



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

SECOND SECTION

CASE OF ALGIRDAS BUTKEVIČIUS v. LITHUANIA

(Application no. 70489/17)

JUDGMENT

Art 8 • Correspondence • Private life • Lawful and proportionate disclosure of intercepted telephone conversation between applicant Prime Minister and mayor on matter of public interest, despite impact on applicant's reputation among colleagues

STRASBOURG

14 June 2022

FINAL

14/09/2022

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

In the case of Algirdas Butkevičius v. Lithuania,

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

Jon Fridrik Kjølbro, *President*,
Carlo Ranzoni,
Branko Lubarda,
Gilberto Felici,
Saadet Yüksel,
Peeter Roosma, *ad hoc* judge,
Diana Sârcu, *judges*,
and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 70489/17) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Algirdas Butkevičius (“the applicant”), on 19 September 2017;

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

the withdrawal of Egidijus Kūris, the judge elected in respect of Lithuania, from sitting in the case (Rule 28 § 3 of the Rules of Court) and the decision of the President of the Section to appoint Peeter Roosma to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a));

the parties’ observations;

Having deliberated in private on 24 May 2022,

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

INTRODUCTION

1. The case concerns a complaint by the applicant, who is the former Prime Minister of the Republic of Lithuania, that the State authorities had breached his right to private life and correspondence by disclosing one of his telephone conversations to the media.

THE FACTS

2. The applicant was born in 1958 and lives in Vilnius. He was represented by Ms K. Čeredničenkaitė, a lawyer practising in Vilnius.

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

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

A. Background to the case

5. The applicant is a politician. He has been a member of the Seimas (the Lithuanian Parliament) since 1996. From 2004 to 2005 he served as Minister of Finance, and from 2006 to 2008 he was Minister of Transport and Communications. In the 2009 elections for the office of President of the Republic of Lithuania the applicant was the candidate for the Lithuanian Social Democrats Party, at that time one of the biggest political parties in Lithuania. He came second, with 12% of the votes. Between 1999 and 2008 he was the deputy chairman of the party, and between 2009 and 2017 he was the chairman.

6. At the material time, from 22 November 2012 to 21 November 2016, the applicant was the Prime Minister of Lithuania.

B. Criminal investigation regarding the Government's adoption of Resolution no. 1025

7. In 2015 the Kaunas regional prosecutor's office and the Special Investigations Service were conducting pre-trial investigation no. 03-700012-15 – an investigation regarding possible abuse of office (Article 228 § 2 of the Criminal Code) – into allegations of political corruption relating to the process whereby some State territories had had their status as resorts – and thus protected territories – revoked by Government Resolution no. 1025, which was adopted on 23 September 2015. That Resolution was annulled on 2 May 2016 (see also paragraph 46 below).

During that investigation a court authorised the recording of R.M.'s telephone conversations; R.M. was the mayor of Druskininkai, a resort town. One of his conversations was with the applicant (see paragraph 8 below). The authorities also intercepted a number of other conversations between R.M. and the Minister of the Environment, the Minister of the Economy, the Chancellor of the Government and other State officials. During those telephone conversations the adoption of a Government resolution on the status of resorts was discussed.

8. The intercepted telephone conversation between the applicant and R.M., which took place on 11 August 2015, went as follows:

“[The applicant] – Yes. I am listening to you.

R.M. – Prime Minister, as concerns the Government resolution which we discussed today, I have found out that it was not the one under consideration at yesterday's meeting. That one concerned protected areas.

[The applicant] – Well, not the one? Well?

R.M. – No. Not the one.

[The applicant] – I see.

R.M. – This one recently has just left the Ministry of Justice, and now the Ministry of the Environment must submit it to the Government; however, it is unclear how long they will take to do it.

[The applicant] – I see. OK then. I will [move things along] then.

R.M. – This is not the one. And the date is not needed for that one.

[The applicant] – OK.

R.M. – Since the adoption.

[The applicant] – Well, because there were a lot of discussions during the submission, so

R.M. – Yes, yes, but there are different things in it, but not that one. 343.

[The applicant] – Well, OK. I see. Thanks then.

R.M. – Thank you.”

9. In the context of that pre-trial investigation, on 10 February 2016 the applicant was questioned as a witness. The applicant stated that a working relationship had existed between him and R.M.: the latter was the President of the Municipalities’ Association, the mayor, and also deputy chairman of the same political party. The applicant stated “I have no informal communication with R.M.” (*Neformaliai su juo nebendrauju*). The applicant did not deny that the conversation (see paragraph 8 above) had taken place. He stated that he had not performed any action to accelerate the Government Resolution of 23 September 2015 being submitted for adoption. He also stated that he did not think that that resolution had been in any way beneficial to R.M.’s personal interests.

10. On 12 November 2015 the Seimas passed resolution no. XII-2017 “On granting the Seimas provisional investigation commission’s powers to the Seimas Anti-Corruption Commission”, instructing its Anti-Corruption Commission to conduct a parliamentary inquiry in order to ascertain and provide a conclusion as to the circumstances on 23 September 2015 in which the Government had adopted Resolution no. 1025, which was just before the court hearing of 29 September 2015, and which had partly annulled the Government’s earlier Resolution on protection of resort zones (for details see *Povilonis v. Lithuania* (dec.), no. 81624/17, §§ 16, 64-67, 7 April 2022). The Seimas considered that Government Resolution no. 1025 could have aggravated the possibilities to protect the public interest (*ar taip nebuvo apsunkintos galimybės ginti viešą interesą*) in the court proceedings related to possibly unlawful construction in the *Vijunėlė* park territory, and that Resolution no. 1025 could have been adopted without having followed appropriate procedures (*ibid.*).

11. On 23 February 2016 the Seimas Anti-Corruption Commission, referring to Article 4 § 1 (1) of the Law on the Seimas Provisional Investigation Commissions (see paragraph 40 below), asked the prosecutor to provide information about when the criminal investigation, regarding

possible influence on civil servants when adopting the aforementioned Government resolution, would be completed and a procedural decision that had been taken.

12. By a decision of 29 February 2016, the prosecutor discontinued the pre-trial investigation on the basis of Article 3 § 1 (1) of the Code of Criminal Procedure, that is, that no actions which could be characterised as a crime had been performed. The prosecutor's decision contained transcripts of the telephone conversation between the applicant and R.M. (see paragraph 8 above), as well as transcripts of other telephone conversations (see paragraph 7 above).

13. On the same day, complying with the earlier request from the Seimas Anti-Corruption Commission, the prosecutor sent the commission a copy of the decision to discontinue the criminal proceedings. As later indicated by the prosecutor during the subsequent criminal proceedings (see paragraph 26 below), and as it transpires from the documents in the Court's possession, the cover letter typed by the prosecutor and addressed to the commission did not specify that material from the pre-trial investigation could not be disclosed to the public.

14. The same day the prosecutor also sent a copy of his decision to the Chief Official Ethics Commission (*Vyriausioji tarnybinės etikos komisija*) (see also paragraphs 34 and 35 below). He referred to Article 214 § 6 of the Code of Criminal Procedure (see paragraph 43 below) and considered that the material gathered during the pre-trial investigation showed that there had been a possible breach of other laws, such as the Law on the Adjustment of Public and Private Interests in the Public Service (*Viešųjų ir privačių interesų derinimo valstybinėje tarnyboje įstatymas*) and the Code of Conduct for State Politicians (see paragraph 39 below).

C. Disclosure of the applicant's telephone conversation with R.M.

15. On 1 March 2016 the Seimas Anti-Corruption Commission held a hearing which was open to the public. Some twenty journalists were present at that hearing, including the journalist V.D., who had written articles for the Internet news portal Delfi. The Commission discussed the pre-trial investigation materials.

16. On the evening of the same day the Internet news portal Delfi published an article by V.D. entitled "Juicy details in the conversations that were made public: I am fed up here, but at least [I can] relax at your place for an hour or so" (*Išviešintuose pokalbiuose – pikantiškos detalės: čia užknisa protą, pas tavę nors užsimiršti valandai kitai*). The article made public extracts from the transcripts of the telephone conversation between the applicant and R.M. (see paragraph 8 above), as well as extracts from some of the other telephone conversations intercepted by the law-enforcement

officials in the context of pre-trial investigation no. 03-7-00012-15 which had been reproduced in the prosecutor's decision of 29 February 2016.

