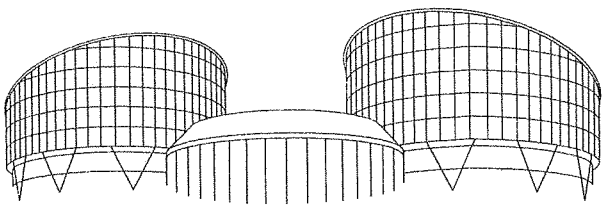

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27930/05
by LIETUVOS NACIONALINIS RADIJAS IR TELEVIZIJA and
TAPINAS IR PARTNERIAI
against Lithuania

The European Court of Human Rights (Second Section), sitting on 6 July 2010 as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 25 July 2005,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, *Lietuvos Nacionalinis Radijas ir Televizija* (the Lithuanian National Radio and Television Broadcasting Company; "the first applicant") and *Tapinas ir Partneriai* (a company of journalists; "the second applicant") are Lithuanian legal entities. They were represented

before the Court by Mr P. Docka, a lawyer practising in Vilnius. The Lithuanian Government were represented by their Agent, Ms Elvyra Baltutytė.

A. The circumstances of the case

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

On 9 June 2003 the first applicant placed on its Internet site notice of a forthcoming television ("TV") broadcast entitled "Money generation". This programme had been produced by the second applicant. The notice stated that the broadcast would reveal that "an influential official and a well-known person openly asks for a bribe in return for his help in settling the gambling organisers' problems. Who is he? The answer will be given on 10 June, Tuesday, 9 p.m. in the TV broadcast 'Money generation'".

Having read this announcement, S.J., a member of the State Gaming Control Commission, on 10 June 2003 wrote to the first applicant, asking that the broadcast be deferred until certain information had been thoroughly analysed. He stated that the programme would damage his honour and dignity because it was defamatory. Nevertheless, the first applicant went ahead with the following broadcast:

> A. Tapinas (the announcer and one of the journalists at the company *Tapinas ir Partneriai*): It's "Money generation" on the air. If you follow public life in Lithuania at least a little, you might already know what we are showing you today.
>
> *(Vignette of the broadcast "Money Generation" is being shown)*
>
> A. Tapinas (the announcer): (Announcement of the broadcast – views of a casino are being shown) A dazzling casino and thousands of naive people expecting to get rich in a moment. Big money, very big money – it lures.
>
> *(Recording taken by a secret camera is being shown)*
>
> Voice no 1: If you want... I don't like these things, you know...
>
> Voice no 2: I understand.
>
> Voice no. 1: ...I have been working for half a year so far and I ...
>
> Voice no. 2: I understand.
>
> Voice no. 1: I know how it's done.
>
> Voice no. 2: Ok. Everybody, we live, still it will be needed in the future. In case I legalise paths will still cross, and this is... Well... My situation in Klaipėda is normal, why, well, this...
>
> A. Tapinas (the announcer): (*Announcement of the broadcast is continued – views of a casino are being shown)* "An influential official and a well-known person openly asks for a bribe in return for his help in settling the gambling organisers' problems. However, he does not know that he is being filmed".
>
> *(Vignette of the broadcast "Money Generation" is being shown)*

A. Tapinas (the announcer): This will, however, be shown later in the broadcast. *(The recording is aborted)*

The programme included a report, which was filmed with a hidden camera, of a conversation between S.J. and a businessman, showing the surname of S.J. in subtitles.

After the transmission, the second applicant gave the video material to the Special Investigation Service (*Specialiųjų tyrimų tarnyba*), which is the responsible authority in the fight against corruption in Lithuania. Having analysed the submitted material the latter reported that the video included a conversation between S.J., who was a member of the Gaming Control Commission, and the director of a private company, about the gambling business. During that conversation, the businessman had asked S.J. for help several times, without specifying the nature of such help, or any remuneration for it. During the same conversation, S.J. commented on the methods by which the businessman pursued his business. He also commented on certain decisions and actions of the State authorities. The Special Investigation Service concluded that no objective and unquestionable data about any corruption-related criminal activity was disclosed by the video. Therefore, there was no factual basis on which to start a pre-trial investigation into S.J.'s activities.

