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

FOURTH SECTION

DECISION

Application no. 8619/09
Žilvinas ŽVAGULIS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 13 December 2016 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*

and Andrea Tamietti, *Deputy Section Registrar*

Having regard to the above application lodged on 10 February 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Žilvinas Žvagulis, is a Lithuanian national who was born in 1965 and lives in Vilnius. He was represented before the Court by Ms L. Meškauskaitė, a lawyer practising in Vilnius.

2. The Lithuanian Government ("the Government") were represented by their former Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

4. The applicant is a singer and well-known person in the entertainment industry in Lithuania.

5. On 9 November 2006 the applicant received a call on his personal mobile telephone from a journalist at the newspaper "*L.T.*". The journalist informed the applicant that he was in possession of information regarding the fact that the applicant had fathered a child outside marriage. The information was to be published in a forthcoming issue of the newspaper.

6. The applicant did not consent to the publication, and on the following day obtained a court injunction prohibiting the newspaper from publishing the information.

7. Notwithstanding the injunction, on 11 November 2006 the newspaper went ahead with the publication. The article was called "Žvagulis hides his son born outside marriage", and was printed on pages nine and eleven of the newspaper, with a large headline on the front page. The article included statements such as: "*L.T.* reveals that a famous singer has not three, but four children"; "Žvagulis's secret – a child born outside marriage"; "the boy does not know that his father is a famous singer"; "before marrying I.S., a singer [the applicant's current wife], Ž. Žvagulis had a short, yet passionate love affair with L."; "Žilvinas did not disappear from the woman's life"; "passionate love affairs fade over time. Nevertheless, sometimes children who come into the world and are rejected by their fathers remain a reminder of such affairs. Such a shadow of the past caught up with the famous singer Žilvinas Žvagulis"; and "there will be much gossip following the publication of information about Žvagulis's child born outside marriage". The names of the boy and his mother were changed in the article, which also pointed out the fact that the boy's mother was a dancer in a famous dance group in Lithuania.

8. In addition, on the second page of the same issue, an article entitled "Hostages of love" appeared, describing the applicant's private life as the journalists imagined it to be.

9. On 18 November 2006 *L.T.* printed another article entitled "Marčiulionis in the arms of a new woman". The article stated that "on 6 November, while partying, Ž. Žvagulis was restless. Needless to say, there were plenty of young women at the party".

10. The applicant started court proceedings for breach of privacy and damage to his reputation. He claimed that the publications had caused him serious humiliation, as well as great distress to both him and his family. He also claimed that the newspaper had recorded his telephone conversation with the journalist without prior permission. The applicant requested that 100,001 Lithuanian litai (LTL – approximately 28,960 euros (EUR)) be awarded to him in compensation for non-pecuniary damage.

The applicant also asked that the newspaper be fined LTL 1,000 for having disregarded the court order prohibiting the publication (see paragraph 6 above).

1. The first-instance court's decision

11. By a decision of 25 October 2007 the Vilnius Regional Court concluded that the newspaper had breached the applicant's right to privacy, which was protected under Article 8 of the Convention. The court found that the applicant's wife and the child's mother had attempted to persuade the newspaper's chief editor and the journalist who had written the article not to publish it. The two women had not been successful. On the contrary, the newspaper had blackmailed the child's mother to make her portray the applicant in a negative light, in return, promising not to disclose the identity of the child.

12. The Vilnius Regional Court held that the fact that the applicant's son had been conceived out of marriage was a matter relating to his private life, and, despite being a singer, the applicant did not come under the category of public figures. Moreover, even if the applicant could be considered a public figure, this would not give grounds to publish the information in question, given that there was no public interest in disclosing the fact that he had fathered the child. The publisher's and the journalist's argument that she had been aiming to disclose a story about how famous men did not raise or take care of their own children was devoid of substance. On the contrary, the court established that the child's mother had no claim against the applicant to the effect that he did not take care of the child. Quite the contrary, the child had a father whom he knew to be his father. The court agreed with the finding of the Inspector of Journalistic Ethics that the information in this particular case had been published in a sensational manner, with a large headline on the front page, thereby seeking to satisfy the readers' curiosity, and denying the applicant's right to protection of his privacy, and also being in breach of journalistic ethics. The court emphasised that, according to the practice of the Supreme Court, the disclosure of information about a child being conceived out of wedlock was to be considered a violation of the right to a private life, even if that information concerned a public figure, because there was no public interest in making such information known.

13. In addition, the court found that the journalist had breached the applicant's privacy by recording a telephone conversation with him without his consent (see paragraph 41 below), as well as by unlawfully observing or watching him, collecting information about him, and using that information in the article entitled "Marčiulionis in the arms of a new woman".

14. As to the sum to be awarded in compensation for non-pecuniary damage, the Vilnius Regional Court determined that the publication at issue had caused the applicant serious distress. Until then, only his wife and certain members of his family had known about what the publication had revealed. The court also attached importance to the fact that the newspaper had disregarded the court injunction and gone ahead with the publication of article, even though it had received that injunction in time to stop its

publication. Moreover, the newspaper had had a large print run. Consequently, a large number of people had learnt about the relevant information.