The article discussed the circumstances of the adoption of Government Resolution no. 1025 (see paragraph 7 above), and suggested that “nearly half of the Government, including the Prime Minister, were dancing to the music played by the mayor R.M. concerning the business affairs of the so-called *Vijūnėlė* manor”. The article also referred to the Chairman of the Anti-Corruption Commission stating that the story of the so-called *Vijūnėlė* manor was a circumstance that allowed for the disclosure of not only possible crimes, but also possible violations of ethics, abuse of power or disciplinary violations by civil servants.

Later on, this information was republished by the biggest news portals in the country, as well as aired on television channels (see also paragraph 57 below).

D. Criminal proceedings regarding the disclosure of the telephone conversations to the public

17. On 2 March 2016 the applicant lodged a complaint with the Prosecutor General, asking that the persons responsible for disclosing to the media the information which was of restricted use be brought to justice.

On 1 April 2016, when questioned as a victim during the pre-trial investigation, the applicant pointed out that criminal investigation no. 03-7-00012-15 had been discontinued, and that in that criminal investigation he had had the procedural status of a witness. He noted that, under Lithuanian law, the use of pre-trial investigation material was strictly regulated, and the unlawful disclosure of such material was punishable. Under the Constitution, as well under the European Convention on Human Rights, a person's correspondence and telephone conversations were inviolable. Such information which was collected by applying criminal-intelligence measures had to be destroyed once the criminal investigation had been discontinued.

18. That being so, the applicant also stated that “data about [his] private life [had] not been disclosed, given that during the telephone conversation [in question] [he] and R.M. [had] discussed only work-related matters, in particular, a specific resolution by the Government”. He nevertheless considered that the disclosure of his telephone conversation to the media had breached his rights as a politician and a private person, since because of that he, as a politician and a private person, had suffered serious psychological damage, for there had been a great deal of negative writing about those telephone conversations in the press. The applicant pointed out that this would “clearly have an impact on [his] career as a politician, and on the Social Democrats Party led by [him]”. He also stated that the disclosure of the telephone conversation had had negative consequences for him as a private person, since when attending certain events he had heard several negative

comments regarding those disclosed telephone conversations, despite the fact that there had been nothing criminal in the conversations, and the criminal proceedings which had examined those conversations had been discontinued. The applicant considered that the telephone conversations had been made public for political gain – to harm him as a person, the Social Democrats Party and the Government. He thought that it was the Anti-Corruption Commission which was “most liable” for that disclosure. Lastly, he pointed out that the telephone number for which calls had been intercepted had been his work mobile telephone number, which had been issued to him when he had become a member of the Seimas, and that that number had not been publicly available.

19. On an unknown date R.M. also lodged an application with the Prosecutor General, complaining about the disclosure of the pre-trial investigation material at the Seimas Anti-Corruption Commission hearing of 1 March 2016. He was granted the procedural status of a victim in the context of that pre-trial investigation. The mayor R.M. considered that the disclosure of his telephone conversations had been damaging to his reputation as a politician, because it had intentionally created a negative opinion about him and had tendentiously provided distorted information, without reflecting the essence of the conversations.

20. On 7 March 2016 the Minister of the Environment also lodged an application with the Prosecutor General, in which he complained about the disclosure of the pre-trial investigation material. His arguments were similar to those of the applicant.

21. On 10 March 2016 the Prosecutor General’s Office started pre-trial investigation (no. 01-2-00056-16) into the possible disclosure by the members of the Seimas Anti-Corruption Commission of non-public material from the pre-trial investigation file (Article 247 of the Criminal Code), and also into the possible disclosure of information regarding the private life of an individual (Article 168 § 1 of the Criminal Code).

22. When questioned as a witness on 30 March 2016, the journalist V.D. stated that she had been present at the Commission’s hearing of 1 March 2016; this had not been the first hearing on the matter of the adoption of the Government resolution, and also not the first hearing at which she had been present. In V.D.’s opinion, the hearing of 1 March 2016 had been public: some twenty journalists had been present. She said that during the hearing the members of the Anti-Corruption Commission had publicly cited and discussed the transcripts of the telephone recordings of the conversations between the applicant and R.M., and between R.M. and the Minister of the Environment, as well as other telephone conversations. The journalist stated that the quotes from those telephone conversations which she had used afterwards in her article (see paragraph below) were the ones that she had heard during that public hearing of the Anti-Corruption Commission.

23. By a decision of 5 October 2016, the prosecutor discontinued the pre-trial investigation, on the grounds that no crime had been committed. The

prosecutor found that the telephone conversation between the applicant and R.M., as well as that between R.M. and the Minister of the Environment, which had been reproduced in the prosecutor's decision to discontinue criminal case no. 03-7-00012-15, concerned work-related matters, and did not fall within the sphere of private life. Neither the applicant nor the Minister of the Environment had proved the opposite, nor had the mayor of Druskininkai.

24. In reaching that conclusion, the prosecutor also relied on the Constitutional Court's ruling of 23 October 2002 to the effect that all the persons in this case – the applicant (as the Prime Minister), the Minister of the Environment – and the mayor of a town, had been public figures to whom higher moral standards applied (see paragraph 45 below). Moreover, according to the Constitutional Court's ruling of 8 May 2000, the activities of State and municipal officials linked to the implementation of functions of the State and municipal authorities and administrations were always of a public nature (see paragraph 44 below). As could be seen from the situation at hand, the question of adoption of the Government's resolution abolishing resort zones had had great importance for the public, therefore there had been a public interest, protected by the Constitution, for society to be informed about such pressing matters.

25. As to Article 247 of the Criminal Code – the unlawful disclosure of material in a pre-trial investigation file – referring to the case-law of the Supreme Court, the prosecutor considered that only participants in criminal proceedings could be held criminally responsible under Article 247 of the Criminal Code (see paragraph 42 below). The members of the Seimas Anti-Corruption Commission and the representatives of the media who had been present at the commission's hearing of 1 March 2016 had not been participants in the criminal proceedings in case no. 03-7-00012-15, and therefore they could not be subjected to criminal liability under Article 247 of the Criminal Code. The prosecutor also noted that the members of the Anti-Corruption Commission had not been prohibited from disclosing the pre-trial investigation data, and they had not been warned of any criminal liability under Article 247 of the Criminal Code, so it would be unreasonable to hold that they could be subjected to such criminal liability. The same went for the journalist V.D. Moreover, the commission's hearing of 1 March 2016 had been public, and in the prosecutor's view, under the Law on the Seimas Provisional Investigation Commissions, there had been no reason to organise it as a non-public hearing.

26. Lastly, one could also not question the actions of the prosecutor who had sent the decision to discontinue the criminal proceedings (see paragraph 13 above) to the Anti-Corruption Commission. The commission had had the right to obtain such information, pursuant to Article 4 § 1 of the Law on the Seimas Provisional Investigation Commissions (see paragraph 40 below). In taking a decision to send a copy of that decision to the Anti-

Corruption Commission, and in not warning the commission that the data from the pre-trial investigation file was not to be made public, the prosecutor, who had relied on Article 214 § 6 of the Code of Criminal Procedure (see paragraph 43 below), had also not breached the requirements applicable to the criminal proceedings. It followed that no crime under Article 247 had been committed.

27. The applicant, who relied on Article 8 of the Convention, and the Minister of the Environment then appealed against the prosecutor's decision, but on 23 November 2016 a higher prosecutor rejected their appeals.

28. On 29 December 2016 the applicant's appeal was rejected by the Vilnius City District Court, which considered that the prosecutors' decisions had been well reasoned, and that the telephone conversation in question (see paragraph 8 above) could not be considered to have contained information about a person's private life. Rather, that information related "exclusively [to] work and [public] service-related matters", therefore the element of the crime set out in Article 168 of the Criminal Code was not present.

29. On the basis of an appeal lodged by the applicant, the Vilnius Regional Court then returned the case for fresh examination, on the grounds that the first-instance court had not answered the applicant's complaint of a possible breach of Article 247 of the Criminal Code, that is, the complaint that the pre-trial investigation had not established who had disclosed the pre-trial investigation material to the media.

