

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

FOURTH SECTION

CASE OF PETKEVIČIŪTĖ v. LITHUANIA

(Application no. 57676/11)

JUDGMENT

STRASBOURG

27 February 2018

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Petkevičiūtė v. Lithuania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Faris Vehabović, *President,*
Carlo Ranzoni,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 6 February 2018,

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

PROCEDURE

1. The case originated in an application (no. 57676/11) 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, Ms Liudmila Petkevičiūtė ("the applicant"), on 2 September 2011.

2. The applicant, who had been granted legal aid, was represented by Mr A. Ryibin, a lawyer practising in Moscow. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. On 3 October 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Vilnius.

A. The applicant's father's book

5. The applicant's father, V.P., was a well-known writer in Lithuania. In September 2003 he published a book entitled "The Ship of Idiots" (*Durnių laivas* – hereinafter "the book") in which he presented his memoirs of various events in the history of Lithuania, often using a satirical and mocking tone. Several passages in the book discussed the personality and activities of V.L.-Ž. (deceased at the time of publication). V.L.-Ž. had been a minister in the Provisional Government of Lithuania, which operated from June to August 1941, and his son V.L. had been a prominent Lithuanian politician since the 1980s. The book contained the following statements

(hereinafter "the disputed statements"), in which V.L.-Ž. was referred to as "[L.] senior" or "the patriarch":

> "[V.L.] had to somehow cover for his father, who had for many years collaborated with the KGB ... Having worked as a spy, he was returned home by Moscow ..." (*[L.] reikėjo kaip nors pridengti tėvą, ilgus metus bendradarbiavusį su KGB ... Jį kaip atidirbusį žvalgą namo sugrąžino Maskva ...*)

> "Some were already [trying to get familiar with] the new 'patriarch', Hitler's ... friend, ... spy, ... copier of strategic maps, [L.] senior ..." (*Kai kas jau vedžiojo už parankių naujai iškeptą „patriarchą", Hitlerio ... draugą, ... žvalgą, ... strateginių žemėlapių kopijuotoją senąjį [L.] ...*)

> "[L.] senior ... told how in 1918 ... [they] had raised the flag in the castle tower ... [H]ow afterwards they had had to flee to Kaunas in order to escape from the Bolsheviks, how on the way they had been arrested [and] interrogated... (and, as far as I know, recruited)." (*Senasis [L.] ... pasakojo, kaip 1918 metais ... pilies bokšte kėlė vėliavą, ... kaip jiems po to teko nuo bolševikų bėgti į Kauną, kaip pakeliui juos areštavo, tardė... (o kiek man žinoma, ir užverbavo).*)

> "The pharmacy was ejected onto the streets. Moreover, the pharmacists were sued because 'the patriarch' did not find on the veranda the six-metre oak bench which he had left there before the war." (*Vaistinę išmetė į gatvę. Dar daugiau, vaistininkai buvo paduoti į teismą todėl, kad patriarchas verandoje nerado šešių metrų ąžuolinio suolo, kurį buvo palikęs prieš karą.*)

6. On the fourth page of the book it was stated that the author assumed full responsibility for the truthfulness of the facts presented in the book (*autorius prisiima visą atsakomybę už knygoje išdėstytų faktų tikrumą*).

B. Criminal proceedings

7. After the book's publication, V.L. lodged a complaint with the Prosecutor General's Office (hereinafter "the prosecutor"), seeking the opening of a pre-trial investigation against V.P. for defamation of his late father. On 21 October 2003 the prosecutor opened the investigation.

8. During the investigation, the prosecutor asked various bodies about the activities of V.L.-Ž. described in the disputed statements. He received replies from the Central State Archives, the Genocide and Resistance Research Centre of Lithuania, the National Library of Lithuania, the Archives of Literature and Art, and the State Security Department. They all stated that they did not have any information indicating that V.L.-Ž. had collaborated with the Nazi or Soviet regimes or any information confirming any of the other parts of the disputed statements. The prosecutor also interviewed several individuals who had been quoted as sources in V.P.'s book but they all stated that they were unable to confirm the truthfulness of the events described in the disputed statements.

9. On 10 October 2005 the Vilnius City First District Court acquitted V.P. of defamation on the grounds that the offence could be committed only against a living person, whereas V.L.-Ž. was already dead when V.P.'s book

had been published. The court noted that V.P.'s actions could have constituted the crime of contempt for the memory of a deceased person, but that charge had not been included in the indictment.

