



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

SECOND SECTION

CASE OF STARKEVIČ v. LITHUANIA

(Application no. 7512/18)

JUDGMENT

Art 6 § 1 (civil) • Art 8 • Fair hearing • Private life • Interception of electronic communications and use of criminal conduct simulation model during criminal investigation against police officer and use of obtained information in disciplinary proceedings leading to his dismissal • Right to fair hearing not impaired • Relevant domestic law accessible and foreseeable • Persons carrying out a professional activity to proceed with a high degree of caution when pursuing their occupation and with special care in assessing risks entailed • Constitutional duty to properly investigate possible official misconduct and find liability where grounds exist to ensure accountability • Applicant afforded all procedural safeguards • Interference proportionate and necessary in a democratic society

STRASBOURG

29 March 2022

FINAL

29/06/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Starkevič v. Lithuania,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Branko Lubarda,

Jovan Ilievski,

Saadet Yüksel,

Diana Sârcu, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 7512/18) 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 Edvin Starkevič (“the applicant”), on 5 February 2018;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning the right to a fair hearing, right to the presumption of innocence and right to respect for private life, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 8 March 2022,

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

INTRODUCTION

1. The case mainly concerns the applicant’s complaints about the right to a fair hearing and right to respect for his private life on account of the use of information obtained during a criminal investigation in subsequent disciplinary proceedings wherein the decision to dismiss him from the police was upheld.

THE FACTS

2. The applicant was born in 1986 and lives in Vilnius. He was represented by Mr G. Danėlius, a lawyer practising in Vilnius.

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

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

I. CRIMINAL INVESTIGATION AND THE APPLICANT'S DISMISSAL FROM THE POLICE

5. The applicant was a police officer.

6. In October 2015 the police arrested a certain V.M. on suspicion of burglary. He was held at the police detention facility in Vilnius and released several days later on condition that he periodically report to the police station. On 12 November 2015 V.M. informed the internal affairs division of the Vilnius county police headquarters (*Vilniaus apskrities vyriausiojo policijos komisariato imuniteto skyrius* – hereinafter “the internal affairs division”) that during his detention he had been approached by the applicant with a request to steal certain goods. Afterwards, on 25 October and 11 November 2015, V.M. had met the applicant, and other persons linked to the applicant, in public places – near a bus station and near a shop (see also paragraph 8 below).

7. On 12 November 2015 the internal affairs division opened a pre-trial investigation into suspected abuse of office (Article 228 § 2 of the Criminal Code, see paragraph 43 below).

8. Acting on the basis of V.M.'s statements, the police obtained records from a security camera near the shop, which confirmed V.M.'s meeting with the applicant and thus corroborated V.M.'s testimony. On the basis of a request by the internal affairs division of 13 November 2015, on 16 November 2015 a prosecutor asked the court's permission to intercept the applicant's electronic communications and conduct secret surveillance of him. The prosecutor reasoned that because of his job, the applicant was aware of criminal intelligence methods and tactics; he avoided detection of his criminal acts by only communicating with V.M. in person and choosing where and when they would meet, thus fully controlling the situation and events. The prosecutor also asked the court to authorise a criminal conduct simulation model and permit V.M., no more than twice, between 16 November 2015 and 13 January 2016, to agree to the applicant's demands – for goods to be stolen and given to him in exchange for payment. Any such actions would be recorded.

9. On 16 November 2015 the Vilnius City District Court authorised the applicant's secret surveillance, the interception of the applicant's electronic communications and use of the criminal conduct simulation model, pointing out that he was a police officer and that an investigation of potential criminal acts under Article 228 § 2 of the Criminal Code would otherwise be particularly difficult. The authorisation was issued on the basis of Article 159 of the Code of Criminal Procedure (see paragraph 44 below).

10. The applicant met V.M. on 7 January 2016 at the police station when the latter went to present himself. As noted by the police, the applicant had not been assigned a task to meet V.M. or to perform with him any procedural actions.

The second meeting took place on 8 January 2016 in a public place, when V.M. also met the applicant's wife, I.S. V.M. delivered some of the goods – a bottle of whiskey – earlier requested by the applicant.

The applicant was caught *in flagrante delicto* and arrested.

11. On 8 January 2016 the applicant was given a notice of suspicion (*pranešimas apie įtarimą*) indicating that he was suspected of abuse of office (under Article 228 § 2 of the Criminal Code): between 25 October 2015 and 8 January 2016 he, a police officer, acting in complicity with two other individuals, his spouse I.S. and a certain J.R., was believed to have asked a suspect in another criminal case, V.M., to illegally obtain certain goods – two handbags, two pairs of sports shoes and seven bottles of whiskey.

12. The same day the applicant wrote that “the essence of the notice of suspicion, which was given to me, is clear”, yet he denied the accusations. He also wrote that, as he was a suspect, he would refuse to testify. The notice indicated that the applicant had read it and that it had been “drafted correctly”.

13. On 11 January 2016 the prosecutor asked the Vilnius region police authority to temporarily remove the applicant from his duties.

14. On 21 January 2016 the prosecutor ordered the internal affairs division to have the applicant's telephone records of 16 November 2015 to 13 January 2016 destroyed on the grounds that they did not contain any information pertinent to the pre-trial investigation.

15. On 24 January 2016 the police drew up a report stating that the mobile telephone numbers used by J.R. on 25 October 2015 and I.S. on 25 October and 11 November 2015 appeared to have also been used in certain locations at the times V.M. stated having met them and the applicant.

16. On 29 January 2016 the internal affairs division informed the applicant that a disciplinary investigation was being conducted on the basis of information that “he had possibly committed a crime under Article 228 § 2 of the Criminal Code”: from 25 October 2015 to 8 January 2016 he had demanded that a suspect, V.M., unlawfully acquire goods for him. It was noted in that misconduct notice (*pranešimas dėl tarnybinio nusižengimo*) that by such actions the applicant had damaged the prestige of the police as an institution and possibly discredited an officer's name. He was asked to provide, by 5 February 2016, an explanation regarding the alleged disciplinary offence. It was also noted that he could submit evidence, explanations or lodge requests. The applicant signed the notice.

17. In connection with the disciplinary investigation, and following a request by the police's representative by email on 1 February 2016, the same day the applicant wrote that, as regards his actions being assessed within the disciplinary proceedings, the police should rely on his testimony given within the pre-trial investigation.

On 11 February 2016 the disciplinary proceedings were suspended pending the outcome of the criminal investigation.

18. On 14 July 2016 the applicant's lawyer in the criminal proceedings received the pre-trial investigation file; he signed to confirm that he had received copies of the documents he wished to have.

19. On 27 July 2016 the internal affairs division received official information from colleagues that in his reports the applicant had never mentioned having communicated with V.M.

20. On 9 September 2016 the prosecutor discontinued the pre-trial investigation under Article 228 § 2 of the Criminal Code and held that there was no *corpus delicti* in the applicant's actions: no serious pecuniary or non-pecuniary damage had been caused to the State or the police as an institution. His actions had not caused much public reaction, they had not disrupted the police's work, and no individuals had been granted victim status in the criminal proceedings. It followed that his actions had not resulted in any significant damage to the State within the meaning of criminal law.

