

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

SECOND SECTION

CASE OF NARBUTAS v. LITHUANIA

(Application no. 14139/21)

JUDGMENT

Art 3 (substantive aspect) • Inhuman or degrading treatment • Ban on applicant, suffering from cancer, attending any Ministry of Health institutions to access medical care, during house arrest imposed in the context of a criminal investigation against him • Requisite threshold of severity not attained
Art 5 § 1 • Deprivation of liberty • Applicant's provisional detention decided by the Special Investigation Service not in accordance with a procedure prescribed by law
Art 8 • Private life • Disclosure to the public by the authorities of the applicant's identity and about the ongoing pre-trial investigation • Content and form of press releases and public comments not justified by the need to inform the public of the ongoing criminal proceedings • Serious damage caused to the applicant's reputation • Failure to strike fair balance between competing Art 8 and 10 rights
Art 10 • Freedom of expression • Warning issued to the applicant not to disclose information about the pre-trial investigation despite many essential details already being public • Failure to provide relevant and sufficient reasons showing impugned interference necessary in a democratic society and proportionate to aims pursued
Art 1 P1 • Peaceful enjoyment of possessions • Control of use of property • Temporary seizure of applicants' assets (bank accounts, future income and car) during criminal proceedings • Failure to strike a fair balance between the general interest and the applicant's fundamental rights
Art 6 § 2 • Presumption of innocence • Art 35 § 1 • Exhaustion of domestic remedies • Public statements by high-ranking State officials allegedly implying applicant's guilt before that question had been determined by the courts • Failure to lodge civil claim for protection of his honour and dignity against said officials

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 December 2023

FINAL

19/03/2024

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



In the case of Narbutas v. Lithuania,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 14139/21) 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 Šarūnas Narbutas ("the applicant"), on 15 February 2021;

the decision to give notice to the Lithuanian Government ("the Government") of the complaints concerning the applicant's alleged inability to access medical assistance (Article 3 of the Convention), the lawfulness of and justification for his detention (Article 5 § 1), his right to be presumed innocent (Article 6 § 2), the harm allegedly caused to his reputation by the publicity given to the criminal proceedings (Article 8), the restrictions on him discussing the case in the media (Article 10) and the temporary seizure of his assets (Article 1 of Protocol No. 1 to the Convention) and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 28 November 2023,

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

INTRODUCTION

1. The case concerns various remand measures applied against the applicant in the context of a high-profile criminal investigation relating to his involvement in the acquisition by the Lithuanian government of a large number of COVID-19 tests. The applicant raised complaints under Article 3, Article 5 § 1, Article 6 § 2, Article 8 and Article 10 of the Convention as well as Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1988 and lives in Vilnius. He was represented by Ms E. Matulionytė and Ms R. Tamulytė, lawyers practising in Vilnius, and Mr L. Tsang, a lawyer practising in London.

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

4. From 2013 to 2019 the applicant was the president of the Lithuanian Cancer Patient Coalition (hereinafter "POLA"), an association defending the interests of cancer patients and their families; he later became a member of its board. Previously, he had been a legal advisor to the President of Lithuania (in 2014-2016) and an advisor to a member of the *Seimas* (in 2010). He has also served on the management boards of several public bodies working mainly in the area of public health (see paragraph 237 below). At the material time, he was a university lecturer, the head of a private company and a self-employed consultant.

I. PURCHASE OF COVID-19 TESTS BY THE LITHUANIAN AUTHORITIES

5. On 26 February 2020 a national state of emergency was declared in Lithuania in view of the spread of the new coronavirus. On 16 March 2020 a nationwide lockdown was announced. During that time the relevant authorities were seeking to urgently purchase the items necessary to manage the spread of the virus. It appears that the authorities were also willing to accept assistance in this regard from individuals having no formal links to any State institutions.

6. As submitted by the applicant, in March 2020 he contacted several government officials and a pharmaceutical company registered in Spain (hereinafter "the company") and negotiated with it a potential purchase of COVID-19 tests by the Lithuanian government. He also submitted that he and the company had agreed that he would be paid 1 euro (EUR) for every test sold.

7. On 21 and 23 March 2020 the National Public Health Surveillance Laboratory (hereinafter "NVSPL"), a public entity supervised by the Ministry of Health, signed two contracts with the company, purchasing 303,360 COVID-19 tests at a total cost of EUR 5,157,120.

8. Between May and June 2020 the company paid EUR 303,360 into the applicant's bank account.

II. SUSPICIONS AGAINST THE APPLICANT AND THE RESTRICTION OF HIS LIBERTY

9. On 30 March 2020 the Special Investigations Service (*Specialiųjų tyrimų tarnyba* – hereinafter "the STT") opened a pre-trial investigation into the circumstances of the purchase of COVID-19 tests by NVSPL.

A. The applicant's provisional detention

10. On the morning of 21 July 2020 STT officers arrived at the applicant's home. He was officially notified that he was suspected of trading in influence under Article 226 § 4 of the Criminal Code (see paragraph 98 below). It was alleged that he had requested and accepted a bribe of EUR 303,360, disguised as commission, from the pharmaceutical company, in exchange for which he, using his social status, contacts or other possible or supposed influence, had convinced several people in charge of the response to the COVID-19 pandemic, including one of the Deputy Ministers of Health and the head of NVSPL, to purchase a large number of tests from the company.

11. On the same day, at 8.01 a.m., the STT informed the applicant that he was being held in provisional detention under Article 140 of the Code of Criminal Procedure (hereinafter "the CCP" – see paragraph 108 below). The relevant decision stated that the investigation was at its initial stage and that it was therefore likely that the applicant would flee, seek to influence witnesses and other potential suspects, hide or destroy evidence, or commit further crimes (see paragraph 104 below). It also stated that there was no possibility of urgently requesting a court to authorise his detention on remand (see paragraph 122 below). Moreover, the crime of which the applicant was suspected was punishable by imprisonment of between two and eight years. Accordingly, it was necessary to place him in provisional detention to prevent the commission of further crimes, enable the smooth conduct of the investigation, including the identification of all possible accomplices, and ensure his participation in the proceedings.

12. On the same day, from 9.44 a.m. to 12.48 p.m., the STT carried out a search of the applicant's home, car and office, in the presence of the applicant and his lawyer. He was then taken to the STT headquarters, where he gave a written statement. At around 5 p.m. he was taken to a detention facility, where he remained until the following morning.

13. On the same day the applicant lodged a complaint with the prosecutor in which he submitted that the decision to place him in provisional detention was unlawful. He stated that it was based on general and abstract reasons and did not contain any information to justify why, in this particular case, there were grounds for believing that he might flee, interfere with the investigation or commit further crimes. The decision had been prepared before the STT agents had arrived at his home and did not take into account the fact that he had fully cooperated with them during the search of his home. Moreover, the conditions laid down in Article 140 § 2 of the CCP had not been met (see paragraph 108 below). The applicant further submitted that all the circumstances of his alleged criminal activity were already known because the events in question had taken place several months previously and he had provided all the relevant documents to the STT. Furthermore, he was married, had a place of residence, was employed and had no previous convictions. He

therefore contended that his provisional detention had not been ordered to achieve any aims relating to the investigation but to scare and pressure him. Moreover, the decision had been taken without any consideration of the fact that he had been diagnosed with cancer, which required him to follow a certain daily regime, avoid stress and take special medication. He asked the prosecutor to quash the decision ordering his provisional detention.

14. On 22 July 2020 the prosecutor dismissed the applicant's complaint. The decision stated that detention could be ordered if there were grounds for believing that the person might flee, interfere with the investigation or commit further crimes; those grounds were alternative and not cumulative, so it was enough for at least one of them to be established. In the case at hand, the applicant was suspected of having committed a serious crime, which gave grounds for believing that he might commit further serious crimes (see paragraph 120 below), and the circumstances of the case did not rule out such a possibility. Moreover, in view of the nature and gravity of the suspicions against him, he might interfere with the investigation, seek to interfere with witnesses or other potential suspects directly or through other people, or destroy or hide relevant items or documents, in order to avoid criminal liability. Furthermore, the pre-trial investigation was at its initial stage, the authorities were questioning various people who could provide relevant information, all the factual circumstances of the suspected criminal activity had not yet been identified, and various items and documents remained to be seized. Accordingly, the applicant's detention was necessary. Lastly, the prosecutor stated that at the time the impugned decision had been taken, there had been no possibility of urgently applying to a court for authorisation to detain him on remand.

15. On the morning of 22 July 2020 the applicant was again taken to the STT headquarters and questioned as a suspect. He denied the allegations against him and submitted that he had acted as a lawful intermediary between the government and the pharmaceutical company. He also denied having any personal ties with the Deputy Minister of Health or the head of NVSPL and having exerted any influence over them. After questioning he was taken back to the detention facility.

16. On the same day the prosecutor asked the pre-trial investigation judge to authorise placing the applicant under house arrest for three months (see paragraph 122 below). The prosecutor's request stated that, at that stage of the investigation, there were grounds for believing that the applicant might have committed the crime of which he was suspected and that, in order to establish all the relevant circumstances, it was necessary to restrict his contact with certain individuals and thereby prevent any possibility of evidence being hidden or destroyed. However, those aims could be achieved by applying a remand measure more lenient than detention. The prosecutor asked that the applicant be ordered to stay at home from 6 p.m. to 7 a.m., banned from

contacting certain individuals and banned from attending the Ministry of Health or any institutions under it.

17. On the same day the STT asked the Vilnius police to arrange for the applicant to be taken to the Vilnius District Court under police escort.

18. The applicant was taken to court in an armoured police vehicle and escorted to the courtroom by two police officers. Although he was not handcuffed, he submitted that the police officers had told him to keep his hands behind his back, which had made it seem in the photographs and videos taken by journalists as though he was actually handcuffed (see paragraph 66 below).

19. The hearing before the pre-trial investigation judge was held at 3 p.m. the same day. At the start of the hearing, the applicant's lawyer asked to have access to the investigation file. The request was granted and the court adjourned for approximately one hour. After the hearing resumed, the applicant's lawyer argued that imposing any remand measure on the applicant was unjustified because there were no grounds for believing that his actions had constituted a criminal offence.

20. The pre-trial investigation judge delivered a decision at 4.55 p.m. The judge allowed the prosecutor's request in part and placed the applicant under house arrest for one month. He was ordered to stay at home from 10 p.m. to 6 a.m., banned from contacting the individuals indicated in the prosecutor's request and banned from attending the Ministry of Health or any institutions under it.

21. The applicant was released from provisional detention at 5.15 p.m. in the afternoon of 22 July 2020.

B. Proceedings concerning the lawfulness of the applicant's provisional detention

1. Decision of the senior prosecutor

22. On 29 July 2020 the applicant lodged a complaint with the senior prosecutor against the decisions concerning his placement in provisional detention (see paragraphs 11 and 14 above). He submitted, as in his previous complaint (see paragraph 13 above), that the decision ordering his provisional detention had been based on general and abstract reasons and had not taken into account his individual circumstances. He further submitted that the conditions set out in the CCP when provisional detention could be ordered had not been met. In particular, neither the STT nor the prosecutor had provided any explanation why it had not been possible to urgently apply to a court for authorisation of detention on remand (see paragraph 108 below). The applicant pointed out that the pre-trial investigation had been opened in March 2020 and that it appeared from the case file that he had been identified as a potential suspect from the very beginning; however, from then until July 2020, the prosecutor had not applied to a court for authorisation to detain him.

Moreover, before arriving at his home on 21 July 2020, the STT had obtained court authorisation to carry out a search, and there was no explanation why it could not have also sought similar authorisation for his detention. The applicant contended that, under Article 140 § 2 of the CCP, provisional detention of a person who had not been caught committing a criminal offence was an exceptional measure, but that the impugned decisions had in no way explained why such a measure had been justified in his case.

23. The applicant further submitted that there had been no objective grounds justifying his detention. The pre-trial investigation had been ongoing since March 2020, so it could not be said that in July 2020 it had been at its initial stage. By that time the investigators had obtained all the relevant documents concerning his alleged criminal activity – the commission agency agreement between him and the company, the invoices he had provided to the company and records of his bank accounts – and it had not been indicated what other items or documents remained to be seized. If the authorities had failed to carry out certain investigative measures during the first three months of the investigation, that could not justify his detention. He also contended that in the impugned decisions the risk of him absconding had been assessed solely with reference to the fact that he was suspected of a serious crime, but that that was not in line with the Court's case-law (in this connection, he relied on *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 60, ECHR 2003-IX (extracts); *Becciev v. Moldova*, no. 9190/03, § 58, 4 October 2005; and *Cabała v. Poland*, no. 23042/02, § 31, 8 August 2006). Lastly, he submitted that the authorities had failed to justify why more lenient remand measures could not achieve the aims of Article 119 of the CCP (see paragraph 104 below).

24. On 10 August 2020 the senior prosecutor dismissed the applicant's complaint. The decision acknowledged that when ordering any remand measure, it was necessary to consider the individual circumstances of the case, such as the suspect's personality, place of residence, lawful source of income, age, health and family situation. In the applicant's case, those circumstances had been duly taken into account, as demonstrated by the fact that the prosecutor had eventually asked the court to place him under house arrest rather than extend his detention. However, that did not mean that his provisional detention had not been justified. The senior prosecutor emphasised that a pre-trial investigation was a constantly changing process in which new information came to light and remand measures had to be reassessed regularly. It was the prerogative of the prosecutor to choose a particular remand measure.

25. Furthermore, the fact that the prosecutor had obtained advance authorisation from the court to search the applicant's home had not deprived the STT of the right to provisionally detain him under Article 140 § 2 of the CCP. According to the senior prosecutor, it was obvious that, at the time the decision ordering his provisional detention had been adopted, there had been

no possibility of applying to a court for authorisation. Nonetheless, the applicant had been able to complain about that decision the very same day and his complaint had been examined by the prosecutor the following day, thereby providing him with a speedy review. Accordingly, his provisional detention had been lawful and none of the arguments indicated in his complaint supported a different conclusion.

2. Decisions of the courts

26. On 17 August 2020 the applicant lodged an appeal against the senior prosecutor's decision with the pre-trial investigation judge of the Vilnius District Court. He presented essentially the same arguments as in his previous complaints (see paragraphs 13, 22 and 23 above). In addition, he emphasised that the decision of the STT to place him in provisional detention had been drawn up and printed out before the officers had arrived at his home, which demonstrated that the STT had decided to detain him without finding out any of his personal circumstances, including his health, and without assessing his cooperation in the investigation. Moreover, if the STT had been able to prepare such a decision in advance, it remained unclear why it could not have sought authorisation from the court. Lastly, the applicant contended that after the prosecutor had decided to ask a court to place him under house arrest rather than detain him on remand (see paragraph 16 above), it had become clear that the grounds for his continued detention were not present and that he should have been released immediately, but that this had not been done. Instead, he had been taken to court by the police (see paragraph 18 above) in order to make him appear guilty in the eyes of society. The applicant asked the pre-trial investigation judge to assess the lawfulness of his provisional detention for its entire duration and quash the impugned decisions of the STT, prosecutor and senior prosecutor.

27. On 8 October 2020 the pre-trial investigation judge of the Vilnius District Court dismissed the applicant's appeal. The decision stated that although the pre-trial investigation had been opened on 30 March 2020, no witnesses had been questioned until 21 July 2020. Therefore, at that stage, there had been grounds for believing that the applicant might seek to interfere with witnesses or hide or destroy relevant documents. Moreover, according to the case-law of the domestic courts, the gravity of the alleged crime and the seriousness of the potential punishment were among the factors which could lead the authorities to believe that the suspect might flee. Accordingly, the decision to place the applicant in provisional detention had been lawful. The pre-trial investigation judge also stated that, after the applicant had been placed in provisional detention, it had not been possible to urgently seek authorisation from a court: court hearings on remand measures had to be scheduled in advance and requests concerning detention on remand had to be comprehensive and properly reasoned, which meant that they took time to prepare.

28. Lastly, the pre-trial investigation judge refused to examine the applicant's request for an assessment of the lawfulness of the entire duration of his provisional detention on the grounds that he had not lodged such a request with the prosecutor and senior prosecutor, as required by the CCP.

29. The decision indicated that it was amenable to appeal before the Vilnius Regional Court.

30. On 16 October 2020 the applicant lodged an appeal with the Vilnius Regional Court in which he raised essentially the same arguments as previously (see paragraphs 13, 22, 23 and 26 above). In addition, he submitted that the pre-trial investigation judge had assessed whether it had been possible to seek a court's authorisation after he had been placed in provisional detention, but not whether this had been possible before his provisional detention, which was one of the conditions for ordering such detention under Article 140 § 2 of the CCP (see paragraph 108 below). The applicant also submitted that the CCP and Article 5 § 4 of the Convention entitled him to lodge complaints with the courts regarding the lawfulness of his detention and that, therefore, his request for an assessment of the lawfulness of the entire duration of his provisional detention should have been examined.

31. On 4 November 2020 the Vilnius Regional Court discontinued the proceedings on the grounds that, contrary to the lower court's findings (see paragraph 29 above), decisions taken by the pre-trial investigation judge concerning provisional detention were final and not amenable to further appeal.

C. Proceedings concerning house arrest

32. On 29 July 2020 the applicant lodged an appeal with the Vilnius Regional Court against the decision to place him under house arrest (see paragraph 20 above). He submitted, in particular, that he had cancer and needed constant medical attention, but that he had been banned from going to the public hospital in which he was being treated, since all public hospitals were run by the Ministry of Health. He contended that the ban amounted to inhuman treatment.

33. On 18 August 2020 the court allowed the applicant's appeal in part. It observed that he had not provided any proof that he had needed to go to the hospital during the period of his house arrest and that the documents he had submitted indicated that a follow-up visit with a doctor was scheduled to take place in September 2020. Nonetheless, the court acknowledged that, in view of the applicant's illness, it could not be ruled out that he might need to go to hospital. Accordingly, it amended the lower court's decision and allowed him to attend all medical facilities when necessary for treatment purposes.

34. On 19 August 2020 the prosecutor adopted a decision releasing the applicant from house arrest and instead banned him from going abroad without the prosecutor's permission. He remained banned from contacting

certain individuals and attending the Ministry of Health or any institutions under it, except when necessary for treatment purposes.

35. In February 2021 the applicant asked the prosecutor to lift the above-mentioned restrictions in part and allow him to attend the Ministry of Health and any institutions under it. He also asked for permission to contact some of the individuals indicated in the prosecutor's decision, to the extent that this was necessary for him to carry out his functions as a board member of POLA. In March 2021 the restriction was lifted with regard to certain institutions under the Ministry of Health.

III. TEMPORARY SEIZURE OF THE APPLICANT'S PROPERTY

A. Prosecutor's decision of 21 July 2020

36. On 21 July 2020 the prosecutor ordered the seizure of the applicant's property – all of his bank accounts and his car – for six months, in order to secure a possible civil claim, confiscation or extended confiscation of property (see paragraphs 124-130 below). He was allowed to use the car but none of the money in his bank accounts, including any future income.

37. On 22 July 2020, in the applicant's presence, an STT officer assessed the value of the property temporarily seized at EUR 350,000.