10. V.L., V.P. and the prosecutor all submitted appeals against that decision, and on 17 January 2006 the Vilnius Regional Court quashed it. The court found that the indictment had not complied with the relevant procedural requirements, and returned the case to the prosecutor.

11. On 9 August 2006 the prosecutor discontinued the pre-trial investigation. He considered that there was sufficient evidence to charge V.P. with contempt for the memory of a deceased person, but criminal prosecution for that offence had become time-barred.

C. Civil proceedings

1. First-instance proceedings

12. In June 2007 V.L. lodged a civil claim against V.P. He asked the court to order V.P. to publicly retract the disputed statements and to award him 100,100 Lithuanian litai (LTL – approximately 29,000 euros (EUR)) in respect of non-pecuniary damage. V.L. submitted that the disputed statements had been erroneous and insulting to the honour and dignity of his late father, as well as to his own honour and dignity.

13. V.P. disputed the claim, submitting that he had not intended to defame or insult anyone and that the disputed statements had been taken out of context. He contended that the book had been a product of literary creativity made up on the basis of his subjective memories, and that it had been written in figurative and exaggerated language which could be interpreted in many different ways. V.P. thus argued that the disputed statements should be regarded as value judgments and not as factual statements. He further submitted that, in any event, when writing the book he had relied on various historical sources and witness testimonies, as well as on his own personal experience – he provided a list of books and other publications which he had consulted, and described the circumstances in which he had found out about the events discussed in the disputed statements. Therefore, he argued that the disputed statements had been sufficiently accurate. Lastly, V.P. contended that both V.L.-Ž. and V.L. had been prominent politicians and public figures and therefore had to tolerate higher levels of criticism.

14. On 10 December 2008 V.P. died. The court adjourned the examination of the case until V.P.'s legal successors were identified. On 7 May 2009 the applicant and her two brothers, who had accepted their father's inheritance, were issued with certificates of inheritance, stating that they had inherited their father's estate in equal parts. On 23 July 2009 the

court decided to continue with the examination of the case, replacing the defendant V.P. with the applicant and her brothers.

15. V.L. subsequently amended his claim and asked the court to declare that the disputed statements had been erroneous and insulting to the honour and dignity of himself and his late father (see paragraph 36 below), and to award him a symbolic sum of LTL 1 (approximately EUR 0.29) in respect of non-pecuniary damage.

16. At the court hearing on 9 December 2009, V.L. argued that the disputed statements amounted to statements of fact and not value judgments. He submitted that, in line with the domestic courts' case-law, the burden was on the author to prove that those statements were factually accurate, but the evidence collected in both the civil and the criminal proceedings demonstrated that they did not have any factual basis.

17. The applicant and her brothers were represented by the same lawyer who had represented V.P. in the civil proceedings up until his death. They submitted essentially the same arguments that V.P. had submitted before (see paragraph 13 above). They also argued that an obligation to pay compensation for damage allegedly caused by a literary work was a personal obligation of the author and could not be transferred to his heirs. They furthermore submitted that the disputed statements had been based on their late father's memories and subjective opinions, and so they should not be required to prove the truthfulness of those statements.

18. On 23 December 2009 the Vilnius Regional Court found in V.L.'s favour. It stated that, in line with the domestic law, in order to uphold the claim, four circumstances had to be established: firstly, that certain statements had been disseminated; secondly, that those statements had concerned the claimant (V.L.) and his late father (V.L.-Ž.); thirdly, that the statements had been insulting to the honour and dignity of V.L.-Ž. and V.L.; and fourthly, that the statements had been erroneous. The claimant (V.L.) had to prove that the first three circumstances had existed, whereas the defendants (the applicant and her brothers) had to prove that the fourth circumstance had not (see paragraph 34 below).

19. The Vilnius Regional Court observed that there was no dispute that statements had been disseminated and that they had referred to V.L.-Ž. and V.L. (see paragraph 5 above). However, the parties disagreed as to whether they had amounted to statements of fact or to value judgments. The court found that the disputed statements had been presented as factual statements about V.L.-Ž.: they had implied that certain events had actually occurred, for example, that V.L.-Ž. had been recruited by the Soviet forces and had collaborated with them, or that he had expressed support for Hitler's ideology (see paragraph 5 above). Accordingly, the court held that those statements should have had a sufficient factual basis.

