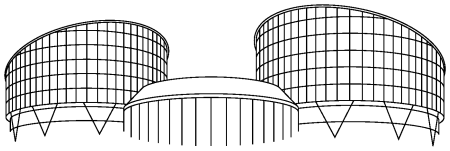

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 59076/08
A.Č.
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 4 October 2016 as a Chamber composed of:

András Sajó, *President*,
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 November 2008,

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 A.Č., is a Lithuanian national, who was born in 1949 and is detained in Kybartai (in the Marijampolė Region).

2. The application was initially allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). The Court decided of its own motion to grant the applicant anonymity (Rule 47 § 4 of the Rules of Court). On 1 November 2015 the Court's Sections were reorganised. The application was thus reallocated to the Fourth Section (Rule 25 § 1 and Rule 52 § 1).

3. The applicant was granted leave to represent himself in the proceedings before the Court. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

A. The circumstances of the case

4. Since 1971 the applicant has been convicted more than ten times of various crimes, including sexual assault of minors, possession of child pornography, unlawful possession of narcotic substances, and falsification of official documents. At the time of the lodging of his application with the Court he was serving a prison sentence for sexual crimes against minors, and at the time of the present judgment he was serving another prison sentence for similar crimes.

5. The applicant claimed to be a board member of several non-governmental organisations, an author of various publications, a member of the anti-Soviet resistance and a political prisoner of the Soviet regime. Meanwhile, the Government submitted that he had falsified documents purportedly proving his participation in the anti-Soviet resistance, and that he was widely known to the Lithuanian public solely because of his long history of sexual crimes against minors.

1. Publications concerning the applicant

6. On 23 December 2000 the newspaper *Laikinoji sostinė* published a two-page article entitled "Perverts are getting more impudent" (*Iškrypėliai įžūlėja*) (hereinafter "the first article"). The article had twelve sections, the first eight of which discussed various instances of sexual crimes against minors committed in the city of Kaunas. The last four sections of the article were dedicated to the applicant. The first of those four, entitled "Convicted for paedophilia", discussed his conviction for sexually assaulting a minor in 1995. The second section, entitled "Suspicion regarding an armed assault", stated that in 1988 the applicant had established a political party, and that in 1998 he had complained to the police that he had been the victim of an armed assault. The third section, entitled "Pretended to be a doctor", stated that the applicant had had his first encounter with the police in 1971, after he had pretended to be a doctor and had performed "medical check-ups" on underage girls. The final section of the article (the fourth one dedicated to the applicant) was entitled "Had [sexual] intercourse with his mother" (*Santykiavo su savo motina*) and consisted of four paragraphs. The first three paragraphs described several instances in the 1980s and 1990s when the applicant, pretending to be a doctor, had examined people in an educational institution and a public bath, and had drugged and sexually assaulted a male university student. The last paragraph of that section read:

> "Around 1985, law enforcement officers had a suspicion that [A.Č.] may have had sexual relations with his mother, with whom he lived ... During a search [of the applicant's apartment], officers found photographs in which the well-known pederast of Kaunas was depicted with his mother in specific positions. It was decided not to open a case."

The article did not include any photographs of the applicant or his mother.

7. On 7 June 2004 the magazine *Ekstra* published a six-page article entitled "Pornography – a flourishing illegal business" (*Pornografija – klestintis nelegalus verslas*) (hereinafter "the second article"). The article had seventeen sections. The first five sections discussed clandestine photo studios in Kaunas which had pornographic photoshoots. The sixth section of the article, entitled "The 'classic' pornographer" (*Pornografijos „klasikas"*), was dedicated to the applicant. Its relevant parts read:

> "In 1985 [law enforcement officers] had many concerns about sexual relations between the well-known paedophile of Kaunas, [A.Č.], and his mother, with whom he lived.
>
> That year, during a search of his home, officers found photographs in which the paedophile, who enjoyed presenting himself as "Doctor Andrey", was depicted not only with minors, but also with his mother, while having sexual intercourse in non-traditional positions. However, it was decided not to open a case. In November 2003 [A.Č.], who until then had avoided longer prison sentences for sexual crimes, was sentenced to about eight years of imprisonment."