30. On 10 February 2017 the Vilnius City District Court dismissed the applicant's appeal. The court found that the conversation between the applicant and the mayor had not related to the applicant's private life: they had only discussed the circumstances of the adoption of a Government resolution related to territorial planning, and not any matters relating to their personal or family life, or any other spheres of private life. Furthermore, there had been a professional relationship between them – one was the Prime Minister and the other was a mayor. In addition, R.M. was deputy chairman of the same political party to which the applicant belonged. In addition, the applicant himself, when questioned during the first criminal investigation on 10 February 2016, had stated that he had not maintained any relations with the mayor unrelated to work (see paragraph 9 above). Likewise, when questioned on 1 April 2016 in the context of the second criminal investigation (see paragraph 18 above), the applicant had stated that during the telephone conversation in question information related to his private life had not been divulged. Thus, finding that no private life had been discussed in the relevant conversation, the court held that the publication of the transcript of the conversation could not have infringed the applicant's right to respect for his private life. It further referred to the Court's judgments in *Craxi v. Italy* (no. 2) (no. 25337/94, 17 July 2003) and *Drakšas v. Lithuania* (no. 36662/04, 31 July 2012), as stating the principle that public figures were inevitably more exposed to scrutiny, but nevertheless should be guaranteed the right to

privacy. The court observed that because of his position as Prime Minister, his work-related activity and his participation in public life, the applicant was a prominent politician, and that the pre-trial investigation and the telephone conversation had concerned a matter of public interest – allegations of corruption in territorial planning, which society had a legitimate interest in knowing about. Accordingly, no issue could arise under Article 168 § 1 of the Criminal Code.

31. The Vilnius City District Court also noted that the members of the Seimas Anti-Corruption Commission had not been party to criminal proceedings no. 03-7-00012-15. Nor had they been warned not to disclose the material from the pre-trial investigation file, or warned about possible criminal liability under Article 247 of the Criminal Code. At the same time, those persons had had a right to see the material from the pre-trial investigation file, as noted in Article 4 § 1 of the Law on the Seimas Provisional Investigation Commissions. The prosecutor, once asked to do so, had been obliged to provide the commission with a copy of his decision. In the court's view, this meant that the commission members could not be held liable under Article 247 of the Criminal Code for having disclosed the material from that case.

32. By a final ruling of 20 March 2017, the Vilnius Regional Court rejected the applicant's appeal and left the first-instance court's decision unchanged. The disclosed information had been linked to the professional activity of a State official. The applicant had been a public figure because of the duties he had been performing at the relevant time, as the Prime Minister. Given that Article 168 § 1 of the Criminal Code protected only information of a private nature, and that the information disclosed related to a certain event – the adoption of the Government's resolution related to territorial planning, and the actions of certain State officials – this information, which had attracted much public interest, was not private, and its disclosure could not attract criminal liability under the above-mentioned provision of the Criminal Code.

33. As to the other provision of the Criminal Code, Article 247, the Vilnius Regional Court shared the first-instance court's conclusions in their entirety (see paragraph 31 above).

E. The applicant's exoneration by the Chief Official Ethics Commission

34. By a decision of 18 March 2016, the Chief Official Ethics Commission (hereinafter "the Ethics Commission") informed the prosecutor (see paragraph 14 above) that it would not institute an investigation into the circumstances of the adoption of Government Resolution no. 1025 of 23 September 2015.

35. The Ethics Commission pointed out that the prosecutor’s decision to discontinue criminal proceedings (see paragraphs 7 and 12 above) lacked any concrete data or circumstances which would prove that the persons mentioned in that decision – the Minister of the Environment K.T., the Minister of the Economy E.G., the applicant (as the Prime Minister) and the Chancellor of the Government A.M. – had had any pecuniary or non-pecuniary interest in having that Government resolution adopted. The Ethics Commission also pointed out that the Government resolution in question had been a legal act of “general application, in contrast to individual legal acts” (*norminis, o ne individualus teisės aktas*), and thus it had not had a concrete beneficiary. The Ethics Commission also held that the above-mentioned persons had only been fulfilling their work-related duties. As for R.M., he was not a member of the Government, and did not participate in passing legal acts as part of that State institution. The prosecutor’s decision likewise lacked information proving that the adoption of that Government resolution would have had an impact on R.M.’s private property or on him personally. The Ethics Commission lastly emphasised that, pursuant to the case-law of the Supreme Administrative Court, a conflict of interest could not be established merely on the basis of suppositions or guesses.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

36. Article 22 of the Constitution protects private life.

37. The Law on Providing Information to Society (*Visuomenės informavimo įstatymas*) read as follows at the relevant time:

Article 14. Protection of Private Life

“1. In producing and disseminating public information, it is mandatory to ensure a person’s right to have his personal and family life respected.

...

3. Information concerning private life may be published without a person’s consent in cases where the publication of the information does not cause harm to the person or where the information assists in uncovering violations of the law or crimes ... In addition, information about the private life of a public figure may be disseminated without his or her consent, if such information discloses circumstances of that person’s private life or his or her character traits which [are of] public interest.”

38. The Law on the Government (*Vyriausybės įstatymas*) at the material time read:

Article 4. Basic Principles of the Activities of the Government

“The Government shall ground its activities on the principles of collegiality, democracy, lawfulness and openness.”

39. At the material time the Code of Conduct for State Politicians (*Valstybės politikų elgesio kodeksas*) read:

Article 2. Definitions

“1. “State politicians” shall mean persons who are elected, in accordance with the procedure set forth by laws, as a member of the Seimas, President of the Republic, a member of the European Parliament, a member of a municipal council or a mayor of a municipality, or appointed as a member of Government or a deputy mayor of a municipality.

...

4. “Private life” shall mean the personal, home and domestic, and intimate life of a State politician, as well as his activities not related to the duties of a State politician, political activities or the institution in which he holds office. The conduct or personal features of a State politician that are related to certain circumstances of his private life and are likely to have influence over public interests shall not be considered [to constitute] private life.

...

6. “Political activities” shall mean a State politician’s actions, conduct and participation in the activities of representative and executive institutions during his tenure.

7. “Public interests” shall mean a public interest that in public life a politician would act in compliance with the Constitution of the Republic of Lithuania and its legal acts and would take decisions only for the benefit of the State, a municipality and the society.

8. “Public life” shall mean a State politician’s political activities as well as a State politician’s conduct not related to his private life.”

Article 4. Principles of Conduct of State Politicians

“In public life, a State politician shall adhere to the following principles of conduct:

...

3) honesty – shall perform his duties honestly and adhere to the highest standards of conduct, and avoid situations that may influence taking the decisions that may raise doubts in the society;

4) transparency and publicity – when taking decisions, shall not raise doubts as to honesty, reveal the motives of his conduct and decisions to society, always upkeep the principles of openness and publicity, except for the cases specified by laws restricting the disclosure of information, and declare his private interests;

...

6) exemplarity – shall act properly in public and adhere to the universally accepted norms of morality, morals and ethics;

7) selflessness – shall serve the state and public interests, avoid any apparent or real conflict of public and private interests, and, in the event of such conflict, undertake all the required measures to resolve them promptly and make them coincide with the public interests, and shall not use his post or position seeking to influence the decision to be taken by another person, which might be beneficial for the politician or a person closely related to him; ...”

40. The Law on the Seimas Provisional Investigation Commissions (*Seimo laikinųjų tyrimo komisijų įstatymas*) read as follows at the material time:

Article 4. Rights of the Commission

“1. The Commission has the right:

1) to be familiarised with all the information relevant to the investigation, and to receive documents, data or information from all State and other institutions ... even if they contain State or ... professional secret[s] ...

...

5) having agreed with General Prosecutor’s Office ... or pre-trial investigation institution, to see the criminal case-file or other materials or documents that are [in the prosecutor’s] possession; ...”