20. Seeking to determine whether the disputed statements had been factually accurate, the Vilnius Regional Court examined the evidence which

had been collected in the criminal proceedings (see paragraph 8 above), as well as the sources indicated by V.P. himself in his written submissions to the court during the civil proceedings (see paragraph 13 above). The court found that none of those sources had been able to confirm any parts of the disputed statements to the standard of proof required in civil cases.

21. The Vilnius Regional Court next examined whether the disputed statements had been insulting to the honour and dignity of V.L.-Ž. and V.L. As for the first three statements (see paragraph 5 above), it considered that, in the historical context of Lithuania, the allegations of collaboration with the Soviet security services or of support for Nazi ideology had clearly been insulting not only to V.L.-Ž. but also to his family, including V.L., who had been a prominent politician himself. As for the fourth statement (see paragraph 5 above), it considered that allegations of ejecting the pharmacy owners onto the streets and suing them for a wooden bench – an item of movable property of low value – had created the impression of V.L.-Ž. as someone with low moral standards and a lack of respect for others, and that that statement had therefore been insulting as well, not only to V.L.-Ž. himself, but also to his family.

22. The court dismissed the defendants' objection that the case concerned the personal obligations of their father. It held that the domestic law provided several different remedies for victims of defamation in publications (see paragraph 36 below). On the one hand, the victim could ask the court to order the author of the work to retract the disputed statements, which would be a personal obligation on the part of the author which could not be transferred to his or her heirs. On the other hand, the victim could ask the court to declare that the disputed statements were erroneous and defamatory (insulting to the victim's honour and dignity), in other words to request an objective assessment of those statements. Such an assessment could be made without the involvement of the author and would thus not constitute a personal obligation on the part of the author. Accordingly, the court held that, since V.L. had made the latter request (see paragraph 15 above), domestic law permitted the transfer of civil liability to the author's heirs.

23. As a result, the Vilnius Regional Court upheld one part of V.L.'s claim and declared that the disputed statements had been erroneous and insulting to his and his late father's honour and dignity. It dismissed V.L.'s claim for compensation in respect of non-pecuniary damage as time-barred.

2. Appeal proceedings

24. The applicant and her brothers lodged an appeal against the decision of the Vilnius Regional Court, presenting essentially the same arguments as before (see paragraphs 13 and 17 above).

25. On 13 August 2010 the Court of Appeal upheld that decision in its entirety. It firstly stated that the key difference between statements of fact

and value judgments was that the truthfulness of the former could be verified and proved, whereas the latter expressed a subjective view to which the criteria of truthfulness or accuracy did not apply. The court held that, notwithstanding the fact that the book had been based on the author's memories, the disputed statements had not been limited to expressing a subjective view on any persons or events, but alleged that certain actions had been taken and certain events had occurred. In the court's view, the average reader, even when reading the disputed statements as part of the entire book and not "out of context" (see paragraph 13 above), would perceive them as statements of fact and not as value judgments.

26. The Court of Appeal agreed with the defendants that V.L.-Ž. and V.L. had been public figures and therefore had to tolerate greater levels of criticism. It observed that, in line with the case-law of the domestic courts, dissemination of factually inaccurate statements about a public figure did not attract civil liability when such statements concerned that person's public activities and when their author had acted in good faith, seeking to inform society about such activities (see paragraph 35 below). Nonetheless, the Court of Appeal stated that this could not justify dissemination of falsehoods which were insulting to a person's honour and dignity, even when they concerned a public figure. It held that, in the case at hand, the first-instance court had thoroughly examined the evidence collected during the criminal proceedings and the sources indicated by the author himself (see paragraph 20 above), and had reached the conclusion that, on the balance of probabilities, the events described in the disputed statements "were more likely not to have happened than to have happened". The Court of Appeal also examined additional sources referred to in the defendants' appeal, but found that they did not contain any information which would enable it to reach a different conclusion than that reached by the first-instance court. It therefore held that the factual accuracy of the disputed statements had not been proved. The Court of Appeal also upheld the first-instance court's conclusion that those statements had been insulting to the honour and dignity of V.L.-Ž. and V.L. (see paragraph 21 above).