B. Prosecutor's decision of 10 September 2020

38. On 30 August 2020 the applicant lodged a request with the prosecutor to amend the aforementioned decision and lift the temporary seizure of his property in part. He submitted that no civil claims had been lodged and that no victims had been identified in the criminal proceedings against him and that, therefore, the temporary seizure of his property could not be justified by the need to secure a civil claim (see paragraph 124 below). While the law permitted the temporary seizure of property which might have been used to commit the alleged criminal activity or obtained from such activity, in his case, the value of the seized property (EUR 350,000) exceeded the profit he had received from the alleged criminal activity (EUR 303,360). Since it had not been alleged that the remaining money in his bank accounts or his car had been in any way related to the alleged criminal activity, there were no grounds for seizing them.

39. The applicant further submitted that the measure was disproportionate. He pointed out that EU regulations which provided for the seizure of assets of individuals accused of certain serious crimes nonetheless authorised the release of funds necessary to satisfy their basic needs, such as food, medicine, rent, taxes and legal expenses (he relied on Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus and

on Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism). The applicant therefore contended that he was subject to stricter restrictions than those applicable to individuals accused of crimes against humanity or terrorism. He submitted that the ban on him using any of the money in his bank accounts for six months, including any future income received from lawful sources, precluded him from meeting his basic needs, such as buying food and medication, paying rent, taxes and social security payments, or hiring a lawyer to defend him in the criminal proceedings. He submitted that meeting those needs required approximately EUR 6,650 per month – including approximately EUR 1,000 for the rent of his flat and approximately EUR 4,500 for legal expenses. He enclosed invoices for the legal expenses he had incurred between July and August 2020 and bank statements showing the amounts he paid every month for rent and utilities, payments to various social security funds and various other expenses, including food, gas, medical procedures and consultations with a psychologist. Accordingly, the applicant asked that the temporary seizure be lifted from all of his property except for the amount of EUR 303,360.

40. On 10 September 2020 the prosecutor dismissed the applicant's request. The decision stated that the temporary seizure of property could be applied when at least one of the grounds indicated in the CCP was present, that is to say when it was necessary to secure a possible civil claim, confiscation or extended confiscation of property. The CCP did not lay down any other conditions for applying this measure. The prosecutor further stated that a civil claim in criminal proceedings could be lodged until the start of the examination of the case by the court (see paragraph 129 below). Accordingly, the existence of civil claims and their potential amount could not be determined until the pre-trial investigation was completed, and the prosecutor had an obligation to ensure that such a claim could be satisfied if eventually lodged. Furthermore, in cases which concerned, among other things, allegations of bribery or trading in influence, the prosecutor was required, in accordance with a regulation approved by the Prosecutor General's Office, to investigate the origins of the suspect's property (see paragraphs 144-146 below). Such an investigation with respect to the applicant's property had been opened on 4 September 2020 and was currently ongoing, and therefore there were no grounds for lifting the temporary seizure.

41. The prosecutor further stated that there was no indication that the temporary seizure of the applicant's property had restricted his rights significantly more than necessary. While the applicant had submitted information about his usual monthly expenses, he had not asked to be allowed to use part of his assets to meet his basic needs. Nonetheless, the prosecutor acknowledged that it was necessary to strike a balance between, on the one hand, the rights of victims or potential civil claimants and, on the other, those of the suspect. The prosecutor considered that since the applicant had not

provided information about the amount of money necessary to meet his actual basic needs, he would be allowed to use EUR 607 per month, corresponding to the minimum monthly salary. According to the prosecutor, the fact that the applicant, who was accused of a serious crime, could not live according to his usual lifestyle did not allow for the conclusion that the temporary seizure of property was unlawful or unjustified.

42. The decision stated that it was amenable to appeal before the senior prosecutor.

C. Decisions of the courts

43. On 21 September 2020 the applicant lodged an appeal against the prosecutor's decisions of 21 July and 10 September 2020 with the pre-trial investigation judge of the Vilnius District Court. He emphasised that the suspicions against him related to the alleged bribe in the amount of EUR 303,360 (see paragraph 10 above). Although the prosecutor had stated that a civil claim in the criminal proceedings might be lodged at a later stage, it had not been explained who the potential civil claimants might be or what the extent of the damage allegedly caused might have been. Accordingly, the temporary seizure of the applicant's property had been based on purely hypothetical reasons. Moreover, neither the notice of suspicion nor the decisions ordering the temporary seizure of his property had contained any allegations concerning the lawfulness of the origins of his other property. Although in the decision of 10 September 2020 the prosecutor had also referred to the fact that an investigation into the origins of the applicant's property was ongoing (see paragraph 40 above), the applicant questioned whether such an investigation had been justified on objective grounds. He pointed out, in particular, that the pre-trial investigation had been opened in March 2020 and that he had been officially notified of the suspicions against him in July 2020, but that the investigation into the origins of his property had only started in September 2020, after he had asked the prosecutor to amend the temporary seizure. He also submitted that an investigation into the origins of a person's property was not one of the grounds on which the CCP allowed a temporary seizure to be ordered (see paragraph 124 above).

44. The applicant further argued that EUR 607 per month was insufficient to meet his needs, including the need to pay for a lawyer in the criminal proceedings, rent, food and medical expenses. He submitted the same supporting documents that he had provided to the prosecutor (see paragraph 39 above). He emphasised that legal expenses, medical expenses, rent and social security payments were essential and could not be deferred.

45. Lastly, the applicant complained that some of the wording used in the prosecutor's decision of 10 September 2020 had implied that he was guilty of the crimes of which he was suspected. He contended that the prosecutor might have been influenced by the politicisation of the investigation, as even

the President had made public statements incompatible with the principle of the presumption of innocence (see paragraph 73 below).

46. On 28 October 2020 the pre-trial investigation judge of the Vilnius District Court dismissed the part of the applicant's appeal relating to the prosecutor's decision of 21 July 2020 (see paragraph 36 above). The judge held that the temporary seizure of the applicant's property was in accordance with the law and necessary in order to secure a civil claim if one were eventually lodged in the criminal proceedings, or to ensure the possible confiscation or extended confiscation of the relevant property. The judge acknowledged that the investigation into the origins of the applicant's property had not been started at the time that the decision to temporarily seize his property had been adopted, but considered that the delay was justified by the large scope of the case and the amount of information which needed to be examined. Moreover, although the value of the property seized (EUR 350,000) exceeded the amount of the alleged bribe (EUR 303,360), the judge considered that the difference between the two amounts (EUR 46,640) was not such as to make the measure "grossly disproportionate".

47. The pre-trial investigation judge left the part of the applicant's appeal concerning the prosecutor's decision of 10 September 2020 unexamined on the grounds that he had not complained about that decision before the senior prosecutor, as required by law and as indicated in the decision itself (see paragraph 42 above).

48. On 4 November 2020 the applicant lodged an appeal against the pre-trial investigation judge's decision with the Vilnius Regional Court, raising essentially the same arguments as in his previous complaints (see paragraphs 38, 39, 43 and 44 above). However, on 26 November 2020 the court dismissed the appeal. In particular, with regard to the proportionality of the temporary seizure, the court agreed with the pre-trial investigation judge that the value of the property seized did not significantly exceed the amount of the alleged bribe. It also held that the investigation into the origins of the applicant's other property was ongoing and that it could therefore not yet be concluded that his remaining property had been obtained lawfully. Lastly, the court noted that the prosecutor's decision of 10 September 2020 entitled the applicant to use EUR 607 per month to meet his basic needs and that he had not complained about that decision before a senior prosecutor (see paragraph 47 above).

D. Extensions of the temporary seizure of property

49. On 18 January 2021 the pre-trial investigation judge of the Vilnius District Court extended the temporary seizure of the applicant's property for a further three months, allowing him to use EUR 607 per month. The applicant appealed against that decision, arguing that the seizure of any property above the amount of EUR 303,360 was disproportionate and that a

monthly amount of EUR 607 was insufficient to meet his basic needs (see paragraphs 38, 39, 43 and 44 above).

50. On 17 February 2021 the Vilnius Regional Court allowed the appeal in part. It stated that remand measures could not be applied for an excessive period of time and that investigating officers and prosecutors were under an obligation to take measures to allow people who might have sustained damage as a result of alleged criminal activity to exercise their procedural rights within a reasonable time. In line with the principles of proportionality and the balance of interests, if a civil claim was not lodged within a reasonable time and if there were no other grounds for applying a remand measure, a temporary seizure of property had to be discontinued. In the applicant's case, although no civil claim had been lodged to date, the investigating officers were still awaiting the conclusion of the relevant authorities regarding the applicant's tax obligations and other possible consequences of the alleged criminal activity. Moreover, the Ministry of Health had not yet informed the investigating officers whether the Ministry or the State had sustained any damage. The pre-trial investigation was complex and large-scale and measures were being taken to determine whether any, and if so what, damage might have been caused. Accordingly, the court concluded that, at that stage of the proceedings, the temporary seizure of his property could not be considered disproportionate.

51. Nonetheless, the court acknowledged that the amount of EUR 607 per month was not sufficient to meet the applicant's basic needs, given the cost of the rent of his flat and his other expenses. He was allowed to use EUR 1,000 per month.

52. The temporary seizure of the applicant's property was extended in April, July and October 2021, each time for a further three months, on essentially the same grounds. In an appeal against the last of those decisions, the applicant argued that since the investigation into the origins of his property had been completed on 19 November 2020, the continuing seizure of all of his assets was unjustified. The appeal was dismissed.

53. On 19 October 2021 the Ministry of Health was recognised as a civil claimant in the criminal proceedings. It claimed EUR 303,360 in respect of the pecuniary damage allegedly caused by the applicant.

54. After the case was sent for trial (see paragraph 94 below), on 20 January 2022 the Vilnius Regional Court extended the temporary seizure of the applicant's property for a further three months. The applicant lodged an appeal against that decision, submitting that the seizure of his property exceeding the amount of the civil claim (see paragraph 53 above) was disproportionate and precluded him from meeting his basic needs (see paragraph 39 above) and paying taxes (see paragraph 57 below).

55. On 21 February 2022 the Court of Appeal allowed the applicant's appeal in part. It held that the extension of the temporary seizure of property had been justified. However, the value of the seized property clearly exceeded

the amount of the civil claim which that measure aimed to secure (see paragraph 53 above), which meant that the applicant's property rights had been disproportionately restricted. The court extended the seizure with regard to three of his bank accounts (which contained EUR 320,000 in total), allowing him to withdraw up to EUR 1,000 per month from them. The restrictions were lifted in respect of his remaining bank accounts (which contained EUR 12,000 in total) and his car.

56. On an unspecified date the applicant asked the Vilnius Regional Court to change the remand measure and limit the seizure of property to the amount of EUR 303,360. He submitted that the three bank accounts on which the restriction had been maintained contained EUR 320,000 (see paragraph 55 above), but that because of the seizure of those accounts he was unable to use the remaining money. On 25 March 2022 the court allowed that request and limited the seizure to the amount of EUR 303,360, finding that there were no grounds for seizing property beyond the amount of the civil claim which that measure was intended to secure.

E. Other facts relating to the temporary seizure of property

57. In April and July 2021 the applicant asked the prosecutor to allow him to pay his income tax and social and health insurance payments for 2020, amounting to approximately EUR 52,000 in total. He submitted that if he did not pay his taxes within the official deadlines, he would have to pay late payment fees of 0.03% per day; however, he had been banned from using the money in his bank accounts. The prosecutor dismissed the requests. The decisions stated that they were amenable to appeal before the senior prosecutor. The applicant did not lodge any such appeals. In December 2021 the State Tax Inspectorate deducted EUR 768.64 from the applicant's bank account as late payment fees for the taxes due from him for the year 2020.

58. In July 2021 the applicant lodged a civil claim against the State, claiming approximately EUR 367,700 in respect of pecuniary damage and EUR 2,000 in respect of non-pecuniary damage caused by the temporary seizure of his property. He submitted that the seizure of the entirety of his property had been unlawful and disproportionate, relying on essentially the same arguments he had raised during the pre-trial investigation (see paragraphs 38, 39, 43 and 44 above). However, on 29 November 2021 he withdrew the claim.

IV. PUBLICITY GIVEN TO THE CASE AGAINST THE APPLICANT

A. Media coverage and public comments on the case in July and August 2020

59. On 21 July 2020 the STT published the following press release on its official website:

> **Suspected corruption in the procurement of COVID-19 tests**
>
> "The Vilnius Department of the Special Investigations Service (STT) is conducting a pre-trial investigation into possible unlawful actions relating to the high-value purchase of COVID-19 tests.
>
> On the basis of the currently available information, Šarūnas Narbutas, who is publicly known as the president of the Lithuanian Cancer Patients Coalition (POLA), is suspected of trading in influence. Today searches, seizures, interviews and other necessary investigative measures are being carried out in various locations in Vilnius.
>
> According to information from the investigation, in March, when the State authorities were urgently seeking to purchase a large quantity of coronavirus (COVID-19) tests and started negotiations with an authorised representative of a foreign company, the suspect started acting as an unofficial intermediary between the Lithuanian authorities and the aforementioned company. The pre-trial investigation file also contains information that the suspect might have indicated to the representative of the company a certain amount of money for his services as an intermediary in the purchase.
>
> According to information from the pre-trial investigation, after the purchase of tests worth more than EUR 5 million ... more than EUR 300,000 was transferred to the suspect's personal bank account in several transfers.
>
> The investigation is under the control and supervision of prosecutors from the Organised Crime and Corruption Investigation Department of the Prosecutor General's Office."

The press release initially indicated that the value of the purchase had been more than EUR 6 million, but it was corrected later the same day.

60. On the same day the information included in the press release was republished by several major news websites. The spokesperson for the STT also spoke to various journalists and answered their questions on camera, giving essentially the same information as provided in the press release. Some news articles published that day also mentioned that the applicant was being detained, that searches had been conducted at the premises of the Ministry of Health, NVSPL and POLA and that the Chancellor and Deputy Chancellor had been questioned as witnesses. Some also described details of the contracts between the Lithuanian government and the pharmaceutical company (see paragraph 7 above), providing the company name, the value of the purchase and photographs of the contracts. Some of the articles were also published in English.

61. On the same day the Minister of Health posted on his Facebook page that he was surprised by the news of the applicant's detention. He stated that during the COVID-19 pandemic the Ministry had been willing to accept any

external help to deal with the spread of the virus and that they had not had any reason to mistrust the applicant. The Minister emphasised that any doubts regarding the transparency of the purchase of the tests had to be dispelled and that the Ministry was fully cooperating with the investigating authorities.

62. On 22 July 2020 the STT published an English translation of the press release (see paragraph 59 above) on its website.

63. On 22 July 2020, after the court hearing during which the applicant was released from detention and placed under house arrest (see paragraphs 19 and 20 above), he and the prosecutor spoke to several journalists separately and the videos of their interviews or quotes were published online the same day.

64. The applicant told the journalists about the conditions of his house arrest (see paragraph 20 above) and the temporary seizure of his property (see paragraph 36 above). Criticising the STT's use of criminal-law measures against what he considered to have been lawful commercial activity, he stated that he had acted lawfully, in accordance with the commission agency agreement he had signed with the company, and that he had issued all necessary invoices and other documents. He also stated that his actions had helped the State save a lot of money when buying tests, that during the negotiations he had had contact with several government officials and suggested buying the tests from various companies, that the Ministry of Health had been aware that he had been acting as an intermediary and that nobody had asked him directly whether he was being paid for those services. Lastly, he questioned the lawfulness of his provisional detention.

65. The prosecutor told the journalists that the circumstances of the purchase and the documents obtained from the applicant would be assessed during the investigation and that various investigative measures remained to be taken, in Lithuania and Spain. When asked whether the applicant had cooperated with the authorities, the prosecutor stated that the search of the applicant's home had been carried out in accordance with the applicable procedural requirements and that he had not shown "any special cooperation". The prosecutor further stated that the applicant had chosen not to answer certain questions put to him by the STT officers and that his cooperation had been limited to providing a short written explanation.

66. Some of the news articles also included photographs or videos of the applicant being led into the courtroom by police officers with his hands behind his back (see paragraph 18 above).

67. On the same day (22 July 2020) an opposition member of the *Seimas*, A.G., who was a member of the Parliamentary Anti-Corruption Commission, publicly urged the Prime Minister to disclose whether the applicant maintained close personal ties with the Deputy Chancellor. She stated:

> "The suspicions against Šarūnas Narbutas with regard to trading in influence and alleged material gain from the order of tests for Lithuania resembles a feast in time of plague. The participation of Š. Narbutas in government working groups and his close

> friendship with [the Deputy Chancellor] raise suspicions that [the Prime Minister's] entourage might have sought to profit from the coronavirus crisis and the purchase of tests without a public bid ..."

68. On 23 July 2020 the applicant gave an interview on national television. He commented on the suspicions against him and provided further details relating to his role in the purchase of the COVID-19 tests. He also described the procedural measures taken in relation to him and contended that he had cooperated with the authorities.

69. Later in July 2020 it was reported that the Minister of Health had been questioned as a witness in the pre-trial investigation. When speaking to journalists, the Minister made the following statement:

> "I will not comment on the lawfulness or unlawfulness of the so-called financial mediation, but what I find really strange and dishonest is that nothing was said about that. Neither me nor my team knew that the individual in question received any money. I am sure that this is not unlawful, but such things should be mentioned."

70. In the same month (July 2020) the spokesperson for the Prosecutor General's Office informed the media that, after questioning more than ten people, there was no information in the investigation file that the government officials who had participated in the negotiations leading to the purchase of the tests had been aware that the applicant had had "a financial interest" in the purchase.

71. On 28 July and 4 August 2020 another opposition member of the *Seimas*, L.K., made public statements criticising the lack of transparency in the purchase of various items relating to the management of the COVID-19 pandemic by the government and questioning "the influence of unofficial intermediaries". He also referred to the suspicions against the applicant and called on various high-ranking government officials to take personal responsibility.

72. On 4 August 2020 the President of Lithuania held a meeting with representatives of the Public Procurement Service, the State Ombudsperson's Office and the STT, aimed at discussing the use of public funds during the pandemic, the risks of abuse which had been identified and the prevention of any such risks in the future. The President criticised the fact that many of the procurement processes had not been public and called for more transparency in that area.

73. On 6 August 2020 a number of news websites quoted the President as calling on the Minister of Health to return from holiday and provide answers to the various questions which had been raised with respect to the Ministry's response to the pandemic. The President also commented on two ongoing pre-trial investigations related to purchases of various COVID-19 protective measures – one of those investigations concerned the applicant, while the other concerned allegations of corruption against one of the Deputy Ministers of Health. The President stated:

> "Both the case of Šarūnas Narbutas and [the case of the Deputy Minister] show that at a time when Lithuania lacked means of protection and testing, when everybody was in over their heads – I understand that the situation was extraordinary – nonetheless there were a lot of things, a lot of murky water, in which some people were trying to catch fish. This cannot be tolerated; in popular terms it is called 'marauding' (*liaudyje tai vadinama marodieryste*). We must fight against such phenomena."

74. On 9 August 2020 the Minister of Health gave an interview on national television in which he discussed, among other topics, the investigations against the applicant and the Deputy Minister of Health. The Minister stated that he had no doubts as to the innocence of the Deputy Minister and was certain that she would succeed in defending herself. When asked about the applicant, the Minister stated that "this [was] a slightly different situation". He further stated:

> "The one thing in Šarūnas's story which really does not look good to me – I do not know whether that may constitute some type of crime or if there was any kind of infringement at all – is the fact that he concealed that he was an intermediary and that he would be paid for it. That we really did not know."