15. However, the court observed that, prior to the present litigation, the applicant had been rather open with the mass media, having disclosed private matters such as the fact that he was having another child [with his wife] and details about that child's birth. As a result, it was possible to conclude that up to the moment when the information at issue had become public, the applicant had not vigilantly protected his private life from the media, and had not considered his private life to have great value. For the court, that particular aspect of the case allowed it to lower the compensation award for non-pecuniary damage to LTL 10,000 (EUR 2,900), an award to cover all the violations of privacy.

16. The court also ordered the newspaper to pay the applicant LTL 3,254 in respect of legal costs. The applicant, in turn, was ordered to pay LTL 606, the newspaper's legal costs, on the basis that legal costs are reimbursed proportionately in relation to the claims granted (Article 93 § 2 of the Code of Civil Procedure, see paragraph 40 below).

2. The appellate court's ruling

17. The applicant appealed. On 4 March 2008 the Court of Appeal partly upheld the first instance court's decision. The court observed that, whilst the applicant was a singer and therefore had to be tolerant of media attention, he still retained the right to determine the boundaries of his private life, which no one had the right to cross without his consent. The information at issue had been made public without his consent. Moreover, that information was purely private and the publication thereof had had no connection to the applicant's professional activities. The court of first instance had been correct in finding that the aim of disclosing the information had been to cause a sensation, and not to inform society about matters of public interest. The publication had caused the applicant distress, and this was clearly proved by his wish to prevent public disclosure by obtaining a court injunction.

18. The appellate court noted that, according to the guidelines of the Supreme Court, the circumstances of any particular situation had to be evaluated when assessing non-pecuniary damage. In the light of the facts of the case, the Court of Appeal considered that the sum of LTL 10,000 which had been awarded was too low to compensate for the non-pecuniary damage the applicant had sustained. Given that there had actually been two violations of privacy in the case – the disclosure of information regarding the applicant having a child outside marriage, which was the more serious breach, and information about his behaviour at a party – it was appropriate to make two separate awards. On that basis, the appellate court awarded the applicant LTL 20,000 for the first breach of privacy and

LTL 5,000 for the second. The court observed that there was no legal basis for a larger award, particularly given the Supreme Court's guidelines that, when determining the sum to be awarded, it was necessary to take into account the economic situation of the country and the standard of living of its citizens. The newspaper was also ordered to cover the applicant's legal costs in respect of the part of the civil claim which had been allowed.

19. On the basis of Article 149 of the Code of Civil Procedure, the Court of Appeal also imposed a fine of LTL 1,000 on the newspaper, the maximum amount possible, for disregarding the court injunction forbidding it from going ahead with the publication of information breaching the applicant's right to a private life. The Court of Appeal established that the newspaper had received the court injunction in time, but had failed to comply with it, thus grossly breaching the maxim that court rulings are imperative (see paragraph 40 below).

3. The Supreme Court's ruling

20. The applicant and the newspaper both lodged appeals on points of law. On 14 August 2008 the Supreme Court changed the decision of the Court of Appeal in part. The Supreme Court had regard to the need to balance rights under Articles 8 and 10 of the Convention (it relied on *Editions Plon v. France*, no. 58148/00, ECHR 2004-IV, and *Hachette Filipacchi Associés v. France*, no. 71111/01, 14 June 2007). The Supreme Court agreed with the lower courts' reasoning to the effect that the applicant's occupation did not automatically mean that he consented to the publication of all information about his private life. The information which had been disclosed was exclusively private; there was no public interest in society learning of it. Consequently, the court found that the newspaper had overstepped the boundaries prescribed by Article 10 § 2 of the Convention.

21. As to the question of non-pecuniary damage, the Supreme Court concurred with the lower courts that a mere finding of a violation of the applicant's right to privacy would not be sufficient compensation. However, the Supreme Court deemed it important to ensure the continuity of its earlier case-law and take into consideration past awards in analogous cases. Given the scarcity of case-law on breach of privacy matters, it was necessary to consider the non-pecuniary value (*neturtinė vertybė*) which had been breached. The more important the value (for example, health or life), the more it was protected (the Court relied on its earlier ruling in case no. 3K-3-394/2006, see paragraph 29 below). Moreover, the right to a private life had to be balanced with another constitutional value – the right to disseminate information. Article 6.250 of the Civil Code provided a list of criteria to be taken into account when assessing compensation, also providing for court discretion in this matter.

22. Continuing with its assessment, the Supreme Court noted that the newspaper's transgression had been deliberate, given that it had consciously

chosen not to comply with the court injunction. However, the publication of the information had not carried grave or long-term consequences for the applicant, because his wife had known about his son who had been born outside marriage, and the applicant had discussed certain aspects of his private life with journalists on many occasions in the past, and was used to media attention. All this was relevant when assessing compensation for non-pecuniary damage. Moreover, the lower courts had not established that, by breaching the applicant's right to a private life, the newspaper had attempted to obtain economic gain, for example by printing more copies of the newspaper, and such a point was relevant when determining compensation for non-pecuniary damage.

23. In the light of the above, the Supreme Court concluded that the first-instance court had properly examined all of the relevant circumstances, and taking into consideration, *inter alia*, the sums awarded as compensation in similar cases, had reasonably awarded the applicant LTL 10,000. That decision was to stay in force.