21. That being so, the applicant's actions had contained elements of a disciplinary violation: they had not complied with the principles of good morals and raised the question of "whether such a person could continue to properly exercise police officer's duties" (*ar toks asmuo tinkamas eiti policijos pareigūno pareigas*). This remained to be ascertained within the disciplinary proceedings, for criminal liability was *ultima ratio* means when it concerned breaches of public service-related legal acts. The prosecutor thus forwarded his decision to the police so that they could examine the matter of the applicant's alleged disciplinary violation. As the basis for that decision, the prosecutor referred, among other things, to Article 214 of the Code of Criminal Procedure (see paragraph 44 below).

22. Regarding the evidence against the applicant, the prosecutor noted his refusal to testify during the pre-trial investigation. The prosecutor's decision was therefore based on information obtained through the criminal conduct simulation model, the testimony of V.M. and other witnesses, including four police officers, CCTV recordings from security cameras located at the public places where V.M. and the applicant had met, the applicant's and V.M.'s telephone conversations confirming that they had been in certain locations where they had met, and V.M. having recognised the applicant and I.S. from photographs. The prosecutor also referred to material evidence – the bottle of whiskey recovered on 8 January 2016.

23. The prosecutor's decision indicated that it could be appealed against to a higher prosecutor within twenty days. The applicant lodged no such appeal.

24. On 26 October 2016 the internal affairs division asked the prosecutor, for the purposes of the ongoing disciplinary investigation, to permit access to the file of the discontinued pre-trial investigation. The prosecutor agreed to that request.

25. On 26 October 2016 the internal affairs division adopted a disciplinary investigation report (*tarnybinio patikrinimo išvada*) indicating that the

applicant had been given a misconduct notice (see paragraph 16 above) under signature yet had failed to provide an explanation, instead asking the police to rely on his testimony given in the pre-trial investigation proceedings, in which he had in fact availed himself of his right not to testify. Accordingly, the report referred to the information in the pre-trial investigation file. The report held that the applicant's actions, as described in the prosecutor's decision, had been "contrary to the law" (*priešingi teisei veiksmi*) and had "had features of a crime" (*turintys nusikalstamos veiklos požymių*): the applicant, an officer whose duty it was to detect and prevent crime, had instead used his position for personal gain and encouraged another individual to break the law, even though before starting to serve in the police he had sworn an oath to respect and abide by the law, perform his duties honestly and defend the good name of an officer of the internal affairs system. The applicant had thus acted in breach of Article 25 § 1 (2) of the Law on the Police (see paragraph 47 below), points 4.6, 4.14 and 14.1 of the Lithuanian Police Officers' Code of Ethics (see paragraph 48 below), as well as the fundamental principles of professional ethics, such as the absence of selfish motives, decency and exemplarity (*nesavanaudiškumas, padorumas ir pavyzdingumas*). Furthermore, such actions were classified as abuse of office under Article 2 § 13 of the Law on the Civil Service (see paragraph 49 below); they contradicted the interests of the police and their core values; they were also incompatible with the tasks and role of the police, as well as with a police officer's status. The actions had been committed with "direct intent" (*tiesiogine tyčia*) and had not been haphazard. It also had to be borne in mind that the applicant's wife, J.R. and V.M. had represented society, and the applicant's actions had formed their impression of the police. Such actions by the police, when witnessed by civilians, or when they became known otherwise, formed a negative societal view of the police, as State officials, and tarnished the police's prestige, destroying and compromising trust in them.

26. The report also referred to Article 2 § 5 of the Statute of Internal Service (see paragraph 46 below) to the effect that actions committed by an officer clearly undermining the police's authority and compromising or destroying trust in the police amounted to discrediting an officer's name. In the applicant's case, the fact that his actions had been known only to certain individuals and had not been made public was not a basis to hold that he had not discredited an officer's name, for making a violation public was not a precondition for such a finding (on this issue, the report referred to the Supreme Administrative Court's ruling no. A13-465/2013, of 28 March 2013).

27. Lastly, under Article 62 § 1 (7) of the Statute of Internal Service, discrediting an officer's name was an independent and separate basis for dismissal from service and was also in itself sufficient grounds for dismissal (see paragraph 46 below). Once it had been established that an officer's name

had been discredited, the Statute did not provide for any alternative solutions. Dismissal from service was a mandatory legal consequence and the officer's previous work performance, behaviour or other circumstances were irrelevant.

28. On the basis of the disciplinary investigation report's findings (see paragraphs 25-27 above), on 27 October 2016 the police dismissed the applicant from the police for discrediting an officer's name, under Article 62 § 1 (7) of the Statute of Internal Service.

II. PROCEEDINGS FOR REINSTATEMENT AND UNPAID SALARY

29. The applicant brought administrative proceedings seeking reinstatement and unpaid salary. His appeal was drafted by a lawyer.

He asserted that the grounds for pre-trial and disciplinary investigations differed and that therefore he should have been provided with an opportunity to give an explanation and submit evidence, defend his name in disciplinary proceedings and prove the absence of guilt. He also asserted that the circumstances referred to in the disciplinary investigation report lacked concrete evidence as a basis. Lastly, the disciplinary violation should not have been based on evidence obtained *via* the criminal conduct simulation model, for those acts presented a different danger and also because restrictions on a person's rights, such as the interception of communications, were disproportionate to the danger presented by a disciplinary violation.

The applicant's claim made no mention of a possible breach of the principle of the presumption of innocence.

30. The police authority – the defendant in the proceedings – responded that the disciplinary investigation report referred to the period during which the violations (*pažeidimai*) had been committed, the allegedly unlawful (*neteisėti*) actions of the applicant, the person linked to those actions (V.M.), and also indicated that the applicant had discredited an officer's name. The applicant had thus “known perfectly well” the actions in connection with which the disciplinary investigation had been conducted. His defence rights had not been breached or made difficult to exercise, and he had chosen not to provide explanations, instead asking for his testimony given in the pre-trial investigation to be used (see paragraph 17 above). Furthermore, at the request of the applicant's lawyer, the report had been given to him twice, and he had been twice requested to provide an explanation by 14 October 2016, yet he had still not provided one. Such tactics, aimed at avoiding disciplinary liability, could not be seen as a restriction of his defence rights.

A. The Vilnius Regional Administrative Court

31. On 10 May 2017 the Vilnius Regional Administrative Court dismissed the applicant's claim as unfounded. A hearing was held, and the applicant was represented by a lawyer.

32. Although the applicant contested V.M.'s in-court testimony alleging that the applicant had asked him to steal goods and sell them to him for less than the retail price, the court noted that the decision to dismiss the applicant from the police had been taken not just on the basis of that testimony, but also on the testimony of other people, which had been described in the prosecutor's decision to discontinue the criminal proceedings. V.M.'s testimony had been considered against all the evidence gathered. The applicant's inappropriate behaviour as an officer had been proven by evidence gathered during the disciplinary investigation and set out in the disciplinary investigation report. Besides, the applicant had not appealed against the prosecutor's decision to discontinue the criminal proceedings, which meant that the applicant agreed with the circumstances described therein.