27. Lastly the Court of Appeal dismissed the defendants' argument that they had been obliged to prove the truthfulness of their father's memories and subjective opinions. It observed that the disputed statements had been found to constitute statements of fact and not value judgments and it had therefore been necessary to prove their factual accuracy and not the reasons why the author might have held certain opinions. The court stated that the factual accuracy of the disputed statements could be proved by anyone and not only by their author, and that the applicant and her brothers had been able to rely on the material collected during the criminal proceedings and on the submissions made by their father in the civil proceedings, as well as to submit new evidence themselves. The Court of Appeal also observed that the applicant and her brothers had accepted their father's inheritance (see

paragraph 14 above), which included the rights to reprint the book and to receive royalties from it. The court considered that if the author's heirs had been exempted from the liabilities arising from the book, then the claimant, V.L., would have been denied any possibility to defend his rights against the erroneous and insulting statements published therein.

28. Consequently, the Court of Appeal upheld the first-instance decision declaring the disputed statements erroneous and insulting to the honour and dignity of V.L.-Ž. and V.L.

3. Proceedings before the Supreme Court

29. The applicant and her brothers submitted an appeal on points of law, presenting essentially the same arguments as before (see paragraphs 13 and 17 above).

30. On 14 March 2011 the Supreme Court dismissed that appeal. It underlined the importance of striking a fair balance between the right to freedom of expression and the right to respect for honour and dignity, but stated that the right to freedom of expression did not extend to the deliberate dissemination of falsehoods with the aim of humiliating, insulting or otherwise causing harm to others, even if directed at public figures. The Supreme Court observed that the lower courts had established that the disputed statements had been erroneous and insulting to the honour and dignity of V.L.-Ž. and V.L. (see paragraphs 21 and 26 above); it therefore ruled that the dissemination of those statements could not be justified by the exercise of the right to freedom of expression.

31. The Supreme Court also reiterated that the claim submitted by V.L. did not constitute a personal obligation of the author of the book and could therefore be transferred to his heirs. It stated that the applicant and her brothers had accepted their father's inheritance, which included certain rights to the book (see paragraph 14 above). Accordingly, once the court had declared that the disputed statements in the book had been erroneous and insulting to the honour and dignity of others, the author's legal successors had the obligation to ensure that those statements would no longer be disseminated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Article 22 of the Constitution affirms that private life is inviolable and that the law and courts will protect everyone from arbitrary or unlawful interference with his or her private and family life, as well as from encroachment upon his or her honour and dignity.

33. Article 25 of the Constitution provides that no one may be hindered from seeking, receiving, or imparting information and ideas, and that 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. Such freedom is incompatible with incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

34. Article 2.24 § 1 of the Civil Code provides that a person has the right to demand, in judicial proceedings, the retraction of disseminated statements which insult his or her honour and dignity and are erroneous. He or she also has the right to compensation for pecuniary and non-pecuniary damage caused by the dissemination of such statements. Statements which have been disseminated should be presumed to be erroneous unless the publisher can prove the opposite to be true.

35. Article 2.24 § 6 of the Civil Code provides that a person who has disseminated erroneous statements is exempted from civil liability if those statements concern a public figure and his or her public activities and the person who has disseminated them proves that he or she acted in good faith, seeking to inform society about that public figure and his or her activities.

36. In its rulings of 6 November 2006 in civil case no. 3K-3-569/2006 and of 13 November 2007 in civil case no. 3K-3-488/2007, the Supreme Court held that a person's honour and dignity can be defended by a retraction of erroneous statements, or by a court's declaration that such statements are erroneous and insult the person's honour and dignity, or by awarding compensation in respect of pecuniary and non-pecuniary damage. These remedies are independent of one another.

37. Article 48 § 1 of the Code of Civil Procedure provides that when a party withdraws from a case because of a death or in other instances provided for by law, the court may replace that party with its legal successor, except for the cases in which material rights cannot be transferred. Transfer of rights is possible at any stage of proceedings.

38. Article 5.1 of the Civil Code establishes which rights and duties of a deceased natural person can be transferred to his or her heirs. Inheritable items include material objects (movable and immovable things) and non-material objects (securities, patents, trademarks, and so forth), property claims and obligations and, in cases provided for by law, intellectual property rights (authors' property rights to works of literature, science and art, related property rights and rights to industrial property), as well as other property rights and duties stipulated by law. Non-inheritable items include personal non-property and property rights inseparable from the person (such as the right to honour and dignity, authorship, right to author's name, inviolability of creative work), except in cases provided for by law.