24. Lastly, the Supreme Court reviewed the issue of legal costs, in the light of Article 93 of the Code of Civil Procedure (see paragraph 40 below), and lowered the costs of representation to be reimbursed to the newspaper, because they were higher than those recommended by the Lithuanian Bar Association. Once all the sums in respect of both parties' representation at the three levels of court had been calculated, the applicant had to pay the newspaper LTL 2,136 for legal costs and court fees. He therefore received LTL 7,864 (approximately EUR 2,280) following the civil litigation.

4. Other relevant information

25. In February 2011 the newspaper *Private* printed an article about the applicant's family life, where he and his wife I.S. were interviewed about their family. They stated that they were able to lean on each other at any time.

B. Relevant domestic law and practice

26. Article 22 of the Constitution of the Republic of Lithuania reads:

> "A person's private life shall be inviolable...
>
> The law and the courts shall protect everyone from arbitrary or unlawful interference in his private and family life, or from encroachment upon his honour and dignity."

27. Article 30 of the Constitution provides that compensation for pecuniary and non-pecuniary damage suffered by a person must be established by law.

28. The relevant provisions of the Civil Code read:

Article 2.23. Right to privacy and secrecy

"1. A person's privacy shall be inviolable. Information regarding a person's private life may be made public only with his consent...

2. Unlawful invasion of a person's dwelling or other private premises, including fenced private territory; keeping the person's private life under observation ...; intentional interception of the person's telephone communications, post or other private communications, as well as violation of the confidentiality of his personal notes and information; publication of data relating to the state of his health, in violation of the procedure prescribed by law; and other unlawful acts shall be deemed to violate the person's private life.

3. The creation of a file on another person's private life, in violation of the law, shall be prohibited. A person may not be denied access to the information contained in the file, except as otherwise provided for by law. Dissemination of the information collected on the person's private life shall be prohibited unless, taking into consideration the person's official post and his status in the society, dissemination of the said information is in line with a lawful and well-grounded public interest in being aware of that information.

4. The public announcement of facts concerning a person's private life, however truthful they may be; making private correspondence public, in violation of the procedure prescribed in paragraphs 1 and 3 of this Article; invasion of a person's dwelling without his consent, except as otherwise provided for by law; keeping his private life under observation; or gathering information about him in violation of the law; and other unlawful acts infringing the right to privacy shall form the basis for bringing an action for compensation for pecuniary and non-pecuniary damage sustained as a result of those acts..."

Article 6.250. Non-pecuniary damage

"1. Non-pecuniary damage shall be deemed to be a person's suffering, emotional experiences, inconvenience, mental shock, emotional depression, humiliation, damage to reputation, diminution of opportunities to associate with others, and so on, evaluated by a court in terms of money.

2. Non-pecuniary damage shall be compensated for only in cases provided for by law. Non-pecuniary damage shall be compensated for in all cases where it has been sustained as a result of crime, health impairment or deprivation of life, as well as in other cases provided for by law. The courts, in evaluating the non-pecuniary damage, shall take into consideration the consequences of the damage sustained, the degree of fault on the part of the person who caused the damage, his financial status, the amount of pecuniary damage sustained by the aggrieved person, and any other circumstances of importance to the case, as well as the criteria of good faith, justice and reasonableness."

1. A case concerning non-pecuniary damage, referred to by the Supreme Court in the Žvagulis case

29. On 12 June 2006 the Supreme Court decided civil case no. 3K-3-394/2006. The plaintiff had asked to be awarded LTL 40,000 in respect of non-pecuniary damage, which he had suffered as a result of physical injury. He had been attacked by three people and beaten, thereby suffering facial injuries and being rendered disabled. The Supreme Court

held that health was one of the most important values, which was often not repairable or restorable. Health therefore merited particular protection. The court also took into account that the non-pecuniary damage in this case had been caused by a crime – the deliberate and brutal actions of the respondents. It was therefore fair to grant the civil claim in full.

2. Cases relied on by the Government in the case of Žvagulis v. Lithuania

30. As regards the amounts awarded for non-pecuniary damage to redress breaches of privacy, the Government referred to a number of Supreme Court decisions. In cases concerning the reputation of a legal entity, for example, the awards were between LTL 15,000 and LTL 20,000.

The Government also referred to cases where protected values other than privacy had been at issue. In cases concerning injury to one's health, the awards for non-pecuniary damage were between LTL 6,000-8,000 and LTL 20,000-50,000, depending on the severity of the injury. In cases concerning loss of life, compensation awards for non-pecuniary damage were between LTL 6,000 to LTL 40,000. In cases where the right to liberty had been violated, the awards were between LTL 3,000 to LTL 7,000.

3. Other cases concerning non-pecuniary damage

(a) Cases concerning compensation for injury at work

31. In case no. 3K-3-450/250, decided on 6 September 2006, which concerned an injury at work, the Supreme Court held that, when evaluating the amount of non-pecuniary damage, it was important to consider the values being protected and their interrelationship (*turi būti atsižvelgta į ginamų vertybių specifiką ir jų tarpusavio santykį*), because the right to life and the right to health were absolute rights, whereas the right to privacy and the right to dignity were relative or conditional rights (*santykinės teisės*) which could not be equally valued as regards damages. A worker who had fallen off a building platform and cracked his skull was thus awarded LTL 25,000 for non-pecuniary damage sustained as a result of that injury.