The recording was also examined by the Chief Official Ethics Commission (*Vyriausioji tarnybinės etikos komisija*), which found that S.J. had not violated the applicable legislation. However, the Commission noted that, having unofficially consulted a person who was engaged in illegal gambling without informing the State Gaming Control Commission, S.J. had behaved improperly.

On 5 August 2003 S.J. asked the first applicant to correct the statement in a future broadcast and to compensate him for non-pecuniary damage, but the first applicant did not comply with this request.

On an unknown date S.J. suspended his duties and took unpaid leave. Subsequently, he brought a civil action for defamation before the Vilnius Regional Court against the first applicant. The second applicant joined the proceedings as a third party.

In its response to the lawsuit, the first applicant argued that the information, which according to S.J. was untrue, was made public for the first time on 9 June 2003 at 6.45 p.m. in another television channel's news broadcast. In addition, the information had previously been published by the daily newspapers *Lietuvos Rytas* and *Respublika*. The first applicant stated that the authors of the television programme were honest, and that their main concern had been to inform society about potentially illegal actions by a public figure. The information in its Internet announcement represented the journalist's opinion on the facts and a subjective evaluation of the events. The facts were ambiguous; therefore the first applicant had the right to interpret them. S.J. was a public figure; this allowed a critical opinion to

be expressed about him. Consequently S.J. should have been more tolerant when reacting to criticism.

On 7 May 2004 the Vilnius Regional Court ruled in favour of S.J. The court noted at the outset that the information which formed the basis of the lawsuit had been published by the aforementioned newspapers after the first applicant had already placed its announcement on the Internet. Moreover, the first applicant failed to submit a recording of the above-mentioned other television channel's news broadcast. Therefore, the Vilnius Regional Court found that the first applicant was precluded from relying on Article 55 § 1.3 of the Law on the Provision of Information to the Public (see Relevant domestic law part below).

Having considered the merits of the case, the Vilnius Regional Court noted that, pursuant to Article 2.24 § 1 of the Civil Code, the data which had been made public was to be presumed to be erroneous unless the publisher proved the opposite. Given that the first applicant had failed to prove that the broadcast statement was true, as well as the fact that, in its report, the Special Investigation Service had found no objective and unquestionable data to prove the suspected corruption, the Vilnius Regional Court concluded that the information it had in its possession did not substantiate the accusation of alleged bribery. Nonetheless, the court partly agreed with the first applicant, in so far as the broadcast concerned issues of general public interest involving the criticable activities of a public official. The court took note of the conclusion of the Chief Official Ethics Commission that S.J. had acted improperly and that his actions had damaged society's trust in the public service. Yet the court emphasised that disseminating untrue information about alleged bribery did not constitute justified criticism of S.J.'s activities.

The Vilnius Regional Court did not agree with the first applicant's argument that the announcement of the future broadcast, and the broadcast itself, expressed an opinion to which the criterion of truth did not apply. According to the national court, the main point, that the State official had met a representative of an illegal business, was clear. The official's behaviour was indeed unethical, but at no point during the conversation did S.J. ask for a bribe. Consequently, the first applicant could have interpreted the content of this meeting and the conversation negatively, but without any allegation of bribery. The court, whilst acknowledging that some of the applicants' statements expressed an opinion, nevertheless noted that the categorical interpretation of the main point as a clear request for a bribe amounted to new information which did not correspond to reality. According to the court, this publicly disseminated statement about a proposed bribe could only be understood by the public as an allegation that a crime had been committed by S.J.

The Vilnius Regional Court also took into account the fact that, after the announcement of the broadcast, S.J. had requested the first applicant not to

show the programme until the journalists' information had been scrutinised. Despite this request, the first applicant had gone ahead with the transmission. In the opinion of the court, the first applicant had not acted honestly, as it had not taken all reasonable measures to evaluate S.J.'s actions based on correct and verified information.