75. In July and August 2020 the applicant gave several more interviews to various news outlets in which he discussed his role in the purchase of the test, insisting that his actions had been lawful, properly documented and had benefited Lithuania, and criticising the actions of the STT in relation to him. On 30 July 2020 he posted on his Facebook page that the authorities had leaked an audio recording of his interview with the STT to the media.

B. Warning given to the applicant not to disclose information about the investigation

76. On 19 August 2020 the applicant was summoned to appear the following day at the STT headquarters to be warned not to disclose information about the pre-trial investigation to any unauthorised persons.

77. On the same day he lodged a request with the prosecutor in which he submitted that the case against him had attracted widespread public and media attention and that the publicity campaign had been started by the authorities themselves. In particular, he had been taken to the court hearing concerning his house arrest by the police (see paragraph 18 above). Immediately after that hearing, the prosecutor had given an interview to the press disclosing all the main details of the suspicions against him (see paragraph 65 above). The spokesperson for the Prosecutor General's Office had given another interview several days later (see paragraph 70 above) and the STT had published a press release about the case on its website in English, making that information accessible abroad (see paragraph 62 above). The applicant submitted that these actions by the authorities had made it necessary for him to publicly defend his reputation by talking to the media. He argued that the public had started supporting him and that this was why the authorities were seeking to silence him. He also questioned the necessity of

giving him such a warning in August 2020 rather than immediately after his arrest in July 2020. He asked the prosecutor to instruct the STT to either withdraw the warning or prepare a properly reasoned decision as to why such a warning was necessary.

78. On 20 August 2020 the prosecutor dismissed the applicant's request. The decision stated that the warning of participants in criminal proceedings against disclosing information about the pre-trial investigation was provided for in Article 177 of the CCP (see paragraphs 131 and 132 below). Since the applicant had been granted access to part of the investigation file on 5 August 2020, the warning was in accordance with the law and well-founded.

79. On 20 August 2020 the applicant was officially warned that he was not allowed to disclose information about the pre-trial investigation without the prosecutor's permission, as provided for in Article 177 § 2 of the CCP. He wrote on the warning that he did not understand what information he was not allowed to disclose and asked for a written explanation.

80. Soon after receiving the warning, the applicant spoke to journalists. He stated that the warning was unclear and restricted his constitutional right to criticise State institutions. The spokesperson for the STT also spoke to journalists and stated that the applicant had been warned against disclosing information in the investigation file, such as evidence supporting the suspicions, expert assessments or records of witness statements.

81. On 28 August 2020 the applicant put a post on his Facebook page addressing certain allegations made by a certain public figure with regard to his role in the purchase of the tests. The applicant also wrote that, in his view, his post did not violate the ban on him disclosing information about the pre-trial investigation because all the information contained therein had already been made public prior to the warning being given to him.

1. Decision of the senior prosecutor

82. On 22 October 2020 the applicant lodged a complaint with the senior prosecutor. He submitted that the STT and the prosecutor's office had made much of the information about the pre-trial investigation public, including the witnesses who had been questioned and the gist of their statements (see paragraphs 59, 60, 65 and 70 above). Copies of the contracts between NVSPL and the pharmaceutical company had also been published in the media (see paragraph 60 above). Moreover, public comments about his case had been made by the Minister of Health and the President, the latter of whom had publicly implied that he was guilty (see paragraphs 69 and 73 above). It was therefore not clear which information could not be disclosed – for instance, whether he was allowed to publicly speak about the conditions of his house arrest or the seizure of his property, or to correct certain factual inaccuracies in the media reports. Although he had asked for clarification in that regard (see paragraph 79 above), none had been provided to him. The applicant further contended that, when the authorities were in constant communication

with the media, the restriction on him making public comments about the case did not seek to protect his right to be presumed innocent, but on the contrary, violated that right.

83. On 9 November 2020 the senior prosecutor dismissed the applicant's complaint. The decision stated that one of the aims of criminal proceedings was to protect the public interest and that, in certain cases, it was in the interest of the public to receive information of a general nature about an ongoing pre-trial investigation. The disclosure of such information did not violate the suspect's right to be presumed innocent, but ensured a balance between that right and the public's interest in being informed of the investigation of criminal offences. The senior prosecutor stated that the information about the applicant's case disclosed by the authorities had been of a general nature and that its disclosure had been justified by the importance of the case, in view of its link to the COVID-19 pandemic. The notion of information of a general nature was laid down in the recommendations adopted by the Prosecutor General (see paragraph 136 below) and the public comments made by the authorities with regard to the applicant's case had not overstepped those limits. Moreover, the applicant had to be considered a public figure in the light of his position at POLA and active participation in public life. Therefore, although normally a suspect's identity should not be disclosed to the public (see paragraph 140 below), in the applicant's case that had been justified.

84. The senior prosecutor further stated that a warning under Article 177 of the CCP sought, *inter alia*, to ensure the smooth conduct of an ongoing investigation, because the disclosure of information about a pre-trial investigation in the press or social media might influence ongoing or planned investigative measures, or the position of individuals linked to the investigation. Moreover, if information about a pre-trial investigation was made widely accessible, that would require the relevant authorities to take additional measures and use additional resources to protect the information collected. The senior prosecutor noted that the applicant had been warned against disclosing information about the investigation in August 2020 because at the time it had become apparent that, immediately after each investigative measure taken in relation to him, he had made public comments and expressed his position regarding each such measure. Such actions could cause the public to form a certain opinion about the ongoing investigation, which might eventually affect the criminal proceedings.

85. Lastly, the senior prosecutor stated that it should have been clear to the applicant that he was not allowed to disclose any information about the pre-trial investigation relating to his status as a suspect, including the remand measures and procedural restrictions applied against him, any procedural measures carried out in relation to him, the details of the suspicions against him and other circumstances of the investigation which related to him or which did not directly relate to him but of which he had become aware.

2. Decision of the pre-trial investigation judge

86. On 23 December 2020 the applicant lodged an appeal against the senior prosecutor's decision with the pre-trial investigation judge of the Vilnius District Court. He submitted that the impugned restriction had put him in a less advantageous position than the public authorities, which were not subject to any restrictions and were able to form a negative opinion about him in the eyes of the public. He reiterated his previous argument that the STT and the prosecutor's office had already made much of the information about the investigation public (see paragraph 82 above). In addition, the applicant disputed the senior prosecutor's finding that he had to be considered a public figure. He submitted that he was not the head of POLA but only a member of its board and that he did not meet the definition of a public figure set out in the relevant law (see paragraph 133 below). Lastly, he submitted that the senior prosecutor's decision had not clarified which information he was not allowed to disclose and that it might have even broadened the scope of the impugned restriction because it included the phrase "other circumstances of the investigation ... of which he had become aware" (see paragraph 85 above), irrespective of whether such circumstances had already become public knowledge and whether disclosing them might actually prejudice the investigation.

87. On 30 December 2020 the pre-trial judge of the Vilnius District Court dismissed the applicant's appeal. The judge referred to the Constitutional Court's case-law regarding the definition of a public figure (see paragraph 147 below) and stated that the applicant could be considered a public figure in view of his role at POLA, his active public role in patient advocacy, his participation in various working groups of the Ministry of Health, the fact that he had worked at the office of the previous President of Lithuania and his other present and past public activities. The investigating authorities had therefore been justified in making his identity public. The judge also held that the senior prosecutor had provided adequate reasons why the restriction on the applicant disclosing information about the investigation was necessary and that the types of information concerned by that restriction were clear.

C. Subsequent publications and public statements

88. On 9 June 2021 the Parliamentary Committee on Health Affairs held a meeting, a video recording and transcript of which were made publicly available online. Among other issues, the Committee discussed the possibility of carrying out a parliamentary inquiry into three matters relating to the management of the COVID-19 pandemic: the purchase of rapid tests, the purchase of vital signs monitors and the shortage of personal protective equipment. Several members of the Committee stated that some information reported in the media gave grounds for believing that unethical or criminal

actions may have been committed. Some spoke in favour of carrying out a parliamentary inquiry to identify shortcomings in the legislation or systemic problems, whereas others were opposed to such an inquiry, in view of the fact that the relevant investigations were being carried out by the law enforcement authorities. A representative of the Prosecutor General's Office took part in the meeting and stated that, in addition to the aforementioned three matters, another pre-trial investigation was being carried out concerning the purchase of tests from a foreign company through an intermediary and that the intermediary in question, a Lithuanian citizen, had been paid a substantial fee for his services.

89. On 11 November 2021 the STT published a press release on its official website stating that a pre-trial investigation concerning the purchase of a large quantity of COVID-19 tests had been completed. The suspect in the investigation, identified only by the initials Š.N., was suspected of having abused his position, equivalent to that of a civil servant, for personal material gain and of obtaining property by deception (see paragraph 93 below). The press release also included the following statement made by the prosecutor:

> "The essence of the alleged criminal activity is the self-serving and unlawful financial gain by taking advantage of the extraordinary circumstances during a very difficult time for the entire State. Negotiations on behalf of the State for urgently acquiring items vitally important to the national healthcare system are, in my view, incompatible with possibly concealed and unlawfully obtained personal material gain. It is disappointing that such actions, as is suspected, not only caused significant material damage, but also undermined trust in the State institutions and numerous volunteers who, at that same time, sacrificed their time, effort, material and other resources, trying to help the State overcome an exceptional crisis."

90. On the same day the applicant addressed the press release in a post on his Facebook page. He pointed out that the initial suspicions against him concerning trading in influence had been dropped (see paragraph 92 below) and commented on the new suspicions of abuse of office and fraud, as well as on the civil claim lodged by the Ministry of Health (see paragraph 53 above). In addition, he criticised the work of the STT and stated that the Court was examining an application he had brought against Lithuania.

91. On 28 December 2021 the STT published another press release, which concerned the sending of the case for trial (see paragraph 94 below) and summarised the suspicions against the applicant, who was identified only by his initials.

V. OTHER RELEVANT FACTS

A. Decisions taken in the criminal proceedings

92. On 27 October 2021 the prosecutor discontinued the pre-trial investigation against the applicant for alleged trading in influence. The decision stated that during the investigation it had not been credibly

established that he might have exerted actual or supposed influence on others, and that the criminal offence of trading in influence under Article 226 § 4 of the CCP had therefore not been committed. There were, however, grounds for believing that his actions could be classified as fraud and abuse of office under Article 182 § 2 and Article 228 § 2 of the Criminal Code, respectively (see paragraphs 99 and 100 below).

93. On the same day the applicant was officially notified that he was suspected of fraud and abuse of office. It was suspected that, after receiving verbal instructions from the Deputy Minister of Health and from an advisor to the Prime Minister to participate in negotiations regarding the acquisition of COVID-19 tests, he had requested the pharmaceutical company to include in the price of the tests remuneration for himself, without informing the government officials of this and without informing the company that he had been acting as a representative of the government; he had thereby obtained property of high value by deception. Furthermore, it was suspected that he had agreed with the company to retroactively sign a commission agency agreement even though he could not have entered into such an agreement while acting as a representative of the government, and that he had used the forged agreement to justify the money he had received from the company. He had thereby abused his position as a person with equivalent status to a civil servant.

94. On 28 December 2021 the case was sent for trial in the Vilnius Regional Court.

95. On 11 May 2023 the court acquitted the applicant of both charges. It found no evidence that he had been authorised by any officials to act as a representative of the government in the negotiations. Accordingly, he had not been a person with equivalent status to a civil servant and it had not been against the law for him to be paid for providing services as an intermediary; the fact that he had not informed government officials about the remuneration was immaterial. The court also found that the remuneration had been paid to the applicant by the pharmaceutical company and it had not come from the budget of the Lithuanian Government; his actions had therefore not caused any damage to the government. The court ordered that the seizure of the applicant's property be lifted (see paragraph 56 above) and awarded him EUR 16,811 from the State in respect of litigation costs. The prosecutor lodged an appeal against that decision. As a result, the first-instance court's decision, including the order to lift the seizure of the property, did not become final. At the time of the submission of the parties' latest observations to the Court (on 20 July 2023), the case was pending before the appellate court.

B. The applicant's fundraising efforts to cover his legal expenses

96. In August 2020 the applicant launched an online crowdfunding campaign in which he asked for donations to help him cover his legal

expenses. On 24 August 2020 he announced on that platform that EUR 30,000 had been raised by 223 contributors. In January 2022 he launched a new crowdfunding campaign for an additional EUR 44,000 to cover his further legal expenses during the examination of the criminal case by the first-instance court and enable him to lodge an application with the Court. It appears that EUR 44,680 was raised.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK AND PRACTICE

A. Constitution

97. The relevant provisions of the Constitution read as follows:

Article 20

"Human liberty shall be inviolable.

No one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law.

A person apprehended *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately."

Article 21

"The human person shall be inviolable.

Human dignity shall be protected by law.

It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments. ..."

Article 22

"Private life shall be inviolable.

...

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity."

Article 23

"Property shall be inviolable.

The rights of ownership shall be protected by law. ..."

Article 25

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

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

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

Article 31

"A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment. ..."

B. Criminal Code

98. The crime of trading in influence is defined in Article 226 of the Criminal Code. Article 226 § 2 states, *inter alia*, that anyone who, using his or her social status, office, family ties, contacts or other possible or supposed influence on State or municipal institutions or officials, directly or indirectly requests, agrees to accept or accepts a bribe for his or her own personal gain or for the benefit of others, in exchange for promising to influence a public authority or official to act lawfully or unlawfully in the exercise of their functions, is to be punished by a fine, detention or up to five years' imprisonment. Article 226 § 4 provides that where the bribe in question is higher than 250 times the minimum subsistence level, the penalty is two to eight years' imprisonment.

99. The crime of fraud is defined in Article 182 of the Criminal Code. Article 182 § 2 states, *inter alia*, that anyone who obtains property of a high value from another person by deception is to be punished by up to eight years' imprisonment.

100. The crime of abuse of office is defined in Article 228 of the Criminal Code. Article 228 § 1 states, *inter alia*, that a civil servant or a person having status equivalent thereto who abuses his or her position or exceeds his or her authority, where this results in significant damage to the State, is to be punished by a fine, detention or up to five years' imprisonment. Article 228 § 2 provides that anyone who commits the aforementioned act for pecuniary or other personal gain, where there are no indications of bribery, is to be punished by a fine or up to seven years' imprisonment.

101. Article 72 § 2 states that the following property is subject to confiscation: instruments of crime, means of committing criminal activity or any property directly or indirectly obtained through criminal activity. Under Article 72 § 3, any such property belonging to a person who has committed a criminal offence must be confiscated.

102. Article 72^3 § 1 defines extended confiscation as confiscation of all or part of the property belonging to a person who has committed a criminal offence which is disproportionate to his or her lawful income and there are grounds for believing that it has been obtained through criminal means. Under Article 72^3 § 2, extended confiscation may be applied if all the following

conditions are met: (i) the person has been found guilty of a very serious crime, serious crime or crime of medium seriousness through which he or she obtained or could have obtained material gain; (ii) at the time of commission of the criminal activity, after its commission or in the five years prior to its commission the person owns or has transferred to others property of value which does not correspond to his or her lawful income and this difference is more than 250 times the minimum subsistence level; and (iii) during the criminal proceedings he or she is unable to justify that such property has been obtained lawfully.

C. Code of Criminal Procedure

1. General provisions concerning remand measures

103. Article 11 § 1 of the CCP provides that coercive procedural measures may only be applied if the aims of the proceedings cannot be achieved without them. The application of any coercive procedural measure must be immediately discontinued when it becomes unnecessary.

104. Article 119 provides that remand measures may be applied in order to ensure that the suspect, accused or convicted person participates in the proceedings, to prevent interference with the pre-trial investigation, trial or execution of the sentence, as well as to prevent the commission of further criminal offences.

105. Article 121 § 1 provides, *inter alia*, that only a pre-trial investigation judge or a court may order the following remand measures: detention on remand, close supervision, house arrest or an order obliging the suspect to live separately from the victim and/or not to approach or come within a specified distance of the victim. The prosecutor may order other remand measures, such as payment of a deposit, the seizure of documents, suspension of a special right, an obligation to regularly report to a police station or a ban on going abroad.

106. Article 121 § 4 provides that the investigating officer, prosecutor, judge or court deciding whether to impose a remand measure and choosing a particular measure must take account of the seriousness of the suspected criminal offence, the suspect's personality, whether he or she has a permanent place of residence, job or another lawful source of income, his or her age, state of health, family situation and other relevant circumstances.

2. Provisional detention

(a) Legal regulation in force at the material time

107. At the material time, Article 140 § 1 provided, *inter alia*, that a prosecutor, pre-trial investigation officer or any other person could arrest a person caught committing a criminal offence or immediately after its commission.

108. Article 140 § 2 provided that a person who had not been caught committing a criminal offence or immediately after its commission could only be placed in provisional detention by a prosecutor or pre-trial investigation officer in exceptional circumstances, if all the following conditions were met: (i) at least one of the grounds for detention on remand under Article 122 of the CCP were present (see paragraph 117 below); (ii) it was necessary to immediately restrict the person's liberty to achieve the aims listed in Article 119 of the CCP (see paragraph 104 above); and (iii) there was no possibility of urgently requesting a court to authorise detention on remand under Article 123 § 2 of the CCP (see paragraph 122 below).

109. Article 140 § 3 provided, *inter alia*, that the prosecutor had to be notified of provisional detention by an investigating officer or another person within the shortest possible time.

110. Article 140 § 4 provided, *inter alia*, that provisional detention could not last longer than was necessary to establish the person's identity and carry out the necessary procedural steps. The maximum duration of provisional detention was forty-eight hours.

111. Article 140 § 8 provided that the person had to be immediately released from provisional detention if any of the following conditions were met: (i) the suspicion that he or she had committed a criminal offence had not been confirmed; (ii) the grounds for detention on remand under Article 122 of the CCP had not been established or detention on remand had not been deemed necessary; (iii) the maximum duration of provisional detention had expired; or (iv) the court had not authorised the person's detention on remand.