On 18 April 2007 the Supreme Court gave a ruling in civil case no. 3K-3-157/2007 concerning an accident at work following which the plaintiff in question had become handicapped. The Supreme Court noted that the worker was partly to blame for his injury, because he had not followed safety instructions at work. Accordingly, although the plaintiff had asked for LTL 150,000 and the first-instance court had awarded him LTL 100,000, the Supreme Court considered that a sum of LTL 50,000 would be sufficient to compensate for the non-pecuniary damage suffered.

On 20 October 2008 the Supreme Court examined case no. 3K-3-529/2008, which also concerned an accident at work. The plaintiff

in that case was awarded LTL 50,000 for non-pecuniary damage suffered as a result of physical injury.

(b) Cases concerning breaches of the right to protection of one's image or the right to privacy

32. On 16 March 2007, in civil case no. 3K-3-113/2007, the Supreme Court held that there had been a violation of the plaintiff's right to privacy and reputation, owing to a publication about his allegedly fraudulent manner of conducting business and his alleged debts to his business partners, and the printing of the plaintiff's photograph. For the Supreme Court, LTL 5,000 was sufficient to compensate for the non-pecuniary damage sustained.

On 23 September 2008, in civil case no. 3K-3-394/2008, the Supreme Court agreed that an award of LTL 5,000 in a civil case was sufficient to compensate for the plaintiff's mental suffering, where a local television station had wrongfully accused the plaintiff of having committed a traffic violation.

4. More recent case-law concerning breaches of the right to privacy

(a) Civil case no. 3K-3-136/2010

33. On 23 March 2010 the Supreme Court gave a ruling in civil case no. 3K-3-136/2010 concerning a civil claim by a woman, J.G., for breach of privacy in respect of an article in a daily newspaper, *Respublika*, entitled "A date with a lesbian" ("*Pasimatymas su lesbiete*"). The case concerned an article which had included eight photographs. J.G. was in one of those photographs, which was in a large format. She had been photographed from the front, although her name had not been disclosed. The first-instance court considered that, "taking into account society's negative opinion about people of non-traditional sexual orientation" ("*teismas, įvertinęs susidariusią neigiamą visuomenės nuomonę apie netradicinės seksualinės orientacijos žmones*"), the publication of J.G.'s photograph in such a context could cause her to be evaluated oddly (*galėjo sukelti prieštaringų ieškovės vertinimų*). The court also noted that the newspaper's financial situation was good, it had a large print throughout Lithuania. However, the newspaper had not apologised to the plaintiff or paid her damages, even though it had initially promised to do so. However, the sum claimed by the plaintiff, LTL 65,000, was clearly excessive. It was therefore reasonable to award her LTL 10,000 in respect of non-pecuniary damage. That sum was upheld by the appellate court, which underlined that the article "A date with a lesbian" was conflicting (*vertinamas prieštaringai*) in a homophobic society, and people whose photographs were linked to that article could therefore experience negative consequences, as indeed in J.G.'s case. She had had to explain herself to her parents, colleagues at work and friends

from times of studies. The award of LTL 10,000 would also not impede the daily commercial activity of the defendant.

34. The newspaper lodged an appeal on points of law, arguing that the award for non-pecuniary damage was too high. The Supreme Court noted that it was important to adhere to the principle of non-discrimination, which meant that similar cases should be decided similarly, and which also meant that, in analogous situations, awards for non-pecuniary damage should be comparable. The Supreme Court also relied on its earlier case-law to the effect that courts should not only follow the criteria established in legal norms and court practice, but should also take into account the awards already granted in analogous cases.

35. The Supreme Court thus distinguished three categories of cases.

Firstly, there were cases where a plaintiff's privacy had been breached on account of the arrangement of his or her nude photographs with offensive text and headlines (the Supreme Court referred to the case of Dalius Mertinas and Laima Mertinienė), or where information regarding "family secrets" or health had been made public (the Supreme Court referred to its ruling of 14 August 2008 in the instant case of Žvagulis), or where information about private life had been published together with photographs, which had amounted to a breach of the right to a private life. The awards in those cases were, respectively, LTL 15,000, LTL 10,000 and LTL 8,000.

As to the second category, the Supreme Court referred to some cases where the press had used plaintiffs' private photographs without permission, or had accused them of crimes, where the non-pecuniary damage awards were LTL 5,000.

The third category concerned cases where photographs of plaintiffs who were well-known people in society had been published without their consent, and for the purpose of a newspaper gaining financial benefit from advertisement, where the awards for non-pecuniary damage were LTL 1,500.

36. The Supreme Court then held that, in the case of J.G., the award of LTL 10,000 was too high, because it did not correspond to the above-mentioned court practice. J.G.'s photograph had been published only as an illustration of the article, and neither her personal data nor information about her private life had been made public. Moreover, the photograph had been taken at a public event when J.G. was posing (*viešame renginyje, ieškovei pozuojant*). In the view of the Supreme Court, an award of LTL 5,000 would be fair and adequate in respect of the non-pecuniary damage sustained by J.G. in relation to the breach of her right to protection of her image, and to prevent the abuse of freedom of expression by the press.

(b) Civil case no. 3K-3-481/2012

37. On 15 November 2012 the Supreme Court adopted a ruling in civil case no. 3K-3-481/2012, which concerned R.C.'s civil claim for defamation against a television channel, Tele-3. In particular, R.C., who is a singer, had complained that in May 2009, during a television broadcast, a presenter had made statements about someone else allegedly being the father of R.C.'s child, had made allegations about R.C.'s actual sexual orientation, and, in the latter context, had also claimed that R.C. had been operated on in clinics in Kaunas several months ago after "he had sustained trauma to his anus from a blunt object".

