfulness of N.N.'s actions. Having examined the available documents, they considered that the applicant could have had a sufficient factual basis to form an opinion that the shareholders of company T. might have sustained losses because of N.N.'s actions, or that N.N. might have carried out certain actions which could have caused damage to the State (see paragraphs 24 and 48 above).

90. The Court takes note of the fact that, as acknowledged by the domestic courts, at the time when the applicant made the impugned statements, his allegations had already been dismissed by two prosecutors (see paragraph 25 above), although those decisions were not yet final. That being so, it reiterates in this context that the degree of precision for establishing the well-foundedness of a criminal charge can hardly be compared to that which ought to be observed when expressing someone's opinion on a matter of public concern (see *Brosa v. Germany*, no. 5709/09, § 48, 17 April 2014, and the cases cited therein). Accordingly, the Court has no reason to disagree with the conclusion of the domestic courts, made on the basis of relevant documents, that the applicant had a sufficient factual basis to allege that N.N. might have carried out certain actions which could have caused damage to the State. Although the domestic courts found that factual basis to be sufficient only in respect of the first two statements and the first sentence of the third statement, the Court considers that the factual basis which was sufficient for the applicant to form an opinion that certain unlawful acts might have been committed must also be considered sufficient to support the view that those unlawful acts might have caused damage (see also the Court's findings in paragraph 86 above, and, for a similar approach, *Lombardo and Others v. Malta*, no. 7333/06, § 59, 24 April 2007).

(γ) Whether the applicant overstepped the limits of acceptable criticism

91. Lastly, the Court turns to the argument made by the Government that the applicant had to be more careful about his choice of words, in view of the fact that he was a public figure and an influential businessman (see paragraph 67 above). It has previously held that the safeguard afforded by Article 10 of the Convention to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism, and the same principle must apply to others who engage in public debate (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 90, ECHR 2005-II, and the cases cited therein).

92. The Court has no reason to doubt that the applicant was a public figure on account of his economic activities relating to Vilniaus Prekyba (see paragraphs 4 and 22 above, and, *mutatis mutandis*, *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, § 36, 14 December 2006), and that as a result, his words might influence public opinion to a greater degree than those of a purely private person unknown to the general public. At the same time, it must be emphasised that the applicant's influence over public opinion cannot be compared to, for example, that of a high-ranking State official (see *Mesić*, cited above, § 109).

93. In any event, the Court is unable to find that the sentence "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage" amounted to a gratuitous personal attack on N.N. (see, *mutatis mutandis*, *Gorelishvili v. Georgia*, no. 12979/04, § 40, 5 June 2007), and the domestic courts did not reach such a conclusion either (see paragraphs 32 and 49 above). It also takes note of the fact that, as noted by the courts, N.N. failed to demonstrate any actual consequences sustained because of the applicant's statements (see paragraph 28 above). In such circumstances, the Court has no grounds to find that, by making the impugned statement, the applicant overstepped the limits of acceptable criticism of a public figure.

(δ) Conclusion

94. In the light of the foregoing, the Court concludes that the domestic courts' finding that the second sentence of the third statement made by the applicant was a statement of fact and that it did not have a sufficient factual basis was not based on an acceptable assessment of the relevant facts. Consequently, the order for the applicant to retract that statement cannot be considered necessary in a democratic society.

95. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He submitted that the court decisions in question had harmed his reputation and caused him great distress.

98. The Government submitted that the amount claimed by the applicant was excessive and that the finding of a violation would constitute in itself sufficient just satisfaction.

99. The Court, relying on its relevant case-law, considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary

damage sustained by the applicant (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 295, ECHR 2015 (extracts); *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 88, 17 January 2017; and *Ottan v. France*, no. 41841/12, § 79, 19 April 2018).

B. Costs and expenses

1. *The parties' submissions*

100. The applicant claimed EUR 58,637 in respect of the costs and expenses incurred in the domestic proceedings. He submitted that that amount corresponded to the legal expenses and court fees which had not been reimbursed to him in the domestic proceedings. He also claimed EUR 19,648 for the legal expenses incurred in the proceedings before the Court. The applicant submitted to the Court a list of legal services which had been provided to him and copies of relevant invoices indicating that he had paid the above amounts.

101. The Government submitted that the amount the applicant had claimed in respect of the costs and expenses incurred in the domestic proceedings was excessive. The case was not particularly complex and throughout the domestic proceedings he had been represented by the same lawyer who had presented essentially the same arguments before each level of jurisdiction. Thus, the high cost of the legal services was not justified in the circumstances. They further submitted that the applicant's claim in respect of the costs and expenses incurred in the proceedings before the Court was excessive as well, since the applicant had been represented by the same lawyer who had represented him in the domestic proceedings and who was therefore familiar with the case.

2. *The Court's assessment*

102. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

103. The Court considers that the present case cannot be characterised as raising particularly complex issues of fact or law. It concerned the characterisation of one statement made by the applicant, which had been assessed in one set of domestic proceedings, and the applicant presented essentially the same arguments before all the levels of jurisdiction in the domestic proceedings and before this Court. In such circumstances, the Court considers that the amounts claimed by the applicant in respect of the costs and expenses are excessive (compare and contrast *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, §§ 62-63, 12 December 2017, and *Rinau v. Lithuania*, no. 10926/09, § 234, 14 January 2020).

104. Regard being had to the documents in its possession and the criteria established in its case-law, the Court considers it reasonable to award the sum of EUR 15,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

   Done in English, and notified in writing on 15 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

   Dorothee von Arnim Deputy Section Registrar
   Jon Fridrik Kjølbro President