(b) Amendment of 30 June 2022

112. In October 2020 the Ministry of Justice submitted a proposal to the *Seimas* to amend Article 140 of the CCP. The relevant part of the explanatory report to the proposed amendment reads as follows (emphasis in the original):

> "...
>
> Under the provisions of the CCP currently in force ... provisional detention [under Article 140 § 2 of the CCP] is only possible when the grounds for detention under Article 122 of the CCP are established (which is also linked to the existence of the aims pursued by the remand measures listed in Article 119 of the CCP, since one of the conditions for ordering detention is that it must not be possible to achieve [the aforementioned aims] by ordering a less severe remand measure) and the prosecutor *does not have the possibility (enough time)* to apply to a court and seek authorisation to detain the person. An analysis of the conditions for ordering provisional detention reveals that such detention *should only be applied in exceptional cases*, since the inability to seek a court's authorisation should be determined essentially by a very sudden change in circumstances being established during a pre-trial investigation, a change which the prosecutor could not have foreseen. It must be emphasised that provisional detention [under Article 140 § 2] may only be ordered if all the aforementioned conditions are met, and it is clear from the totality of the content of those conditions that *provisional detention on such grounds is only necessary in order to ensure the possibility for the prosecutor to urgently apply to a court for authorisation*

> *to detain the person on remand* and that without provisionally detaining such a person, there is a high risk that the criminal proceedings will be seriously prejudiced (for example, the person may hide, destroy evidence, commit further crimes, and so on). However, an analysis of the relevant case-law has shown that pre-trial investigation officers or prosecutors ordering provisional detention under Article 140 § 2 of the CCP often base that decision not on the need to urgently request authorisation to detain the person on remand but by the need to carry out investigative measures, or that only one of the conditions for provisional detention under Article 140 § 2 of the CCP is present. It is evident that such practice ... is flawed and contrary to the object and purpose of provisional detention and that it may potentially lead to violations of the rights of the detained persons and disproportionate restrictions of their liberty ...
>
> ...
>
> ... It must also be emphasised that the lack of clarity in the circumstances under which provisional detention must end creates the pre-conditions for keeping the person detained for the maximum duration of forty-eight hours without ever applying to a court for authorisation of detention on remand, which is completely contrary to the object and purpose of provisional detention [under Article 140 § 2 of the CCP] and unjustifiably restricts the person's liberty without an actual need to restrict it ..."

113. On 30 June 2022 Article 140 of the CCP was amended. The amendment entered into force on 1 October 2022.

114. Following the amendment, Article 140 § 3 provides, *inter alia*, that a decision to place a person in provisional detention must indicate why it was not possible to request a court to authorise detention on remand under Article 123 § 2 (see paragraph 122 below).

115. Article 140 § 4 provides, *inter alia*, that the prosecutor must be notified of each instance of provisional detention by an investigating officer or another person within the shortest possible time. The prosecutor must immediately assess whether the provisional detention is lawful and well-founded and must either approve or annul it.

116. Article 140 § 11 provides, *inter alia*, that complaints against provisional detention may be lodged with the pre-trial investigation judge. The judge must examine the complaint in a written procedure within twenty hours of receiving it and adopt a decision. If the judge allows the complaint, the person must be immediately released from provisional detention, unless his or her detention on remand has been authorised. The decision of the pre-trial investigation judge regarding provisional detention is final and not amenable to further appeal.

3. Detention on remand

117. Article 122 § 1 permits detention on remand when there is a well-founded belief that the suspect may flee or hide from the investigation or prosecution, interfere with the investigation or commit further criminal offences.

118. Article 122 § 2 provides that detention on remand may be ordered on the grounds that the suspect might flee or hide from the investigation or

prosecution, after taking into account his or her family situation, permanent place of residence, employment relations, health, any previous convictions, connections abroad and other circumstances.

119. Article 122 § 3 provides that grounds for believing that the suspect might interfere with the proceedings may be found to exist when there is information indicating that he or she may, directly or through others, seek to: (i) interfere with victims, witnesses, experts, other suspects, accused or convicted persons; or (ii) destroy, hide or falsify items and documents relevant for the case.

120. Article 122 § 4 provides, *inter alia*, that grounds for believing that the suspect might commit new criminal offences may be found to exist when he or she is suspected of one or more serious or very serious crimes and there is information indicating that he or she might commit new serious or very serious crimes.

121. Article 122 § 7 states that detention on remand may only be ordered where the aims indicated in Article 119 (see paragraph 104 above) cannot be achieved by more lenient measures.

122. Article 123 § 2 provides that if the prosecutor believes that a suspect who is not detained should be remanded in custody, he or she must request authorisation from the relevant district court or pre-trial investigation judge to detain that person.

4. House arrest

123. Article 132 § 1 provides that house arrest is an obligation for a suspect to remain at his or her place of residence during specified hours, not to visit public places and not to have contact with certain individuals. Article 132 § 2 provides, *inter alia*, that during the pre-trial investigation, house arrest may be ordered by the pre-trial investigation judge at the request of the prosecutor.

5. Temporary seizure of property

124. Article 151 § 1 provides, *inter alia*, that to ensure satisfaction of a civil claim lodged in criminal proceedings or the potential confiscation or extended confiscation of property, the prosecutor may order the temporary seizure of property of the suspect or another person who has property which has been obtained through criminal activity.

125. Article 151 § 3 provides, *inter alia*, that items recognised by law as essential to the suspect or his or her family cannot be temporarily seized.

126. Article 151 § 6 provides, *inter alia*, that the prosecutor may order the temporary seizure of property for no more than six months. It may be extended by the pre-trial investigation judge but for no more than another six months.

127. Article 151 § 7 provides, *inter alia*, that in cases concerning serious or very serious crimes, or in cases in which a civil claim has been lodged, the temporary seizure of property may be extended an unlimited number of times.

128. Article 170^1 states that during the criminal proceedings the prosecutor must take measures to identify property which meets the criteria laid down in Articles 72 and 72^3 of the Criminal Code (see paragraphs 101 and 102 above) and secure its possible confiscation.

6. Civil claims in criminal proceedings

129. Article 112 § 1 provides, *inter alia*, that a civil claim may be lodged at any stage of the criminal proceedings but no later than before the start of the examination of evidence by the court. A victim who has not lodged a civil claim in criminal proceedings has the right to lodge such a claim in separate civil proceedings.

130. Article 116 states that during criminal proceedings, a pre-trial investigation officer, prosecutor or court must take measures to secure a potential civil claim: to find the property belonging to the suspect or accused or persons materially liable for the actions of the suspect or accused, and temporarily restrict their rights to such property.

7. Non-disclosure of information about the pre-trial investigation

131. Article 177 § 1 provides, *inter alia*, that information about a pre-trial investigation is not public. Until the case is examined by the court, such information may only be disclosed with the prosecutor's permission and only to the extent that this is allowed by the prosecutor.

132. Article 177 § 2 provides that, when necessary, the prosecutor or investigating officer warns participants in criminal proceedings or others who have witnessed the measures taken in the pre-trial investigation that it is forbidden to disclose information about the investigation without the prosecutor's permission. In such cases, the person must be warned about potential criminal liability under Article 247 of the Criminal Code and he or she must sign the warning. The latter provision states that disclosure of information about the pre-trial investigation without the prosecutor's permission is punishable by community service, a fine, restriction of liberty or detention.

D. Other relevant legal instruments

1. Law on the Provision of Information to the Public

133. At the material time, the term "public figure" (*viešasis asmuo*) was defined in Article 2 § 78 of the Law on the Provision of Information to the Public (*Visuomenės informavimo įstatymas*). It stated that a public figure was a State politician, a judge, a State or municipal official, the leader of a political

party and/or head of an association who participated in State or public affairs because of his or her official position or the nature of his or her work, as well as any other individual who held a position in public administration or the administration of public services, or whose activities had implications for public affairs.

2. Recommendations on the disclosure of information about a pre-trial investigation

134. The Recommendations on the disclosure of information about a pre-trial investigation (*Ikiteisminio tyrimo duomenų skelbimo rekomendacijos*) were approved by the Prosecutor General on 17 August 2017 and later amended.

135. Paragraph 5.1 defines personal data as any information relating to an individual whose identity is known or can be directly or indirectly identified through such information (personal identity number, date of birth, exact address, image and other information allowing identification of an individual).

136. Paragraph 5.2 states that information of a general nature about criminal activity is information about the opening of a pre-trial investigation, refusal to open such an investigation or its suspension or discontinuation; the legal classification of the criminal activity; the authority carrying out the investigation; the prosecutor in charge of carrying out, organising and heading the investigation; the place, time and other essential details of the criminal activity not allowing identification of specific individuals or legal entities; the presence or absence of victims and suspects; the manner in which the criminal activity was committed and its consequences (pecuniary or non-pecuniary damage); the sex and year of birth of victims and suspects; the arrest of the suspect and the remand measures applied; as well as summarised information about the investigative measures carried out and the remand measures applied, without disclosing their exact number and the information obtained during them.

137. Paragraph 5.3 defines information about a pre-trial investigation as information in the pre-trial investigation file obtained in accordance with the CCP and other laws, as well as personal data about participants in proceedings kept separately from the rest of the information about the investigation and other information recognised by the investigating officer or the prosecutor as information about the pre-trial investigation.

138. Paragraph 7 states, *inter alia*, that the disclosure of accurate information about the pre-trial investigation which does not threaten the success of the investigation aims to: (i) inform the public; (ii) protect the interests of the victims, ensure respect for the principle of the presumption of innocence and persons' procedural rights; (iii) assist with resolving issues of further organisation of the pre-trial investigation or investigative tactics; (iv) increase the transparency of the work of the prosecutors' offices and pre-

trial investigation authorities and the understanding of the particularities of criminal proceedings in society; (v) protect information essential to the success of the investigation from premature disclosure; and (vi) investigate criminal activity.

139. Paragraph 15 provides, *inter alia*, that the disclosure of information about the pre-trial investigation must comply with the principles of lawfulness and proportionality, the presumption of innocence, protection of personal data and the private life of public figures and persons not considered public figures, and respect and equality of participants in proceedings.

140. Paragraph 10 provides, *inter alia*, that when disclosing information about a person suspected of a criminal offence, the first and last name of a person not considered a public figure is not disclosed, unless such disclosure is justified by the need to find that person or protect the public from the danger he or she may pose, or by other circumstances of essential importance to the public interest. The first and last name of a public figure may be disclosed in accordance with the rules and principles laid down in paragraphs 26-28 of the Recommendations (see paragraphs 141-143 below).

141. Paragraph 26 provides that when deciding on the disclosure of information about a pre-trial investigation into criminal offences allegedly committed by a public figure, it is recommended to also take into account, *inter alia*, the following considerations: (i) the public interest in being informed of criminal offences allegedly committed by public figures is higher than where such offences are allegedly committed by private individuals; (ii) neither the need to protect an ongoing pre-trial investigation nor the importance of protecting the reputation of a public figure who has allegedly committed a criminal offence can be automatically considered to be more important than the freedom to impart information or the right to receive information, or to be denying those rights; (iii) in each case, an appropriate balance must be struck between the interest of the public in being informed and the protection of the fundamental rights of the person who has allegedly committed a criminal offence.

142. Paragraph 27 states that where the criminal offence under investigation concerns the civil service or the public interest, it must be taken into account that such criminal offences directly threaten the interests of society as a whole and that the interests of society in being informed of them may therefore be higher than in the case of other criminal offences.

143. Paragraph 28 provides that where the pre-trial investigation concerns the type of criminal offence described in paragraph 27 (see paragraph 142 above), the prosecutor or another officer must assess, in each case, the possibility of informing the public of the ongoing investigation. A decision not to disclose general information about the alleged criminal offence is only recommended if such disclosure might affect the success of the investigation or it would be clearly incompatible with the principles established in

paragraphs 15 and 26 of the Recommendations (see paragraphs 139 and 141 above).

3. Recommendations on investigating property

144. The Recommendations on investigating property (*Rekomendacijos dėl turto tyrimo*) were approved by the Prosecutor General on 27 June 2018 and later amended.

145. Paragraph 3.2 states that a property investigation is carried out as part of a pre-trial investigation to gather information about a person's property of any kind and the circumstances and history of its acquisition or transfer.

146. Paragraph 10.6 states that a property investigation must be carried out where the pre-trial investigation concerns the following corruption-related crimes: accepting a bribe (Article 225 of the Criminal Code), trading in influence (Article 226), offering a bribe (Article 227 § 3) and abuse of office (Article 228 § 2).

E. Case-law of the domestic courts

1. Constitutional Court

147. In a ruling of 23 October 2002, the Constitutional Court held that public figures were those who, by reason of their office or the nature of their work, participated in public life. Politicians, State and municipal officials and heads of public organisations fell within that category. However, other individuals could also be considered public figures if their activity was of importance to public affairs. The Constitutional Court further stated that the notion of a public figure was not included in the Constitution and that it was the role of the legislature to define the criteria under which certain people could be categorised as public figures. It emphasised that the person's official position or his or her participation in public activities was not sufficient, in and of itself, for him or her to be considered a public figure. Moreover, the law had to strike a balance between, on the one hand, the right to privacy enshrined in Article 22 of the Constitution and, on the other, the right of the public to be informed of the various factors capable of exerting influence on public affairs, which was also protected by the Constitution.

2. Supreme Court

148. In a decision of 22 June 2006 in civil case no. 3K-3-235/2006, the Supreme Court examined a case in which a civil claim had been lodged against the Minister of Foreign Affairs and several newspapers. The claimant alleged, in particular, that the Minister had made defamatory and erroneous statements against him, implying that he had committed criminal offences and thereby breaching his right to be presumed innocent. The first-instance

court allowed the claim in part and held that several public statements made by the Minister had been erroneous and had breached the claimant's honour and dignity. The court ordered the newspapers in which those statements had been published to publish a retraction and awarded the claimant non-pecuniary damages from the Ministry of Foreign Affairs and the newspapers. The appellate court upheld that conclusion. The Supreme Court however quashed those decisions and remitted the case to the first-instance court for fresh examination. It held, in particular, that the lower courts had erred when assessing the truthfulness of the Minister's statements and had not properly assessed the classified information on which those statements had been based. The Court has not been informed of any decisions taken by the domestic courts after the remittal of the case.

3. Other courts

149. In a decision of 29 April 2008 in criminal case no. 1S-66-81/08 the Kaunas Regional Court, acting as an appellate court, examined a case in which the prosecutor had refused to open a pre-trial investigation against an individual for unlawful disclosure of information about the pre-trial investigation. The court stated that, under Article 177 of the CCP (see paragraphs 131 and 132 above), information about the pre-trial investigation should not be disclosed to: (i) ensure respect for the presumption of innocence; (ii) ensure respect for the protection of private life; and (iii) ensure the success of the pre-trial investigation. Criminal liability could only be incurred for disclosure of such information which could have affected one of these aims. It was therefore necessary to examine the information which had been disclosed and its importance.

150. In a decision of 20 October 2010 in criminal case no. 1S-655-106/2010 the Klaipėda Regional Court, acting as an appellate court, examined a case in which the prosecutor had discontinued a pre-trial investigation against two journalists for unlawful disclosure of information about the pre-trial investigation but that decision had been quashed by the first-instance court. The Klaipėda Regional Court upheld the prosecutor's decision, finding that the journalists had obtained permission to disseminate certain information.

151. In a decision of 10 June 2011 in criminal case no. 1S-332-495/2011 the Vilnius Regional Court, acting as an appellate court, examined a case in which the prosecutor had refused to open a pre-trial investigation against a lawyer for unlawful disclosure of information about the pre-trial investigation. The court held that only people who had been officially warned under Article 177 of the CCP not to disclose information about a pre-trial investigation could be held criminally liable for such disclosure. However, the lawyer in question had not been given such a warning and could not therefore be prosecuted.

152. In a decision of 19 November 2013 in criminal case no. 1S-957-366/2013 the Panevėžys Regional Court, acting as an appellate court, examined a case in which the prosecutor had refused to open a pre-trial investigation against a journalist for unlawful disclosure of information about the pre-trial investigation in an article. The court found that the impugned article had reproduced information which had already been made public by that same journalist in a previous publication, and that the latter publication was the subject of another pre-trial investigation pending against the journalist. There were therefore no grounds for starting a new investigation.

153. In a decision of 19 January 2021 in civil case no. e2A-165-567/2021 the Vilnius Regional Court, acting as an appellate court, examined a case in which a civil claim had been lodged against a member of the *Seimas* concerning public statements which had allegedly been erroneous and damaging to the claimant's professional reputation. On 24 January 2019 the first-instance court allowed the claim in part. It found that the impugned statements had lacked sufficient factual basis and damaged the claimant's reputation, but it dismissed the claim for compensation in respect of non-pecuniary damage, holding that the finding of a violation constituted sufficient just satisfaction for any damage sustained by the claimant. On 10 December 2019 the Vilnius Regional Court upheld that decision. However, on 20 November 2020 the Supreme Court remitted the case to the Vilnius Regional Court for fresh examination on the grounds that the courts had incorrectly applied the law, had not properly assessed the facts and had not adequately reasoned their conclusions. After a fresh examination, the Vilnius Regional Court quashed the decision of the first-instance court and remitted the case to it. The Court has not been informed of any decisions taken by domestic courts after the most recent remittal.

II. INTERNATIONAL MATERIAL

154. The relevant passages of Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings, adopted on 10 July 2003 at the 848th meeting of the Ministers' Deputies, provide as follows:

> "*Principle 1 – Information of the public via the media*
>
> The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.
>
> *Principle 2 – Presumption of innocence*
>
> Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

Principle 3 – Accuracy of information

Judicial authorities and police services should provide to the media only verified information or information which is based on reasonable assumptions. In the latter case, this should be clearly indicated to the media.

...

Principle 8 – Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

...

Principle 10 – Prevention of prejudicial influence

In the context of criminal proceedings, particularly those involving juries or lay judges, judicial authorities and police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings.

Principle 11 – Prejudicial pre-trial publicity

Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

155. The applicant complained that the ban on him attending any institutions under the Ministry of Health had precluded him from receiving medical assistance for his cancer. He contended that that had amounted to a violation of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

(a) The Government

156. The Government submitted that the applicant had failed to exhaust effective domestic remedies. In particular, he could have lodged a request with the prosecutor asking to relax the conditions of his house arrest. While under domestic law only a court could order house arrest, the prosecutor had

the authority to temporarily relax its conditions, for example, shorten the time a person was required to stay at home or allow him or her to temporarily leave home for a specific purpose. The Government pointed out that in the case of *Uspaskich v. Lithuania* (no. 14737/08, §§ 44-49, 20 December 2016) the prosecutor had granted several requests lodged by the applicant, who had been under house arrest, to leave home to receive medical treatment.

157. The Government further submitted that the applicant had not raised the issue of access to medical treatment before the pre-trial investigation judge of the Vilnius District Court in the hearing concerning his house arrest (see paragraph 19 above).

(b) The applicant

158. The applicant disputed the Government's arguments. He submitted that he had lodged an appeal against the decision to place him under house arrest with a higher court (see paragraph 32 above) and that he had therefore not been required to use any other remedies serving essentially the same purpose.

159. He further submitted that the authorities had been aware of his state of health: he had informed the STT officers during the search of his home and provided them with the relevant medical records; he had also raised the issue in his complaint against his provisional detention (see paragraph 13 above). Moreover, he was widely involved in patient advocacy and the fact that he himself was a cancer patient was public knowledge.

2. The Court's assessment

160. The general principles concerning the requirement to exhaust effective domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and the cases cited therein).

161. The Court will firstly address the question whether the applicant raised the issue of his health before the pre-trial investigation judge of the Vilnius District Court who adopted the decision to place him under house arrest and banned him from attending any institutions under the Ministry of Health.

162. The request to place the applicant under house arrest and for the aforementioned ban was lodged by the prosecutor on 22 July 2020 (see paragraph 16 above). The Court has no reason to believe that the applicant might not have been aware of the restrictions which the prosecutor requested the pre-trial investigation judge to impose. Moreover, the judge considered the request for house arrest at a hearing in which the applicant and his lawyer participated and which was adjourned for approximately one hour to allow them to access the investigation file (see paragraph 19 above). Accordingly, the Court is satisfied that during the hearing of 22 July 2020 the applicant was

aware of the restrictions that he was facing. However, he did not argue before the pre-trial investigation judge that the ban on him attending institutions under the Ministry of Health might be incompatible with his state of health (see paragraph 19 above). The fact that he had previously brought up the issue of his illness before other authorities or that this information was in the public domain (see paragraph 159 above) did not exempt him from the obligation under Article 35 § 1 of the Convention to raise that complaint, at least in substance, before the appropriate domestic body (ibid., § 72).