41. The Law on the Seimas Anti-Corruption Commission (*Seimo antikorupcijos komisijos įstatymas*), in so far as relevant, reads as follows:

Article 2. Tasks of the Commission

“The tasks of the Commission shall be as follows:

1) to investigate the phenomena of corruption and instances linked with it, adopt decisions on the basis of the issues being examined and control how the institutions are implementing them;

2) analyse the decisions of State and municipal institutions and agencies and enterprises, which create the conditions for corruption and crimes and other violations of the law in the economic and financial systems, to seek that such decisions be abolished; ...”

Article 3. Rights of the Commission

“1. The Commission shall have the right to:

1) obtain the necessary information from ... General Prosecutor’s Office, Supreme Court of Lithuania, State Control, Special Investigation Service, State Security Department and other State and municipal institutions, enterprises, agencies and organisations;

...

3) invite State officers and civil servants and other persons to meetings;

...

5) in accordance with the procedure established by laws to obtain information, which comprises official or State secrets ...”

Article 6. Procedure in Respect of the Commission’s Work

“2. The Commission’s hearings shall, as a rule, be held publicly. Closed hearings, which may only be attended by persons invited by the Commission, may be held as per a decision of the Commission. ...”

42. At the material time the Criminal Code read:

Article 168. Unauthorised Disclosure or Use of Information About a Person's Private Life

"1. A person who, without another person's consent, makes public [or] uses for his own benefit or for the benefit of another person information about the private life of another person, where he gains access to that information through his service or profession or in the course of performing a temporary assignment ...,

shall be punished by community service, a fine, restriction of liberty, arrest or imprisonment for a term of up to three years."

Article 247. Unauthorised Disclosure of Pre-trial Investigation Data

"A person who discloses pre-trial investigation data prior to the hearing of a case at a court sitting, without the authorisation of a judge, prosecutor or pre-trial investigation officer investigating the case, shall be considered to have committed a misdemeanour, and shall be punished by community service, a fine, restriction of liberty or arrest."

43. At the material time the Code of Criminal Procedure read:

Article 177. Non-disclosure of Pre-trial Investigation Data

"1. Information about a pre-trial investigation shall not be made public. It may be made public only subject to a prosecutor's authorisation, and only to such an extent as is determined permissible..."

2. Where necessary, the prosecutor or the official [in charge] of the pre-trial investigation warns the participants in the [criminal] proceedings or other persons who have seen the actions performed in the pre-trial investigation proceedings that it is forbidden to make public the information from the pre-trial investigation. In such cases, a person is warned about criminal liability under Article 247 of the Criminal Code and provides a signature [confirming this]."

Article 214. Order Discontinuing a Pre-trial Investigation

"1. ... [T]he pre-trial investigation is discontinued by the prosecutor's decision ...

...

6. If the pre-trial investigation material contains information about an administrative-law offence or a violation of a law provided for in other legal acts, when adopting the decision to discontinue the pre-trial investigation, the prosecutor transfers that material in accordance with the rules set out in the Code of Administrative Law Offences or rules set out in other legal acts ..."

44. In its ruling of 8 May 2000 on operational activities, the Constitutional Court held:

"The legal concept of private life is linked to the state of an individual when the individual may expect privacy, or with legitimate expectations of private life. When the person carries out actions of a public nature and comprehends this, or must comprehend this or is capable of understanding this, whether at home or on other private premises,

then such actions of a public nature will not enjoy protection under Article 22 of the Constitution and Article 8 of the Convention, and the person may not expect privacy.

The activities of State and municipal officials linked to the implementation of functions of the State and municipal authorit[ies] and administration[s] are always of a public nature.

...

The Constitutional Court notes that a person who commits criminal deeds or ones which are contrary to the law must not and may not expect privacy. The limits of protection of an individual's private life disappear in cases when, through criminal or otherwise unlawful actions, [that individual] violates interests protected by law, [or] inflicts damage on particular persons, society or the State."

45. In its ruling of 23 October 2002 on protection of a public figure's private life and a journalist's right not to disclose a source of information, the Constitutional Court held:

"8. ... [P]ersonal characteristics, behaviour and certain circumstances of the private life of persons participating in social and political activities may be of importance to public matters. The public's interest in knowing more about these persons than others has a constitutional basis. That interest would not be secured if, in every particular case, when publishing information of public importance about the private life of a person participating in social and political activities, that person's consent was necessary. Thus, the media may inform the public about such a person's private life without [that person's] consent, inasmuch as personal characteristics, behaviour and certain circumstances of that person's private life may be of importance to public matters, and therefore the information published is of public importance. The person participating in social and political activities [must] anticipate more attention from the public and the media. Such persons, as a rule, are called public figures.

Persons who, because of the office that they hold or the nature of the work that they perform, participate in public life should primarily be categorised as public figures. These are politicians, State and municipal officials [and] heads of public organisations. Other persons may also be considered public figures if their activity is of importance to public affairs."

46. By its ruling of 8 July 2016 on the procedure for adopting legal acts of the Government, and in the context of the adoption of Government Resolution no. 1025, the Constitutional Court held (summary by the Constitutional Court; see also *Povilonis*, cited above, § 67):

"In the constitutional justice case at issue, [which was] initiated subsequent to the petition of the President of the Republic requesting an investigation into whether Government Resolution (no. 1025) of 23 September 2015 – whereby the Special Conditions for the Use of Land and Forests had been amended – was compliant with the Constitution and laws, in view of the procedure by which it had been adopted, the Constitutional Court ... noted that under the Constitution, legal acts must be passed in accordance with the established procedural law-making requirements, including the requirements established by the law-making subject itself. Institutions of State authority must also follow the requirements of publicity and transparency [in respect] of law-making procedures, deriving from the constitutional principle of responsible governance, which is to be interpreted in conjunction with the imperative obliging State institutions to serve the people ... Compliance with these requirements is an essential

condition for public trust in the State and law, as well as for the responsibility of State authorities towards the public...

While interpreting ... the Constitution ... the Constitutional Court has noted on more than one occasion that, when passing legal acts, the Government must observe the laws that are in force, including those establishing the procedure for adopting legal acts. [They] must follow the procedure for the drafting, assessment, coordination and consideration of Government resolutions, as well as [the procedure] for voting on them, which is established by laws. ... Under the Constitution, the stages and rules of the procedure for the adoption of legal acts of the Government as established in law and other legal acts must be observed while any draft legal act of the Government is being prepared, irrespective of whether this legal act is aimed at amending (correcting) the legal regulation, establishing a new one, or annulling the effective one.

...

The part of the case concerning the disputed Government Resolution's [no. 1025] compliance with the Constitution and laws, in view of the procedure for its adoption, was dismissed, with regard to the fact that this Resolution was annulled by the Government Resolution of 2 May 2016 [in an effort] to dispel doubts as to [the disputed resolution's] legitimacy. ... After the legal act in question had been removed from the legal system, the investigation into its compliance with the Constitution and laws, in view of the procedure for its adoption, would be an end in itself.

The Constitutional Court noted that, as was obvious from the material of the case, in the course of adopting the Government Resolution in question, certain violations of the procedure for the preparation, coordination, consideration and adoption of legal acts of the Government could have been committed; additionally, according to the Constitutional Court, it was not obvious from the data in the case that there had been any exceptional circumstances objectively justifying the urgent placement – not agreed beforehand with the competent institutions – of the draft Resolution in question on the agenda of the Government's sitting without the ordinary procedure established in the Rules of Procedure of the Government being followed."

47. On 12 December 2018 the enlarged chamber of the Supreme Court delivered a ruling in case no. e3K-7-471-403/2018. The case concerned a complaint by a business entity which had been lodged against the State Security Department in connection with information gathered under the Law on Intelligence and provided by the State Security Department to the Seimas Committee on National Security and Defence. The business entity had attempted to start civil proceedings for defamation of its business reputation, arguing that the information which the State Security Department had provided to the Seimas committee had been revealed to the media. The first-instance and appellate courts had refused to accept the business entity's claim for examination.

The Supreme Court, however, overturned those court decisions. The cassation court highlighted that the existing legal regulation, pursuant to which a Seimas committee had oversight of intelligence agencies and the Seimas Ombudsmen investigated complaints against intelligence officers' actions violating human rights or freedoms, failed to ensure effective and efficient protection of the rights of the individual (in that case, professional reputation). Referring to the case-law of the Constitutional Court, and also

relying on the Court's case-law regarding Article 6 § 1, the Supreme Court also emphasised that the right to access to court was absolute.