The Vilnius Regional Court found that, by making the statement that "an influential official and a well-known person openly asks for a bribe in return for his help in settling the gambling organisers' problems" both in the notice of the forthcoming "Money generation" broadcast and at the beginning of that broadcast, the first applicant had damaged S.J.'s reputation, and ordered it to correct that statement publicly. The court also ordered the first applicant to pay S.J. 1,000 Lithuanian litai (LTL) (approximately 290 euros (EUR)) in compensation for non-pecuniary damage and LTL 1,150 (approximately EUR 333) in litigation costs. The court rejected as unsubstantiated S.J.'s claim for pecuniary damage, which S.J. had allegedly sustained due to the need to take unpaid leave.

S.J. appealed, claiming that the award for non-pecuniary damage was too low. The second applicant appealed, claiming, *inter alia*, that the information contained in the broadcast was an opinion and not news and, therefore, the criterion of truth did not apply to it. Unlike the defence's response to the lawsuit, the second applicant no longer argued that the statement about S.J.'s corrupt behaviour had been made public by other mass media before the 'Money generation' programme was aired. Lastly, the second applicant maintained that the first-instance court had made too high an award for the litigation costs to be paid by the first applicant.

The first applicant did not appeal.

By a decision of 22 November 2004, the Court of Appeal dismissed the appeal of the second applicant, upheld the decision of the Vilnius Regional Court and, in addition, awarded S.J. LTL 4,091 (approximately EUR 1,185) in compensation for pecuniary damage to S.J.

On 17 February 2005 the first and second applicants lodged a joint appeal on points of law, relying on Article 2.24 (6) of the Civil Code and the Court's judgment in the case of *Oberschlick v. Austria (no. 1)* (23 May 1991, Series A no. 204) and arguing, *inter alia*, that they had acted honestly in the interests of society and that, in their broadcast, they had merely expressed their opinion about S.J., who was a public person and for that reason enjoyed less privacy. Again, the applicants no longer maintained that information about S.J.'s alleged corruption had been made public before the 'Money generation' broadcast.

By a ruling of 21 February 2005, the Supreme Court refused to examine the cassation appeal, on the ground that it did not meet the requirements of Articles 346 and 347 § 1 (3) of the Code of Civil Procedure.

The next day the applicants lodged a new joint cassation appeal. Again, they argued that they had acted in good faith and had been punished for

merely expressing opinions about a public figure. In support of their pleas, this time the applicants explicitly invoked Article 10 of the Convention.

On 25 February 2005 the Supreme Court, relying on Articles 346 and 347 § 1 (3) of the Code of Civil Procedure, refused to accept the cassation appeal, finding that the applicants had failed to demonstrate convincingly that the alleged breaches of procedural and substantive law had an essential significance for the uniform interpretation and application of the law and could have caused the adoption of an unlawful decision.

B. Relevant domestic law

Article 2.24 of the Civil Code regarding the protection of honour and dignity reads as follows:

> "1. A person shall have the right to demand the refutation, in judicial proceedings, of publicised data which abase his honour and dignity and which are erroneous, as well as the redress of pecuniary and non-pecuniary damage incurred by the public announcement of the said data. Data which has been made public shall be presumed to be erroneous unless the publisher proves the opposite to be true.
>
> 2. Where erroneous data have been publicised in the mass media (press, television, radio, etc.) the person about whom those data were published shall have the right to file a correction and demand that the media publish the said correction free of charge, or make it public in some other way...
>
> ...
>
> 4. Where the mass media refuse to publish the correction or to make it public in some other way ... the [aggrieved] person has the right to apply to a court in accordance with the procedure established in paragraph 1 of the given Article. The court shall establish the procedure and the terms of the refutation of the erroneous data which prejudiced that person's reputation.
>
> 5. The mass media which have publicised erroneous data prejudicing a person's reputation shall provide redress for any pecuniary and non-pecuniary damage incurred by that person only in cases when they knew, or should have known, that the data were erroneous, including those cases where the data were made public by their employees or ... anonymously, and the media refuse to name their source.
>
> ...
>
> 6. The person who publicly disseminates erroneous data shall be exempted from civil liability in cases when the publicised data relate to a public person and his State or public activities and the person who made them public can demonstrate that his actions were in good faith and intended to introduce the person and his activities to the public."