The article printed a photograph of the applicant with the following caption:

> "The 'classic' pornographer, [A.Č.], who for a long time used to lure teenagers to his apartment, sexually assault them and take their photographs, was convicted of sexual crimes in November 2003 and sentenced to about eight years of imprisonment."

The remaining eleven sections of the article contained interviews with photographers involved in erotic photography, and discussed the business of intermediaries taking young Lithuanian women to foreign countries to work as escorts.

8. On 21 June 2004 the applicant contacted *Ekstra* and asked it to publish a retraction of the part of the article concerning sexual relations between him and his mother (who had died in 1989). The applicant submitted a draft retraction, but the magazine refused to publish it on the grounds that the text contained insulting language.

9. Subsequently, the applicant submitted a complaint regarding the second article to the Inspector of Journalistic Ethics. On 20 January 2005 the Inspector concluded that the statements about sexual relations between the applicant and his mother were "of a clearly degrading character" (*akivaizdžiai žeminančio pobūdžio*), and "undoubtedly caused negative public opinion" (*neabejotinai sukelia neigiamą nuomonę visuomenėje*).

2. Civil proceedings

10. On an unspecified date in 2005 or 2006 the applicant lodged a civil claim for damages against the journalist who had written the second article, D.D., and the magazine *Ekstra*. He argued that the claims concerning sexual relations between him and his mother had been erroneous, and that the publication had humiliated him, damaged his reputation and caused him emotional distress.

11. In their reply to the claim, D.D. and *Ekstra* submitted that the disputed statements in the second article had been based on the information published in the first article. They therefore argued that, in line with domestic law (see paragraphs 29-32 below), the publishers of the second article could not be held liable for republishing erroneous information which had not been publicly retracted. They further submitted that, in any event, the disputed claims were true and testimony to that effect could be provided by law enforcement officers who had searched the applicant's apartment in 1985. Lastly, they argued that because of the applicant's long history of sexual crimes, there was a general interest in making such information public, and that "as far as someone with such a reputation was concerned, it was impossible to cause any more dishonour" (*tokios reputacijos asmeniui dar labiau sumenkinti jo garbę nebeįmanoma*).

12. Subsequently, the applicant amended his claim to also include the author of the first article, S.P., and the company which owned the *Laikinoji sostinė* newspaper. He also alleged that that publication had included erroneous claims about him and his mother, which had damaged his reputation and caused him emotional distress.

13. In their reply to the amended claim, S.P. and the newspaper company submitted that the first article had not stated that the applicant had had sexual relations with his mother, but only that law enforcement officers had had such suspicions. They also submitted that, in line with domestic law (see paragraph 31 below), the applicant could not bring court proceedings against them, because he had not asked the newspaper to publish a retraction within two months of the disputed publication. They asserted that in December 2000 the applicant had been interviewed by S.P. and some television journalists; subsequently he had sued the television broadcasting company, but not *Laikinoji sostinė*. Accordingly, S.P. and the newspaper company submitted that the applicant had known about the first article and its contents, but had failed to ask for a retraction within the time-limits provided for in law.

14. The Vilnius Regional Court held a hearing on 1 February 2007. During that hearing the applicant denied having given an interview to S.P. in 2000, and claimed that he had not been aware of the first article until the current court proceedings had started. However, when asked by the judge how that article could have caused him any emotional distress if he had not known about it, the applicant replied that he had heard rumours about the

publication but had not seen it himself. The court also heard the testimony of a witness requested by the applicant, who stated that in 2004 he had been imprisoned together with the applicant and had seen other prisoners insult and humiliate him because of the statements published in the second article. The hearing was adjourned at the applicant's request, and the court ordered the defendants to provide the disputed photographs of the applicant and his mother.

15. The next hearing was held on 12 July 2007. The Vilnius Regional Court heard another witness requested by the applicant, who also stated that the second article had led to insults and humiliation of the applicant by other prisoners. The hearing was adjourned at the applicant's request in order to allow his new lawyer to acquaint himself with the case file.