39. Article 5.50 § 1 of the Civil Code provides that in order to receive an inheritance, the heir has to accept it. An inheritance cannot be accepted in part or conditionally. Article 5.60 § 1 establishes the heir's right to refuse an inheritance.

THE LAW

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

40. The applicant complained that she had been held liable for the actions of her late father. She invoked Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

41. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The applicant submitted that in the domestic proceedings she had been held liable for the actions of her late father, without any fault of her own. She submitted that she had never agreed to inherit any rights to the book. She also argued that she had not been able to defend herself adequately in the domestic proceedings because she had not possessed the same knowledge which her late father had possessed when writing the book. The applicant further submitted that her father had not been held liable for the disputed statements whilst he had been alive, and she could therefore not have inherited a liability which had not existed at the time of his death.

43. The Government submitted that the applicant and her brothers had accepted their father's inheritance in its entirety, as partial acceptance was not provided for in domestic law (see paragraphs 14 and 39 above). They had therefore inherited certain rights to the book, such as the right to reprint it and to receive royalties from it. The Government contended that if after an author's death his or her civil liability could not be transferred to his or her legal successors, victims of defamation would not have any possibility to defend their honour and dignity.

44. The Government further submitted that the claimant in the domestic proceedings had not asked the applicant to retract her late father's statements but had asked the courts to make an objective assessment of the truthfulness of those statements. Even though the applicant had had to bear the burden of proof, she had been able to rely on the submissions her late father made before his death, as well as on the information collected during the criminal proceedings, and the courts had been active in obtaining

evidence. The Government therefore argued that the applicant had not been put in an unfair position.

2. The Court's assessment

45. At the outset the Court observes that the applicant's father, who was the author of the book, was not, in his lifetime, held liable for defamation in either criminal or civil proceedings (see paragraphs 9-11 and 14 above). However, it reiterates that while criminal proceedings cannot continue after a defendant's death, a civil claim for compensation, by contrast, may be brought against the estate of a deceased defendant, and decided in accordance with the general rules of civil proceedings to the standard of proof required in those proceedings (see *Vulakh and Others v. Russia*, no. 33468/03, § 47, 10 January 2012).

46. In the present case, the applicant and her brothers inherited their father's estate in equal parts after his death (see paragraph 14 above). As stated by the domestic courts, that estate included the right to reprint the book and to receive royalties from it (see paragraphs 27 and 31 above). Although in her submissions before the Court the applicant argued that she had never agreed to inherit any rights related to the book, the Court observes that the domestic law did not allow heirs to accept an inheritance in part only (see paragraphs 39 and 43 above), and the applicant did not provide any evidence that that rule had not been applied in her case, nor did she raise that argument in the domestic proceedings (see paragraphs 17, 24 and 29 above). The Court therefore concludes that the applicant had accepted her late father's inheritance, including certain rights to the book and, as a result, she stood to receive pecuniary gain from its continued dissemination. Accordingly, the domestic courts' decision to replace the deceased initial defendant with the applicant (and her brothers, who were in the same situation) cannot be regarded as arbitrary or unjust.

47. The Court furthermore observes that in the domestic proceedings, the applicant was not asked to retract her late father's words or to justify his subjective opinions – the domestic courts made it clear that they had been asked to make an objective assessment as to whether the disputed statements had been erroneous and defamatory as regards V.L.-Ž. and V.L. (see paragraphs 22, 27 and 31 above). That assessment was not dependent on any findings made against the applicant's father before his death, and she was able to dispute all the aspects of the case (see, *a contrario* and under Article 1 of Protocol No. 1, *Vulakh and Others*, cited above, § 49; see also *Lagardère v. France*, no. 18851/07, § 47, 12 April 2012). The Court further observes that, even though the burden was on the applicant and her brothers to prove that the disputed statements had been factually accurate, the domestic courts were active in obtaining evidence in that regard – they examined not only the material provided by the applicant and her father

before his death, but also the information collected by the prosecutor in the criminal proceedings (see paragraphs 20 and 26 above).