48. The Council of Europe Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption, adopted by the Committee of Ministers on 6 November 1997, urges the States to ensure that the media have the freedom to receive and impart information on matters relating to corruption, subject only to limitations or restrictions which are necessary in a democratic society.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

49. The applicant alleged, in particular, that the release into the public domain of transcripts of an intercepted telephone call between him and a mayor had amounted to a breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private ... life ... 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

50. At the outset, the Government wished to point out that the applicant had not complained before the Court that his telephone conversation with R.M. had been intercepted unlawfully. Rather, the applicant had claimed a violation of his right to respect for his private life and correspondence, on account of the disclosure of that conversation to the Seimas Anti-Corruption Commission and its subsequent wide dissemination to the public. The Government also submitted that the applicant, if he had wished to do so, had been able to contest the lawfulness of the criminal-intelligence actions.

51. The Government also pointed out that in order to seek redress for the alleged violation of his right to respect for private life and correspondence, the applicant had availed himself of only criminal-law remedies. He had not resorted to complaints to the institutions which monitored journalistic ethics, such as the Inspector of Journalistic Ethics or the Public Information Ethics Commission.

52. Considering that criminal liability as an *ultima ratio* should be imposed not for every disclosure of private information, but only in cases of the most severe violations of private life, in the applicant's case the effective protection at domestic level had not been reduced to only criminal measures. Thus, the applicant could have successfully sought the protection of his rights under civil law, by starting proceedings for breach of privacy against the media or the journalist in question. Besides, the applicant could also have sought compensation for damage from the State, for the allegedly improper handling of the pre-trial investigation material.

53. In the alternative, the Government considered that the complaint was manifestly ill-founded, as the applicant had not experienced sufficiently serious adverse effects impacting his private life or correspondence for his complaint to raise an issue under Article 8 of the Convention (see also paragraph 73 below).

(b) The applicant

54. The applicant considered that the Government's arguments as to the effectiveness of the remedies proposed by them were devoid of substance.

55. Firstly, as to the Government's suggestion that the applicant could have sued the intelligence agencies, it had to be emphasised that by the ruling of 12 December 2018 the Supreme Court had established that the current legal regulation – which stated that a Seimas committee had parliamentary oversight of intelligence agencies, and the Seimas Ombudsmen investigated complaints against the actions of intelligence officers which possibly violated human rights or freedoms – failed to ensure an effective and efficient defence of the rights of the individual that could be protected in court (see paragraph 47 above). It followed that, insofar as it concerned the claim for damages against the intelligence agencies, the applicant had had no effective way in which to defend his rights before the national courts.

56. Secondly, the applicant viewed the Government's suggestion that he should have instituted proceedings against the journalist in question as an effort to shift onto the media the blame for publishing the information that had come to their knowledge. However, it was not the press which had failed to carry out its duty to prevent the disclosure (especially the disclosure to the media) of the applicant's telephone conversation that had been recorded during the criminal-intelligence operation. Undoubtedly, it was the State and not the media which was responsible for such an event.

57. Thirdly, since the applicant's main complaint concerned the fact that the intelligence information had been revealed to the media and had not been protected from public exposure, a complaint to the institutions which monitored journalists' ethics would likewise have been irrelevant. The institutions referred to by the Government (see paragraph 51 above) had not had the capacity to guarantee the security of intelligence-related information. In other words, the applicant's issue was not with the media which had

published the information that had been provided, but rather with the State authorities whose actions had resulted in the violation of his rights. Therefore, the action of addressing any institutions with a complaint regarding the journalist's actions had to be viewed as irrelevant to the issue raised in the application to the Court.

58. Fourthly, the applicant wished to highlight that his efforts to lodge complaints with the prosecutors and the domestic courts in respect of the matter of the disclosure of his telephone communications had been unsuccessful.

59. Lastly, the applicant noted that in principle there was no reason why the notion of "private life" should be taken to exclude professional activities, and that professional life was part of the zone of interaction between a person and others which, even in a public context, might fall within the scope of "private life" (he cited *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 165-67, ECHR 2013, and *Mólka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV). In his case, the effect of disclosure had been significant.

2. The Court's assessment

60. The Court notes at the outset that the applicant has fully exhausted the criminal-law avenue by having pursued proceedings regarding the disclosure of his telephone conversation (see paragraphs 17-33 above). Whilst accepting that, regarding cases concerning alleged breach of privacy, a criminal-law remedy is not always required and the civil-law nature remedies could be seen as sufficient (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013), the Court observes that in the present case the criminal proceedings were opened in respect of not only the alleged breach of the applicant's privacy, but also another criminal act, namely the disclosure of the pre-trial investigation material to the media (see paragraph 21 above). Accordingly, the Court cannot find that the criminal-law avenue was entirely inappropriate as a remedy for the applicant's complaint, especially as the applicant's complaints were accepted for examination and scrutinised by the prosecutors and the courts.

61. The Court also takes note of the applicant's argument that the actions of intelligence agencies could not be challenged in court, at least until the very recent ruling by the Supreme Court (see paragraph 47 above), an argument which finds support in that ruling. The Court therefore cannot hold that the applicant, who lodged his application with the Court before that ruling by the Supreme Court, was obliged to pursue proceedings against the intelligence agencies.

62. The Court also shares the applicant's view (see paragraph 57 above) that, given the circumstances of his case and his opinion that State institutions were responsible for his grievance, he was not obliged to lodge a complaint with the bodies which supervised the activities of the media.

63. The Court observes that the Government did not explicitly argue that Article 8 of the Convention was not applicable, as such, to the applicant's complaint. Rather, they submitted that the disclosure of the applicant's telephone conversation with the mayor had had a rather limited impact on his right to respect for private life and correspondence, because the content of that intercepted conversation had been related to purely public matters (see paragraph 53 above and paragraph 73 below). Be that as it may, the Court reiterates that Article 8 of the Convention protects the confidentiality of "private communications", whatever the content of the correspondence concerned, and whatever form it may take. This means that what Article 8 protects is the confidentiality of all the exchanges in which individuals may engage for the purposes of communication (see *Frérot v. France*, no. 70204/01, § 53, 12 June 2007; *Michaud v. France*, no. 12323/11, § 90, ECHR 2012; and, more recently, *Klaus Müller v. Germany*, no. 24173/18, § 37, 19 November 2020). Article 8 of the Convention also covers calls made from office telephones (see *Halford v. the United Kingdom*, 25 June 1997, § 44, *Reports of Judgments and Decisions* 1997-III). Furthermore, Article 8 of the Convention does not use, as it does for the word "life", any adjective to qualify the word "correspondence". Indeed, the Court has already held that, in the context of correspondence in the form of telephone calls, no such qualification is to be made (see *Huvig v. France*, 24 April 1990, §§ 8 and 25, Series A no. 176-B, and *Niemietz v. Germany*, 16 December 1992, § 32, Series A no. 251-B). Accordingly, and recalling that the question of applicability is an issue of the Court's jurisdiction *ratione materiae*, and that therefore the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92 and 93, 25 September 2018), the Court finds that Article 8 of the Convention is applicable to the applicant's complaint about disclosure of the content of his telephone conversation with R.M.

64. This complaint is therefore 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

65. The applicant complained that the disclosure to the media of the transcripts of his telephone conversation had infringed his right to respect for his correspondence and had affected his right to respect for his private life.

66. Initially, the applicant could not have known that his telephone conversation was being intercepted. Moreover, he had never been warned or

even suspected that the transcripts of such a conversation would afterwards be disclosed to the public, without any warning or grounds. Likewise, it was irrelevant to examine the fact that, in the present case, the applicant's right to respect for privacy and correspondence had been affected by the disclosure of only one telephone call, rather than by the systematic monitoring of his communications at his workplace. Nor should such a fact be considered a mitigating circumstance.