16. On 22 November 2007 the Vilnius Regional Court suspended the civil proceedings pending the outcome of the criminal proceedings instituted by the applicant (see paragraphs 17-21 below).

3. Criminal proceedings

17. On 7 November 2007 the applicant brought a private prosecution against D.D. and the editor of *Ekstra*, V.V., accusing them of defamation, insult, and contempt of the memory of a deceased person, under Article 154 § 2, Article 155 § 1 and Article 313 § 2 of the Criminal Code. He also submitted a civil claim for damages.

18. On 14 April 2008 the Vilnius City Third District Court held a hearing in the criminal case. During the hearing the applicant submitted that the defendants were former supporters of the Soviet regime, and the purpose of the publication had been revenge for his political and public activities. Meanwhile, D.D. stated that his purpose had been to warn the public about the applicant's dangerous sexual activities and that, when preparing the article, he had spoken to S.P. and a prosecutor, M.R, who had confirmed the existence of the disputed photographs. That prosecutor was called as a witness and testified that he had personally seen such photographs. However, the photographs were not submitted to the court, because the prosecution archives of 1985 had already been destroyed.

The applicant made an application for the court to call additional witnesses who could testify about the damaging effects of the second article, and to obtain documents proving that S.P. and M.R. had participated in anti-independence repression during the Soviet occupation. The court rejected his applications as unfounded and unnecessarily time-consuming with regard to the proceedings.

19. The next hearing was held on 21 April 2008. The applicant made an application for the Vilnius City Third District Court to call witnesses who could testify about the circumstances of his mother's death, but the court rejected that application as unrelated to the case. In his final address to the court the applicant insisted that the statements about his sexual relations

with his mother were false and unproven, and that D.D. and V.V. had published them to insult and humiliate him. Meanwhile, D.D. and V.V. argued that they had made a sufficient effort to verify the disputed statements – they had relied on the first article, which had not been publicly retracted, and had interviewed law enforcement officers who had had the relevant knowledge. They also submitted that the purpose of the article had not been to insult or humiliate the applicant, but to inform the public about a dangerous person known for his sexual crimes. They emphasised that the article had examined a certain aspect of life in the city of Kaunas, and statements about the applicant had constituted only a small part of it.

20. On 10 May 2008 the Vilnius City Third District Court acquitted D.D. and V.V. of all charges. The court held that the criminal offence of defamation consisted of the intentional distribution of erroneous information about another person, but D.D. and V.V. had had reasonable grounds to believe that the disputed statements about the applicant and his mother were true, because they had been previously published in another newspaper and not retracted. The court also held that the criminal offence of insult consisted of the public humiliation of another person in an intentionally obscene or offensive manner, whereas a mere negative opinion about another person, presented in a civil manner, would not qualify as criminal insult. The court considered that the disputed statements of the second article, albeit amounting to negative characterisation of the applicant, had been presented in a neutral manner which was not offensive, and that D.D. and V.V. had not intended to insult the applicant. Lastly, the court dismissed the charge of contempt of the memory of a deceased person as time-barred. The applicant's civil claim for damages was left unexamined.

21. The applicant appealed against that judgment, but on 16 July 2008 the Vilnius Regional Court upheld the acquittal. It emphasised that, in criminal proceedings, the burden was on the prosecuting party to prove that statements published by defendants had been erroneous, or that defendants had intended to insult a victim. The court considered that the applicant had not discharged that burden. It also held that the first-instance court had been justified in not hearing the additional witnesses requested by the applicant, (see paragraphs 18-19 above), because those witnesses could not have provided any information relating to D.D. and V.V.'s alleged intention to defame or insult the applicant.

4. Continuation of civil proceedings

22. Subsequently, the Vilnius Regional Court resumed the examination of the applicant's claim for damages against the publishers of both articles (see paragraphs 10-16 above). In a hearing held on 5 February 2009 the court heard another witness called by the applicant, who stated that the publication of the second article had led to insults against the applicant

among his fellow prisoners. The hearing was adjourned at the applicant's request.