163. The applicant raised his complaint concerning access to medical care before the domestic courts for the first time on 29 July 2020, as part of his appeal lodged with the Vilnius Regional Court (see paragraph 32 above). Accordingly, the Court finds that he did not exhaust domestic remedies with respect to his complaint under Article 3 of the Convention regarding the period prior to 29 July 2020. The part of the complaint concerning this latter period must therefore be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

164. The Court next turns to the Government's argument concerning the possibility for the applicant to ask the prosecutor to relax the conditions of his house arrest (see paragraph 156 above). It reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 109, ECHR 2014 (extracts), and the cases cited therein). The Court considers that by lodging an appeal against the pre-trial investigation judge's decision asking the higher court to annul the decision to place him under house arrest (see paragraph 32 above), he availed himself of a domestic remedy which could have addressed his grievance. Accordingly, he was not required to pursue any other remedies. This part of the Government's objection must therefore be dismissed.

165. The conditions of the applicant's house arrest were relaxed on 18 August 2020 and from that date he was allowed to attend healthcare facilities under the Ministry of Health for treatment purposes (see paragraph 33 above). The Court considers that his complaint under Article 3 of the Convention regarding the period from 29 July to 18 August 2020 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

166. The applicant submitted that, in view of his cancer, he needed constant medical supervision, but that the ban on him attending any institutions under the Ministry of Health had precluded him from accessing the necessary medical care. The illness he had been diagnosed with could only be treated in three healthcare facilities in Lithuania and they were all under the Ministry of Health; he had been receiving continuous treatment in one of them since 2006. The type of medical care required by his condition could not therefore be obtained in municipal or private facilities, or remotely, contrary to what had been suggested by the Government (see paragraph 169 below).

167. The applicant contended that his health had deteriorated as a result of the impugned restriction. In his submissions, he included a table summarising the parameters by which his health was monitored. According to it, his condition was examined every six months – in March and September each year, and the relevant parameters had worsened from September 2020 onwards.

(b) The Government

168. The Government challenged the applicant's assertion that he had been precluded from accessing medical treatment. They submitted that the ban on him attending any institutions under the Ministry of Health had been imposed because the pre-trial investigation had been at its initial stage and it had been necessary to question employees of several such institutions and obtain various documents. The ban had therefore sought to preclude the applicant from interfering with the investigation, not to deprive him of healthcare. The Government contended that the extent of the remand measure should not be interpreted formalistically but rather in accordance with its purpose. The possibility for the applicant to seek treatment in all medical facilities had been expressly indicated by the prosecutor on 19 August 2020 when changing the remand measure to avoid any misunderstanding (see paragraph 34 above).

169. The Government further submitted that, even assuming that the impugned decision had precluded the applicant from seeking medical care in facilities under the Ministry of Health, he had nonetheless had the possibility of obtaining such care in municipal or private medical facilities or by consulting doctors remotely, and he could receive emergency medical care at home. They also emphasised that the duration of the applicant's house arrest had been short and that he had not provided any evidence of an imminent or constant need for specific medical assistance. Accordingly, they contended

that the threshold of severity under Article 3 of the Convention had not been attained.

2. The Court's assessment

170. The relevant general principles with regard to the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the Convention, in particular as concerns the obligation of the State to provide medical care to persons deprived of their liberty, have been summarised in *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-36, 23 March 2016, and the cases cited therein). Although in the present case the applicant was subjected to house arrest which was not of such degree and intensity as to amount to deprivation of liberty (see paragraph 20 above and, *mutatis mutandis*, *Lisovskij v. Lithuania*, no. 36249/14, § 71, 2 May 2017), the Court nonetheless considers that measures depriving him of appropriate medical care during the period of house arrest could amount to treatment contrary to Article 3 (see, *mutatis mutandis*, *Blokhin*, cited above, § 136, and the cases cited therein).

171. In the present case, the Court is not persuaded by the Government's argument that the ban on the applicant attending any institutions under the Ministry of Health did not in fact preclude him from accessing medical care (see paragraph 168 above). It observes that when the applicant raised that complaint before the Vilnius Regional Court, it considered it necessary to relax the conditions of his house arrest to allow him access to any medical facilities for the purposes of treatment (see paragraph 33 above), which indicates that it understood the restriction as covering attendance for treatment purposes. The Court has no reason to substitute its own assessment for that of the domestic court and to interpret the impugned restriction differently.

172. It also takes note of the applicant's submission, which was not disputed by the Government, that he had been receiving medical care at a hospital under the Ministry of Health since 2006 and that no municipal or private facilities were able to ensure the treatment which his condition required (see paragraph 166 above).

173. The Court has no reason to doubt that the restriction on accessing healthcare facilities caused the applicant stress and anxiety, particularly in view of his serious illness. At the same time, it reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Muršić v. Croatia* [GC], no. 7334/13, § 97, 20 October 2016, and the cases cited therein).

174. In this connection, the Court observes that after the applicant brought the matter to the attention of the domestic courts on 29 July 2020 (see

paragraph 32 above), the impugned restriction was lifted on 18 August 2020 (see paragraph 33 above), that is to say within fifteen working days, or within less than three weeks.

175. It further notes that neither in his appeal before the Vilnius Regional Court nor in his submissions to the Court did the applicant indicate that during the period in question he had needed any specific medical procedures or had been forced to miss medical appointments. According to the material in the Court's possession, his condition was examined every six months (see paragraph 167 above); his next appointment was scheduled for September 2020 and was therefore not affected by the impugned restriction (see the reasoning of the Vilnius Regional Court in paragraph 33 above).

176. The Court also reiterates that allegations of treatment contrary to Article 3 of the Convention must be supported by appropriate evidence (see, among many other authorities, *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009, and *Blokhin*, cited above, § 139). In the present case, although the applicant submitted that his health had worsened from September 2020 onwards (see paragraph 167 above), he did not provide any medical evidence showing that that worsening had been caused specifically by the contested measure. Consequently, the Court does not have sufficient information to be able to reach such a conclusion.

177. In the light of the foregoing, the Court considers that the material in its possession does not allow it to conclude that the impugned restriction attained the threshold of severity under Article 3 of the Convention. Accordingly, it finds that there has been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

178. The applicant complained that his provisional detention had been unlawful and unjustified. He relied on Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

1. The parties' submissions

179. The Government submitted that the applicant had failed to exhaust effective domestic remedies regarding the part of his complaint under

Article 5 § 1 of the Convention. In so far as he had complained that he should have been released immediately after the prosecutor had decided to ask a court to place him under house arrest rather than detain him on remand, he had not raised that issue with the senior prosecutor (see paragraph 28 above).

180. The applicant submitted that his provisional detention had been unlawful in its entirety and that he had consistently argued this in all his complaints and appeals; its unjustified duration had been merely one of the arguments he had provided in support of that complaint. Accordingly, he contended that he had properly exhausted domestic remedies in respect of his complaint under Article 5 § 1 of the Convention.

2. The Court's assessment

181. The Court observes that the applicant complained that his provisional detention had been incompatible with Article 5 § 1 of the Convention from the very beginning. The Government did not dispute that he had raised that complaint before the appropriate domestic authorities.

182. The Court takes note of the applicant's submission that the lack of justification for his detention following the prosecutor's request to place him under house arrest was one of the arguments he had provided in support of his above-mentioned complaint under Article 5 § 1 of the Convention, rather than an independent complaint in and of itself (see paragraph 180 above). While the question of whether the applicant raised that specific argument before the appropriate domestic authorities, and if so, whether the authorities duly addressed it, may be relevant when assessing the merits of the complaint under Article 5 § 1, the Court considers that this issue has no bearing on the admissibility of his overall complaint under that provision. It therefore dismisses the Government's objection regarding non-exhaustion of domestic remedies.

183. The Court 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

184. The applicant submitted that his provisional detention had been unlawful and unjustified. None of the decisions taken by the domestic authorities and courts had provided any objective and individualised reasons to show that he might flee or commit crimes. The likelihood of him doing so had been based essentially on the fact that he had been suspected of a serious crime (see paragraphs 11, 14, 24, 25 and 27 above), but that was not in accordance with the Court's case-law (see the cases referred to in

paragraph 23 above). He also contended that he had fully cooperated with the authorities during the search of his home but that this had not been taken into account because the STT had decided to detain him before even arriving at his home. He also submitted that the pre-trial investigation had been opened in March 2020 and that the failure by the authorities to question witnesses and carry out other investigative measures by July 2020 should not have served as justification for his detention.

185. The applicant further submitted that the deprivation of his liberty had not been authorised by a court. The fact that the STT had requested prior court authorisation to search his home (see paragraph 12 above) showed that there had been no reason why it could not have also obtained authorisation to detain him. Moreover, he had not been promptly taken before a judge after being arrested by the STT and its decision had instead been reviewed by the prosecutor (see paragraph 14 above), who could not be considered impartial. The applicant pointed out that Article 140 of the CCP had later been amended to address various flaws in the legal regulation in force at the time of his arrest (see paragraphs 112-116 above). He contended that the amendment had been prompted by the public debate surrounding his case and that it demonstrated that the legal regulation applied to him had not complied with the Constitution and the Convention.

186. Lastly, he submitted that at around 10 a.m. on 22 July 2020 the prosecutor had lodged the request to place him under house arrest (see paragraph 16 above). At that time it had therefore been clear that there were no grounds for keeping him in detention. However, he had not been released immediately but had remained in detention until the court hearing.

(b) The Government

187. The Government submitted that the applicant's provisional detention had complied with the domestic law in force at the material time: it had been ordered by an official of the STT and the prosecutor had been notified (see paragraphs 108 and 109 above). Moreover, the applicant had been informed of the suspicions against him and his rights, and he had been able to consult a lawyer.

188. They further submitted that the applicant's provisional detention had been justified by the need to prevent him from committing further crimes, as well as by the need to identify all possible accomplices and to carry out the necessary investigative measures (see paragraphs 11 and 14 above). On the day of the applicant's arrest, the authorities had planned to carry out searches in several different places and question several people. It had therefore been necessary to restrict the applicant's liberty to preclude him from interfering with those measures, in particular from coordinating his position with other individuals with whom he had links, such as State officials and contacts in foreign countries. The Government also submitted that the authorities had suspected that one of the key documents of the investigation – the

commission agency agreement between the applicant and the pharmaceutical company – might have been forged, and that those suspicions had later been "confirmed" during the course of the investigation (see paragraph 93 above). It had therefore been reasonable to believe that the applicant might take other deliberate actions to distort the truth regarding the circumstances in which the tests had been purchased.

189. The Government further contended that it had not been possible for the prosecutor to obtain prior authorisation from the court to detain the applicant on remand (see paragraph 122 above), despite the fact that such authorisation had been obtained for the search of his home (see the applicant's submissions in paragraph 185 above). In particular, when requesting authorisation for the search, the prosecutor could not have known when it would be granted and when the search would be carried out and therefore requesting authorisation for detention on remand at the same time "had not necessarily been feasible". After the search had been authorised, the prosecutor and the STT had needed to act promptly and had exercised their legal authority to order the applicant's provisional detention (see paragraph 108 above). The Government pointed out that the duration of his provisional detention had not exceeded the maximum of forty-eight hours provided in law (see paragraph 110 above).

190. Lastly, the Government disputed the applicant's argument that his detention had no longer been justified after the prosecutor had requested the court to place him under house arrest (see paragraph 186 above). They contended that it had not been possible to release him from detention immediately after the prosecutor had lodged the request for house arrest, for the following reasons. Under domestic law, house arrest could only be ordered by a court and not by a prosecutor (see paragraph 105 above). Therefore, prior to the court's decision, the prosecutor could have either released the applicant from provisional detention without imposing any remand measures, which could have prejudiced the ongoing investigation, or he could have imposed one of the more lenient remand measures provided for by domestic law (see paragraph 105 above). However, in the latter case, it would have no longer been possible to place the applicant under house arrest unless he had breached the conditions of the more lenient measure. In addition, the Government submitted that in view of the high workload of judges, it was not always possible to hold a hearing immediately after a prosecutor's request for a certain remand measure had been lodged.

2. The Court's assessment

(a) General principles

191. The Court reiterates that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1 of the Convention, be "lawful". Where the "lawfulness" of

detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where failure to comply with such law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 of the Convention is at stake and the Court must then exercise a certain power to review whether national law has been observed (see *Denis and Irvine v. Belgium*, [GC], nos. 62819/17 and 63921/17, §§ 125-26, 1 June 2021, and the cases cited therein).

192. Compliance with national law is not, however, sufficient: the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The general principles implied by the Convention to which the Article 5 § 1 case-law refers include the principle of the rule of law and connected to the latter, that of legal certainty (ibid., § 127). With regard to the principle of legal certainty, the expression "in accordance with a procedure prescribed by law" requires not only any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law. Where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention (ibid., § 128).

193. Article 5 § 1 of the Convention requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (ibid., § 129). In particular, in order not to be considered arbitrary, the deprivation of liberty must be shown to have been necessary in the circumstances. The detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 137, 4 December 2018, and the cases cited therein).

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

194. In the present case, there was no dispute between the parties that from 8.01 a.m. on 21 July 2020 to 5.15 p.m. on 22 July 2020 the applicant had been placed in provisional detention and therefore deprived of his liberty (see paragraphs 11 and 21 above).

195. The provisional detention order was adopted by the STT on the basis of Article 140 § 2 of the CCP (see paragraph 11 above). At the material time, that provision allowed a prosecutor or pre-trial investigation officer, in exceptional circumstances, to provisionally detain a person who had not been

caught committing a criminal offence or immediately after its commission if all of the following conditions were met: first, the grounds for detention on remand under the CCP had to be present – that is to say, there had to be a well-founded belief that the suspect might flee, interfere with the investigation or commit further criminal offences (see paragraph 117 above); second, it was necessary to immediately restrict the person's liberty to achieve the aims listed in the CCP – to ensure his or her participation in the criminal proceedings or to prevent interference with the proceedings or the commission of further criminal offences (see paragraph 104 above); and third, there was no possibility of urgently requesting a court to authorise detention on remand (see paragraphs 108 and 122 above).

196. The Court notes that in October 2020 the Lithuanian Ministry of Justice introduced a proposal for amending Article 140 of the CCP. In the explanatory report enclosed with that proposal, the Ministry emphasised that a person who had not been caught committing a crime or immediately afterwards could only be placed in provisional detention in exceptional circumstances. The purpose of such detention was to enable a prosecutor to urgently seek authorisation from a court to detain that person on remand, and in order for provisional detention to comply with Article 140 § 2 of the CCP, it had to have been impossible for the prosecutor, due to a sudden change in circumstances and lack of time, to obtain prior court authorisation for detention. The Ministry further stated that applying provisional detention for the purpose of carrying out investigative measures, or keeping the person in provisional detention without ever seeking a court's authorisation for detention on remand, was incompatible with the object and purpose of Article 140 § 2 of the CCP (see paragraph 112 above). Indeed, in 2022 that legislative provision was amended to address the problems indicated by the Ministry (see paragraphs 113-116 above).

197. As the Court has held previously, the fact that legal regulation is subsequently amended is not sufficient, in and of itself, to demonstrate that the previous regulation was flawed (see *Galakvoščius v. Lithuania* (dec.), no. 11398/18, § 60, 7 July 2020, and the case-law cited therein). However, it considers that the arguments provided by the Ministry of Justice in the explanatory report, elaborating on the object and purpose of Article 140 § 2 of the CCP and criticising certain practices of investigating authorities in their application of that legislative provision, are relevant when assessing whether its application in the case at hand was in accordance with a procedure prescribed by law and whether it was devoid of arbitrariness.

198. The applicant argued, in particular, that the third condition under Article 140 § 2 of the CCP had not been met in his case, as the domestic authorities had failed to demonstrate that it had not been possible to seek authorisation from a court before detaining him (see paragraph 185 above).

199. The Court has not been referred to any legal instruments, examples of case-law or other sources capable of clarifying what circumstances could

be seen as making it impossible, within the meaning of Article 140 § 2 of the CCP, for the prosecutor to seek prior court authorisation to detain a person. In this connection, it takes note of the criticism expressed by the Ministry of Justice with regard to the lack of clarity in that provision (see paragraph 112 above). These circumstances give the Court serious doubts as to whether the domestic legal regulation in force at the time of the applicant's provisional detention was sufficiently foreseeable in its application to meet the standard of "lawfulness" under Article 5 § 1 of the Convention.

200. As it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many other authorities, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018), the Court considers that any doubts as to whether all the conditions set out in Article 140 § 2 of the CCP had been met in the applicant's case ought to have been dispelled by the domestic authorities. However, the STT, which ordered the provisional detention and the prosecutor, who dismissed his first complaint against it, merely stated that seeking a court's authorisation had not been possible, without any further explanation (see paragraphs 11 and 14 above; see also, in paragraph 114 above, the subsequent legislative amendments which enshrined in Article 140 of the CCP the requirement to justify why obtaining court authorisation had not been possible).

201. Moreover, in his complaints to the senior prosecutor and the pre-trial investigation judge, the applicant argued that the inability to request prior authorisation from a court had not been demonstrated. He pointed to the following circumstances: the pre-trial investigation concerning the circumstances of the purchase of COVID-19 tests had been opened on 30 March 2020; he had been the only potential suspect in that investigation from the start; the STT and the prosecutor had been preparing to carry out a search of his home and had obtained court authorisation for it; and the decision to place him in provisional detention had been prepared before the STT officers had arrived at his home to carry out the search (see paragraphs 22 and 26 above). The Court finds the applicant's arguments to be specific and pertinent to the question of whether or not the investigating authorities had had sufficient time and opportunity to obtain prior court authorisation for his detention. However, neither the senior prosecutor nor the pre-trial investigation judge addressed those arguments (see paragraphs 25 and 27 above). In fact, the pre-trial investigation judge considered the inability to request such authorisation immediately after the applicant's arrest, rather than prior to it, as required under Article 140 § 2 of the CCP (see paragraph 27 above). In such circumstances, the Court considers that the domestic authorities failed to demonstrate that the third condition under Article 140 § 2 of the CCP had been met in the applicant's case.

202. The applicant further argued that his provisional detention had not been necessary in the circumstances (see paragraph 184 above). Indeed,

Article 140 § 2 of the CCP required the authorities to ascertain the necessity of provisional detention (see paragraph 108 above) and, moreover, the CCP establishes a general requirement that coercive procedural measures may only be applied if the aims of the proceedings cannot be achieved without them (see paragraph 103 above). The STT stated that the applicant's provisional detention was necessary to prevent him from fleeing, interfering with the investigation or committing further crimes and that the risk of him doing so arose from the fact that he was suspected of a serious crime and was facing a prison sentence, as well as the fact that the pre-trial investigation was at its initial stage (see paragraph 11 above). However, that decision did not contain any explanation why that risk could not have been prevented by any of the more lenient remand measures provided for by domestic law, some of which could be ordered without a court's authorisation (see paragraph 105 above).