48. Taking all the above circumstances into account, the Court is satisfied that the civil proceedings against the applicant concerning her late father's book were fair within the meaning of Article 6 § 1 of the Convention. There has accordingly been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

49. The applicant complained about the violation of her right to freedom of expression, protected by 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

50. The Government submitted that the applicant could not be considered the victim of a violation of Article 10 of the Convention because the domestic proceedings in question had been concerned with statements made by her late father and not by the applicant herself. The Government argued that, since the applicant had complained that she should not have been the defendant in the domestic proceedings, she could not at the same time complain that those proceedings had affected her freedom of expression.

51. The applicant submitted that she should be considered the victim of a violation of Article 10 because "the exercise of the freedom of expression of her father was transferred to her by the domestic courts".

2. The Court's assessment

52. The Court reiterates that, in order to be able to lodge a petition by virtue of Article 34, a person must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be the

victim of a violation, a person must be directly affected by the impugned measure (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010).

53. In the present case, the applicant, together with her brothers, succeeded her late father as the defendant in the civil proceedings concerning his book (see paragraph 14 above) because she had inherited the right to reprint the book and to receive royalties from it (see paragraphs 27, 31 and 46 above). In this connection, the Court notes that Article 10 of the Convention includes not only the freedom to hold opinions but also the freedom to impart information and ideas, and it has been applied numerous times in cases concerning interference with the rights of publishers who were not themselves the authors of the impugned publications (see, among many other authorities, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 75, 7 February 2012; *Novaya Gazeta and Borodyanskiy v. Russia*, no. 14087/08, § 31, 28 March 2013; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 139-40, ECHR 2017 (extracts)). In the present case, the Supreme Court stated that, in their quality of legal successors of the author of the book, the applicant and her brothers had the obligation to ensure that the disputed statements, which were held to be erroneous and defamatory, would no longer be disseminated (see paragraph 31 above). In the Court's view, this amounted to a limitation to the applicant's right to reprint the book. Accordingly, the Court finds that the domestic proceedings directly affected the applicant's right to impart information and ideas under Article 10, and that she must be considered a victim within the meaning of Article 34 of the Convention. The Government's objection of lack of victim status should therefore be dismissed.

54. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

55. The applicant submitted that the interference with her right to freedom of expression had not been justified in law because no law required children to accept rights and obligations related to their parents' freedom of expression. She also submitted that the interference had not sought a legitimate aim because V.L.-Ž. had been "a minister of the Nazi Government of Lithuania" and had therefore not been entitled to protection of his rights under Article 8 of the Convention. The applicant asked the Court to apply Article 17 of the Convention.

56. She also submitted that the disputed statements had sought to impart information and ideas on matters of public interest and it had thus been permissible for the author to have recourse to a degree of exaggeration or even provocation. She contended that those statements had referred to V.L.-Ž., who had been a politician and therefore subject to wider limits of criticism. The applicant further argued that the domestic courts had incorrectly assessed the factual accuracy of the disputed statements, but in any event, they should have been read as value judgments based on her father's memories, as shown by words "as far as I know" (see paragraph 5 above).

57. The Government argued that the interference with the applicant's right to freedom of expression had complied with Article 10 § 2 of the Convention. They submitted that such interference was prescribed by Articles 2.24 and 5.1 of the Civil Code and Article 48 of the Code of Civil Procedure (see paragraphs 34, 37 and 38 above), and it had sought the legitimate aim of protecting the reputation or rights of others, namely of V.L.-Ž. and V.L. The Government submitted that by calling V.L.-Ž. "a minister of the Nazi Government" (see paragraph 55 above) the applicant had gone even further than her father had done in the book; in any event, allegations of V.L.-Ž.'s support of the Nazi regime had been found to have no factual basis by the courts in the domestic proceedings.

58. The Government argued that protecting individuals from erroneous and defamatory statements corresponded to a pressing social need, even with respect to public figures. They submitted that the domestic courts had thoroughly assessed the disputed statements and had not found sufficient evidence to support them. The Government lastly submitted that the applicant had not suffered disproportionate consequences because the domestic courts had not ordered her to retract the disputed statements or to pay damages, nor had they prohibited further publication or sales of the book – the applicant and her brothers had only been obliged to ensure that the disputed statements would no longer be disseminated (see paragraph 31 above). The Government thus argued that the domestic courts had struck a fair balance between the applicant's rights under Article 10 and the other party's rights under Article 8 of the Convention.