The relevant sections of the Law on the Provision of Information to the Public read as follows:

Article 45. Refutation of published information

"1. The producers and/or disseminators of public information must correct published, false information which prejudices the honour and dignity of a physical person or damages the legitimate interests of a legal person, in particular their reputation.

2. A request to correct information shall be submitted to the producer or disseminator of the publicised information in writing not later than two months after the publication ... The request shall specify the false information which requires correction, when and where it was published, and which statements ... are degrading to the honour and dignity of the person concerned ...

3. After receiving a reasoned request to correct published false information prejudicing the honour and dignity of a person, the producer or disseminator of that information must publish the correction free of charge and without comment, in an equivalent place, of an equivalent size and in the same form, in the nearest possible publication, television or radio broadcast, or in any other media where such information was published. A subsequent refutation shall not release the producer of that information from liability."

Article 55. Exemption from compensation for damage

"1. A producer of public information shall not be liable for the publication of false information if he indicates his source ... and that the information has been: ...

3) published previously in other mass media, if the information has not been corrected by the mass media in which it was published. "

The Code of Civil Procedure, as relevant in this case, provides:

Article 346. Grounds for reviewing in cassation a *res judicata* court decision or ruling

"1. Cassation is possible only if the grounds enumerated in this Article exist.

2. The grounds for reviewing a case in cassation are:

1) a violation of the rules of substantive or procedural law, such violation having an essential significance for the uniform interpretation and application of the law if this violation could have caused an unlawful ruling or decision to be adopted;

2) if in its decision or ruling which has been appealed against the court has deviated from the practice in the application and interpretation of the law, as formulated by the Supreme Court of Lithuania;

3) if the Supreme Court's practice in respect of the disputed issue is not uniform."

Article 347. The content of the cassation appeal

"1. The cassation appeal ... shall contain: ...

3. Extensive legal arguments, which confirm the existence of grounds of cassation, as enumerated in Article 346 of the Code ..."

Article 350 § 2 (3, 4) of the Code of Civil Procedure provides that the Supreme Court shall refuse to accept a cassation appeal if it does not meet the requirements of Articles 346 and 347 thereof. If the cassation appeal has

been rejected for the above reason, a party to the proceedings can rectify the shortcomings and submit a new cassation appeal (Article 350 § 5).

Article 225 of the Criminal Code, which creates criminal liability for bribery, stipulates that a civil servant who, in favour of others, directly or indirectly demanded or provoked the giving of a bribe for a specific legal act or omission, is to be punished by the deprivation of the right to hold a specific position or engage in certain activity, or by imprisonment of up to three years.

COMPLAINT

Relying on Article 10 of the Convention, the applicants complained that the national courts had violated their right to freely express their thoughts and opinions.

THE LAW

The applicants complained that the domestic courts infringed their right to freedom of expression enshrined in Article 10 of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ..."

A. The parties' submissions

1. The Government

The Government argued at the outset that the applicants had failed to exhaust domestic remedies. In particular, the first applicant had not appealed against the Vilnius Regional Court's decision of 7 May 2004. What is more, although both applicants submitted two joint cassation appeals, the Supreme Court refused to examine them.

Alternatively, whilst acknowledging that the decisions of the Lithuanian courts constituted an interference with the applicants' freedom of expression, the Government submitted that that interference had been justified under Article 10 § 2 of the Convention. It had its basis in

Article 2.24 of the Civil Code. Moreover, it served a legitimate aim, given that the domestic courts, whilst expressly acknowledging the applicants' right to impart information of public interest, also recognised the right of S.J. to have his honour and dignity protected. As a result, in their decisions the courts carefully balanced these conflicting interests. Moreover, in view of the journalists' serious accusations of bribery, which is a criminal offence under Lithuanian law, the interference with the applicants' right to freedom of expression was necessary. The Government noted that the domestic courts, the Special Investigation Service and the Chief Official Ethics Commission had found nothing to corroborate the allegation of S.J.'s culpability. Consequently, those courts were correct to conclude that, due to its gravity, the allegation was a factual statement and therefore susceptible to proof. Since the applicants failed to provide any such proof, the courts were entitled to order sanctions, which moreover were civil and not excessive, against the first applicant. Lastly, the Government noted that by refusing to verify the factual allegation, even though urged to do so by S.J., the journalists failed to act in good faith. From the foregoing, the Government concluded that the application should be dismissed as being manifestly ill-founded.