38. The Supreme Court held that information about R.C.'s fatherhood, his sexual orientation, and his unverified operation concerned his private life, notwithstanding R.C. being well-known because he was a singer. Moreover, disseminating such information had no public interest. On the contrary, having had regard to the manner in which the information had been presented, the Supreme Court held that the only aim in disseminating it had been to spread gossip to satisfy the curiosity of a certain category of television viewers. The fact that R.C. had communicated with the media before did not mean that he had lost his right to privacy. Having examined the case in the light of the Court's case-law (*Axel Springer AG v. Germany* [GC], no. 39954/08, 7 February 2012, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, ECHR 2012), the Supreme Court held that there had been a breach of R.C.'s right to privacy.

39. Although R.C. asked the courts to award him LTL 80,000 to compensate for the non-pecuniary damage, the Supreme Court found that the lower courts had correctly applied Article 6.250 of the Civil Code, and had had a proper basis for their decision to award R.C. LTL 10,000 in compensation.

5. Other relevant domestic law

40. The Code of Civil Procedure states:

Article 18. Obligatory force of a court decision, ruling or order

"1. A court decision, ruling or order which has come into force is obligatory ... [in respect of all persons] and must be executed ..."

Article 93. Division of legal costs

"1. A court orders the legal costs of the party to the proceedings in whose favour a court decision has been adopted to be paid by the other party to the proceedings ...

2. If a civil claim is granted in part, the plaintiff's legal costs are awarded proportionately in relation to which part of the civil claim is granted, and the defendant's legal costs are awarded proportionately in relation to which part of the civil claim is rejected.

3. The rules set out in this Article also apply to court fees ...

4. If the appellate court or court of cassation, without referring the case for fresh examination, changes a lower court's decision or ruling, or adopts a new ruling, it accordingly changes the division of legal costs. If the appellate court or court of cassation does not change the division of legal costs, it is the court of first instance which has to resolve this question."

Article 149. Liability for a breach of temporary protective measures

"1. If [temporary protective measures] are breached, the court may impose a fine of up to one thousand litas ..."

41. At the relevant time, with regard to the collection and publication of information, the Law on the Provision of Information to the Public (*Visuomenės informavimo įstatymas*) read that, in order to avoid violating a person's rights and to protect his honour and dignity, it should be prohibited to film, photograph, or make audio or video-recordings of a person without his consent (Article 13 § 1 (1)). Journalists were also obliged not to make audio or video-recordings if the individual providing the information objected (Article 41 § 2(9)). The Journalists' and Publishers' Code of Ethics read that journalists or publishers should not use the recordings for direct quotes if an individual objected to this (Article 14).

C. Relevant international law

42. On 23 January 1970 the Parliamentary Assembly of the Council of Europe adopted Resolution 428, containing a Declaration on Mass Communication Media and Human Rights, the relevant parts of which read:

"15. There is an area in which the exercise of the right of freedom of information and freedom of expression may conflict with the right to privacy protected by Article 8 of the Convention on Human Rights ... Everyone has the right to respect for his private and family life, his home and his correspondence ... The exercise of the former right must not be allowed to destroy the existence of the latter.

16. The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially. Those who, by their own actions, have encouraged indiscreet revelations about which they complain later on, cannot avail themselves of the right to privacy.

17. A particular problem arises as regards the privacy of persons in public life. The phrase 'where public life begins, private life ends' is inadequate to cover this situation. The private lives of public figures are entitled to protection, save where they may have an impact upon public events. The fact that an individual figures in the news does not deprive him of a right to a private life.

..."

20. In order to counter these dangers, national law should provide a right of action enforceable at law against persons responsible for such infringements of the right to privacy.

21. The right to privacy afforded by Article 8 of the Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media. National legislations should comprise provisions guaranteeing this protection."

43. The relevant passages of Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy, adopted on 26 June 1998, read:

"1. The Assembly recalls the current affairs debate it held on the right to privacy during its September 1997 session, a few weeks after the accident which cost the Princess of Wales her life.

2. On that occasion, some people called for the protection of privacy, and in particular that of public figures, to be reinforced at the European level by means of a convention, while others believed that privacy was sufficiently protected by national legislation and the European Convention on Human Rights, and that freedom of expression should not be jeopardised.

...

4. The right to privacy, guaranteed by Article 8 of the European Convention on Human Rights, has already been defined by the Assembly in the declaration on mass communication media and human rights, contained within Resolution 428 (1970), as 'the right to live one's own life with a minimum of interference'.

5. In view of the new communication technologies which make it possible to store and use personal data, the right to control one's own data should be added to this definition.

6. The Assembly is aware that personal privacy is often invaded, even in countries with specific legislation to protect it, as people's private lives have become a highly lucrative commodity for certain sectors of the media. The victims are essentially public figures, since details of their private lives serve as a stimulus to sales. At the same time, public figures must recognise that the position they occupy in society – in many cases by choice – automatically entails increased pressure on their privacy.

7. Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.