203. The Court also notes that in his complaint to the prosecutor on the day of his arrest, the applicant referred, in particular, to the fact that he had a lawful source of income, had no previous convictions and had cooperated with the authorities during the search of his home (see paragraph 13 above; see also the relevant provision of the CCP in paragraph 106 above). However, the prosecutor's decision did not address the applicant's individual circumstances in any way (see paragraph 14 above). Following a further complaint lodged by the applicant, the senior prosecutor stated that those circumstances had been taken into account when eventually deciding to place him under house arrest (see paragraph 24 above). However, the decision to place him under house arrest was issued after he had been detained for approximately thirty-three hours (see paragraph 194 above) and did not change the fact that the necessity of that detention had not been adequately assessed by any domestic authority, as required under Article 140 § 2 of the CCP (see, *mutatis mutandis*, *Dzerkorashvili and Others v. Georgia*, no. 70572/16, § 102, 2 March 2023).

204. In the light of the foregoing, the Court concludes that the applicant's provisional detention did not follow the procedure prescribed by law. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

205. The applicant complained that the President, the Minister of Health and several members of the *Seimas* had publicly implied that he was guilty of the crimes of which he had been suspected, infringing his right to be presumed innocent. He relied on 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."

Admissibility

1. The parties' submissions

206. The Government submitted that the applicant had failed to exhaust effective domestic remedies. In particular, under the Civil Code, he had the right to lodge a civil claim for protection of his honour and dignity against anyone, including State officials. The Government contended that the effectiveness of that remedy in cases regarding public statements made by prominent politicians was demonstrated by the domestic case-law – they gave two examples of relevant cases (see paragraphs 148 and 153 above). They also pointed out that the Court had already acknowledged that the civil-law remedies in Lithuanian law were effective in respect of alleged violations of the presumption of innocence (see *Januškevičienė v. Lithuania*, no. 69717/14, §§ 59-63, 3 September 2019).

207. The Government further submitted that the criminal proceedings against the applicant were still pending (see paragraph 95 above) and that, therefore, any assessment of the fairness of those proceedings was premature.

208. The applicant submitted that he had alleged a violation of his right to be presumed innocent in his various complaints to the domestic authorities (see paragraphs 45 and 82 above) and that requiring him to institute additional proceedings against each State official who had made public statements about him would have constituted an unreasonable burden. He also submitted that the civil-law remedy suggested by the Government would have been ineffective in the circumstances.

2. The Court's assessment

209. The Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see *Vučković and Others*, cited above, § 70). The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (ibid., § 71).

210. In the present case, the applicant complained about statements made by the President, the Minister of Health and members of the *Seimas* (see paragraphs 61, 67, 69 and 71-74 above) which he considered to be encouraging the public to believe him guilty before his guilt had been determined by a court (see, for a similar situation, *Butkevičius v. Lithuania*, no. 48297/99, § 53, ECHR 2002-II (extracts), and, in the context of Article 8

of the Convention, *Rinau v. Lithuania*, no. 10926/09, §§ 210-11, 14 January 2020).

211. The Court will firstly address the Government's argument that that complaint is premature because the criminal proceedings against the applicant are still pending (see paragraph 207 above). It considers that the essence of the applicant's grievance was that high-ranking State officials had encouraged the public to believe that he was guilty before that question had been determined by the courts, rather than that the courts' decisions in the criminal proceedings had actually been influenced by any such statements (compare and contrast *Paulikas v. Lithuania*, no. 57435/09, §§ 40 and 44, 24 January 2017, and, in the context of civil proceedings, *Čivinskaitė v. Lithuania*, no. 21218/12, §§ 103 and 105, 15 September 2020); in fact, he was acquitted by the first-instance court (see paragraph 95 above). In such circumstances, the Court is not persuaded that raising this complaint in the criminal proceedings, to which those officials were not parties, would have constituted an effective remedy against the impugned statements (see, *mutatis mutandis*, *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000; *Peša v. Croatia*, no. 40523/08, § 132, 8 April 2010; and *Neagoe v. Romania*, no. 23319/08, § 27, 21 July 2015). Indeed, in the present case the Government did not indicate what measures the courts examining the criminal charges against the applicant could take to redress the essence of the applicant's grievance, namely that high-ranking State officials encouraged the public to believe him guilty (see *Neagoe*, cited above, § 27, and compare and contrast *Rimšēvičs v. Latvia* (dec.), no. 31634/18, § 51, 10 October 2023). Accordingly, the Court considers that the fact that the criminal case against the applicant is still pending has no bearing on the admissibility of his complaint under Article 6 § 2 of the Convention.

212. The Court next turns to the Government's argument that the applicant did not exhaust effective domestic remedies because it had been open to him to lodge a civil claim for protection of his honour and dignity against anyone, including State officials (see paragraph 206 above).

213. The applicant contended that he had not been required to exhaust the aforementioned remedy because he had complained about the impugned statements in his complaints regarding the temporary seizure of his property and the restriction on him disclosing information about the investigation (see paragraph 208 above). However, the Court observes that the proceedings during which the applicant raised those complaints concerned the lawfulness of the specific procedural measures taken against him. He did not provide any references to domestic legal instruments or examples of case-law which might lead the Court to believe that the domestic authorities called upon to examine the lawfulness of those procedural measures were also entitled to assess public statements made by the President, the Minister of Health or members of the *Seimas*. In such circumstances, the Court is not convinced that by raising complaints of violations of the presumption of innocence in

those proceedings the applicant complied with the obligation to exhaust effective domestic remedies.

214. Accordingly, it needs to be assessed whether the civil-law remedy indicated by the Government could be considered effective in the circumstances of the present case. The Court notes that it has previously held that a civil-law remedy may, in principle, be an effective way of addressing a complaint relating to allegedly prejudicial statements made in respect of ongoing criminal proceedings, either alone or in combination with a criminal-law remedy (see *Mamaladze v. Georgia*, no. 9487/19, § 63, 3 November 2022, and the cases cited therein). In the present case, the Government provided two examples of domestic cases in which the courts had examined civil claims lodged against prominent politicians regarding their public statements, although the Court has not been informed of the final decisions taken in those cases (see paragraphs 148 and 153 above). Be that as it may, it notes that the applicant did not comment on those examples and did not dispute their relevance to his case, nor did he provide any other arguments or decisions of domestic courts capable of demonstrating that that remedy was obviously futile in the circumstances of the present case or that there existed special circumstances absolving him from the requirement to exhaust it.

215. In this connection, the Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 159, 27 November 2023, and the cases cited therein). In addition, in a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and to allow the domestic courts to develop those rights by way of interpretation. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law on a case-by-case basis (ibid.).

216. In the light of the foregoing, the Court considers that it was incumbent on the applicant to avail himself of the civil-law remedy indicated by the Government with regard to his complaint concerning public statements made by State officials. In view of the fact that he did not institute any domestic proceedings whereby the effectiveness of that remedy could be tested, it is not for the Court to conclude *in abstracto* that it was not effective.

217. It follows that this complaint must be declared inadmissible for failure to exhaust domestic remedies, in line with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

218. The applicant complained that the investigating authorities had damaged his reputation by disclosing his name and employment history on the day of his arrest, escorting him to a court hearing in front of journalists and regularly commenting on the case in the media. He alleged that these actions had violated his rights under Article 6 § 2 and Article 8 of the Convention.

219. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) considers that this complaint falls to be examined solely under 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

220. The Government submitted that the applicant had not availed himself of the possibility of lodging a civil claim for damages against any media outlets or investigating authorities, the effectiveness of which had been acknowledged by the Court in *A.Č. v. Lithuania* ((dec.), no. 59076/08, § 50, 4 October 2016).

221. The applicant submitted that he had raised the aforementioned complaint before the domestic authorities (see paragraphs 77, 82 and 86 above).

2. The Court's assessment

(a) Applicability of Article 8 of the Convention

222. The Government did not dispute that Article 8 of the Convention was applicable in the present case. However, the Court reiterates that the applicability *ratione materiae* of the Convention defines the scope of its jurisdiction. Therefore, it is not prevented from examining this question of its own motion (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 71, 13 December 2016, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 59, 3 November 2022).

223. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, among many other authorities, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

224. In the present case, the investigating authorities announced through their official communication channels that the applicant, who was identified by his full name, had been suspected of a serious crime relating to a high-value purchase of COVID-19 protective measures by the State. The Court has no reason to doubt that such publicity, in view of its form and content, attained the requisite level of seriousness as could harm his reputation (see, *mutatis mutandis*, *Jishkariani v. Georgia*, no. 18925/09, § 47, 20 September 2018, and *Margari v. Greece*, no. 36705/16, § 31, 20 June 2023). Accordingly, Article 8 of the Convention is applicable.

(b) Exhaustion of domestic remedies

225. The Court reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe*, cited above, § 109, and the cases cited therein).

226. In his complaints raised in the course of the proceedings concerning the warning issued to him not to disclose information about the investigation, the applicant also complained that the STT and the prosecutor's office had publicly commented on the suspicions against him and disclosed his identity (see paragraphs 77, 82 and 86 above). The Court is mindful that the purpose of those proceedings was to assess the lawfulness of the warning issued to the applicant. At the same time, it notes that the senior prosecutor and the pre-trial investigation judge did in fact assess the merits of his arguments concerning the authorities' actions when disclosing certain details about the pre-trial investigation, including his identity, considering those actions lawful and justified (see paragraphs 83 and 87 above). In such circumstances, the Court considers that the domestic authorities were given an opportunity to address his complaint subsequently raised before the Court and that this complaint cannot be dismissed for failure to exhaust domestic remedies (see, *mutatis mutandis*, *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008, and *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 43-45, ECHR 2009).

227. Accordingly, the Court finds that the applicant was not required to pursue any other domestic remedies with regard to his complaint under

Article 8 of the Convention. It therefore dismisses the Government's objection.

(c) Conclusion on admissibility

228. The Court 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

229. The applicant submitted that, at the time the pre-trial investigation had been opened, he had not been in public office and could not have been considered a public figure. At that time, he had no longer been part of most of the bodies to which the Government had referred in their submissions (see paragraph 237 below) and had no longer been the president of POLA. In any event, none of those roles had given him any decision-making powers or accorded him the status of a public official under domestic law. Moreover, he had never been part of any working groups or committees relating to the management of the COVID-19 pandemic.

230. Despite that, the STT and other authorities had gone to great lengths to make his arrest and the case against him public. In particular, on the day of his arrest, the STT had made the suspicions against him public and disclosed his full name and his links to POLA (see paragraphs 59 and 60 above). Moreover, the STT had published the press release on its website not only in Lithuanian but also in English (see paragraph 62 above), which was not its usual practice and which affected his professional reputation abroad. Furthermore, the STT had decided to have him escorted by the police to the court hearing concerning house arrest with his arms behind his back, which had made it seem like he was handcuffed, despite the fact that the prosecutor had not even asked for his detention (see paragraphs 17 and 18 above). He contended that the authorities had aroused the interest of journalists in the case by disclosing his personal details and regularly commenting on the case in public (see paragraphs 65 and 70 above) and that they had thereby created the conditions for information about him and his photographs to be widely distributed in the media (see paragraph 66 above).

231. He further contended that even in high-profile cases it was not the standard practice of the STT to disclose as much personal information as had been done in his case. He enclosed two press releases issued by the STT announcing the opening of pre-trial investigations in which the allegations had been expressed more abstractly and the suspects had been identified only by their initials. A similar approach had been followed by the Financial Crime

Investigations Service when informing the public of an investigation concerning a large-scale purchase of other COVID-19 protective measures. In the applicant's view, this showed that the Lithuanian authorities had managed, in other similar cases, to strike a balance between the need to inform the public and the protection of the suspects' privacy. There could therefore be no objective justification for treating his case differently.

232. Moreover, the applicant criticised the contrast between the extensive coverage given to the opening of the criminal proceedings against him and that given to the dropping of the initial charges of trading in influence (see paragraph 92 above) – when those charges had been dropped, neither the STT nor the prosecutor's office had issued a press release to that effect.

233. He also pointed to the press release of 11 November 2021 in which the prosecutor had characterised his actions as being for "self-serving and unlawful financial gain by taking advantage of the extraordinary circumstances" (see paragraph 89 above). The applicant contended that by making such statements before his guilt had been determined by a court, the prosecutor had sought to publicly shame him.

234. The applicant further submitted that any statements made by the investigating authorities had to be assessed in the light of the ban on him commenting on the case (see paragraph 79 above): the authorities had created a situation where they were allowed to publicly voice any suspicions against him, whereas any comments that he might have wished to make risked being treated as disclosure of information about the pre-trial investigation and subject to new prosecution.

235. Lastly, he submitted that all the aforementioned publications and photographs remained available online and were accessible to anyone who searched his name, thereby continuing to harm his reputation.

(b) The Government

236. The Government firstly submitted that the present case had to be seen in its wider context (see paragraph 5 above). In particular, the circumstances of the purchase of the COVID-19 tests had become public knowledge at the time that the campaign for the October 2020 elections to the *Seimas* had been the most active and the political debate, including criticism of the governing coalition's decisions, had been particularly intense. The political context and the link between the alleged crimes and the measures taken during the COVID-19 pandemic had understandably attracted the attention of the public and the media and prompted a debate in a democratic society.

237. They further submitted that the applicant was actively involved in public affairs. In addition to his role at POLA and his previous work with elected officials (see paragraph 4 above), he had been a co-founder and chair of Youth Cancer Europe, a network of youth cancer organisations; a board member of several State and municipal healthcare facilities; a member of the Scientific Council of the National Cancer Institute; chair of the State Public

Health Promotion Fund; a board member of the European Cancer Patient Coalition; and a board member of Invest Lithuania, a State investment promotion agency. He had also participated in a number of governmental committees or working groups tasked with developing electronic and mobile healthcare solutions. His involvement in social and political activities had therefore not been short or incidental.

238. The Government contended that the public had a justifiable interest in being informed of the criminal proceedings against the applicant and that the investigating authorities had provided that information in general terms, without any prejudice to his rights. Notably, the Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers on 6 November 1997, included the need to ensure that the media had the freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which were necessary in a democratic society. Thus, providing information about the investigation, particularly where it concerned a public figure, had to be considered as contributing to a debate of public interest.

239. They also stated that, when contacting various authorities and officials in relation to the purchase, the applicant had used his professional email address at POLA. Accordingly, it had been justified to indicate in the initial press release that he was publicly known as the president of that entity. However, no other employment history or personal details had been disclosed. Lastly, the Government emphasised that the authorities had not published any photographs of the applicant.

2. The Court's assessment

(a) Existence of an interference

240. There was no dispute between the parties that there has been an interference with the applicant's right to respect for his private life under Article 8 of the Convention, and the Court has no reason to find otherwise.

(b) Whether the interference was in accordance with the law

241. The rules regarding the disclosure of information about ongoing pre-trial investigations are laid down in the Recommendations on the disclosure of information about a pre-trial investigation approved by the Prosecutor General (see paragraphs 134-143 above).

242. The Court observes that, under the Recommendations, when disclosing information about a person suspected of criminal offences, the first and last name of a person who is not considered a public figure must not be disclosed (see paragraph 140 above). As for public figures, the Recommendations state that in each case an appropriate balance must be struck between the interest of the public in being informed and the protection

of the fundamental rights of the person who has allegedly committed a criminal offence (see paragraph 141 above).

243. The applicant argued that he did not meet the definition of a public figure in domestic law (see paragraph 133 above). In this connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Ramos Nunes de Carvalho e Sá*, cited above, § 186). In the present case, it considers that the question of whether the applicant was sufficiently known to the public to justify the extent of the dissemination of information by the authorities should be addressed when examining whether the impugned interference was necessary in a democratic society.

244. Accordingly, the Court accepts that the impugned interference was in accordance with the law within the meaning of Article 8 § 2 of the Convention.

(c) Whether the interference pursued a legitimate aim

245. Under domestic law, providing the public with information about ongoing pre-trial investigations serves aims such as increasing the transparency of the work of the relevant authorities, improving the public's understanding of criminal proceedings and contributing to the investigation of alleged criminal offences (see paragraph 138 above). Indeed, the Court has no reason to doubt that providing the public with information of a general nature about ongoing criminal proceedings in principle pursues the legitimate aim of the prevention of disorder or crime under Article 8 § 2 of the Convention.

246. While the Court has doubts with regard to the aim pursued, specifically, by the disclosure of the applicant's identity, it considers that it is more appropriate to address that issue when assessing whether the measure in question was necessary in a democratic society. Accordingly, it accepts that the impugned interference pursued a legitimate aim within the meaning of Article 8 § 2.

(d) Whether the interference was necessary in a democratic society

(i) General principles

247. In the present case, the interference with the applicant's right to respect for his private life resulted not from the actions of any private individuals or entities but from the dissemination of information by public authorities, namely the STT and the prosecutor's office.

248. The Court has recognised in its case-law that the protection of freedom of expression under Article 10 of the Convention extends to civil servants and members of the judiciary (see *Kövesi v. Romania*, no. 3594/19, § 179, 5 May 2020, and the cases cited therein). Moreover, it previously found that a prosecutor who had imparted information to the public in the exercise

of his official duties enjoyed the protection of Article 10 (see *Brisc v. Romania*, no. 26238/10, §§ 104-05, 11 December 2018).

249. Accordingly, the Court considers that the principles developed in its case-law with regard to the balance to be struck between, on the one hand, one person's right to respect for his or her private life under Article 8 of the Convention and, on the other, another person's right to freedom of expression under Article 10 of the Convention (see, among many other authorities, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-107, ECHR 2012, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)), are applicable in the present case.

250. In particular, the Court has identified, in so far as is relevant to the present case, the following criteria in the context of balancing competing rights: the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned and the content, form and consequences of the publication (ibid., § 93).

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

251. Where the balancing exercise between the competing rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 139, ECHR 2015, and the cases cited therein).

252. In the present case, although the domestic authorities assessed some of the relevant criteria, such as whether the applicant was a public figure, there is no indication that they carried out the required balancing exercise in conformity with the Court's case-law, either explicitly or at least in substance (see paragraphs 83 and 87 above and compare and contrast *Marcinkevičius v. Lithuania*, no. 24919/20, § 78, 15 November 2022). The Court must therefore carry out such a balancing exercise itself (see *Mesić v. Croatia*, no. 19362/18, § 93, 5 May 2022, and the case-law cited therein).

(α) Subject of the publications and their contribution to a debate of public interest

253. The impugned press release and public statements concerned the suspicions against the applicant and various other information about the pre-trial investigation against him.

254. The Court has previously found that the public have a legitimate interest in the provision and availability of information about criminal proceedings (see *Morice v. France* [GC], no. 29369/10, § 152, ECHR 2015, and the case-law cited therein). It observes that the pre-trial investigation against the applicant concerned a high-value purchase by the State of COVID-19 protective measures during the pandemic, which was

undoubtedly a matter of public interest. It also takes note of the Government's argument that, at the material time, the campaign for the upcoming parliamentary elections was underway, which led to more intense scrutiny and criticism of the governing coalition's actions when managing the pandemic (see paragraph 236 above).

255. Accordingly, the Court accepts that providing the public with information about the pre-trial investigation in question contributed to a debate of public interest.