33. The court rejected the applicant's suggestion that evidence gathered when using the criminal conduct simulation model within the criminal proceedings should not have been used during the disciplinary proceedings. In reaching that conclusion, the court referred to the Supreme Administrative Court's practice on that matter (ruling no. A-4353-438/2016 of 15 September 2016).

34. The fact that the applicant had not been brought to justice under Article 228 § 2 of the Criminal Code did not negate his unlawful actions, which amounted to discrediting an officer's name. The same actions, even if they did not contain all the constituent elements of a crime, could discredit an officer's name, as had been the case. The consequences of the violations committed were obvious; they did not meet the existing moral norms and expectations which society had towards officers. The applicant's actions had clearly undermined the authority of the internal service system and destroyed society's trust in the police. They had sought to achieve aims opposite to those which society would expect of the police, such as the prevention of crime and prevention of violations of the law. Once it was established that a police officer's name had been discredited, dismissal from the police force was the only sanction provided for in Article 62 § 1 (7) of the Statute of Internal Service (see paragraph 46 below). Besides, the applicant had not submitted any arguments to challenge the legal classification of his disciplinary violation.

35. As to defence rights, the misconduct notice of 29 January 2016 (see paragraph 16 above) had described the violation of which the applicant had been suspected. That information had clearly been sufficient for him to comprehend the violation of the law in question. Accordingly, he had been

notified properly. Furthermore, as could be seen from the applicant's emails of 1 February and 13 October 2016, he had refused to provide an explanation regarding the alleged disciplinary violation, instead asking for his testimony within the criminal proceedings to be used. This also demonstrated that the applicant had understood the essence of the violation in question. Lastly, the applicant had had a lawyer and the opportunity to provide explanations during the disciplinary proceedings but had not availed himself of that right or had any objective obstacles preventing him from contacting a lawyer to defend his rights.

B. The Supreme Administrative Court

1. The applicant's and the police authority's arguments

36. The applicant lodged an appeal on points of law, arguing, among other things, that V.M. had acted under the control of law enforcement officers, and that he had been provoked into committing a crime. Furthermore, the material obtained during the criminal conduct simulation model, authorised under Article 159 of the Criminal Procedure, should not have been used as a basis for his dismissal from service in the disciplinary proceedings. He had not challenged the lawfulness of the criminal conduct simulation model, for the only decision adopted in the criminal case had been the prosecutor's decision to discontinue the criminal proceedings, which had been in his favour since it had been concluded that no crime had been committed. The applicant acknowledged having understood that the suspicions of having committed a disciplinary offence, the ongoing pre-trial investigation and disciplinary investigation had been "intrinsically linked" and based on the circumstances examined during that pre-trial investigation, and that "therefore, he had decided not to provide repeated statements and explanations" during the disciplinary proceedings.

Lastly, the applicant pleaded that the prosecutor's words regarding his ability to "continue to properly exercise police officer's duties" (see paragraph 21 above) had been nothing but a subjective assessment (*subjektyvus prokuroro vertinimas*), which did not oblige the authorities to adopt a certain decision in disciplinary proceedings.

The matter of the presumption of innocence was not mentioned in the applicant's appeal.

37. In reply, the police authority pointed out that it had received the prosecutor's permission to use the material from the pre-trial investigation within the disciplinary proceedings. It also referred to the Supreme Administrative Court's case-law (ruling no. A-4353-438/2016 of 15 September 2016, and ruling no. A-1043-575/2017 of 3 January 2017) to the effect that information obtained *via* criminal intelligence measures, as reflected in pre-trial investigation decisions, was admissible evidence and could be lawfully used in disciplinary proceedings. Similarly, material

gathered during the pre-trial investigation was admissible evidence when examining a disciplinary violation (the Supreme Administrative Court's ruling no. A662-1444/2013 of 25 July 2013). In the case at hand, even if the information obtained *via* the criminal conduct simulation model had been removed from the disciplinary investigation material, the remaining facts, referred to in the prosecutor's decision to discontinue the pre-trial investigation, would have been sufficient to hold that the applicant had discredited an officer's name.

2. *The Supreme Administrative Court's verdict*

38. By a final ruling of 1 September 2017, the Supreme Administrative Court dismissed the applicant's appeal.

The court referred to an earlier ruling, given by an enlarged chamber, namely that of 9 June 2015 (case no. A-1554-662/2015), where it had held that an officer should be properly informed of suspicions linked to the possible discrediting of an officer's name, so that defence rights were guaranteed. In the case at hand, the misconduct notice contained information about the duration of the violation, the applicant's allegedly unlawful actions and the person linked to those actions. The notice also referred to the undermining of the prestige of the institution and the possible discrediting of an officer's name. A notice with such content was sufficiently informative, complying with internal investigation procedures and the applicant's rights. The applicant's choice not to provide explanations had been his own method of defence and could not be seen as improper action on the part of the police during the internal investigation.

39. As to the legal meaning (*teisinė reikšmė*) of the prosecutor's decision to discontinue the pre-trial investigation, that decision had been an official document, adopted in compliance with the rules of the Code of Criminal Procedure. The facts and assessment of the law, as stated in that document, could be contested only within criminal proceedings, under the rules of the Code of Criminal Procedure. The valid prosecutor's decision had constituted proof in the administrative case and had to be assessed under the general rules of evidence, as set out in Article 56 §§ 1, 2 and 6 of the Law on Administrative Proceedings (see paragraph 51 below).

40. In the light of the foregoing, the first-instance court had not breached the rules for the assessment of evidence when holding that the applicant had been lawfully dismissed from the police. After all, there had been sufficient evidence against him without it being necessary to rely on that obtained *via* the criminal conduct simulation model. Specifically, V.M.'s testimony had been consistent, the circumstances referred to had entirely corresponded to other evidence referred to in the decision to discontinue the pre-trial investigation, namely the video recordings from a private security company and data from a mobile telephone operator; thus there was no legal basis to refute the objectivity of V.M.'s testimony.

III. PROCEEDINGS FOR DAMAGE DUE TO SUSPENSION

41. On 4 July 2017 the applicant lodged a civil claim for unpaid salary for the period 11 January to 29 September 2016 following his temporary removal from office.

42. By a decision of 3 November 2017 the Vilnius City District Court dismissed that claim as unfounded. The applicant's removal from office had been the consequence of his own actions, which had led not only to his removal from office, but also to his dismissal.

It transpires that the applicant did not appeal against the above-mentioned decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

43. The Criminal Code reads:

Article 228. Abuse of office

“1. A civil servant or a person equivalent thereto who abuses his or her official position or exceeds his or her authority, where this results in significant damage to the State ... shall be punished by a fine, arrest or up to five years' imprisonment.