2. The Court's assessment

(a) Existence of an interference

59. At the outset, the Court notes that there was no dispute between the parties that the decisions adopted by domestic courts in the civil proceedings against the applicant constituted an interference with her right to freedom of expression as guaranteed by Article 10 of the Convention. It sees no reason to hold otherwise and refers to its conclusions as to the applicant's victim status (see paragraph 53 above).

60. In the light of paragraph 2 of Article 10, such an interference with the applicant's right to freedom of expression must be "prescribed by law", have one or more legitimate aims and be "necessary in a democratic society" (see *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 141).

(b) Lawfulness of the interference

61. The Court is satisfied that the interference was in accordance with Article 2.24 of the Civil Code and the case-law of the Supreme Court (see paragraphs 34 and 36 above), and that the replacement of the initial defendant (the applicant's father) with his legal successors (the applicant and her brothers) was in accordance with Article 5.1 of the Civil Code and Article 48 of the Code of Civil Procedure (see paragraphs 37 and 38 above). The interference was thus "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(c) Legitimate aim of the interference

62. The Court sees no reason to doubt that the interference pursued the legitimate aim of protecting the reputation or rights of others, namely of V.L.-Ž. and V.L. Although the applicant disputed that aim by arguing that V.L.-Ž. had not been entitled to protection of his rights under Article 8 of the Convention (see paragraph 55 above), the Court considers that this argument falls to be examined when assessing the necessity of the interference in a democratic society. It will therefore now proceed with assessing whether a fair balance has been struck between the applicant's freedom of expression as guaranteed by Article 10 of the Convention and V.L.-Ž.'s and V.L.'s right to the protection of private life and reputation under Article 8.

(d) Necessity of the interference in a democratic society

(i) General principles

63. Having considered on numerous previous occasions similar disputes requiring an examination of the issue of a fair balance, the Court refers to the general principles relating to each of the rights in question that have been established in its case-law (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-107, ECHR 2012; *Axel Springer AG*, cited above, §§ 78-88; and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83-92, 10 November 2015). These principles also apply to the publication of books, in so far as they concern matters of public interest (see *Editions Plon v. France*, no. 58148/00, § 43, ECHR 2004‑IV, and *Verlagsgruppe Droemer Knaur GmbH & Co. KG v. Germany*, no. 35030/13, § 37, 19 October 2017).

64. In cases such as the present one, where the national authorities had to balance two conflicting interests, the Contracting States have a certain margin of appreciation. However, this margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on. Where the exercise of striking a balance between two conflicting rights was 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 *Von Hannover (no. 2)*, §§ 104-07, and *Couderc and Hachette Filipacchi Associés*, §§ 90-92, both cited above).

65. The Court has identified, in so far as relevant for the present case, the following criteria in the context of balancing competing rights: the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the news report; the content, form and consequences of the publication; the method of obtaining the information and its veracity; the prior conduct of the person concerned; as well as the severity of the sanction imposed (see *Von Hannover (no. 2)*, §§ 109-13; *Axel Springer AG*, §§ 90-95; and *Couderc and Hachette Filipacchi Associés*, § 93, all cited above).

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

(α) Contribution to a debate of public interest

66. In the present case, the Court firstly observes that the book discussed various events in the history of Lithuania and individuals who had taken important roles in those events (see paragraph 5 above). It therefore considers that the contents of the book, including the disputed statements, concerned matters of public interest.

(β) How well known was the person concerned and what was the subject of the report?

67. The Court further observes that V.L.-Ž. had been a minister in the Provisional Lithuanian Government in 1941, and the disputed statements discussed his alleged support for the Soviet and Nazi regimes in Lithuania. Accordingly, as a politician and a public figure, V.L.-Ž. was subject to wider limits of criticism than private individuals (see *Otegi Mondragon v. Spain*, no. 2034/07, § 50, ECHR 2011). However, the Court reiterates that while reporting on true facts about politicians' or other public persons' private life may be admissible in certain circumstances, even persons known to the public have a legitimate expectation of protection of, and respect for,

their private life (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 53, 4 June 2009, and *Halldorsson v. Iceland*, no. 44322/13, § 46, 4 July 2017).

(γ) Content, form and consequences of the publication

68. The Court notes that the defamatory nature of the statements was not disputed by the parties. Those statements presented serious accusations of collaboration with the Nazi and Soviet regimes in Lithuania, and the Court has no reason to doubt the assessment of the domestic courts that in the historical context of Lithuania such accusations were damaging not only to the reputation of V.L.-Ž. but also that of his son, V.L., who was a prominent Lithuanian politician (see paragraphs 21 and 26 above).