67. Whilst not debating his status as a public figure, the applicant wished it to be noted that even a public figure had a right to enjoy a certain degree of privacy. Even if the Government contended that he had unreasonably expected a "high degree of privacy" (see paragraph 73 below), in fact he had been deprived of any privacy whatsoever. Disclosing transcripts to the media of the telephone conversation in question, which had been recorded in the course of criminal-intelligence activities, could not be assessed as "limiting" privacy in a manner measurable by degree, as in fact it had to be considered as (completely) denying his privacy as regards that particular telephone conversation.

68. The applicant further contested that the interference had met the requirements of Article 8 § 2 of the Convention.

69. Firstly, he was dissatisfied with the prosecutor's decision to permit the examination of the information, gathered during the secret surveillance, at a public hearing of the Seimas Anti-Corruption Commission, where the content of that conversation was disclosed (see paragraph 15 above). For the applicant, such decision lacked a legal basis and contradicted the imperative provisions set out in Code of Criminal Procedure regarding the prohibition on releasing information gathered during secret surveillance into the public domain. Additionally, the disclosure by members of the Seimas Anti-Corruption Commission of the material in the criminal investigation file to the media had not had a basis in law, since Article 177 of the Code of Criminal Procedure explicitly prohibited the disclosure of pre-trial investigation material in the absence of a prosecutor's authorisation (see paragraph 43 above), and there had been no such authorisation in his case. Besides, Article 161 of that Code imposed a requirement that all the information gathered about a person's private life be immediately destroyed when criminal proceedings were terminated. The applicant thus argued the data collected during the pre-trial investigation in question, as well as the information relating to his intercepted telephone conversation, should have been destroyed immediately after the prosecutor had decided to terminate the pre-trial investigation, or at least kept secret if it had then been transferred to assist with the investigation of other potential crimes under Article 214 § 6 of the Code. Yet, notwithstanding the fact that neither the applicant nor any other person had been charged with a crime in that criminal investigation, on the pretext of fighting corruption, the information gathered via the interception of telephone communications had been made public, which had

resulted in the applicant's intercepted telephone conversation being published and republished on the biggest news portals in the country, as well as aired on television channels.

70. Secondly, the Government had not provided any proof or reasonable explanation as to how the disclosure of his intercepted telephone conversation to the media had helped or could have helped prevent crime or protect the rights and freedoms of others, for he had never been a suspect in the criminal proceedings. There had been no public interest in disclosing his secretly recorded telephone conversation, because during the pre-trial investigation in question the prosecutor had established that no crime had been committed (see paragraph 12 above). Neither the applicant nor any other person involved in that investigation had been charged with any criminal act. Thus, there were no objective grounds to assert that disclosing the material from a discontinued criminal investigation could achieve one of the aims listed in Article 8 § 2 of the Convention.

71. That being so, he did not question whether or not it had been legitimate to intercept his telephone conversation, or lawful for the prosecutor to transfer the transcript of that conversation to the commission for further investigation. However, the examination of his telephone conversation could have been carried out in a closed hearing of the Seimas Anti-Corruption Commission, rather than in a public one, and the former option would not have been a threat to public safety or made the parliamentary investigation less effective. The applicant had not been informed about the Seimas Anti-Corruption Commission hearing prior to that hearing taking place, and consequently he could not have asked for a closed hearing.

72. Lastly, the applicant wished to highlight that the Court had already found against the Government when, in a case which he considered to be similar, it had held that information about a pre-trial investigation (an intercepted telephone conversation) had to remain confidential. The conversation in question had become known to the public (the media), which had not been in accordance with the law and had given rise to a violation of Article 8 of the Convention; the applicant referred to *Drakšas v. Lithuania* (no. 36662/04, § 60, 31 July 2012). Therefore, one could conclude that the Government had repeatedly failed to comply with their duties under the Convention.

(b) The Government

73. The Government took the view that in the present case it could not be considered that the applicant had experienced sufficiently serious adverse effects impacting his private life or correspondence for his complaint to raise an issue under Article 8 of the Convention. Admittedly, a person might expect a certain degree of privacy, even at work. However, the applicant, as the Prime Minister – a person who, in addition to being involved in purely public matters at the workplace, was also under constant supervision for security

reasons – could not have expected a “high degree of privacy”. Furthermore, besides the fact that the intercepted conversation had been related to a telephone call to the applicant’s work telephone number, the content of that intercepted conversation had been related to purely public matters – the legislative process regarding the adoption of a certain resolution by the Government. Given that the content of the disclosed telephone call had been related to the applicant’s official duties, under the Code of Conduct for State Politicians, it did not fall within the scope of the politician’s private life. Another point to note was that the present case was not related to any systematic monitoring of the applicant at his workplace, as there had been only one telephone call which had been lawfully intercepted in the course of the authorised check on R.M.’s telephone communications. What was of the utmost importance was the fact that the applicant himself did not consider that his conversation with R.M. had been informal or related to private issues. Moreover, there had been no negative consequences, such as the applicant incurring disciplinary liability on account of the fact that the media had reported on the pre-trial investigation, an investigation which had been instituted in respect of the actions of other persons. Lastly, in so far as the applicant alleged that there had been negative consequences for the Lithuanian Social Democrats Party or the Government (see paragraph 18 above), those could not be relied on for the purposes of the current application, since any alleged violation had to be directly related to the applicant as the victim.

74. If the Court were to find that there had been an interference with the applicant’s right to respect for his correspondence and his private life, the Government considered that the interference had met the requirements under the second paragraph of Article 8.

75. The relevant information had been lawfully obtained under the rules regulating criminal intelligence, and subsequently it had been declassified in order to be used for the purposes of instituting a pre-trial investigation into a case of alleged political corruption in the context of the adoption of the Government resolution in question. It had been legitimate to include the applicant’s telephone conversation in the text of the prosecutor’s decision to terminate the pre-trial investigation. Further, the Code of Criminal Procedure provided for a prosecutor’s right to transfer such material to the competent authorities upon a pre-trial investigation being terminated, should the prosecutor consider that an administrative or other offence might have been committed. The Anti-Corruption Commission had a statutory right to receive and publicly examine material from criminal cases which related to alleged acts of corruption. One had to bear in mind that whilst it was reasonable to expect that purely personal information which had no relevance to a criminal case had to be destroyed, this tenet should not be applied too broadly, in order not to undermine the possibilities of the effective administration of justice.

76. This was precisely the situation in the instant case, and the prosecutor had thus reasonably transferred the material to the Anti-Corruption Commission without imposing the requirement of confidentiality. In these circumstances, the disclosure of the content of the prosecutor's decision at the meeting of the commission, which had resulted in the applicant's telephone conversation with R.M. being widely disseminated, had not amounted to a breach of the Convention. The Government compared the instant case to the facts in *Drakšas* (cited above, § 61), where the Court had also found no violation of the Convention due to the disclosure of that applicant's intercepted conversations within the framework of proceedings before the Constitutional Court.

77. As to the aims of the disclosure of the pre-trial investigation material, the relevant information had been gathered to ensure the proper administration of justice and investigate acts related to corruption, the latter aim also being within the purview of the examination by the Seimas Anti-Corruption Commission. Accordingly, any alleged interference with the applicant's rights under Article 8 of the Convention had been imposed to prevent crimes, and to ensure the protection of the rights and freedoms of others.

78. As to the hearing of the Seimas Anti-Corruption Commission, although the law provided for the possibility to ask for a closed hearing, in this case, no such request had been submitted. The press had therefore been allowed to be present. The Government also pointed out that in accordance with the Code of Criminal Procedure, a prosecutor was vested with the authority to take a decision concerning the scope of the confidentiality of pre-trial investigation material.

79. The Government further referred to the guiding principles for the fight against corruption, adopted by the Committee of Ministers, whereby it was recommended that it should be ensured that the media have the freedom to receive and impart information on matters relating to corruption (see paragraph 48 above). In that context, not only did the media have the task of imparting such information, but the public also had the right to receive information about corruption-related issues. In certain circumstances, society's right to information on the behaviour and activities of public figures prevailed over an applicant's right to protection of public image (the Government referred to *Craxi v. Italy* (no. 2) (no. 25337/94, § 64, 17 July 2003).