(β) How well known the applicant was

256. The Court reiterates that the extent to which an individual has a public profile or is well known influences the protection that may be afforded to his or her private life (see *Couderc and Hachette Filipacchi Associés*, cited above, § 117, and the cases cited therein). In particular, politicians inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large. Furthermore, this principle applies not only to politicians, but to every person who is part of the public sphere, whether through their actions or their position. Nevertheless, in certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life (ibid., §§ 121-22).

257. In the present case, the applicant was not a politician and was not in public office at the relevant time – he was a university lecturer, the head of a private company and a self-employed consultant. Although he had previously been an advisor to a member of the *Seimas* and to the President, his work in those positions had ended ten and four years respectively prior to the events in question (see paragraph 4 above).

258. It is true that the applicant was somewhat publicly known because of his involvement in cancer patient advocacy, which included roles in non-governmental organisations, board membership of certain healthcare facilities and participation in governmental working groups (see paragraph 237 above). However, the Court is not convinced that his involvement in public affairs was to such an extent and of such importance as to make his role comparable to that of a politician or a public official (see the applicant's submissions in paragraph 229 above and, *mutatis mutandis*, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 98, 27 June 2017, and *Kaboğlu and Oran v. Turkey*, nos. 1759/08 and 2 others, § 74, 30 October 2018). In this connection, it takes note that, according to the case-law of the Lithuanian Constitutional Court, a person's official position or his or her participation in public activities is not sufficient, in and of itself, for him or her to be considered a public figure (see paragraph 147 above).

259. In the Court's view, it cannot be said that the applicant, by virtue of his activities, inevitably and knowingly entered the public domain and laid

himself open to close scrutiny of his acts, which would require him to show a greater degree of tolerance (compare and contrast *Drousiotis v. Cyprus*, no. 42315/15, §§ 50-51, 5 July 2022). In particular, the Court is unable to find that the degree of the applicant's notoriety or his public role was such as to justify the disclosure of his identity by the STT when announcing the suspicions against him.

(γ) The applicant's prior conduct

260. The Court observes that the initial information about the suspicions against the applicant, including his full name and links to POLA, was published by the STT, whose representative also spoke to journalists the same day (see paragraphs 59 and 60 above). Accordingly, the fact that the applicant was suspected of criminal offences was made public by the authorities without any prior initiative on his part (compare and contrast *Hachette Filipacchi Associés (*ICI PARIS*) v. France*, no. 12268/03, §§ 52-53, 23 July 2009).

261. The applicant subsequently gave interviews to the press or posted on social media about the criminal proceedings on several occasions (see paragraphs 64, 68, 75 and 90 above). In this connection, the Court takes note of the argument which the applicant raised in relation to his complaint under Article 10 of the Convention that his public comments were a reaction to the information disseminated by the authorities, in an attempt to defend his reputation (see paragraph 277 below). Having examined the publications submitted to it by the parties, the Court is unable to find that the media interest in the case was provoked by the applicant's own conduct or that the extent of his communication with the media significantly exceeded that of the investigating authorities. Accordingly, it cannot be said that the applicant's conduct was such as to deprive him of the protection of his right to privacy (see, *mutatis mutandis*, *Egeland and Hanseid v. Norway*, no. 34438/04, § 62, 16 April 2009).

(δ) Content, form and consequences of the publications

262. The Court has already found that the disclosure of the applicant's identity by the STT was not justified by his level of notoriety (see paragraphs 257 and 259 above). In this connection, it takes note of the applicant's submissions, which were not disputed by the Government, that the standard practice of the Lithuanian investigating authorities, even when informing the public of high-profile pre-trial investigations, was not to disclose the identities of suspects (see paragraph 231 above).

263. The Court further observes that after publicly announcing that the applicant was suspected of a serious crime, the STT decided to have him escorted to court by police officers with his arms behind his back (see paragraphs 17 and 18 above). Photographs and videos of this were taken by

journalists and published in various media outlets (see paragraph 66 above). The Court acknowledges that the authorities themselves did not publish any photographs or videos of the applicant. However, it shares the applicant's view that by making his identity public, the authorities increased the media's interest in the case and created the conditions for the impugned photographs and videos of him to be taken and published (see paragraph 230 above). Indeed, the applicant did not voluntarily expose himself to the public but was forced to attend the hearing, and, under these circumstances, he had no means to protect his privacy and to prevent journalists from obtaining the images of him being led by police officers in a position which made it seem as if he was handcuffed (see, *mutatis mutandis*, *Axel Springer SE and RTL Television GmbH v. Germany*, no. 51405/12, § 52, 21 September 2017).

264. The Court next turns to the press release issued by the STT on 11 November 2021 (see paragraph 89 above). It is satisfied that the part describing the new charges against the applicant was presented in a neutral manner and provided only details that were legitimately necessary to inform the public of the ongoing criminal proceedings. However, the same cannot be said about the prosecutor's statements quoted in that press release. In particular, the prosecutor characterised the actions imputed to the applicant as being for "self-serving and unlawful financial gain by taking advantage of the extraordinary circumstances during a very difficult time for the entire State" and alleged that the applicant had not only "cause[d] significant material damage but [had] also undermined trust in the State institutions" (see paragraph 89 above). The Court finds that the prosecutor's statements clearly went beyond providing the public with information of a general nature (see the relevant domestic law in paragraph 136 above) and it cannot be said that in releasing them the authorities proceeded with caution (compare and contrast *Brisc*, cited above, §§ 110-11). On the contrary, the impugned statements amounted to a moral judgment of the applicant, expressed in strong and unambiguous terms and liable to damage his reputation.

265. In this connection, the Court emphasises that even when providing the public with information which it has a legitimate interest in receiving, the authorities must not overstep certain bounds, in particular in respect of the reputation and rights of others, and that they must strike a fair balance between the competing interests (see, *mutatis mutandis*, *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016, and *Mediengruppe Österreich GmbH v. Austria*, no. 37713/18, § 48, 26 April 2022; see also the case-law of the Lithuanian Constitutional Court cited in paragraph 147 above and Recommendation Rec(2003)13 of the Committee of Ministers quoted in paragraph 154 above). It also refers to its well-established case-law under Article 6 § 2 of the Convention, according to which the authorities cannot be prevented from informing the public of criminal investigations in progress, but they are required to do so with all the discretion and circumspection

necessary if the presumption of innocence is to be respected (see *Paulikas*, cited above, § 49, and the cases cited therein).

266. Lastly, the Court also takes note of the fact that, as submitted by the applicant and not disputed by the Government, all the aforementioned press releases and articles reproducing the authorities' statements were available online. It emphasises that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press, particularly on account of the important role of search engines (see *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, § 91, 28 June 2018, and the cases cited therein).

267. Accordingly, the Court considers that the content and form of the press releases and public comments issued by the investigating authorities were not justified by the need to inform the public of the ongoing criminal proceedings and that they were such as to cause serious damage to the applicant's reputation.

(ε) Conclusion

268. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to strike a fair balance between, on the one hand, the authorities' right to inform the public of the pre-trial investigation under Article 10 of the Convention and, on the other, the applicant's right to respect for his private life, including his reputation, under Article 8 of the Convention. The interference with the applicant's right to respect for his private life has not therefore been shown to have been necessary in a democratic society.

269. There has accordingly been a violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

270. The applicant complained that he had been banned from discussing the case in the media, which had put him at a disadvantage in comparison to the authorities, who had remained free to make public comments about his case. He relied on Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others,

for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The parties' submissions

271. The Government submitted that the applicant had failed to exhaust effective domestic remedies. Article 177 of the CCP expressly stated that information about a pre-trial investigation could not be disclosed without a prosecutor's permission (see paragraphs 131 and 132 above). The same had been indicated in the warning issued to the applicant (see paragraph 79 above). However, the applicant had never sought such permission from the prosecutor.

272. The applicant submitted that he had lodged complaints against the prosecutor's decision to give him a warning with the senior prosecutor and the pre-trial investigation judge (see paragraphs 82 and 86 above) and that he had therefore not been required to use any other remedies.

2. The Court's assessment

273. The Court reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe*, cited above, § 109, and the cases cited therein).

274. It observes that the applicant complained to the senior prosecutor and the pre-trial investigation judge that the ban on him discussing the case in the media was unjustified *per se*, in view of the fact that its scope was unclear and that it was unfair in the circumstances of the case (see paragraphs 82 and 86 above). Accordingly, the domestic authorities were given an opportunity to assess his complaint subsequently raised before the Court. In such circumstances, it considers that the applicant was not required to exhaust any other remedies. The Government's objection must therefore be rejected.

275. The Court 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

276. The applicant submitted that, given the fact that the STT, the prosecutor's office and various politicians had made regular public comments

regarding his case, the ban on him doing the same had been unjustified. He pointed out that the authorities had disclosed his full name, his position at POLA, the exact payment he had received from the pharmaceutical company and other details about the case. Any public comments made by him had merely been a reaction to the disclosures made by the authorities.

277. He repeated the submissions he had made under Article 8 of the Convention that the publicity of the case had been prompted by the investigating authorities (see paragraph 230 above). Once the criminal case against him had become the subject of a public debate, which had even been joined by high-ranking politicians, it had become justifiable for him to publicly respond to the allegations and to attempt to defend his reputation. He contended that his right to make public comments about the case had therefore called for a high level of protection.

278. He further contended that the extent of the ban had not been adequately explained to him and that it had been overly broad.

279. The applicant disputed the Government's submission that he had disclosed details of secret surveillance measures (see paragraph 282 below). He stated that he had not been reproached for that by any investigating authorities and had only become aware of the allegation from the Government's submissions. Be that as it may, the Government had not clarified what details he had allegedly disclosed and the allegation was therefore unsubstantiated. In this connection, the applicant also submitted that, prior to the completion of the pre-trial investigation, he had been granted access to only a very limited part of the investigation file.

280. He also disputed the Government's argument that the warning on him not to disclose information about the pre-trial investigation had not precluded him from making public comments about the case (see paragraph 284 below). He submitted that after receiving the warning in August 2020, he had stopped commenting publicly on the case and had only posted on his Facebook page on the following occasions: in May 2021, when commenting on certain allegations made about him in a press article; in November 2021, when the initial charges against him had been dropped; and in January 2022, when asking for additional financial support to cover his litigation costs (see paragraphs 90 and 96 above). He contended that he had seen the warning as a serious threat of prosecution and that it had had an actual chilling effect on his freedom of expression.

(b) The Government

281. The Government submitted that the public comments made by the authorities with regard to the investigation had not been excessive and had been limited to the main factual details. By contrast, the applicant had given extensive interviews and made comments on social media, using the publicity as a defence strategy.

282. They further submitted that the warning had been issued to the applicant after he had disclosed certain details concerning secret surveillance measures taken in the pre-trial investigation. The decision to give him that warning had been taken because secret surveillance measures were still being conducted.

283. The Government contended that the domestic authorities had sufficiently explained to the applicant which information he was not allowed to disclose (see paragraph 85 above). Moreover, although the domestic case-law relating to the non-disclosure of information about a pre-trial investigation was limited, it helped to further clarify the extent of the impugned restriction (see paragraphs 149-152 above).

284. Lastly, they submitted that the applicant had not in fact been precluded from publicly discussing the case, as demonstrated by his public statements and social media posts made after the impugned warning had been given (see paragraphs 80, 81 and 90 above). The Government emphasised that the applicant had not incurred any liability for disclosing information about the pre-trial investigation – in fact, in Lithuania no suspect had ever been convicted of disclosure of such information. Accordingly, the warning had been "rather symbolic" and had not disproportionately affected the applicant's rights.

2. The Court's assessment

(a) Existence of an interference

285. The Court must firstly ascertain whether the impugned warning amounted to an interference, in the form of a "formality, condition, restriction or penalty", with the exercise by the applicant of his freedom of expression. To answer this question, the scope of the measure must be determined by putting it in the context of the facts of the case and of the relevant legislation (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999-VII).

286. The Court observes that, under Article 247 of the Criminal Code, disclosure of information about a pre-trial investigation without the prosecutor's permission is punishable by community service, a fine, restriction of liberty or detention (see paragraph 132 above). It notes that the Government provided examples of several domestic cases concerning individuals who had been investigated for alleged disclosure of information about the pre-trial investigation (see paragraphs 149-152 above). It is true that the applicant was not prosecuted or punished for any alleged disclosure; however, the existence of an interference is conceivable even in the absence of prejudice or damage (see, *mutatis mutandis*, *Godlevskiy v. Russia*, no. 14888/03, § 36, 23 October 2008, and the cases cited therein).

287. The Court further observes that throughout the domestic proceedings the applicant consistently argued that the scope of the impugned restriction was not clear to him and that he did not understand what information he was

or was not allowed to disclose, particularly in view of the extent of the information which had already been made public (see paragraphs 79, 82 and 86 above). It takes note of the applicant's submissions that, after receiving the warning, he limited his public comments in relation to the case (see paragraph 280 above). It therefore cannot be said that the impact of the impugned restriction on his freedom of expression was purely hypothetical (compare and contrast *Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland* (dec.), no. 68995/13, § 72, 12 November 2019).

288. Given the circumstances, the Court accepts that the impugned warning was liable to create a chilling effect and preclude the applicant from expressing himself publicly about the pre-trial investigation. There has therefore been an interference with his right to freedom of expression.

(b) Whether the interference was in accordance with the law

289. The impugned interference had a legal basis in domestic law, namely Article 177 of the CCP and Article 247 of the Criminal Code (see paragraphs 131 and 132 above). The applicant did not dispute the accessibility or foreseeability of those legal provisions. Accordingly, the Court finds that the interference was prescribed by law within the meaning of Article 10 § 2 of the Convention.

(c) Whether the interference pursued a legitimate aim

290. The Court has no reason to doubt, nor was it disputed by the applicant, that the restriction on disclosure of information about the pre-trial investigation pursued legitimate aims under Article 10 § 2 of the Convention, namely preventing the disclosure of information received in confidence, maintaining the authority and impartiality of the judiciary and protecting the reputation and rights of others (see the prosecutor's arguments in paragraph 84 above and *Bédat*, cited above, §§ 46-47).

(d) Whether the interference was necessary in a democratic society

(i) General principles

291. The general principles for assessing the necessity of an interference with the exercise of freedom of expression, which have been frequently reaffirmed by the Court since the judgment in *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), have been summarised in, among other authorities, *Stoll v. Switzerland* ([GC], no. 69698/01, § 101, ECHR 2007-V), *Morice* (cited above, § 124) and *Bédat* (cited above, § 48).

292. In particular, the Court has to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Bédat*, cited above, § 48).

293. Furthermore, as regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two fields, namely political speech and matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest, as is the case in particular for remarks on the functioning of the judiciary, even in the context of proceedings that are still pending (ibid., § 49, and the cases cited therein).

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

294. The Court emphasises that it is legitimate for special protection to be afforded to the secrecy of a judicial investigation, in order to protect, *inter alia*, the interests of the criminal proceedings and the opinion-forming and decision-making processes within the judiciary (see, *mutatis mutandis*, ibid., § 68).

295. Accordingly, Article 10 of the Convention cannot be interpreted as guaranteeing an unrestricted right to anyone, including participants in criminal proceedings, to disseminate information pertaining to an ongoing criminal investigation, nor as establishing an obligation on the relevant authorities to provide, in every case, detailed reasons justifying the need to restrict the dissemination of such information.

296. At the same time, the Court takes note of the particular circumstances of the present case. It observes that before the applicant was issued with the warning in question, the investigating authorities had disclosed to the public his full name, his links to POLA, the facts on which the suspicions against him were based, the value of his financial gain from the purchase, the fact that investigative measures were being carried out in Lithuania and Spain, the level of the applicant's cooperation with the authorities, and that after having questioned more than ten people, there was no information that the relevant government officials had been aware that he had had "a financial interest" in the purchase (see paragraphs 59, 65 and 70 above). Moreover, various media outlets had published copies of the contracts between the government and the pharmaceutical company and reported that the applicant had been detained, that searches had been conducted at the premises of the Ministry of Health, NVSPL and POLA, and that the Chancellor, Deputy Chancellor and Minister of Health had been questioned as witnesses (see paragraphs 60 and 69 above). The Minister of Health had himself made his position regarding the suspicions against the applicant clear on social media on several occasions (see paragraphs 61, 69 and 74 above). Accordingly, by the time the impugned warning was issued, a significant amount of information about the pre-trial investigation had already become public (compare and contrast *Stoll*, cited above, § 113).

297. The Court takes note of the fact that, prior to the impugned warning, the applicant also spoke to journalists and told them about the conditions of his house arrest, the temporary seizure of his property and that the company had paid him on the basis of a commission agency agreement (see paragraph 64 above). He also criticised the actions taken by the authorities against him on several occasions (see paragraphs 68 and 75 above). However, contrary to the Government's submissions, there is no material in the Court's possession indicating that he may have disclosed information pertaining to secret surveillance measures (see the parties' submissions in this regard in paragraphs 279 and 282 above). The Court also notes that the senior prosecutor, when dismissing the applicant's complaint concerning the impugned warning, stated that the warning had been necessary because the applicant had publicly expressed his position regarding each investigative measure taken in relation to him, which could cause the public to form a certain opinion towards the investigation (see paragraph 84 above) – but not because he had disclosed any confidential information.

298. In his complaints to the domestic authorities, the applicant argued that after so much information had become public, it was not clear what further information he was not allowed to disclose (see paragraphs 79, 82 and 86 above). The Court considers that, in the specific circumstances of the present case, where many of the essential details about the investigation were already public, it was incumbent on the domestic authorities to clarify the scope of the restriction imposed on the applicant. However, the senior prosecutor and the pre-trial investigation judge who examined his complaints essentially restated the relevant legal provisions, without addressing the applicant's arguments (see paragraphs 85 and 87 above). Moreover, the authorities did not address the applicant's submission that restricting him from commenting on such a high-profile investigation while allowing the investigating authorities and various State officials to do so placed him in a less advantageous position in comparison with the latter and precluded him from defending his reputation (see, *mutatis mutandis*, *Mesić*, cited above, § 110).

299. In this connection, the Court reiterates that where a case is widely covered in the media on account of the seriousness of the facts and the individuals likely to be implicated, an individual cannot be penalised for breaching the secrecy of the judicial investigation where he or she has merely made personal comments on information which is already known to the journalists and which they intend to report, with or without those comments (see, *mutatis mutandis*, *Morice*, cited above, § 138).

300. In such circumstances, the Court finds that the domestic authorities failed to provide relevant and sufficient reasons to show that the impugned interference was necessary in a democratic society and proportionate to the aims pursued.

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

VI. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

302. The applicant submitted that the temporary seizure of all his assets had been unnecessary and disproportionate, contrary to the requirements of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The parties' submissions

303. The Government submitted that the applicant had failed to exhaust effective domestic remedies. He had lodged a civil claim against the State for compensation for damage caused by the allegedly unjustified and disproportionate restrictions on his property rights, but had eventually withdrawn it (see paragraph 58 above). The Government contended that the civil claim had had reasonable prospects of success, particularly given that the temporary seizure of the applicant's property had subsequently been found to be disproportionate and its scope had been reduced (see paragraphs 55 and 56 above).

304. The applicant submitted that in the criminal proceedings he had lodged complaints against all the decisions concerning the temporary seizure of his property (see paragraphs 38, 39, 43, 44, 48, 49, 54 and 56 above) and that he therefore had not been required to use any other remedies. Moreover, as his complaints against the temporary seizure had been dismissed because the courts had found that measure to be lawful, a civil claim for damage caused by unlawful acts of the authorities would have had no prospects of success.