2. A person who commits the act provided for in paragraph 1 of this Article for material or other personal gain, in the absence of characteristics of bribery, shall be punished by a fine or up to seven years' imprisonment ...”

44. The relevant provisions of the Code of Criminal Procedure, at the material time (the version of 16 September 2016), provided:

Article 159. Authorisation to simulate criminal acts

“1. A prosecutor, upon receiving information that a person has been asked to commit or participate in the commission of a crime, may apply to a pre-trial investigation judge requesting permission for that person to simulate criminal acts in order to identify the perpetrators ...

2. To authorise the simulation of criminal acts, the pre-trial investigation judge must adopt an order specifying:

- 1) the person authorised to simulate criminal acts;
- 2) the person with respect to whom such acts are to be performed;
- 3) information concerning the criminal activity of the person with respect to whom such acts are to be performed;
- 4) the specific acts allowed to be performed;
- 5) the desired result;
- 6) the duration of the acts.

3. When simulating criminal acts, provoking a person to commit a crime is prohibited...”

Article 212. Termination of the pre-trial investigation

“1. The pre-trial investigation shall be terminated:

1) where during the pre-trial investigation it becomes evident that the circumstances provided for in Article 3 ... of this Code [that the act, having elements of a crime or criminal offence, has not been committed] exist ...”

Article 214. Procedure for termination of the pre-trial investigation

“1. In the cases provided for in Article 212 §§ 1 and 2 of this Code, the pre-trial investigation shall be terminated by a decision of the prosecutor ...

...

4. The decision referred to in 1 paragraph of this Article may be appealed against by lodging a complaint with the superior prosecutor ... Where the superior prosecutor dismisses the complaint, the decision may be complained against to a pre-trial investigation judge ...

...

6. If pre-trial investigation material contains information concerning an administrative-law offence or any other offence provided for in other legal acts, a prosecutor by the decision to terminate the pre-trial investigation shall transfer that material for further consideration in accordance with the Code of Administrative Offences or other legal acts.”

45. The Law on Criminal Intelligence (*Kriminalinės žvalgybos įstatymas*), at the material time, provided:

Article 19. Using information obtained during criminal intelligence

“3. With the consent of a prosecutor, criminal intelligence information about an act with the characteristics of a corruption-related criminal offence may be declassified by a decision of the head of the principal criminal intelligence institution and used in an investigation into ... official misconduct.”

46. The relevant parts of the Statute of Internal Service (*Vidaus tarnybos statutas*), at the material time, provided:

Article 2. Definitions

“5. Discrediting an officer’s name means acts or omissions of an officer through his or her own fault, whether or not related to the performance of official duties, but which clearly discredit the authority of the internal service system, destroying trust in an institution of internal affairs or compromising it.”

Article 26. Disciplinary sanctions and the imposition thereof

“1. Disciplinary sanctions shall be imposed for official misconduct. A disciplinary sanction shall be imposed taking into account the fault of the official who committed the official misconduct, the causes, circumstances and consequences of the official misconduct, ... and information provided in the cases and in accordance with the procedure laid down in the Law on the Prevention of Corruption and the Law on Criminal Intelligence...”

...

3. A disciplinary sanction – dismissal from internal service may be imposed for:

...

2) a violation of the requirements of the Law on the Coordination of Public and Private Interests in the Civil Service in order to obtain an illegal income or privileges for himself or herself or others;

...

5. Only one disciplinary sanction may be imposed for one instance of misconduct.

...

7. When it becomes evident that official misconduct has elements of a criminal offence or an administrative-law violation, the procedure for imposing a disciplinary sanction shall be suspended and the material of the official investigation shall be referred to the competent authority. When a decision is given not to initiate a pre-trial investigation or judicial proceedings regarding the administrative-law violation or when the person is exempted from criminal or administrative liability and the proceedings are terminated, the procedure for imposing a disciplinary sanction shall be resumed and the sanction shall be imposed within one month if no more than one year has elapsed since the adoption by the competent authority of the decision to carry out a pre-trial investigation or investigate an administrative case. After more than one year has elapsed, the procedure for imposing a disciplinary sanction shall be terminated ...”

Article 62. Grounds for dismissal from internal service

“1. Officer shall be dismissed from internal service:

...

7) if through his or her conduct he or she has discredited the name of an officer;

...”

47. The Law on the Police (*Policijos įstatymas*), at the relevant time, provided:

Article 25. Police officers’ duties

“1. A police officer must:

1) respect and protect human dignity, ensure and safeguard human rights and freedoms;

2) upon receiving a report concerning a criminal act or other violation of the law being committed, or upon witnessing a criminal act or any other violation of the law being committed, take urgent measures to stop the criminal act or other violation of the law being committed, ... identify, apprehend and bring to the police station the person who has committed an act prohibited by law and inform the police ...”

48. The Lithuanian Police Officers’ Code of Ethics (*Lietuvos policijos pareigūnų etikos kodeksas*), at the material time, provided that (i) a police officer had to protect professional honour, his or her good name and behave in a manner that through his or her actions or behaviour would not disgrace a police officer’s name (point 4.6); (ii) avoid conflicts between public and

private interests (point 4.14); and (iii) behave in a publicly acceptable manner and through his or her behaviour, discipline and culture try to set an example for others, and always remember that his or her own behaviour was the basis to decide about the entire police force and its officers.

49. The Law on the Civil Service (*Valstybės tarnybos įstatymas*), at the relevant time, provided:

Article 2. Definitions

“13. “Abuse of office” – an act or omission by a civil servant where the official position is used for purposes other than the interests of the service or in accordance with laws or other legal acts, or for self-interest (misappropriation of property, funds, etc. belonging to another or the unlawful transfer of such property to other persons) ... as well as acts by a civil servant exceeding the authority granted to him or her or wilful acts.”

50. The Law on the Prosecutor’s Office (*Prokuratūros įstatymas*), at the material time, provided:

Article 19. Protection of the public interest

“3. Where there are grounds to believe that the requirements of legal acts have been violated, prosecutors shall, in protection of the public interest, have the authority to:

...

9) adopt a decision requiring an official investigation of the activities of a State official, civil servant or equivalent person and recommend instituting disciplinary or service-related proceedings against that person;

...”

51. The Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*), at the material time, provided:

Article 56. Evidence

“1. Evidence in an administrative case is all factual information deemed admissible by the court hearing the case and based on which the court finds, in accordance with the procedure established by law...

2. The above-mentioned factual information shall be established using the following means: explanations by the parties to the proceedings and their representatives, witness testimony, ... physical evidence, documents and other written, audio and visual evidence.

...

6. No evidence shall have any value set in advance for the court. The court shall assess the evidence according to its inner conviction based on an overall comprehensive and objective review of all the circumstances of the case on the basis of the law as well as the criteria of justice and reasonableness.”

52. In a ruling of 18 April 2019 on compliance of the provisions of the Law on Criminal Intelligence, the Law on the Civil Service and the Statute

of Internal Service with the Constitution, the Constitutional Court held as follows:

“47.4. ... In its ruling of 8 May 2000, the Constitutional Court held that a person who commits criminal acts or those contrary to the law should not and could not expect privacy; the limits of the protection of an individual’s private life cease to exist in cases where, through his or her actions or in a criminal or otherwise unlawful manner, he or she violates the interests protected by law, or causes harm to individuals, society or the State.

