



Obliging *Valstybė* magazine to publish authorities' decisions against political-advertising articles violated freedom of expression

In today's **Chamber judgment**¹ in the case of [Eigirdas and VĮ Demokratijos plėtros fondas v. Lithuania](#) (applications nos. 84048/17 and 84051/17) 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 two articles published in *Valstybė*, one of which concerned, amongst other individuals, a prominent businessman and politician V.M., and the other, in particular, his son. The articles alleged media influence and a connection to forthcoming elections on V.M.'s part. Following complaints and subsequent court proceedings, decisions against the applicants – the writer of the first article and the publisher – were delivered by the Public Information Ethics Commission.

The Court found in particular that the restrictions on freedom of speech imposed as regards the first article had required very strong reasons, which the Supreme Administrative Court had failed to provide.

As regards the second article, the Court held that the Lithuanian law referred to by the courts had not accorded with the Council of Europe recommendations on right of reply, and that the sanction imposed was capable of having a chilling effect on the exercise of freedom of expression.

Principal facts

The applicants are Eduardas Eigirdas, a Lithuanian national who was born in 1970 and lives in Vilnius, and VĮ Demokratijos plėtros fondas, a non-profit organisation that publishes the magazine *Valstybė*, for which Mr Eigirdas is a regular opinion writer.

In February 2015 Mr Eigirdas wrote an article in *Valstybė* entitled "The ten richest and most dangerous oligarchs of Lithuania" (*Įtakingiausių ir pavojingiausių Lietuvos oligarchų dešimtukas*). One of the people listed was V.M., a major businessowner, politician and future mayor of Kaunas, who was described as having huge influence on the media, and therefore positive political coverage in the election run-up, because of his company's large advertising spend.

V.M. complained to the Public Information Ethics Commission, stating that the article had had no basis and had thus damaged his good name and professional reputation. The Commission upheld the complaint and ordered *Valstybė* to publish its decision in its magazine. However, the Inspector of Journalistic Ethics found that the article had not overstepped the bounds of freedom of expression, stating that the language used was more speculation about the future than presentation of facts.

VĮ Demokratijos plėtros fondas lodged a claim with the national courts, successfully at first instance. However, that decision in its favour was overturned by the Supreme Administrative Court on 26 June 2017 following an appeal by V.M. That court held that the mere use of the words "I think" was not

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.

enough to make the article into a series of value judgments. It agreed with the Commission that the article counted as “news” and the responsibility for its accuracy lay with the publishers.

A second article (written by a different journalist), entitled “In political marketing – the duel between Paksaitė and Matijošaitukas” (*Politinėje rinkodaroje – Paksaitės ir Matijošaituko dvikova*) was published in *Valstybė*. Ms Paksaitė referred to in the title is the daughter of former Lithuanian President Rolandas Paksas, while Mr Matijošaitis (D.M.) is the son of V.M. It which contained the following:

“His daily life – unlimited possibilities, extreme hobbies, expensive interests and ... loneliness’ – this is how romantically and upliftingly, like a would-be Lithuanian Leonardo Di Caprio, the magazine *Žmonės* presents Dainius, the son of the businessman [V.M.], who is a mayoral candidate for Kaunas.

When one opens ... *Žmonės* magazine, a well-built young man who is looking at us seriously catches our eye, who could be every middle-aged woman’s dream. The title of the article – “I am still searching for the ideal woman” – also gives [us] hope. On another page, a photograph with [his] dad, creating the myth of a serious businessman who is following in his father’s footsteps. ... we would call such an article another piece of literary trash [produced] by a tabloid; however, after dwelling on political processes, it is possible to draw other conclusions. If one looks at this interview from the perspective of marketing, if we include the municipal council elections and if we also try to assess how much advertising by [V.M.] has recently been in the public domain, the conclusions will certainly be different ...”

ŽLG, the company that owned *Žmonės* magazine, complained to the Commission, asserting that the article had been unethical. The Commission upheld the complaint with reference to the words “hidden political advertising”, “tabloid” and “literary trash”, and found it established that *Žmonės* had not had an opportunity to respond to the claims. *Valstybė* was again ordered to publish the decision in its magazine.