23. The next hearing was held on 30 June 2009. At the applicant's request, the court ordered a linguistic examination of the disputed statements in the first article, in order to determine whether they could be understood as unequivocally stating that the applicant had had sexual relations with his mother. The examination was carried out by the Institute of the Lithuanian Language, which delivered its conclusion on 20 October 2009. It found that the article did not unequivocally state that the applicant and his mother had had such relations, but that it could raise suspicions that such relations may have existed.

24. On 23 September 2010 the Vilnius Regional Court dismissed the applicant's claim. It held that domestic law provided for a mandatory out-of-court settlement procedure in cases concerning the publication of allegedly erroneous statements in the media, in accordance with which the applicant should have asked the publisher of the first article to retract it within two months of its publication (see paragraphs 29-32 below). The court noted that the applicant had missed that time-limit and had not asked for its renewal. As a result, he could not claim any damages from the publishers of the first article. The court further held that the disputed statements in the two articles were essentially identical, and thus the publishers of the second article could not be held liable for republishing the contents of the first article, as long as they had not been publicly retracted.

25. The applicant submitted an appeal in which he insisted that he had not known about the first article until he began the civil proceedings against the publishers of the second article. On 28 December 2011 the Court of Appeal dismissed his appeal and upheld the first-instance judgment. The court underlined that the two-month time-limit to request a retraction was necessary in order to protect journalists from the unreasonable burden of having to prove the truthfulness of information which had been published a long time ago, especially in cases such as the one in question, where the applicant had complained more than four years after the publication of the first article. The court also referred to the submission of S.P. and the newspaper company that the applicant had been interviewed in December 2000 as part of the preparation of the first article (see paragraph 13 above), and concluded that the applicant ought to have known that the impending publication would concern him. Accordingly, the Court of Appeal found that the journalists could not be held responsible for the applicant's own failure to take timely action in respect of the first article.

26. On 30 March 2012 the Supreme Court refused to examine a cassation appeal submitted by the applicant on the grounds that it raised no important legal questions.

B. Relevant domestic law and practice

1. General provisions on the protection of private life, honour and dignity

27. Relevant provisions of the Constitution of the Republic of Lithuania read:

Article 22

"Private life shall be inviolable ...

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

..."

Article 25

"...

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

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

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation ..."

28. In its ruling of 15 May 1998 the Senate of the Supreme Court of Lithuania held the following:

"3. A person's honour and dignity ... shall be protected when all of the following facts are established: a) information has been disseminated; b) that information concerns the claimant; c) it is humiliating to the claimant's honour and dignity; d) it is erroneous.

The right to a private life ... shall be protected when all of the following facts are established: a) information has been disseminated; b) that information concerns the claimant; c) it concerns the claimant's private life; d) it has been disseminated without the claimant's consent; e) there is no legitimate public interest in receiving that information ...

...

12. ... A civil claim for the protection of honour and dignity ... must specify ... what disseminated information is humiliating or erroneous ... If the defendant is a media source, the claimant must indicate that he or she has exhausted the mandatory out-of-court settlement procedure by requesting a retraction ...

...

15. ... Acquittal of a person accused of libel on the grounds that no criminal offence has been committed, as well as the refusal to open a criminal case or the decision to

terminate it due to the expiry of statutory limitations ... does not preclude a victim from submitting a civil claim for the protection of his or her honour and dignity ...

18. It must be underlined that Article 71 of the Civil Code and Article 21 of the Law on the Provision of Information to the Public seek to protect two distinct values: a person's honour and dignity, and a person's right to private life. They can be violated by different facts and thus must be distinguished ... Information about a person's private life can be made public without his or her consent only when its publication does not cause any harm to that person, when that information may help to disclose criminal offences and breaches of law, or protect human rights and fundamental freedoms, and when that information is disseminated in a public court hearing ... The right to a private life is protected ... irrespective of whether the disseminated private information is humiliating to the person's honour and dignity or not ..."

2. Civil liability for publishing erroneous and humiliating information

29. At the material time, Article 7 of the 1964 Civil Code, which remained in force until 1 July 2001, provided in its relevant parts:

Article 7. Honour and dignity

"Individuals or organisations have the right to ask a court to retract information which is erroneous and damages their honour and dignity.