8. It is often in the name of a one-sided interpretation of the right to freedom of expression, which is guaranteed in Article 10 of the European Convention on Human Rights, that the media invade people's privacy, claiming that their readers are entitled to know everything about public figures.

9. Certain facts relating to the private lives of public figures, particularly politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.

10. It is therefore necessary to find a way of balancing the exercise of two fundamental rights, both of which are guaranteed in the European Convention on Human Rights: the right to respect for one's private life and the right to freedom of expression.

11. The Assembly reaffirms the importance of every person's right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value.

12. However, the Assembly points out that the right to privacy afforded by Article 8 of the European Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media.

..."

COMPLAINTS

44. Relying upon Article 8 of the Convention, the applicant argued that the Lithuanian State had failed to effectively protect his right to respect for his private life.

45. The applicant further complained under Articles 6 and 13 of the Convention that he had been precluded from effectively defending his interests in court. He contended that the Supreme Court had incorrectly evaluated the laws regulating compensation for non-pecuniary damage. Moreover, the Supreme Court had aggravated his situation when deciding the issue of litigation costs.

THE LAW

46. In the Court's view, the applicant's complaints under Articles 6 and 13 as to the erroneous application of the domestic law and the absence of an effective domestic remedy are subsidiary to his complaint under Article 8 of the Convention that the State did not ensure respect for his private life.

Therefore, the Court finds it appropriate to examine the applicant's complaints solely under Article 8 of the Convention, the relevant parts of which read:

"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. The parties' submissions

1. The Government

47. The Government argued that the applicant could no longer be held to be a victim of a violation of Article 8. The domestic courts had clearly stated that his right to privacy had been breached, having examined the case in accordance with the Convention standards. Those courts had also made good the loss sustained. On this last point, the Government asserted that the domestic courts had a broad margin of appreciation as to the sums to be awarded at domestic level. In the instant case, the award had not been derisory and, according the Supreme Court's practice, had reflected the need to alter the amount of compensation according to the value being protected. According to the consistent practice of the Supreme Court, compensation awards were lower in breach of privacy cases, when compared to physical injury or loss of life cases (see paragraph 30 above). The amount of compensation also depended on the severity of the negative consequences. In this case, the applicant's wife had known about his son born outside marriage. The applicant was a well-known person in the entertainment industry. His life and extrovert behaviour were often the focus of media attention, usually with his knowledge. The instant case was therefore different from the cases of *Biriuk v. Lithuania* (no. 23373/03, 25 November 2008) and *Armonienė v. Lithuania* (no. 36919/02, 25 November 2008), where the applicants had been ordinary people. In addition, in the present case, the courts had not concluded that the newspaper had printed the two articles to seek economic gain.

2. The applicant

48. The applicant argued that he remained a victim of an Article 8 violation, notwithstanding the domestic courts' decisions in his favour. Those courts had established numerous breaches of his privacy. The breach of his right to a private life had been especially severe: the information about "his family's well-kept secret" had been gathered by secretly following him and then revealed without his consent. To make matters worse, in so doing, the newspaper had even disregarded a court injunction forbidding publication of the information. The applicant underlined that his family and the mother of his child born outside marriage had kept that information secret for many years. The publication had therefore caused emotional trauma not only for him, but also for that child and the man who had considered himself to be the father of the child. The applicant submitted that, following the publication of the information, the man who had considered himself to be the child's father had filed a claim contesting his paternity and asked for a DNA test, and had then taken his family name away from the child. The child had then been adopted. There had been no public interest in printing such information, only the newspaper's wish "to

satisfy the prurient curiosity of a particular readership". It was therefore of particular importance that domestic law and case-law provided appropriate safeguards to discourage any such disclosures or the publication of personal secrets of any kind.

49. That being so, the Supreme Court had awarded him only 10% of the compensation he had claimed, which essentially amounted to a simple acknowledgement of a breach of his right to privacy, and therefore was not capable of making good the loss he had sustained (the applicant relied on *Gäfgen v. Germany* [GC], no. 22978/05, ECHR 2010). The Supreme Court's practice, whereby an award of compensation for non-pecuniary damage should not be of a great amount, therefore restricted the effective remedies for the protection of one's right to privacy. In fact, because of such case-law, media outlets had good reason to believe that they would face only minor pecuniary sanctions for making public information which was private and protected by law. Individuals' rights could therefore be disregarded when anticipated benefits (in terms of higher sales and, accordingly, higher revenues) exceeded the amounts of compensation normally awarded by the courts. The Lithuanian courts' practice of awarding only low sums in compensation for non-pecuniary damage in breach of privacy cases was not in line with the Court's case-law in *Biriuk* (cited above, § 45) and *Armonienė* (cited above, § 46), which stipulated that limits on compensation must not be such as to deprive the individual of his or her privacy and thereby empty the right of its effective content.

50. For the applicant, the existence of the above-mentioned Lithuanian courts' practice was conclusive as regards the newspaper's violation of his rights in the present case. At the material time, *L.T.* had been one of the most popular tabloid newspapers in Lithuania. By printing the confidential information about his private life, the newspaper had gained substantially more economic benefit than the value of the court award against it in favour of the applicant. On 11 November 2006 the newspaper had had a circulation of 34,547, and on 18 November its circulation had reached 36,621. The price of one issue being LTL 1, it was evident that the newspaper had profited by selling copies of the newspaper, in addition to receiving profits from advertising. The compensation paid to the applicant could count as only a small part of that sum. The compensation he had actually received was even less than LTL 10,000, because he had also been ordered to cover the newspaper's litigation costs.