...

49.2. ... Under the Constitution, *inter alia*, Article 33 [§ 1] thereof, and under the constitutional concept of the civil service and the constitutional principle of a State under the rule of law, information about persons secretly collected by other authorised public authorities may also be used, in the cases and in accordance with the procedure established by law, for criminal justice or other lawful purposes when seeking to achieve constitutionally important objectives, i.e. ensuring the proper functioning of the civil service, as well as transparency and publicity, preventing, *inter alia*, abuse of authority and corruption in the civil service, detecting criminal and other unlawful acts, *inter alia*, official misconduct, including corruption, that are allegedly being committed or have been committed by a civil servant (official), which are incompatible with the above-mentioned requirements ... for the civil service as a system and for civil servants (officials), and creating the preconditions for the proper application of legal liability to persons who commit violations in the civil service where that liability serves as a public form of control over servants (officials) of a democratic State and of their accountability to society; the use of such information can not only have a certain impact on the conduct of the civil servant (official), but also interfere, *inter alia*, with his or her private life.

...

55. The Constitutional Court, ... in its ruling of 15 March 2017 ... also noted that, if investigations and hearings of criminal cases where persons were suspected and accused of having committed a certain crime did not establish (prove) any characteristics of this crime, but revealed characteristics of other criminal acts or those of other violations of the law, public authorities and officials were not released from the obligation to investigate them and, where there was a basis to do so, find the persons liable.

Thus ... under the Constitution ... if the application by the State of the relevant coercion measures, established by law, to a civil servant (official) or another person, in particular for the investigation of criminal acts, does not reveal the characteristics (in that they have not been proved) of the composition of a crime, but reveals the characteristics of other possible unlawful acts, *inter alia*, official misconduct, including corruption, which are inconsistent with the Constitution for civil servants (officials), ... or identifies civil servants (officials) who have allegedly committed them, public authorities and officials have the duty to properly investigate such violations of the law and, where there is a basis to do so, find those civil servants (officials) liable, *inter alia*, by using, in the cases and in accordance with the procedure established by law, information collected secretly by other authorised public authorities about them, which discloses the aforementioned violations of the law, *inter alia*, official misconduct, allegedly committed by them. Such use of this information for investigating official misconduct is justified by the constitutionally important objectives of protection of the public interest; it aims to protect the interests of the State, of the civil service and all of society, to prevent, *inter alia*, corruption in the civil service, to strengthen the credibility and responsibility of the civil service and every civil servant (official), and to guarantee

that the only persons holding the positions of civil servants (*inter alia*, statutory positions) are those who meet the high requirements established by law, who are loyal to the State of Lithuania and who are of good repute.

...

... [A]t the same time, the civil servant (official) must be afforded effective protection against possible arbitrariness by public authorities and a real opportunity to defend himself or herself regarding the possible violation of his or her rights and freedoms, *inter alia*, his or her right to the inviolability of private life and correspondence, protected in Article 22 of the Constitution, his or her right to enter the civil service on equal terms, which is entrenched in Article 33 [§ 1] thereof, when challenging, *inter alia*, the lawfulness, necessity and proportionality of the use of declassified information as evidence in the investigation into his or her official misconduct, which includes the duty of the court (judge) to assess whether in a particular case the legitimate objectives pursued could be achieved by other less restrictive measures.

...

74.2. ... [I]n cases where criminal intelligence information collected on the basis of the Law on Criminal Intelligence reveals the existence of characteristics of official misconduct or identifies civil servants (officials) who have possibly committed such misconduct, under the Constitution, *inter alia*, Article 33 [§ 1] thereof, as well as the constitutional rule of law, public authorities and officials have the duty to properly investigate such violations of the law and, where there is a basis to do so, to find those civil servants (officials) liable.

Otherwise, not introducing the possibility of imposing official liability on a civil servant (official), *inter alia*, by using information collected about him or her by other authorised public authorities in the cases and in accordance with the procedure established by law, would create an intolerable situation under the Constitution – it would not be ensured that persons who have committed official misconduct would actually be found officially liable, i.e. preconditions would be created for such persons to work in the civil service who do not meet the requirements arising from the Constitution, such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, avoidance of conflicts between public and private interests and non-abuse of office...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. The applicant complained that he had not had a fair hearing in connection with the court proceedings wherein the information collected employing the criminal conduct simulation model had been used to prove that he had committed a disciplinary offence. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. The parties' submissions

(a) The Government

54. The Government argued that the complaint should be dismissed for failure to properly exhaust domestic remedies.

55. Firstly, although the outcome of the pre-trial investigation had been in the applicant's favour, he had been able to effectively complain, under Articles 212 and 214 § 4 of the Code of Criminal Procedure (see paragraph 44 above), about the prosecutor's decision, in order to contest the legitimacy of the secret investigative measures, including the criminal conduct simulation model, and about the referral of the criminal case material for use in the disciplinary investigation. However, no complaint against the prosecutor's decision had been submitted.

56. Secondly, the applicant could have lodged a claim for damages had he considered that damage had been caused to him by the secret investigative measures and the use of information thus obtained in the subsequent disciplinary proceedings.

(b) The applicant

57. The applicant firstly submitted that, as the outcome of a pre-trial investigation – it being discontinued on the grounds that no crime had been committed – was the most advantageous for the suspect, and maximised the suspect's rehabilitation, for him there had been no grounds to challenge the relevant procedural document. Given that the pre-trial investigation had been discontinued on the above-mentioned grounds, and not, for instance, for lack of evidence, the applicant had not considered that the allegations made in the prosecutor's decision would have any negative consequences for him in the future and therefore had not seen any reason to appeal against the decision in question.

58. Secondly, contrary to what had been suggested by the Government, the applicant had lodged a claim for damages with a court of general jurisdiction in civil proceedings, which had nevertheless been dismissed (see paragraphs 41 and 42 above).

2. The Court's assessment

59. The Court is not persuaded by the Government's argument that the applicant could have effectively appealed against the prosecutor's decision to transfer the pre-trial investigation material for use in the disciplinary investigation. It refers to the Lithuanian law provisions obliging prosecutors to transfer such information for further examination (see, *inter alia*, Article 214 § 6 of the Code of Criminal Procedure, and Article 19 § 3 (9) of the Law on the Prosecutor's Office, cited in paragraphs 44 and 50 above).

Besides, the Government themselves argued that such had been the prosecutor's responsibility (see paragraph 84 below).

60. As to the civil claim for damages, such a claim, although lodged by the applicant, only concerned his temporary removal from office, as opposed to his dismissal, the latter having been fully scrutinised in the administrative proceedings, wherein the final verdict has been reached by the Supreme Administrative Court (see paragraphs 38-40 above).