80. Despite the fact that no person had been convicted in relation to the circumstances of the adoption of Government Resolution no. 1025, the Constitutional Court had nevertheless identified that certain violations could have been committed in respect of the preparation, coordination and adoption of legal acts (see paragraph 46 above). In the Government's view, it could not therefore be held that the investigation into the circumstances of the adoption

of that legal act had been arbitrary, or that there had been no reasonable legal grounds for instituting the relevant proceedings.

81. In sum, the applicable domestic law indicated with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities to disclose the content of the prosecutor's decision to terminate a pre-trial investigation, and when subsequently investigating that information within a parliamentary inquiry. There had been a pressing social need for the public to be informed about the ongoing investigation into corruption-related acts involving senior political leaders, thus the parliamentary investigation had reasonably been held in public with the participation of the press. Taking into account that the disclosed information had not been related to any of the applicant's private issues, and in the absence of any severe individual consequences, any restriction on the applicant's right to respect for his private life had been proportionate.

2. *The Court's assessment*

82. The Court observes that the applicant complained that the State had failed to protect his correspondence and that release into public domain of the transcript of his telephone conversation with R.M. had weighed heavily on his private life.

(a) **General principles**

(i) *As to correspondence and secret monitoring of communications*

83. The Court reiterates that telephone calls received on private or business premises are covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see *Amann v. Switzerland* [GC], no. 27798/95, § 44, ECHR 2000-II). For the purpose of delimiting the scope of protection afforded by Article 8 against arbitrary interference by public authorities, the Court also held that the covert taping of telephone conversations falls within the scope of Article 8 in both aspects of the right guaranteed, namely respect for private life and correspondence (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 59, ECHR 2001-IX).

84. The Court has likewise held that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method (see *Rotaru v. Romania* [GC], no. 28341/95, §§ 43-44, ECHR 2000-V, and *P.G. and J.H. v. the United Kingdom*, cited above, § 57).

(ii) *As to private life*

85. The Court reiterates that "private life" is a broad term not susceptible to exhaustive definition. It would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his own

personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 109, ECHR 2014 (extracts), with further references).

86. There is no reason of principle why the notion of “private life” should be taken to exclude professional activities (see *Bigaeva v. Greece*, no. 26713/05, § 23, 28 May 2009). Restrictions on an individual’s professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017). In addition, professional life is often intricately linked to private life, especially if factors relating to private life, in the strict sense of the term, are regarded as qualifying criteria for a given profession. Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of “private life” (see *Fernández Martínez*, cited above, § 110, and the case-law cited therein).

87. The Court has also held that Article 8 of the Convention “protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world”. The notion of “private life” does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world. Therefore, restrictions imposed on access to a profession have been found to affect “private life”. Likewise, dismissal from office has been found to interfere with the right to respect for private life. Lastly, Article 8 deals with issues of protection of honour and reputation as part of the right to respect for private life (see *Oleksandr Volkov*, cited above, § 165, and case-law cited therein).

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

(i) As to existence of interference

88. The Court notes that, once a pre-trial investigation regarding possible political corruption in connection with territorial planning had been opened, a court authorised the monitoring of R.M.’s telephone communications, as a result of which the Special Investigation Service intercepted the conversation between R.M. and the applicant (see paragraphs 7 and 8 above). The Court takes the view that transmitting that data to other State authorities, such as, initially, to the prosecutor (see paragraph 12 above) and, subsequently, to the Seimas Anti-Corruption Commission (see paragraph 13 above), and the authorities’ use of that data and its release into public domain, including the public scrutiny of the telephone transcript at the Anti-Corruption Commission’s hearing (see paragraphs 15 and 16 above) – which enlarged the group of persons with knowledge of the intercepted personal data, –

constituted an interference with the applicant's rights under Article 8 (see, *mutatis mutandis*, *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 79, ECHR 2006-XI, and the case-law cited therein; see also *Craxi* (no. 2), cited above, § 57).

(ii) *Whether the interference was justified*

89. Such an interference is justified by the terms of paragraph 2 of Article 8 only if it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” in order to achieve the aim or aims (see *Weber and Saravia*, cited above, § 80).

(α) Whether the interference was “in accordance with the law”

90. The Court reiterates that the expression “in accordance with the law” within the meaning of Article 8 § 2 requires, firstly, that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must, moreover, be able to foresee its consequences for him, and compatible with the rule of law (see, among other authorities, *Kruslin v. France*, 24 April 1990, § 27, Series A no. 176-A; *Huvig*, cited above, § 26, Series A no. 176-B; and *Perry v. the United Kingdom*, no. 63737/00, § 45, ECHR 2003-IX).

91. The Court notes at the outset that the applicant did not dispute that the interception of his telephone conversation had been lawful, or that the prosecutor had been entitled to transfer that conversation to the Anti-Corruption Commission (see paragraph 71 above). Rather, he contended that the State authorities – the prosecutor and the Anti-Corruption Commission – had not properly protected that information as they had been required to by law (see paragraph 69 above).

92. The Court firstly turns to the applicant's grievance (see paragraph 69 above) that the information from the criminal investigation file was not properly protected by the prosecutor, when transferring the pre-trial investigation materials to the Anti-Corruption Commission. The Court observes that, when requested to do so by the Chairman of the Seimas Anti-Corruption Commission, who acted in compliance with Article 4 § 1 (1) of the Law on the Seimas Provisional Investigation Commissions, the prosecutor sent to that commission his decision to terminate the pre-trial investigation (see paragraphs 11, 13, 31 and 40 above). The Court also does not overlook the fact that, having considered that the materials gathered during the pre-trial investigation had elements demonstrating possible breach of other laws, the prosecutor also sent a copy of his decision to the Chief Official Ethics Commission, which was the prosecutor's right and obligation under Article 214 § 6 of the Code of Criminal Procedure (see paragraphs 14

and 43 above; see also, more recently and, *mutatis mutandis*, *Adomaitis v. Lithuania*, no.14833/18, § 83, 18 January 2022). That being so, and also taking note of the Lithuanian authorities' subsequent conclusion that by transferring that material to the Anti-Corruption Commission and by not warning it that the material should not be made public the prosecutor had not breached the rules of criminal proceedings (see paragraph 26 above), the Court cannot but reject the applicant's argument that the information gathered during the pre-trial investigation had not been protected by the prosecutor. At this juncture the Court also reiterates its constant case-law to the effect that it is in the first place for the national authorities to interpret and apply domestic law. The scope of the Court's task is subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic authorities have interpreted and applied national law, except in cases of flagrant non-observance or arbitrariness, which the Court cannot discern in the present case (see, *mutatis mutandis*, *Elita Magomadova v. Russia*, no. 77546/14, § 59, 10 April 2018, and the case-law cited therein). It notes that the prosecutor's findings set out in paragraph 26 above have never been quashed by the domestic courts (see, in particular, paragraph 28 above).

93. Examining further, the Court observes that the content of the applicant's conversation with R.M. was disclosed in the framework of the Anti-Corruption Commission's proceedings regulated by the domestic law (see paragraphs 40 and 41 above), having obtained authorisation for use of that material from a prosecutor, who had not imposed any restrictions on the disclosure of the pre-trial investigation decision (see, *mutatis mutandis*, *Drakšas*, cited above, §§ 27 and 61); he had not requested that the Anti-Corruption Commission's hearing, which as a rule is public (see paragraph 25 above; see also Article 6 § 2 of the Law on the Seimas Anti-Corruption Commission, cited in paragraph 41 above) be closed either. As pointed out by the prosecutor and the Vilnius City District Court, neither the members of the Seimas Anti-Corruption Commission nor the journalist V.D. had been participants in the criminal proceedings, to be liable for disclosure of the content of the telephone conversation in question (see paragraphs 25 and 31 above), and, in the absence of any clear evidence of arbitrariness, the Court again does not see any reasons to depart from the domestic authorities' conclusions (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I). The Court accepts that the interpretation of the relevant legislation by the prosecutor and the Vilnius City District Court in the applicant's case was not such as to render the contested action – the disclosure of the content of the applicant's telephone conversation with R.M. at the Anti-Corruption Commission's hearing – unlawful in Convention terms. Lastly, the Court also 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 that his actions

could be scrutinised is clear given the applicant's professional occupation – at the relevant time he was the Prime Minister – and the legal regulation on the publicity and transparency of public service, as in force and accessible at the relevant time (see paragraphs 38 and 39 above; see also the Constitutional Court's position on the requirements of publicity and transparency in adoption of legal acts, cited in paragraph 46 above).