If such information was published by the mass media, the court shall examine requests for retraction only after the individual or organisation in question has provided the publisher with a written retraction ... and the publisher has failed to retract the erroneous information ...

If the publisher does not substantiate that the disputed information corresponds to reality, the court shall oblige it to retract the information in question ..."

30. Article 2.24 of the 2000 Civil Code, in force from 1 July 2001 onwards, provides in its relevant parts:

Article 2.24. Protection of honour and dignity

"1. A person shall have the right to demand the retraction, in judicial proceedings, of information which has been made public and which denigrates his honour and dignity and is erroneous; in addition to the right to compensation for pecuniary and non-pecuniary damage incurred by the placing in the public domain of the aforementioned information ... Information which has been made public shall be presumed to be erroneous, unless the publisher proves the opposite to be true.

2. Where erroneous information has been made public by the mass media (including the press, television and radio), the person who is the subject of the publication shall have the right to provide a proposed retraction, and to demand that the media source concerned publish the aforementioned retraction free of charge or make it public in some other way. The media source shall publish the retraction or make it public in some other way within two weeks of receipt. The media source shall have the right to refuse to publish the retraction or make it public, only in such cases where the content of the retraction contradicts good morals ...

...

5. Media sources which make public erroneous information which denigrates a person's reputation shall only provide compensation for damage to property, and for

> any pecuniary and non-pecuniary damage incurred, in cases where they knew or should have known that the information was erroneous ..."

31. At the material time, Article 45 § 2 of the Law on Provision of Information to the Public provided that a written request to retract information had to be submitted to a producer or disseminator of public information within two months of the information being published.

32. At the material time, Article 55 § 1 (3) of the Law on Provision of Information to the Public provided that a producer of public information could not be held liable for the publication of erroneous information if that information had been previously published in other mass media sources, and had not been retracted by the media source which published it.

3. Civil liability for publishing information about a person's private life without his or her consent

33. Article 2.23 of the 2000 Civil Code, in force from 1 July 2001 onwards, provides that information about a person's private life may be made public only with his or her consent.

34. At the time of the publication of the first article, Article 21 § 1 of the Law on Provision of Information to the Public provided for civil liability of the producer or disseminator of information who published information about a person's private life without his or her consent, where that information was degrading to the person's honour and dignity. At the time of the publication of the second article, Article 54 § 1 of the amended version of that Law provided for civil liability of the producer or disseminator of information who published any kind of information about a person's private life without his or her consent.

35. In its ruling of 13 January 2003 in civil case no. 3K-3-41/2003, the Supreme Court held:

> "[T]he defendant disseminated ... in newspaper publications ... information about the birth of the claimant's son, his last name, alimony granted by courts, and so forth, and thereby breached the claimant's and her son's right to a private life. The district court correctly held that that information was not related to the claimant's occupation or the public interest ... As provided in law, the court shall determine the amount of non-pecuniary damages, taking into account the defendant's financial situation, the gravity of the breach and its consequences, and other relevant circumstances ... The courts correctly found that the dissemination of the information about the claimant's private life had caused her emotional suffering and negatively affected her authority. Her son, a minor, also experienced suffering and distress. In such circumstances, the award of non-pecuniary damages cannot be reduced only because of the defendant's financial situation ..."

4. Relevant criminal law provisions

36. Article 154 § 2 of the Criminal Code provides that the offence of libel in the media or in any other publication is punishable by a fine, arrest or imprisonment for a term of up to two years.

37. At the material time, Article 155 § 1 of the Criminal Code provided that the public humiliation of another person in an abusive manner by actions, words or in writing is punishable by a fine, restriction of liberty, arrest or imprisonment for a term of up to one year.

COMPLAINTS

38. The applicant complained that journalists had published erroneous information about him and that the domestic courts had failed to punish them. He invoked Articles 7, 8, 10, 13 and 14 of the Convention.

39. The applicant further complained that the courts in the criminal proceedings had refused to examine the witnesses he had requested. He relied, in substance, on Article 6 § 1 of the Convention.