B. The Court's assessment

1. General principles

(a) As to victim status

51. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question of whether an applicant can claim to be the victim of an alleged violation is relevant at all stages of proceedings under the Convention (see, *inter alia*, *Siliadin v. France*, no. 73316/01, § 61, ECHR 2005-VII, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006‑V). A decision or measure favourable to an applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, *inter alia*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Murray v. the Netherlands* [GC], no. 10511/10, § 83, ECHR 2016).

52. As to what redress is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at hand (see *Gäfgen*, cited above, § 116; *Y.Y. v. Turkey*, no. 14793/08, § 51, ECHR 2015 (extracts)).

(b) As to protection of privacy and freedom of expression

53. Having been required on numerous occasions to consider disputes requiring an examination of the fair balance to be struck between the right to respect for private life and the right to freedom of expression, the Court has developed much case-law in this area (see, for example, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts), and the case-law cited therein). In the circumstances of the present case, it considers it useful to reiterate only some of those principles.

54. The Court firstly notes that, in exercising their profession, journalists make decisions on a daily basis whereby they determine the dividing line between the public's right to information and the rights of others to respect for their private lives. They thus have primary responsibility for protecting individuals, including public figures, from any intrusion into their private life. The choices that they make in this regard must be based on their profession's ethical rules and codes of conduct (ibid., § 138).

55. Wherever information bringing into play the private life of another person is in issue, journalists are required to take into account, in so far as possible, the impact of the information and pictures to be published prior to

their dissemination. In particular, certain events relating to private and family life enjoy particularly attentive protection under Article 8 of the Convention, and must therefore lead journalists to show prudence and caution when covering them (ibid., § 140). It remains the case that a person's romantic relationships are, in principle, a strictly private matter. It follows that, in general, details concerning a couple's sex life or intimate relations should only be permitted to be brought to the public's knowledge without prior consent in exceptional circumstances (ibid., § 99).

56. The Court has also emphasised on numerous occasions that, although the public has a right to be informed, and this is an essential right in a democratic society which, in certain special circumstances, can even extend to aspects of the private life of public figures, articles aimed solely at satisfying the curiosity of a particular readership regarding the details of a person's private life, however well-known that person might be, cannot be deemed to contribute to any debate of general interest to society (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 143, 18 January 2011; and *Alkaya v. Turkey*, no. 42811/06, § 35, 9 October 2012).

57. Thus, the Court considered that an article about the alleged extra-marital relationships of high-profile public figures who were senior State officials contributed only to the propagation of rumours, serving merely to satisfy the curiosity of a certain readership (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 52, 4 June 2009). In this connection, the Court reiterates that the public interest cannot be reduced to the public's thirst for information about the private life of others, or to the reader's wish for sensationalism or even voyeurism (see *Couderc and Hachette Filipacchi Associés*, cited above, § 101).

58. Lastly, the Court has held that the mere fact that somebody has cooperated with the press on previous occasions cannot serve as an argument for depriving a person discussed in an article of all protection (see *Egeland and Hanseid v. Norway*, no. 34438/04, § 62, 16 April 2009). An individual's alleged or real previous tolerance or accommodation with regard to publications touching on his or her private life does not necessarily deprive the person concerned of the right to privacy (see *Couderc and Hachette Filipacchi Associés*, cited above, § 130).

2. Application of these principles to the present case

59. The Court notes that the applicant did not complain regarding any action by the State, but rather that the State had failed to protect his privacy against interference by third parties. In this connection, the Court reiterates that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in ensuring effective respect for private life. These obligations may involve

the adoption of measures designed to secure respect for private life, even in the sphere of individuals' relations between themselves (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-I). The Court therefore considers that the present case engaged the State's positive obligations under Article 8 to ensure effective respect for the applicant's private life.

60. In the circumstances of the instant case, the Court firstly observes that Lithuanian law does provide a right of action against persons responsible for breaches of privacy (see paragraphs 28 and 41 above; also see points 20 and 21 in paragraph 42 above). The Lithuanian courts at all three levels unconditionally acknowledged that both publications concerned intimate details of the applicant's life and his image, which constituted information of a purely private nature with no connection to his professional activities. Those courts likewise correctly observed that, despite the applicant being a well-known singer in Lithuania, he nevertheless retained the right to privacy (see paragraphs 17 and 58 above). There was no reason to believe that the journalists' intention had been to communicate to the public news that was of general interest (see paragraphs 12, 17 and 20 above). The Court fully subscribes to these views. It observes that the impugned publications concerned the sphere of the applicant's love life, in that they described his past relationship and revealed his having a son born outside marriage. It goes without saying that the essential element of the information contained in the article – the child's existence – did not go beyond the private sphere (contrast *Couderc and Hachette Filipacchi Associés*, cited above, § 126). The Court further notes that such a publication plainly was stressful for the applicant, to say nothing of how harmful it was to the psychological integrity of the child (see paragraphs 17 and 48 above).