94. In the light of the foregoing, the Court holds that the interference with the applicant's right to respect for his correspondence, and any ensuing impact on his right to privacy, was "in accordance with the law" (see, *mutatis mutandis*, *Drakšas*, cited above, § 55).

(β) Legitimate aim

95. The Court recalls that both the pre-trial investigation in criminal proceedings wherein the applicant's telephone conversation had been intercepted (see paragraph 7 above), and the subsequent scrutiny of that telephone conversation at the Anti-Corruption Commission's hearing (see paragraphs 15 and 16 above) sought to establish whether the rules for the adoption of legal acts had been breached when adopting Government Resolution no. 1025 and whether that Resolution had been conducive to upholding the territorial planning decisions, which, as it was suspected, were in flagrant breach of the public interest (see paragraphs 7 and 10 above; for more detail, see *Povilonis v. Lithuania* (dec.), no. 81624/17, §§ 11, 16, 67 and 68, 7 April 2022). This element had been underlined by the prosecutors and the court (see paragraphs 24, 30 *in fine* and 32 above); the fact that to dispel doubts as to the legitimacy of Government Resolution no. 1025 it had been eliminated from the Lithuanian legal system had been acknowledged by the Constitutional Court (see paragraph 46 above). Accordingly, the Court finds that the interference with the applicant's right to respect for his correspondence, and any possible subsequent impact on his private life, as stemming from disclosure of that telephone conversation, was aimed at the protection of the rights and freedoms of others – in pursuance of Article 8 paragraph 2 of the Convention. Besides, the Court also gives weight to the Government's suggestion that interference with the applicant's rights under Article 8 of the Convention was aimed at the prevention of disorder and crime (see paragraph 77 above; for the context, see also *Povilonis*, cited above, §§ 50 *et seq.*). In particular, under Article 2 of the Law on the Seimas Anti-Corruption Commission, prevention of corruption-related acts is one of its aims (see paragraph 41 above).

(γ) Necessity of the interference

96. Turning to the conversation at issue which was intercepted and disclosed (see paragraph 8 above), the Court cannot but note that it undoubtedly concerned the matter of the adoption of the relevant Government

Resolution. The Court also finds it plain that the conversation contained no elements related to the applicant's private life, such as questions relating to his health (see *Biriuk v. Lithuania*, no. 23373/03, § 39, 25 November 2008) or sexual life (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 109, 14 January 2020), or similar matters, except for the question of reputation, which the Court will revert to below. The same conclusion was reached by the prosecutor and the domestic courts which examined the applicant's complaint (see paragraphs 23 and 30 above). Indeed, when questioned by the domestic authorities, the applicant himself specified that he had a working relationship with the mayor of Druskininkai, R.M., and that no private matters had been discussed during the conversation in question (see paragraph 9 above). The Court also observes and gives weight to the fact that when examining the applicant's complaint of the breach of his right to privacy, the domestic court referred to the Court's case-law on the protection of private life and carefully balanced the competing interests in question, namely the applicant's reputation and honour on the one hand, and the right of the press to report on matters of public interest on the other (see paragraph 30 above). It must also be emphasised that according to the Court's constant case-law, where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, weighty reasons are required if the Court is to substitute its view for that of the domestic courts (see *Bédat v. Switzerland* [GC], no. 56925/08, § 54, 29 March 2016). It is clear that there are no such reasons in the present case.

97. The Court also has regard to the Constitutional Court's practice whereby the activities of State and municipal officials linked to the implementation of functions of the State or municipal authorities and administrations are always of a public nature. Furthermore, actions of a public nature do not enjoy protection under Article 8 of the Convention, and a person may not expect privacy (see paragraph 44 above). In the Court's view, the matter of the adoption of the Government resolution was precisely the implementation of State powers to adopt legal acts, and thus the circumstances surrounding the adoption of that resolution fell squarely within the notion of actions of a public nature. Moreover, even if the applicant had complained that the disclosure of his telephone conversation had had an impact on his reputation, the Court refers to the Constitutional Court's position that the personal characteristics and behaviour of persons participating in social and political activities, in addition to certain circumstances of their private life, may be of importance to public matters (see paragraph 45 above).

98. In the context of Article 8 of the Convention the Court has also examined whether an attack on a person attained a certain level of seriousness and was made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (see, *mutatis mutandis*, *Delfi AS v. Estonia* [GC], no. 64569/09, § 137, ECHR 2015, with further references;

see also *Denisov*, cited above, §§ 110-14, 25 September 2018). As the Grand Chamber has held, applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way (see *Denisov*, cited above, § 114).

99. The Court acknowledges the applicant's argument that the release into the public domain of his telephone conversation had an impact on his reputation (see paragraph 18 above). It does not dispute his statements that he suffered negative experiences when communicating with others after the transcript of the telephone conversation had been disclosed by the media. Likewise, the Court cannot turn a blind eye to the fact that the applicant has been a professional politician for decades (see paragraph 5 above), and it goes without saying that reputation-related criteria play an important role in a politician's life.

100. Be that as it may, the applicant did not point to any concrete and tangible repercussions which the media's disclosure of that telephone conversation had had on his private life. Therefore, his situation must be contrasted with those that the Court has examined in other cases, such as *Oleksandr Volkov* (cited above, § 166), where the applicant, a judge, had been dismissed from judicial office, which the Court found had affected a wide range of his relationships with other persons, including relationships of a professional nature. In the *Oleksandr Volkov* judgment, the Court also found that that applicant's dismissal had had an impact on his "inner circle", as the loss of his job must have had tangible consequences for his material well-being and that of his family. Moreover, the reason for the applicant's dismissal, namely breach of judicial oath, suggested that his professional reputation had been affected (*ibid.*). There are clearly no such considerations in the present case. Likewise, in *Polyakh and Others v. Ukraine* (nos. 58812/15 and 4 others, §§ 208 and 209, 17 October 2019), the Court found that the applicants – who had not merely been suspended, demoted or transferred to positions of lesser responsibility, but dismissed and excluded from the civil service altogether, losing all their remuneration with immediate effect – had suffered very serious consequences as regards both their capacity to establish and develop relationships with others and their social and professional reputation, and that this had affected them to a very significant degree.

101. In the instant case, however, the disclosure of the telephone conversation did not result in, for example, the applicant's dismissal from the post of Prime Minister, or any other sanctions against him. In fact, the applicant was not convicted and the Chief Official Ethics Commission established nothing unethical in the actions of the persons mentioned in the prosecutor's decision to discontinue the criminal proceedings (see paragraphs 34 and 35 above). The Court considers that those facts and findings alleviated the applicant's situation to a certain extent. Besides, the

Court also has regard to the Government's argument that Government Resolution no. 1025 had been annulled, so that any associated flaws were eliminated from the Lithuanian legal system (see paragraphs 46 and 80 above). In the Court's view, this gives weight to the Government's argument that the press had a right to learn of and report a possible wrongdoing (see paragraph 79 above), and the Court has already referred to the importance of public scrutiny in cases of possible political corruption (see paragraph 95 above). At this juncture, it also observes that the applicant laid the blame for the disclosure of his intercepted telephone conversation not on the press, but on the State authorities which should have kept that material confidential (see paragraph 57 above).

102. In the light of the above, and with regard to the applicant establishing and maintaining relationships with others, the Court finds that even if his reputation among his colleagues was affected by the disclosure of his telephone conversation, there are no factual grounds, let alone evidence, which he has put forward that would indicate that such an effect was so substantial as to have constituted a disproportionate interference with his rights guaranteed by Article 8 of the Convention (compare *J.B. and Others v. Hungary* (dec.), no. 45434/12 and 2 others, §§ 132-33, 27 November 2018).

(iii) Conclusion

103. It follows that there has been no violation of Article 8 in this case as regards the State's obligation to protect the confidentiality of the applicant's correspondence and respect for his private life.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 14 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Jon Fridrik Kjølbro
President