It follows that the Government's objection as to failure to exhaust the domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

62. The applicant firstly argued that he had not been properly informed that he was suspected of having committed a disciplinary offence. For him, the nature and cause of the suspicion had not been pointed out *in concreto*, which had impaired his defence rights and the right to provide explanations. In particular, the elements of *corpus delicti* in criminal offences and disciplinary offences were entirely different, and, consequently, required different defence strategies. The notice of suspicion had referred to him being suspected of a crime under Article 228 § 2 of the Criminal Code, thus he had based his defence on arguments denying having committed a crime. However, his dismissal from service had been based on Article 2 § 5 of the Statute of Internal Service (see paragraph 46 above), which provided entirely different elements of the disciplinary offence. It was obvious that his defence (in the disciplinary proceedings) would have been different had he known the accurate allegations.

63. Furthermore, the applicant's guilt of committing a disciplinary offence had been essentially based on information obtained by means of the criminal conduct simulation model. In that connection, he disputed that it had been appropriate to transfer the pre-trial investigation material for use in the disciplinary investigation on the basis of Article 214 § 6 of the Code of Criminal Procedure (see paragraph 44 above). In the applicant's view, the other information, besides that obtained by means of the criminal conduct simulation model, had not been sufficient to find him guilty of official misconduct. V.M., who was to be considered as "the key piece of material in question", had had a propensity to commit crimes, which had made him unreliable as a witness. Likewise, the other evidence – the CCTV recordings and data provided by the mobile telephone operator – had in no

way conclusively proved that the applicant had had meetings with V.M. Overall, it was evident from all the material of the pre-trial investigation and the disciplinary investigation, the latter having coincided with the material of the pre-trial investigation, that none of the other information listed above confirmed that the applicant had entered into specific illicit agreements with V.M., and that the applicant had exercised his authority as a public servant for personal gain.

(b) The Government

64. At the outset, the Government noted that the instant case differed from those where the fairness of proceedings was analysed owing to the reliance on secret material. Conversely, here, the applicant could have had access to the pre-trial investigation file in its entirety. As a suspect, he had had effective guarantees within the criminal proceedings, which could be considered the most solid, taking into account the nature of those proceedings. The applicant should thus have availed himself of those guarantees to contest the evidence gathered during the pre-trial investigation, especially given that he had been aware that at the same time disciplinary proceedings had been opened. Failure to use the procedural guarantees in the course of the pre-trial investigation could not negate the possibility of using the material of the criminal case for the purposes of the disciplinary investigation.

65. The conclusions of the disciplinary investigation had been drawn up mainly on the basis of the material of the criminal case because it had been directly linked to the applicant's conduct. Given that all the relevant circumstances had been established within the pre-trial investigation, there had been no need to conduct the same repeated investigative measures within the disciplinary proceedings. Besides, the applicant had not submitted any explanations and had himself referred the disciplinary authorities to his testimony in the criminal case. It was worth noting that the material of the pre-trial investigation had not been used for the determination of the applicant's guilt in terms of criminal liability, for it had been explicitly indicated that no crime had taken place. That material had been used solely to determine the applicant's disciplinary liability, falling within "*contestations*" (disputes) over civil rights within the meaning of Article 6 § 1 of the Convention, with regard to the legal acts regulating police activities and the ethics of officers. Furthermore, it would be unthinkable and would run counter to the essence and aims of the implementation of justice if, upon termination of the pre-trial investigation only because the suspect's acts had not caused sufficiently serious damage, the person would avoid disciplinary liability solely on such a formal basis that the material provided for further assessment of the disciplinary liability also included information obtained using secret investigative measures, such as the criminal conduct simulation model.

66. A valid decision of the prosecutor to terminate the pre-trial investigation in an administrative case was considered evidence and was assessed in accordance with the general rules of the Law on Administrative Proceedings on the substantiation and assessment of evidence, taking into account the entirety of the evidence in the case. As long as the decision to terminate the pre-trial investigation was not annulled or otherwise refuted, it could be assessed as evidence deciding on the disciplinary liability, while the person subject to disciplinary action could challenge the circumstances established therein in accordance with the general procedure established by the Law on Administrative Proceedings by lodging a complaint of unlawful dismissal, providing evidence forming the factual basis of the complaint, *inter alia*, by requesting to hear witnesses and so forth. In the case at hand, the administrative courts had verified the lawfulness of the disciplinary liability imposed on the applicant, referring to the evidence gathered in the administrative case and without using the material obtained through the criminal conduct simulation model. That evidence had been sufficient to conclude that the applicant had been lawfully dismissed from service for discrediting the name of a police officer. Acknowledging the right of a suspect to remain silent and not to cooperate with the investigation, the Government noted that such a defence strategy had also predetermined the scope of the disciplinary and then administrative proceedings, especially given that the applicant had not furnished a reasoned different version of events which could have raised doubts about V.M.'s statements.

67. Therefore, having regard to the proceedings as a whole, the applicant had been afforded fair hearing guarantees in the case at issue, and the extent to which he had availed himself of those had been his own choice.

2. The Court's assessment

(a) General principles

68. The Court reiterates that disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to "*contestations*" (disputes) over civil rights within the meaning of Article 6 § 1 of the Convention (see, among other authorities, *Philis v. Greece* ((no. 2), 27 June 1997, § 45, *Reports of Judgments and Decisions* 1997-IV, with further references). While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *Schenk v. Switzerland*, 12 July 1988, §§ 45 and 46, Series A no. 140, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and, *mutatis mutandis*, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 150 and 152, 17 October 2019). In the Court's practice, the use of material of the criminal case within disciplinary proceedings has not been

ruled out, provided that the rights of the defendant have been respected (see *Vanjak v. Croatia*, no. 29889/04, §§ 49 and 50, 14 January 2010).

(b) Application of the general principles to the instant case

69. The Court firstly finds that, contrary to the applicant's arguments, from the notice of suspicion (see paragraph 11 above) the applicant should have been clearly aware of the accusations against him. That notice contained such specific elements as the period during which the acts attributed to him had been committed, details regarding the goods he had instructed V.M. to steal, the name of the person who was to perform those unlawful actions – V.M. – and the nature of the violation of which he was suspected. The case material also contained proof that the applicant “understood” those accusations (see paragraph 12 above). That being so, the Court does not consider that the circumstance that those facts were initially investigated within the criminal proceedings under Article 228 § 2 of the Criminal Code, and later assessed within the disciplinary proceedings, under Article 2 § 5 of the Statute of Internal Service, hindered the applicant's possibility of understanding the infraction he had been charged with and thus impaired his defence rights.

70. Likewise, given the accusations against the applicant, the Court does not find that any issue arises on account of the fact that the elements of the criminal charge of abuse of office, as mentioned in the notice of suspicion, were different to discrediting the name of an officer, as set out in Article 2 § 5 of the Statute of Internal Service. The Court considers that although those two legal provisions set out different offences – the first being a criminal offence and the second being a disciplinary one – the facts attributed to the applicant, on which the investigation into those two offences were based, were clearly the same. Besides, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011, and the case-law cited therein).

