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

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Order to withdraw statements about Vilniaus Prekyba founder was a violation

In today's **Chamber** judgment[1] in the case of Marcinkevičius v. Lithuania (application no. 24919/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a court order issued to Mr Marcinkevičius to withdraw a statement – which the courts had found to constitute a statement of fact and to be defamatory – given in an interview to Delfi, a news website, about a co-founder of Vilniaus Prekyba, N.N., Lithuania's richest person.

The Court found in particular that the domestic courts had not correctly assessed whether Mr Marcinkevičius's statements had amounted to statements of fact, and held that they had been within the acceptable bounds of criticism of a public figure.

Principal facts

The applicant, Mindaugas Marcinkevičius, is a Lithuanian national who was born in 1971 and lives in Vilnius (Lithuania). He is a founder and shareholder in Vilniaus Prekyba, one of the largest retail companies in the Baltic region.

In 2015 Mr Marcinkevičius alleged to the authorities that Vilniaus Prekyba had engaged in tax avoidance leading to the unlawful enrichment of N.N., another founder and major shareholder and also the richest person in Lithuania. The prosecution was ultimately discontinued.

In December 2016 Mr Marcinkevičius gave written replies to questions for an article in Delfi, a news website, about his conflict with N.N. and the ongoing proceedings.

Following a complaint by Mr Marcinkevičius, in March 2017 tax authorities launched an investigation into the activities of N.N., the results of which are still pending.

In January 2017 the article was published under the title "The fight between the rich of Lithuania continues: clashing for earned millions". Among other things, it quoted Mr Marcinkevičius as follows:

> "We have submitted documents to the court, demonstrating [C]ompanies belonging to [Vilniaus Prekyba] were allegedly used for transferring shareholders' money to [N.N.'s] personal accounts, thereby avoiding the payment of taxes in Lithuania and appropriating other shareholders' funds … One of the companies used in such operations was [T.] ... through which, after complicated deals, more than 20 million euros of shareholders' funds were allegedly laundered and at least 3 million euros in taxes hidden from the Lithuanian [State's] budget … When asked what may have been the goal of such a scheme, who had sustained damage and whether the law-enforcement authorities had been contacted, [Mr Marcinkevičius] explained: 'In my opinion, the main goal was to appropriate the profit of [the company] without paying taxes in Lithuania. It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage. We addressed the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

company, spoke about it in shareholders' meetings, and subsequently addressed the prosecutor's office.'"

N.N. lodged a claim against Mr Marcinkevičius for defamation. Among other arguments, he asserted that Mr Marcinkevičius had alleged criminal actions and damage to others on his part in statements of fact. However, those statements had had no supporting evidence.

The Vilnius District Court found for N.N. in part. It held that the majority of the statements given by Mr Marcinkevičius had been value judgments and that they had not been expressed in an offensive manner. However, it reached a different conclusion with regard to the sentence "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage", finding that it was a statement of fact which did not have sufficient factual basis. It ordered Mr Marcinkevičius to publicly retract that sentence.

Mr Marcinkevičius appealed, successfully, with the Vilnius Regional Court holding in 2019 that the statements in context were subjective and merely Mr Marcinkevičius's opinion, and that N.N., as the richest person in Lithuania and thus a public figure, should not be offended at the statements in question.

N.N. lodged an appeal on points of law, which led to the case being re-examined by the Vilnius Regional Court. In its 2020 judgment it upheld the first-instance judgment. In March 2020 Delfi published a retraction.

In 2020 the Supreme Court refused to entertain three appeals on points of law lodged by Mr Marcinkevičius.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Marcinkevičius complained of the court order for him to retract his opinion.

The application was lodged with the European Court of Human Rights on 23 June 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Gilberto **Felici** (San Marino),
Diana **Sârcu** (the Republic of Moldova),

and also Dorothee **von Arnim**, *Deputy Section Registrar.*

Decision of the Court

Questions surrounding the tax affairs of N.N., the wealthiest person in Lithuania and a major shareholder in one of the largest retailers in the Baltic region were, for the Court, a matter of public interest. The Court was satisfied that the domestic courts had performed a balancing exercise between, on the one hand, Mr Marcinkevičius's right to freedom of expression, and on the other hand, N.N.'s right to the protection of his reputation. The question was whether the domestic courts' finding that this part – "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage" – of Mr Marcinkevičius's statements had amounted to a statement of fact had been based on an acceptable assessment of the relevant facts.

The Court noted that, in the article in question, Mr Marcinkevičius had been asked a question consisting of three parts and he had given an answer in three sentences. The domestic courts had assessed each those three sentences independently; instead they should have assessed them in the round. The Court observed that no convincing reason had been given for the approach used, and the arguments advanced by Mr Marcinkevičius as to why the three sentences should have been assessed together had not been addressed. While the Court acknowledged that the phrase alone might have literally connotated a statement of fact, it emphasised that that phrase should not be divorced from its context.

There had also been a contradiction in the domestic courts' reasoning that it had been within acceptable bounds of criticism to allege irregular tax activities on the part of N.N., but that touching on the consequences of that alleged activity – damage to shareholders and the State – had been unacceptable.

The Court therefore held that the domestic courts had failed to justify their conclusion that the phrase in question had been a statement of fact, and found that, like the rest of the statements which Mr Marcinkevičius had made in the article, that phrase had been a value judgment.

It was furthermore satisfied that if a sufficient factual basis for the alleged unorthodox activities on the part of N.N. had existed, then that had to also have been true for the statement concerning the consequences of those alleged activities.

As to whether the statement had overstepped the margin of acceptable criticism, as the Government alleged, the Court reiterated that N.N. was a public figure. It did not find that the statement "It is obvious that not only we [the shareholders] but also the Lithuanian State have sustained huge damage" had amounted to a gratuitous personal attack. Nor had N.N. been able to point to any negative consequences for him as a result. The Court held that Mr Marcinkevičius had therefore not overstepped the bounds of acceptable criticism of a public figure.

The domestic courts' conclusion that Mr Marcinkevičius's phrase had been a statement of fact had thus not been based on an adequate assessment of the facts. The Court held that the order for retraction had therefore not been necessary in a democratic society, concluding that there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by Mr Marcinkevičius. It awarded him 15,000 euros in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.