D.M. complained to the Inspector, arguing that the article had been misleading and had harmed his professional reputation and good name. The Inspector found against D.M., holding that the article had not damaged D.M.’s honour or dignity or overstepped the boundaries of freedom of speech.

VĮ Demokratijos plėtros fondas appealed to the courts. The Vilnius Regional Administrative Court quashed the Commission’s decision, holding that it had been wrong to class the article as “news”. However, on appeal, the Supreme Administrative Court quashed the Vilnius Regional Administrative Court’s decision. It held that the latter court had not properly examined the Commission’s decision, and stated that the criticism in the article could not be classed as the author’s opinion. During the re-examination of the case, the Vilnius Regional Administrative Court and subsequently the Supreme Court found against VĮ Demokratijos plėtros fondas, stating, in particular, that ŽLG should have been given the right of reply. The order to print the Commission’s decision stood, and it awarded costs to ŽLG.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained about the requirement to publish the Public Information Ethics Commission’s decisions in *Valstybė*.

The applications were lodged with the European Court of Human Rights on 11 December 2017.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Pauliine Koskelo (Finland),
Saadet Yüksel (Türkiye),

Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),

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

Decision of the Court

Article 10

The Court was satisfied that the first article had concerned a matter of public interest – the purported influence of business advertising in the upcoming elections and V.M.’s alleged influence. The latter was a large businessowner and politician and was therefore subject to wider limits of acceptable criticism than ordinary individuals. His alleged influence via advertising was of interest to the public. It noted that the article had not concerned V.M.’s private life, rather it was about a politician “throwing in the most money of all the entrepreneurs in Lithuania” to ensure positive coverage before elections. This undoubtedly had been part of a debate affecting Lithuanian society, and there had therefore been little scope for restricting freedom of speech in that context.

For the Court, the fact that the Commission and the Inspector had reached different conclusions regarding the impact of the article was important. Even though the article had contained references corresponding to the findings of the latter body, the Supreme Administrative Court had highlighted what it had perceived as a failure to substantiate the article’s claims, which the European Court took issue with. Furthermore, none of the domestic authorities had pointed to any specific negative impact or effects which the article might have had on V.M.’s reputation or his political life or career.

Regarding the penalties imposed, the Commission’s decision had possibly had an impact on Mr Eigirdas’s reputation (albeit not the chilling effect that a custodial sentence would have had), and ultimately costs had been imposed on the applicants. The Supreme Administrative Court had failed to balance the needs to protect V.M.’s reputation with the needs of society as a whole to access the information. The restrictions on freedom of speech in this case had required very strong reasons, which the Supreme Administrative Court had failed to provide.

There had therefore been **a violation of Article 10 with regard to the first article**.

As regards the second article, the Court found that it had not been a gratuitous attack on either D.M. or *Žmonės* magazine, but instead had been on the subject of political advertising in relation to D.M.’s father, V.M. The main relevant argument was therefore that giving ŽLG the right of reply prior to publication would have amounted to an unjustified restriction on the applicants’ right to freedom of expression.

It reiterated that the right of reply not only protects the reputation of the person exercising it, but also ensures plurality of opinion, especially in matters of general interest. The Court accepted the applicants’ explanation as to why the journalist had not asked ŽLG for comment (it had been unlikely that the company would have admitted to publishing an article about electoral candidates in return for payment).

The Court also stated that the discrepancy between the relevant Council of Europe Recommendation – the right of reply was a person’s right to refute or specify – and Lithuanian Law – a journalist was obliged to contact the person criticised before publication and provide an opportunity to refute and also to explain his or her position – was difficult to reconcile with the Convention right to freedom of expression.

The Court reiterated its findings concerning the first article as regards the severity of the penalty imposed, and held that the sanction was capable of having a chilling effect on the exercise of the applicants’ right to freedom of expression. There had therefore been **a violation of Article 10 with regard to the second article**.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay Mr Eigirdas 220 euros (EUR) and VĮ Demokratijos plėtros fondas EUR 2,121 in respect of pecuniary damage; EUR 3,000 to each applicant in respect of non-pecuniary damage; and EUR 300 to Mr Eigirdas and EUR 7,028 to VĮ Demokratijos plėtros fondas 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.