61. It is true that, according to the Supreme Court, the lower courts did not explicitly hold that the newspaper had sought pecuniary gain by printing such articles (see paragraph 22 above). The Court, however, does not attach particular weight to such a statement by the Supreme Court, for it fails to see what other aim the newspaper could have had, the domestic courts having clearly ruled out any public interest in printing such news. On the contrary, the Court finds it established that the newspaper only sought to satisfy the readers' curiosity. As the newspaper itself acknowledged, it expected the article to trigger much "gossip" (see paragraphs 7, 12 and 17 above; see also point 6 in paragraph 43 above). Indeed, it is not difficult to conclude that the articles were defamatory, disparaging and pejorative with regard to the applicant's image. They certainly presented him in a light which might undermine his public standing from a reader's perspective (contrast *Couderc and Hachette Filipacchi Associés*, cited above, §§ 135 and 149, and see point 16, cited in paragraph 42 above). Both the Inspector of Journalistic Ethics and the courts also emphasised that the information about the applicant's issues in his private life had been presented in a

sensational manner, showing him in an unfavourable light, and the publication itself had been in breach of the requirements of fair journalism (see paragraph 12 above). The domestic court also noted the wile behavior by the newspaper's chief editor and the journalist, when methods such as blackmail and the unlawful recording of the applicant's telephone calls were unscrupulously employed to achieve the newspaper's goals (see paragraphs 11 and 13 above).

62. Furthermore, the Court is particularly struck by the fact that the newspaper went ahead with the publication, notwithstanding the court injunction. Correctly, this fact was not overlooked by the domestic courts, which gave the newspaper the maximum fine possible (see paragraphs 10 and 19 above).

63. That being so, the Court is therefore convinced that the Lithuanian courts carefully balanced the journalist's right to freedom of expression against the applicant's right to respect for his private life (see paragraphs 20 and 21 above; contrast *Ion Cârstea v. Romania*, no. 20531/06, §§ 34 and 38, 28 October 2014; also see points 10 and 11 in paragraph 43 above). Where the balancing exercise has been undertaken by 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 v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012). In the instant case, the Court finds nothing that would require it to disagree with the Lithuanian courts' analysis.

64. The Court turns next to the second criterion – the amount of compensation – to ascertain whether the applicant retains victim status. It observes that the statutory ceiling on non-pecuniary damages in breach of privacy cases, which was the main issue in the *Biriuk* and *Armonienė* judgments, has been lifted (see paragraph 28 above). Nevertheless, as the Government acknowledged in *Biriuk* (cited above, § 32 *in fine*) and *Armonienė* (cited above, § 33), current awards rarely exceed the previous maximum of LTL 10,000. That finding appears to be supported by the more recent practice of the Supreme Court (see paragraphs 30, 32-39 above). That notwithstanding, the Court has also held very recently that States have a margin of appreciation in deciding how to effectively protect the right to privacy, and a victim of a violation may not expect that a breach of Article 8 follows unless he or she receives a certain amount of pecuniary compensation (see, *mutatis mutandis*, *Kahn v. Germany*, no. 16313/10, § 75, 17 March 2016). The Court also acknowledges that certain financial standards based on the economic situation of a State are to be taken into account when determining the measures required to better implement that obligation. The Member States of the Council of Europe may regulate questions of compensation for non-pecuniary damage differently, and the imposition of financial limits is not in itself incompatible with a State's positive obligation under Article 8 of the Convention (see *Biriuk*, cited

above, § 45, and, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], no. 64886/01, § 80, ECHR 2006-V).

65. Regarding the sum of LTL 10,000 (EUR 2,900) awarded to the applicant, the Court is cautious to note that the Supreme Court made its decision having carefully taken into account the relevant case-law, according to which awards differ depending on which value has been breached (see paragraph 29 above). Moreover, and in accordance with the subsidiarity principle and the margin of appreciation left to the States, the Court does not find the Supreme Court's reasoning in this case to be arbitrary.

66. Lastly, the Court observes that the sum of LTL 10,000 (EUR 2,900) awarded to the applicant in respect of non-pecuniary damage does not appear to be derisory, at least at the time of its award in August 2008, taking into account the award of EUR 6,500 granted by the Court in both *Biriuk* (cited above, § 51) and *Armonienė* (cited above, § 52) in November 2008. It cannot fail to observe that, in those two cases, a breach of the right to privacy was found not only because of disclosure by the press of information of a private nature, but also because the Court attached particular significance to the fact that information about an applicant's and an applicant's husband's illness respectively was disclosed to journalists by doctors at State medical institutions, which made that violation particularly grave (see *Biriuk*, § 43, *Armonienė*, § 44, both cited above; also see *Mitkus v. Latvia*, no. 7259/03, § 133, 2 October 2012). Even taking into account that the applicant had to pay some of the newspaper's litigation costs (see paragraph 24 above), that was in accordance with the Lithuanian rules on civil procedure, as explained by the Supreme Court, and, in the Court's view, did not make the final award received by the applicants insignificant (contrast *Klauz v. Croatia*, no. 28963/10, §§ 94 *in fine*, 95 and 96, 18 July 2013).

67. That being so, the Court is not ready to hold that the sum awarded by the Supreme Court to the applicant in the instant case deprived him of his right to privacy, thereby rendering that right ineffective.

68. Accordingly, the applicant may not claim to be the victim of a violation of Article 8, within the meaning of Article 34 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 26 January 2017.

Andrea Tamietti
Deputy Registrar

András Sajó
President