2. The applicants

As to the exhaustion of domestic remedies, the applicants submitted that their case was distinguishable from that of *Lenkauskienė v. Lithuania*, ((dec.) no. 6788/02, 20 May 2008), since both of them had submitted cassation appeals which raised many questions of law. For the applicants, the decisions of the Supreme Court to reject the cassation appeals were very formal and did not indicate any specific reasons for the refusal.

On the merits of their complaints, the applicants argued that the interference with their freedom of expression was in breach of Article 10 of the Convention because they, as the representatives of the media, acted in the interests of society, striving to provide television audiences with accurate and impartial information about a State official. The decisions of the Lithuanian courts amounted to censorship with the aim of prohibiting broadcasts criticising State officials. The courts did not make a distinction between opinion and news; the facts on which the journalists had relied, as well as their good faith, have not been contested.

The applicants also claimed that the national courts overlooked the fact that the limits of permissible criticism with regard to persons acting in the public domain are wider, as they inevitably lay themselves open to journalists' attention and criticism. In the applicants' view, they had been unjustifiably required to prove the truthfulness of mere opinions.

Lastly, the applicants argued that this interference with their freedom of thought and expression did not have any legitimate aim and was not necessary in a democratic society.

B. The Court's assessment

The Court notes the Government's argument that the first applicant, for reasons of its own, chose not to appeal against the Vilnius Regional Court's decision. However, the Court observes that the appeal was lodged by the second applicant. Arguing the breach of its right to freedom of expression in the appeal, the second applicant was defending not only its interests but also those of the first applicant. What is more, the appeal contained arguments which were purely for the benefit of the first applicant, given that the second applicant maintained that the first-instance court had improperly assessed the amount of the litigation costs to be paid by the first applicant. The Court also observes that the first and second applicants lodged two joint cassation appeals.

The Court notes that the Supreme Court refused to accept the applicants' joint cassation appeals for examination, reasoning that they contained no grounds for cassation. It is clear that it is solely for the Supreme Court to decide questions of domestic law, particularly whether the case was important for the uniform interpretation of Lithuanian law. What matters for the Court is whether in those cassation appeals the applicants, "at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law", raised the complaints which they subsequently made to the Strasbourg Court (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

Having examined the applicants' appeals on points of law, the Court observes, and the Government conceded, that the applicants explicitly relied on Article 2.24 (6) of the Civil Code, the relevant Lithuanian case-law, Article 10 of the Convention and the Court's *Oberschlick* judgment, arguing that they should be exempted from liability because they had acted in good faith and sought to disclose to society information, albeit critical, about a public figure. The applicants also contended that the language they had used in the broadcast merely expressed their opinion and was not a statement of fact. In the light of the above, the Court finds that freedom of expression was indeed at issue in the proceedings before the Supreme Court and that the legal arguments made by the applicants to that court included a complaint connected with Article 10 of the Convention (see, by converse implication, *Lenkauskienė*, mentioned above). It follows that the Government's objection of a failure to exhaust domestic remedies must be dismissed.

Turning to the merits of the applicants' complaint, the Court agrees with the evaluation by the national courts that there was an interference with the applicants' freedom of expression as guaranteed by the first paragraph of Article 10. The Court reiterates that an interference with Article 10 § 1 rights will infringe the Convention if it does not meet the requirements of paragraph 2 of that provision. It should therefore be determined whether it

was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 85, ECHR 2004-XI).

Regarding the question of lawfulness, the Court observes that the measures complained of were based on Article 2.24 of the Civil Code and Article 45 of the Law on the Provision of Information to the Public. It is therefore satisfied that they were "prescribed by law".

The Court notes that, in view of the serious accusation of bribery made by the applicants in the notice of the forthcoming "Money generation" broadcast and at the beginning of that programme, the interference pursued the legitimate aim of protecting "the reputation or rights of others", namely S.J.'s honour and good name. The question therefore remains whether the interference was "necessary in a democratic society."