THE LAW

A. The applicant's complaint under Article 8 of the Convention

40. The applicant complained that journalists had published erroneous information about him and that the domestic courts had failed to punish them. He invoked Articles 7, 8, 10, 13 and 14 of the Convention. The Court considers that the applicant's complaint is to be examined solely under Article 8 of the Convention, which provides:

> "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."

41. The Government submitted that the applicant had failed to exhaust effective domestic remedies. They asserted that Lithuanian law provided for two distinct civil remedies against violations of private life in relation to publications: firstly, a claim for damages in respect of damage caused by the publication of erroneous information degrading to a person's honour or dignity (see paragraphs 29-32 above), and secondly, a claim for damages in respect of damage caused by the disclosure of private information without a person's consent, irrespective of whether that information was erroneous or not (see paragraphs 33-35 above).

42. As to the first of those two remedies, the Government submitted that it could not be successfully invoked against a media source which republished erroneous information if that information had not been publicly retracted. In line with domestic law, such a retraction had to be requested within two months of a disputed publication. In the present case, the second article had republished the statements of the first article, which had not been retracted. The domestic courts had established that the applicant had known about the first article and ought to have requested a retraction within the prescribed time-limit, but since he had failed to do so, the publishers of the second article could not be held liable for republishing the allegedly erroneous information. Accordingly, the Government argued that the remedy chosen by the applicant had not succeeded because of his own failure to use the mandatory out-of-court settlement procedure within the time-limits provided for in domestic law.

43. As to the other domestic remedy – a claim for damages for the disclosure of information about an applicant's private life without his or her consent – the Government submitted that that remedy had been available to the applicant and he had failed to avail himself of it. They provided examples of domestic case-law where courts had ordered media outlets to pay damages in respect of damage caused by the disclosure of such information, thus showing that the remedy was effective. The Government therefore asked the Court to declare the applicant's complaint inadmissible for failure to exhaust effective domestic remedies.

44. The applicant disagreed, without providing any specific arguments.

45. The Court reiterates that the only remedies which Article 35 § 1 requires to be exhausted are those relating to the breach alleged which are capable of redressing the alleged violation. The existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among many other authorities, *Karácsony and Others v. Hungary* [GC], no. 42461/13, § 76, ECHR 2016 (extracts), and the cases cited therein). The Court further reiterates that applicants must comply with the applicable rules and procedures of domestic law, failing which their applications are likely to fall foul of the condition laid down in Article 35 § 1 (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, §§ 142-143, ECHR 2010, and the cases cited therein).

46. The Court also reiterates that, in cases concerning the publication of personal information or photographs in the media, Article 8 does not necessarily require a criminal-law remedy, and measures of a civil-law nature will typically suffice (see *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013, and the cases cited therein).

47. In the present case, the applicant complained to the domestic courts that journalists had published erroneous statements about him, and he asked the courts to oblige the journalists to retract those statements. He did not ask

the courts to examine whether the published statements had been of a private nature, or whether there had been a public interest in disseminating them. Therefore, in line with the domestic law (see paragraphs 28-32 above), the role of the courts was limited to examining the veracity of the published information.

48. According to the domestic law, a media source could not be held responsible for publishing erroneous information if that information had already been published before and had not been publicly retracted (see paragraphs 29-32 above). A request for a retraction had to be submitted to the relevant publisher within two months of the disputed information being made public (see paragraph 31 above).

49. Thus, in the civil proceedings instituted by the applicant, the courts were unable to satisfy his claim, because the authors of the second article had republished the disputed statements from the first article, and the first article had not been retracted within the time-limit prescribed by law (see paragraphs 24-25 above). The courts established that the applicant knew or ought to have known about the first article in time to request a retraction (see paragraph 25 above). The Court reiterates that it is not its task to substitute its own assessment of the facts for that of the domestic courts (see, among many other authorities, *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 89, ECHR 2007-I). It sees no reason to depart from their finding that the applicant knew or ought to have known about the first article around the time of its publication, since it was established that he had been interviewed shortly before the publication of that article, and especially since he himself admitted to "having heard rumours" about it (see paragraphs 13, 14 and 25 above). In such circumstances, the Court considers that, given the relevant domestic law, it must have been clear to the applicant that the remedy which he chose to use did not have any reasonable prospects of success (see, *mutatis mutandis*, *Czarnowski v. Poland*, no. 28586/03, § 20, 20 January 2009).