71 The Court also does not disregard the Government's view that it would run counter to the essence and aims of the implementation of justice if evidence gathered within a criminal investigation concerning a corruption-related criminal offence, such as abuse of office, could not be used within disciplinary proceedings concerning the same actions (see paragraph 65 above). The lawfulness of such use has been scrutinised and confirmed by the Constitutional Court, albeit after the administrative proceedings in the applicant's case (see paragraph 52 above).

72. In so far as the applicant's complaint may be understood to concern the assessment of the evidence and the outcome of the proceedings before the administrative courts (see paragraph 63 above), the Court reiterates that it is not a court of appeal from the national courts, and it is not its function to deal

with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018). In the present case, it suffices to note that the applicant's disciplinary offence was based not only on the evidence obtained *via* the criminal conduct simulation model, but rather on the entirety of the evidence. It comprised such elements as witness statements, the police having reported that the applicant had withheld information about being in contact with V.M. in his reports, and the CCTV recordings (see paragraphs 19, 22, 25, 32 and 40 above). Besides, V.M. was questioned at the administrative court hearing and the administrative courts found his testimony to be conclusive (see paragraphs 32 and 40 above). The applicant did not argue that he could not have cross-examined V.M. in order to refute that testimony.

73. In addition, the Court cannot but note that, if the applicant had been dissatisfied with any of the elements referred to in the prosecutor's decision (see paragraphs 20-22 above), those elements, as proof of his disciplinary offence, having later been referred to in the disciplinary proceedings (see paragraph 25 above) and by the administrative courts (see paragraphs 32, 34 and 40 above), he could have contested that decision under the rules of the Code of Criminal Procedure, as noted by the Supreme Administrative Court, which he did not (see paragraphs 23 and 39 above). This is particularly so given the applicant's admission that he comprehended that the material of the criminal file was relevant for the suspended disciplinary investigation (see paragraph 36 above). In fact, it is plain that the applicant's participation in the disciplinary investigation and the administrative proceedings was seriously limited owing to his own choices, given that he had not provided any explanations during the disciplinary proceedings (see paragraphs 12, 35 and 38 *in fine* above). Lastly, and as regards the pre-trial investigation, the applicant had sufficient knowledge of the file, since his lawyer had been given access to the documents he saw relevant (see paragraph 18 above).

74. In the light of the above, the Court finds that the applicant's right to a fair hearing has not been impaired. There has, accordingly, been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicant complained that the use of the pre-trial investigation material to investigate the question of his disciplinary violation had been in breach of his right to respect for his private life, as provided for in Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. Admissibility

1. The parties’ submissions

(a) The Government

76. The Government reiterated their objection that this complaint was inadmissible for failure to exhaust domestic remedies, given that the applicant had not complained about the prosecutor’s decision to terminate the pre-trial investigation or lodged a claim for damages against the State (see paragraphs 55 and 56 above).

(b) The applicant

77. The applicant’s arguments are summarised in paragraphs 57 and 58 above).

2. The Court’s assessment

78. The Court refers to its findings in paragraphs 59 and 60 above, and finds that those conclusions are equally valid to the applicant’s complaint under Article 8. It further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

79. The applicant argued that the use of the pre-trial investigation materials in the disciplinary proceedings had been without a proper legal basis.

80. He also considered that it had been disproportionate and unjustified to forward the information obtained during the pre-trial investigation for use in the disciplinary investigation. The risk of criminal offences and administrative offences – in his case acts discrediting the name of a police officer – was not the same: in the first case, individuals attacked the most protected values of society, whereas in the second case they violated the discipline of the service and discredited the prestige of an institution.

81. Contrary to what had been suggested by the Government (see paragraph 84 below), the ruling of the Constitutional Court of 18 April 2019 (see paragraph 52 above) was not relevant for the assessment of the justification and proportionality of the use of information obtained on the basis of the secret procedural enforcement measures against the applicant during the disciplinary investigation. That is to say, even if Article 19 § 3 of the Law on Criminal Intelligence did explicitly provide for such use, it could not be applied by analogy in criminal proceedings. This also meant that there had not been a sufficient legal basis for the interference.

82. Lastly, the applicant stated that the Government had failed to justify the legitimate aim, proportionality and necessity of the use of the pre-trial investigation material in the disciplinary investigation.

(b) The Government

83. The Government admitted that there had been an interference with the applicant's right to respect for his private life, as the material collected while employing the secret investigative measures had been used to investigate the applicant's disciplinary offences, which had led to his dismissal.

84. That being so, the relevant domestic provision, Article 214 § 6 of the Code of Criminal Procedure, provided, with sufficient clarity, for the possibility of using information obtained during a pre-trial investigation to investigate disciplinary offences. The lawfulness of using such information also stemmed from the Law on the Prosecutor's Office and the Constitutional Court's ruling, and it was not the right but an obligation on the prosecutor to forward such information for disciplinary investigation. There was a pressing social need to strengthen the credibility and responsibility of State officials, namely police officers. Thus, the possibility of using pre-trial investigation material within disciplinary proceedings had to be assessed as a measure necessary in a democratic society, to permit the imposition of disciplinary liability, as a public form of control over civil servants (officials) of a democratic State and their accountability to society, on those who had committed violations in public service which were incompatible with the requirements arising for them from the Constitution. In the applicant's individual circumstances, his right to respect for private life owing to his dismissal from service had been restricted proportionally.

2. The Court's assessment

(a) The general principles

85. The relevant principles are recapitulated in *Drakšas v. Lithuania* (no. 36662/04, §§ 52-54, 31 July 2012).

(b) Application of the general principles to the instant case

86. The Government did not contest that the use of the material gathered *via* the secret surveillance of the applicant in the disciplinary proceedings that ultimately led to his dismissal had amounted to an interference under Article 8 of the Convention. The Court sees no reason to hold otherwise (see *Terrazzoni v. France*, no. 33242/12, § 43, 29 June 2017, and *Pocius v. Lithuania*, no. 35601/04, § 42, 6 July 2010). It remains to be ascertained whether the interference met the requirements of Article 8 § 2.

87. The Court firstly finds that the original secret investigative measures – the criminal conduct simulation model and the recording and storage of the intercepted information – had a basis in law, given that they had been authorised by the pre-trial investigation judge, under Article 159 of the Code of Criminal Procedure (see paragraph 9 above). As to the lawfulness of the reliance on the material of the pre-trial investigation within the subsequent disciplinary proceedings, this possibility was expressly provided for in Article 214 § 6 of the Code of Criminal Procedure, which the prosecutor referred to in the applicant’s case when forwarding the matter of his alleged disciplinary violation to the police authority for investigation (see paragraph 21 above). Although Article 19 § 3 of the Law on the Prosecutor’s Office (see paragraph 50 above) and the Constitutional Court’s findings (see paragraph 52 above) – the latter being posterior to the prosecutor’s decision in the applicant’s case – were not referred to in the prosecutor’s decision, that legal framework also supports the lawfulness of using such information within the disciplinary proceedings, as argued by the Government. Accordingly, the Court is prepared to accept that, upon termination of the pre-trial investigation, to transfer the material for disciplinary investigation in a situation such as in the instant case, where the material of the criminal case, including that obtained by secret investigative measures, contained information of an alleged disciplinary violation, was not only the prosecutor’s right, but also his obligation pursuant to domestic law (on the duty to investigate possibly unlawful acts, see also the Constitutional Court’s position, as reiterated in its ruling in paragraph 52 above). The Court thus finds that the interference had a basis in law, which also was accessible and foreseeable. The finding that the applicant should have been able to foresee the consequences of his unlawful actions and possible interference with his right to privacy is also clear given the applicant’s professional occupation and the legal regulation on the ethics of the police officers, and that on the civil service, as in force and accessible at the relevant time (see paragraph 25 above). In fact, the Court does not find it unreasonable to hold that persons carrying out a professional activity must proceed with a high degree of caution when pursuing their occupation, special care in assessing the risks that such an activity entails, even in the absence of the imposition of criminal liability.