2. The Court's assessment

305. The Court reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe*, cited above, § 109, and the cases cited

therein). It observes that the applicant complained about the temporary seizure of his assets in the criminal proceedings, where he raised essentially the same arguments as those in his subsequent application to the Court (see paragraphs 38, 39, 43, 44, 48, 49, 54 and 56 above). Accordingly, the Court finds that the applicant exhausted the effective domestic remedies with respect to this complaint and that he was not required to institute any additional proceedings with essentially the same objective. The Government's objection is therefore dismissed.

306. The Court 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

307. The applicant contended that the temporary seizure of his assets had been unnecessary and disproportionate in so far as it had exceeded the amount of EUR 303,360 he had been accused of acquiring through unlawful activity (see paragraph 10 above).

308. He submitted that the decision of 22 July 2020 had ordered the seizure of all of his assets, including those whose lawful origin had never been questioned and including any future income received from lawful sources, such as his salary. From that day until 10 September 2020, he had not been allowed to use even a single euro to meet his basic needs. On 10 September 2020 the prosecutor had allowed him to use EUR 607 per month, corresponding to the minimum monthly salary. However, the minimum monthly salary had been increased to EUR 642 from 1 January 2021 and to EUR 730 from 1 January 2022, but that had not been reflected in the impugned measure.

309. The applicant further submitted that he had provided the domestic authorities with documents showing how much money he needed to cover his basic needs, such as rent, taxes, food, cancer medication and legal costs (see paragraph 39 above). In particular, he had been placed under house arrest and ordered to stay in his flat, the rent of which was approximately EUR 1,000 per month. Moreover, the initial months of the pre-trial investigation had required intense involvement by his lawyers and he had incurred substantial legal costs during the first month of the investigation alone (see paragraph 39 above). However, the domestic authorities had not assessed the documents he had provided and had not explained how he was expected to meet his basic needs with EUR 607 or later EUR 1,000 per month (see paragraph 51 above). As a result of such disproportionate restrictions, he had been "forced to go

begging" and launch a fundraising campaign to be able to pay his legal costs (see paragraph 96 above).

(b) The Government

310. The Government submitted that the restriction on the applicant's property rights had been justified and in accordance with the law aimed at securing a civil claim and the possible confiscation or extended confiscation of property. In cases concerning serious crimes or allegations of corruption, the prosecutor was required by law to take measures to secure a potential civil claim (see paragraph 124 above). Moreover, a civil claim could be lodged until the start of the examination of evidence by the first-instance court (see paragraph 129 above). The Minister of Health had been questioned during the pre-trial investigation and had stated that, in addition to pecuniary damage, the Ministry had also sustained damage to its reputation and that the public's trust in it had been negatively affected. Accordingly, the Government contended that it could reasonably have been expected that the amount of any eventual civil claim might exceed EUR 303,360.

311. The Government further submitted that the applicant had been allowed to use his car (see paragraph 36 above) and a certain sum of money, corresponding to the minimum monthly salary (see paragraph 41 above). The fact that he may have been used to higher living standards did not suffice to render the restriction disproportionate. Moreover, after the case had been sent for trial, the restrictions had been gradually lifted and only the amount corresponding to the civil claim lodged by the Ministry of Health remained seized (see paragraphs 51, 55 and 56 above).

312. In reply to the applicant's submission that the temporary seizure had also concerned his future income (see paragraph 308 above), the Government stated that any such income did not necessarily have to be transferred into the seized bank accounts, "as there were other possible options for the arrangement of the relevant payments". They further submitted that the applicant could have asked the authorities to change the conditions of the house arrest and to allow him to reside in a cheaper flat (see paragraph 309 above). Lastly, the Government pointed out that he had successfully raised funds to cover his legal costs (see paragraph 96 above).

2. The Court's assessment

(a) Existence of an interference and the applicable rule

313. The applicant complained about the seizure of his assets – his bank accounts and his car – from 22 July 2020 to 25 March 2022 (see paragraphs 36 and 56 above). The Government did not dispute that that measure amounted to an interference with his rights under Article 1 of Protocol No. 1 to the Convention. The Court has no reason to doubt that the seizure of the applicant's assets engaged the responsibility of the State and

amounted to an interference with his right to peaceful enjoyment of his possessions. Article 1 of Protocol No. 1 is therefore applicable (see, *mutatis mutandis*, *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, § 142, 16 March 2021).

314. The seizure of assets ordered during criminal proceedings is regarded by the Court as a measure entailing control of the use of property, thus falling within the scope of the second paragraph of Article 1 of Protocol No. 1 (see *Akshin Garayev v. Azerbaijan*, no. 30352/11, § 53, 2 February 2023, and *Căpăţînă v. Romania*, no. 911/16, § 48, 28 February 2023, and the cases cited therein).

(b) Whether the interference was provided by law

315. The Court reiterates that Article 1 of Protocol No. 1 to the Convention requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The general principles concerning the requirement of lawfulness have been summarised in *Lekić v. Slovenia* ([GC], no. 36480/07, §§ 94-95, 11 December 2018, and the cases cited therein).

316. The Court further reiterates that the principle of lawfulness also presupposes a certain quality of the applicable provisions of domestic law. The legal norms upon which the interference is based should be sufficiently accessible, precise and foreseeable in their application. In particular, a norm is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (ibid., § 95).

317. In the present case, the temporary seizure of the applicant's property was based on Articles 116, 151 and 170 of the CCP (see paragraphs 124-130 below) and Articles 72 and 72^3 of the Criminal Code (see paragraphs 101 and 102 above).

318. The Court notes that the CCP contains a general rule that any coercive procedural measures must only be applied to the extent that they are necessary (see paragraph 103 above). However, neither the legal provisions on which the prosecutor's decision was based nor any other legal instruments to which the parties referred in their submissions to the Court indicate whether there are any limits to the prosecutor's power to seize the suspect's property during criminal proceedings (see the prosecutor's reasoning in paragraph 40 above and, *mutatis mutandis*, *Zlínsat, spol. s r.o. v. Bulgaria*, no. 57785/00, § 99, 15 June 2006) – such as a requirement to establish a reasonable relationship of proportionality between the property obtained through the alleged criminal activity and the property seized, or to strike a fair balance between, on the one hand, the need to secure a civil claim or the possible confiscation of property and, on the other, the suspect's ability to meet his or her basic needs. While Article 151 § 3 of the CCP states that items essential to the suspect or his or her family cannot be seized (see paragraph 125 above), the Court has not been informed which items might

fall under that category (compare and contrast *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, § 56, 10 September 2013). Nor has it been provided with any examples of domestic case-law capable of clarifying those issues. These circumstances lead the Court to have certain doubts as to whether the domestic law provides adequate protection against arbitrariness (see, *mutatis mutandis*, *Markus v. Latvia*, no. 17483/10, § 73, 11 June 2020, and *Imeri v. Croatia*, no. 77668/14, § 74, 24 June 2021).

319. Be that as it may, the Court considers that the issue with the quality of law is secondary to the question of the necessity of the impugned measure in the applicant's case (see, *mutatis mutandis*, *Sekmadienis Ltd. v. Lithuania*, no. 69317/14, § 68, 30 January 2018, and the case-law cited therein). Accordingly, and in the absence of any arguments made by the applicant as to the accessibility or foreseeability of the law, it accepts that the interference with his property rights was subject to the conditions provided for by law, as required under Article 1 of Protocol No. 1 to the Convention.

(c) Whether the interference pursued a legitimate aim

320. The Government submitted that the impugned interference had sought to ensure the possibility of satisfying a civil claim in the criminal proceedings or the possibility of ordering confiscation or extended confiscation of property, had it been found that any of the applicant's property had been obtained unlawfully (see paragraph 310 above). The Court accepts that these were legitimate aims in the public interest (see *Călin v. Romania*, no. 54491/14, § 73, 5 April 2022, and *Căpăţînă*, cited above, § 52).

321. Accordingly, it finds that the impugned interference served a legitimate general interest, within the meaning of Article 1 of Protocol No. 1 to the Convention.

(d) Whether the interference was proportionate to the aim pursued

322. The Court reiterates that an interference with the right to the peaceful enjoyment of possessions must always strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see, among many other authorities, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 108, 25 October 2012).

323. Turning to the present case, the Court considers that the seizure of all of the applicant's property – all of his bank accounts, containing the amount of EUR 350,000 and any future income, as well as his car – was, by its nature, a harsh and restrictive measure, capable of affecting his rights to a significant extent (see *Shorazova v. Malta*, no. 51853/19, § 114, 3 March 2022, and the case-law cited therein). In particular, from 22 July to

10 September 2020, he was not allowed to use any of the money in his bank accounts. The Court finds it striking that the impugned measure was adopted without any consideration for the applicant's basic needs and that those needs were only taken into account to some extent after he himself lodged a request with the prosecutor (see paragraphs 38-41 above). Although the Government submitted that the applicant had "other options" for receiving income (see paragraph 312 above), they did not elaborate upon what options may have been available to him to receive income without breaching the conditions of the remand measure.

324. From 10 September 2020 to 17 February 2021 the applicant was allowed to use EUR 607 per month, and from 17 February 2021 to 21 February 2022 that amount was increased to EUR 1,000 per month (see paragraphs 41, 50, 51 and 55 above). It is clearly not the Court's role to determine whether or not those amounts were sufficient to meet his basic needs. Be that as it may, on several occasions he provided documents to the domestic authorities showing his monthly expenses for, among other things, rent, food, cancer medication and legal costs in the criminal proceedings, submitting that he needed approximately EUR 6,000 per month to meet those needs (see paragraphs 39, 44, 49 and 54 above). The Court considers that it was incumbent on the domestic authorities to adequately assess the applicant's individual circumstances and the supporting documents (see, *mutatis mutandis*, *Apostolovi v. Bulgaria*, no. 32644/09, § 103, 7 November 2019). However, the authorities did not provide any reasons for refusing his request regarding that amount – they did not find, for example, that the requested amount was exaggerated, that any of the expenses indicated could not be considered necessary, or that the documents were insufficient or unreliable (see paragraphs 41 and 51 above).

325. The domestic authorities sought to justify the seizure of all of the applicant's property on the grounds that, firstly, the exact amount of damage caused by the alleged criminal activity could not be known until a civil claim was lodged and, under domestic law, such a claim could be lodged until the start of the examination of evidence by the first-instance court (see paragraph 129 above); and secondly, it was necessary to examine whether any of his other property could be subject to confiscation or extended confiscation under domestic law (see paragraphs 101 and 102 above).

326. In this connection, the Court reiterates that, according to its well-established case-law, its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, and the cases cited therein).

327. The Court is mindful of the importance of protecting the interests of victims of alleged criminal activity and accepts that the need for such protection may arise even before a victim has been granted official status or

has lodged a civil claim against the suspect. However, it emphasises the need to strike a fair balance between, on the one hand, the rights of victims or civil claimants in criminal proceedings and, on the other, the rights of the suspect or accused. Striking such a balance is particularly important in cases such as the present one, where the domestic law allowed a rather long period for lodging a civil claim and where such a claim was lodged approximately one year and three months after all of the applicant's assets had been seized (see paragraph 53 above).

328. The Court observes that in the present case the amount of pecuniary damage allegedly sustained by the Ministry of Health (EUR 303,360) was known from the start of the criminal proceedings (see paragraph 10 above). It takes note of the Government's argument that, before the civil claim was lodged, it could not have been assumed that it would be equal to the latter amount because the civil claim could have also included non-pecuniary damage (see paragraph 310 above). Nonetheless, the Court cannot accept that the seizure of all of the applicant's assets and all of his future income, without establishing a reasonable relationship of proportionality between that and the amount obtained through the alleged criminal activity, struck the requisite fair balance between the competing interests (see, *mutatis mutandis*, *Džinić v. Croatia*, no. 38359/13, §§ 79-80, 17 May 2016). Instead, that measure clearly gave precedence to the interests of the Ministry of Health in having its claim secured (see, *mutatis mutandis*, *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, § 143, 5 November 2013), before any such claim was even lodged.

329. The Court further observes that, in view of the suspicions against the applicant, the prosecutor was required to carry out an investigation into the origins of all of his property (see paragraphs 144-146 above). It is prepared to accept that while such an investigation was ongoing, there may have been grounds for seizing property exceeding the amount obtained through the alleged criminal activity, in order to secure a possible extended confiscation. At the same time, the Court notes that when the temporary seizure was ordered, a property investigation was not yet being carried out and that it was opened more than one month later (see paragraph 40 above). Be that as it may, the documents in the Court's possession indicate that that investigation was concluded on 19 November 2020 (see paragraph 52 above). While the Court has not been informed of its conclusions, it appears from subsequent decisions of the domestic courts that no grounds for extended confiscation or for confiscation of any property exceeding the amount of EUR 303,360 were identified (see paragraph 55 above). In this connection, it reiterates that, having regard to their restrictive nature, preventive measures must be brought to an end when the need for them has ceased (ibid., § 130, and the cases cited therein). However, even after the property investigation had been completed, the scope of the impugned restriction remained unchanged until 21 February 2022.

330. Lastly, the Court observes that on 21 February 2022 the Court of Appeal held that there were no legal grounds for seizing any of the applicant's assets beyond the amount of EUR 303,360 corresponding to the civil claim lodged by the Ministry of Health (see paragraph 55 above). However, despite reaching that conclusion, the Court of Appeal maintained the seizure of three of the applicant's accounts containing a total of EUR 320,000. As a result, until 25 March 2022 (see paragraph 56 above), EUR 16,640 remained seized without any apparent justification.

331. All of the foregoing considerations taken together lead the Court to conclude that the temporary seizure of the applicant's bank accounts, including his future income, and of his car from 22 July 2020 to 25 March 2022 did not strike a fair balance between the demands of the general interest of the community and the requirements of the protection of his fundamental rights.

332. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

333. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

(a) The applicant

334. The applicant claimed 49,016.94 euros (EUR) in respect of pecuniary damage, consisting of the following:

- EUR 34,542 in respect of the income he would have earned from his work at POLA during the period July to December 2020 – he submitted that he had been unable to carry out that work because of the ban on him attending any institutions under the Ministry of Health (see paragraph 20 above);
- EUR 768.94 in respect of the late payment fees he had had to pay to the tax authorities because the seizure of his property had precluded him from paying his taxes on time (see paragraph 57 above);
- EUR 13,706 in respect of the depreciation of the property seized during the pre-trial investigation. He submitted that EUR 77,000 had been seized without justification and that from July 2020 to March 2022 the value of those assets had depreciated by 17.8%. He stated that he had used the official inflation index provided by the Lithuanian Statistics Department and included a link to a calculator on its website.

335. The applicant also claimed compensation in respect of non-pecuniary damage. He submitted that he had suffered irreparable damage to his reputation, distress and frustration because of the violations of his rights by the authorities, and that those violations had had a substantial negative effect on his health and led to the advancement of his cancer, as shown by his medical records (see paragraph 167 above). He claimed EUR 1,000 for each month that the violations of his rights continued. He submitted that at the time he had lodged his claim for just satisfaction with the Court (on 16 November 2022), that amount had been EUR 28,000.

(b) The Government

336. The Government submitted that the applicant had not been banned from providing services to POLA during the criminal proceedings and that the alleged loss of income therefore had not resulted from any violations which might be found by the Court.

337. They further submitted that the claimed amount of EUR 13,706 to offset the effects of inflation could not be considered reasonable and actually incurred. In particular, they submitted that the difference between the annual inflation in 2019 and that of 2020 had been 0.2%, and that the inflation rate in 2021 had been 4.7% higher than in 2020, so the rate of 17.8% claimed by the applicant was unjustified.

338. With regard to non-pecuniary damage, the Government submitted that not all of the violations alleged by the applicant were continuous and that the method of calculation he had proposed could not be considered just.

2. The Court's assessment

(a) As to pecuniary damage

339. The Court reiterates that, as regards pecuniary loss, there must be a clear causal connection between the damage claimed and the violation of the Convention established (see *O'Keeffe*, cited above, § 201). In the present case, it did not establish a violation of the Convention on account of the ban on the applicant attending institutions under the Ministry of Health and the impact of that ban on his ability to carry out his work at POLA. As a result, it rejects his claim in respect of loss of earnings.

340. The Court further reiterates that the applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage (see *Milosavljev v. Serbia*, no. 15112/07, § 67, 12 June 2012). It notes that, in support of his claim regarding the depreciation of his assets, the applicant provided a link to a calculator on the website of the Lithuanian Statistics Department. However, he did not provide any official documents or expert reports to enable the Court to determine the level of inflation at the relevant time and verify the accuracy of the claim made

under this head. Accordingly, it considers the applicant's claim in respect of the depreciation of assets to be unsubstantiated and rejects it.

341. However, the Court has found a violation of the applicant's rights under Article 1 of Protocol No. 1 to the Convention on account of the seizure of his property during the pre-trial investigation. The Government did not dispute that that measure had precluded him from paying his taxes on time, thereby resulting in late payment fees. Accordingly, the Court is satisfied that there is a clear causal connection between the violation established and the pecuniary damage in the amount of EUR 768.94 claimed by the applicant. It therefore awards him that amount.

(b) As to non-pecuniary damage

342. The Court observes that it has previously made awards in respect of non-pecuniary damage in cases where the applicants asked for such an award to be made but left the precise amount at the Court's discretion (see *Nagmetov v. Russia* [GC], no. 35589/08, § 72, 30 March 2017, and the cases cited therein, and *Ābele v. Latvia*, nos. 60429/12 and 72760/12, §§ 85-86, 5 October 2017).

343. In the present case, the Court found violations of Article 5 § 1, Article 8 and Article 10 of the Convention and Article 1 of Protocol No. 1 to the Convention. It has no reason to doubt that the applicant sustained non-pecuniary damage on account of those violations. Making its award on an equitable basis, the Court awards him EUR 26,000 under this head.

B. Costs and expenses

1. The parties' submissions

344. The applicant claimed EUR 12,782.16 in respect of the costs and expenses incurred in the domestic proceedings and the proceedings before the Court. He provided copies of the relevant invoices issued by his lawyers.

345. The Government submitted that, as acknowledged by the applicant himself, he had successfully raised funds to cover his litigation costs (see paragraph 96 above). Accordingly, in the absence of any proof that he intended to return the donations, making an award in respect of costs and expenses would amount to unjust enrichment.

2. The Court's assessment

346. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023).

347. In the present case, it was not disputed that the applicant had raised over EUR 70,000 through online crowdfunding campaigns to cover his litigation costs in the domestic proceedings and in the proceedings before the Court (see paragraph 96 above). He did not submit that the amount claimed in respect of costs and expenses had not been covered by the funds raised or that he had undertaken to return those donations (see, *mutatis mutandis*, *Macatė v. Lithuania* [GC], no. 61435/19, § 229, 23 January 2023).

348. In such circumstances, the Court is unable to find that the costs and expenses claimed by the applicant were actually incurred. It therefore rejects this claim.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 3 of the Convention with regard to the period from 29 July to 18 August 2022, Article 5 § 1, Article 8 and Article 10 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds* that there has been a violation of Article 10 of the Convention;

6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 768.94 (seven hundred and sixty-eight euros and ninety-four cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President