50. At the same time, the Court notes that another civil-law remedy was available to the applicant: a claim for damages in respect of damage caused by the disclosure of private information without his consent, irrespective of whether that information was erroneous or not (see paragraphs 33-35 above). That remedy did not include a mandatory requirement to ask for a retraction, nor any other mandatory out-of-court settlement procedure, and its success did not depend on the truthfulness of the published information, but on the private nature of that information. The Court also notes that, at the time when the applicant instituted civil proceedings, domestic case-law already existed where courts had assessed the balance between the right to private life and freedom of expression in particular cases, and had awarded damages where breaches of privacy could not be justified by a legitimate public interest (see paragraphs 28 and 35 above). However, the applicant did not submit such a claim to the domestic courts, and he has not advanced

any reasons as to why he might have been unable to do so, or why that remedy would not have been effective in his case (see, *mutatis mutandis*, *Rothe v. Austria*, no. 6490/07, § 78, 4 December 2012, and *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 67, 16 July 2013).

51. In such circumstances, the Court concludes that the applicant has failed to exhaust effective domestic remedies. This complaint must therefore be declared inadmissible in line with Article 35 §§ 1 and 4 of the Convention.

B. The applicant's complaint under Article 6 § 1 of the Convention

52. The applicant further complained that the courts in the criminal proceedings had refused to examine the witnesses he had requested. He relied, in substance, on Article 6 § 1 of the Convention, the relevant parts of which read:

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

53. The Government did not contest that Article 6 § 1, in its civil limb, was applicable to the criminal proceedings instituted by the applicant. However, they underlined that the Convention did not require the attendance and examination of every witness requested by an applicant, as long as proceedings as a whole were fair. The Government submitted that two levels of domestic courts had provided sufficient reasons as to why the witnesses requested by the applicant could not have contributed to the main questions of the case, and that therefore calling them would have unnecessarily protracted the proceedings. Accordingly, the Government asked the Court to declare this complaint inadmissible as manifestly ill-founded, in line with Article 35 §§ 3 (a) and 4 of the Convention.

54. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court, and that the admissibility of evidence or the way it should be assessed are primarily matters for regulation by national law and the national courts (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Kashlev v. Estonia*, no. 22574/08, § 40, 26 April 2016). It further reiterates that Article 6 § 1 does not explicitly guarantee the right to have witnesses called in civil proceedings (see *Gillissen v. the Netherlands*, no. 39966/09, § 50, 15 March 2016, and the cases cited therein). However, proceedings in their entirety, including the way in which evidence is permitted, must be "fair" within the meaning of Article 6 § 1. Accordingly, where courts refuse applications to have witnesses called they must give sufficient reasons, and a refusal must not amount to a disproportionate restriction of a litigant's ability to present arguments in support of his or her case (see *Wierzbicki v. Poland*, no. 24541/94, § 39,

18 June 2002, and *Ivan Stoyanov Vasilev v. Bulgaria*, no. 7963/05, § 31, 4 June 2013).

55. Turning to the circumstances of the present case, the Court notes that the criminal proceedings instituted by the applicant sought to determine whether the two defendants had intentionally distributed erroneous information about him, and whether they had intended to humiliate him. The domestic courts held that the witnesses requested by the applicant would have testified about the emotional distress which he had suffered following the publications and about the circumstances of his mother's death, but that those testimonies would not have been relevant for the purposes of establishing the defendants' criminal intent (see paragraphs 18, 19 and 21 above). The Court considers that the domestic courts provided clear and sufficient reasons for refusing to hear the witnesses requested by the applicant, which do not appear arbitrary. Moreover, the Court finds that the criminal proceedings, taken as a whole, were fair within the meaning of Article 6 § 1 of the Convention.

56. This complaint must therefore be declared inadmissible as manifestly ill-founded, in line with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 October 2016.

Andrea Tamietti
Deputy Registrar

András Sajó
President