88. Furthermore, the police authorities were competent to conduct the disciplinary investigation: there was an official formal request for access to the pre-trial investigation material (see paragraph 24 above), and there were no objective reasons precluding the transfer of the pre-trial investigation material for use in the investigation under the disciplinary procedure. In any case, this, or any other aspects of the prosecutor's decision was not challenged by the applicant (see paragraph 23 above).

89. The interference in question pursued the legitimate aim of preventing disorder or crime (see paragraph 7 above, see also, *mutatis mutandis*, *Terrazzoni v. France*, no. 33242/12, § 52, 29 June 2017) and, inasmuch as it concerned the matter of the applicant being suitable for service in the police, the rights of others. Indeed, in a similar context, the Constitutional Court held that information obtained *via* secret surveillance could be used to achieve objectives such as the proper functioning of the civil service and its transparency (see paragraph 52 above).

90. The Court finds that the interference could be regarded as necessary in a democratic State, given the constitutional duty to properly investigate possible official misconduct and find the relevant officials liable where there is a basis to do so. To do otherwise, would lead to impunity and unaccountability (see paragraph 52 *in fine* above).

91. Regarding the proportionality of the interference, the Court firstly observes that the applicant's surveillance was based on him, as a policeman, being aware of criminal intelligence measures and tactics (see paragraphs 8 and 9 above; see also point 55 *in fine* in paragraph 52 above). Even so, no intercepted calls (their content) were used in the pre-trial investigation, and they were destroyed for the proper protection of the applicant's private life (see paragraph 14 above). As for the use of those materials during the disciplinary proceedings, and as pointed out by the Vilnius Regional Administrative Court, the fact that the pre-trial investigation had been discontinued did not refute the applicant's responsibility in connection with unlawful actions by which he had discredited the name of an officer, and which were the basis for his disciplinary liability. The Vilnius Regional Administrative Court also held that the applicant's actions had amounted to blatant humiliation of the authority of the internal service system and destruction of trust in the internal affairs system (see paragraph 34 above), and, on the facts of the case, the Court sees no reason to dispute that domestic court's conclusion. The Court also notes the administrative courts' findings that whilst criminal liability was not imposed, the fact of having discredited the name of an officer gave rise to the most serious consequence of disciplinary liability and left no other option but dismissal from service, which was the outcome in the applicant's case (see paragraph 34 above).

92. Lastly, the Court has already concluded that the applicant had all the procedural safeguards to protect his rights – he was informed of the disciplinary investigation instituted and comprehended its link with the facts

examined in the pre-trial investigation, he was given an opportunity to submit explanations, and he was represented by a lawyer but chose not to submit any arguments, merely indicating that the investigative authorities should rely on his statements in the criminal case, which in fact were not provided, as he refused to testify during that criminal investigation (see paragraphs 17 and 22 above). Conversely, the police authority did proceed with caution, by enabling, at least on two occasions, the applicant to defend his interests (see paragraphs 17 and 35 above). As to the administrative court proceedings, the first-instance court verified the relevant circumstances, in particular the credibility of V.M.'s testimony (see paragraph 32 above). Above all, the Supreme Administrative Court noted that for the dismissal of the applicant under Article 62 § 1 (7) of the Statute of Internal Service there was sufficient information without use by the defendant – the police – of information obtained during the criminal simulation model (see paragraph 40 above). Further, on the basis of the evidence referred to in the disciplinary investigation report and examined during the administrative court proceedings, and without the material obtained *via* the criminal conduct simulation model, it was proven that the applicant had discredited a police officer's name and had therefore been reasonably and lawfully dismissed from service.

93. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's rights under Article 8 of the Convention met the requirements of Article 8 § 2. Accordingly, there has been no violation of Article 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. Lastly, the applicant complained that certain statements as to his guilt in the prosecutor's decision to discontinue the pre-trial investigation (see paragraphs 20 and 21 above), as later referred to in the disciplinary investigation report (see paragraph 25 above), had been in breach of the right to the presumption of innocence under Article 6 § 2 of the Convention, which reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. The parties' submissions

1. *The Government*

95. The Government submitted that the applicant had not raised a complaint under Article 6 § 2 of the Convention before any of the domestic authorities in connection with some of the formulations used in the prosecutor's decision terminating the pre-trial investigation (see paragraphs 20 and 21 above) and in the report adopted within the course of

the disciplinary proceedings (see paragraph 25 above). That is to say, he had not appealed against the prosecutor's decision or properly raised this issue before the administrative courts, which had examined the justifiability of the disciplinary liability imposed.

2. *The applicant*

96. The applicant submitted that the administrative courts, which had dealt with the question of his dismissal from public service, had also relied on the prosecutor's statements. He considered that the principle of the presumption of innocence precluded public officials, such as the prosecutor, from prejudging the guilt of a suspect, to ensure the principle of integrity of criminal proceedings.

97. The applicant's other submissions are set out above (see paragraph 57 above).

B. The Court's assessment

98. The Court firstly finds that the applicant was not found guilty within the criminal proceedings. In addition, irrespective of the applicant's reasons (see paragraph 57 above), he did not appeal against the prosecutor's decision if only to contest certain phraseology therein. Besides, the applicant's complaints were to the contrary: he argued that the formulations by the prosecutor could not be considered as statements (*konstatavimas*) but merely his subjective opinion, which did not oblige the authorities to adopt a certain decision in disciplinary proceedings (see paragraph 36 *in fine* above).

99. Furthermore, in connection with any of the phraseology in the disciplinary investigation report (see paragraph 25 above), the matter of an alleged violation of the principle of the presumption of innocence was not at any point raised before the Vilnius Regional Administrative Court, when initiating the administrative proceedings, or in the appeal to the Supreme Administrative Court (see paragraphs 29 and 36 above).

100. The Court therefore holds that this complaint is inadmissible for failure to exhaust domestic remedies, in accordance with Article 35 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the complaints concerning the right to a fair hearing, under Article 6 § 1 of the Convention, and the right to respect for private life, under Article 8 of the Convention, admissible and the remainder of the application inadmissible;

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2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President