69. The domestic courts found that the disputed statements constituted statements of fact and not value judgments (see paragraphs 19 and 25 above), and the Court sees no good reasons to depart from their assessment. Those statements alleged that certain events had taken place – that V.L.-Ž. had for many years collaborated with the KGB, that he had been a supporter of Hitler, or that he had ejected the pharmacy owners onto the streets and had sued them over an oak bench (see paragraph 5 above). The applicant argued that those statements should be classified as value judgments because they had been based on her father's memories and he had admitted that his knowledge had been limited (see paragraph 56 above), but the Court is unable to share this view - the statements were not limited to expressing opinions or subjective views and were susceptible of proof (see, *mutatis mutandis*, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI, and *Kieser and Tralau-Kleinert v. Germany* (dec.), no. 18748/10, §§ 36-37, 2 December 2014). The Court thus considers that the domestic courts cannot be criticised for having requested the applicant to support those statements by means of relevant evidence.

(δ) Method of obtaining the information and its veracity

70. The Court emphasises the importance that it attaches to journalists' assumption of their duties and responsibilities, and to the ethical principles governing their profession. In this connection, it reiterates that Article 10 protects journalists' right to divulge information on issues of general interest subject to the proviso that they are acting in good faith and on an accurate factual basis and that they provide "reliable and precise" information in accordance with the ethics of journalism (see *Pedersen and Baadsgaard*, cited above, § 78, and *Bédat v. Switzerland* [GC], no. 56925/08, § 58, ECHR 2016). The Court considers that these principles are also relevant in the present case in which the author of the book was not a journalist but a writer (see, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02

and 36448/02, § 51, ECHR 2007-IV, and *Verlagsgruppe Droemer Knaur GmbH & Co. KG*, cited above, § 44).

71. In the domestic proceedings, the applicant, being the defendant, had to prove to the civil standard that the disputed statements had had a factual basis (see paragraphs 18 and 34 above). The Court reiterates that placing such an onus on the defendant is not, in principle, incompatible with Article 10 of the Convention (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 93, ECHR 2005-II, and *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 63, 22 October 2009). In any event, the domestic courts did not rely solely on the applicant's submissions, but also examined the evidence obtained by the prosecutor in previous criminal proceedings, including information received from various historical archives and research centres, as well as the sources indicated by the applicant's late father before his death (see paragraphs 8, 13, 20 and 26 above). Having examined all that information, the courts concluded that the disputed statements had not been proved to be true to the standard required in civil proceedings. The Court sees no grounds to find that this conclusion was contrary to the facts of the case or otherwise arbitrary. It therefore concludes that the disputed statements, which constituted statements of fact (see paragraph 69 above) and were defamatory (see paragraph 68 above), had not been shown to have an accurate factual basis, and the applicant had not proved that they had been based on information obtained in accordance with the duties of journalists and the ethics of journalism (see paragraph 70 above).

(ε) Prior conduct of the person concerned

72. The applicant argued that V.L.-Ž. had not been entitled to protection of his rights under Article 8 of the Convention because of his alleged collaboration with the Nazi regime (see paragraph 55 above). However, the domestic courts found those allegations to be unsubstantiated by any available facts, and the Court accepts their conclusion as well-founded (see paragraph 71 above). It therefore considers that nothing in V.L.-Ž.'s prior conduct deprived him of protection against false and defamatory statements.

The Court also considers that in the present case there are no grounds to apply Article 17 of the Convention in the manner requested by the applicant (see paragraph 55 above).

(ζ) Severity of the sanction imposed

73. Lastly, the Court notes that the applicant was not given a monetary fine or ordered to pay damages; the only consequence for her was the obligation to ensure that, if the book were to be reprinted, the disputed statements would not be disseminated (see paragraphs 31, 53 and 58 above). The Court is of the view that, in the circumstances of the present case, such an obligation cannot be considered disproportionate.

(η) Conclusion

74. Accordingly, taking into account the gravity of the accusations presented in the disputed statements, the fact that those statements were found to be unsubstantiated, and the nature of the penalty imposed on the applicant, the Court concludes that the domestic courts struck a fair balance between the applicant's right to freedom of expression and the other party's right to protection of their reputation.

75. There has therefore been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Faris Vehabović
Deputy Registrar	President