The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (see *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30). The Contracting States have a certain margin of appreciation in assessing whether such a need exists. This margin of appreciation is not, however, unlimited, but goes hand in hand with European supervision by the Court (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III, and *Cumpănă and Mazăre*, cited above, § 88). Moreover, the Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire*, cited above, § 45).

The Court has also emphasised that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest (see, *mutatis mutandis*, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, and *Castells v. Spain*, 23 April 1992, § 43, Series A no. 236). In this context the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, *inter alia*, in the interests of "the protection of the reputation or rights of others", it is nevertheless incumbent on it to impart information on matters of public interest. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Although formulated primarily with regard to the print media, these principles doubtless also apply to the audiovisual media (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

The Court reiterates its previous case-law to the effect that, in defamation proceedings, the conduct of the applicant is significant. On this point, the Court takes into consideration whether the research undertaken before making the defamatory statements was adequate to substantiate the impugned allegations (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 37, Series A no. 313), whether the allegations were presented in a reasonably balanced manner and whether the person defamed had an opportunity to defend himself or herself (see Bergens Tidende *and Others v. Norway*, no. 26132/95, §§ 57-58, ECHR 2000-IV).

Applying the above principles to the present case, the Court recapitulates that, when balancing the conflicting interests of the applicants' right to freedom of expression on the one hand, and S.J.'s right to the protection of his honour on the other, the Lithuanian courts found in favour of S.J. In the domestic courts' view, by failing to take all reasonable measures to evaluate S.J.'s actions, and, quite the opposite, relying on incorrect or unverified information, the second applicant had not acted honestly. The national courts established that the impugned accusation of bribery by the second applicant, initially made known in the notice of the forthcoming "Money generation" broadcast, two days before the programme, and subsequently reiterated at the beginning of that broadcast, was not proved yet grave, and therefore could not be regarded as a mere inaccuracy or criticism of S.J.'s actions. Notwithstanding the recognised role of the second applicant as an anti-corruption watchdog, such a statement about a well-known public person exceeded the limits of freedom of expression and damaged S.J.'s professional reputation. Relying on the above conclusions, the Lithuanian courts considered that there were strong enough reasons to issue a sanction.

In order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and may infringe freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see, for example, *Lingens v. Austria*, cited above, § 46 and *Oberschlick*, cited above, § 63).

Having thoroughly examined the materials presented to it, the Court sees no reason to depart from the domestic courts' view that the applicants' statement ("an influential official and a well-known person openly asks for a bribe..."), which was the central point of the courts' analysis, was essentially factual. Such a statement was, for the Court, susceptible of proof, which the applicants did not offer the domestic courts.

Furthermore, the Court finds that the applicants' accusation about S.J. was serious. The Court shares the domestic courts' view that the applicants' statement was capable of undermining public confidence in the integrity of S.J., as a high-ranking public officer accused of corrupt behaviour.

In assessing the necessity of the interference, it is also important to examine the way in which the domestic authorities dealt with the case. The examination of the Lithuanian court decisions reveals that they recognised that the present case involved a conflict between the right to freedom of expression and the protection of the honour and reputation of others. Thus, the courts acknowledged that the broadcast addressed a matter of interest to society in being kept informed about the behaviour of a public person, a context in which the applicants' freedom of expression was subject to less restriction. However, the national courts noted the bad faith of the first applicant in not taking all reasonable measures to evaluate S.J.'s actions and relying on incorrect and unverified information. Having balanced the relevant considerations, the national courts found no basis for the applicants' serious allegations against S.J., given that the applicants could not provide any information to the domestic courts justifying such accusations.

Having had an opportunity to examine the materials submitted by the parties, the Court shares the Lithuanian courts' view that the applicants lacked a sufficient factual basis for the serious allegation that S.J. had sought a bribe, which is a criminal offence under the Lithuanian law. The domestic courts were thus entitled to consider that there was a "pressing social need" to take action against the broadcaster (see, *mutatis mutandis*, *Chauvy and Others v. France*, no. 64915/01, §§ 70, 76-77, ECHR 2004-VI).

Furthermore, the Court finds the present case distinguishable from other applications under Article 10 of the Convention, involving big awards for non-pecuniary damages (see, by comparison, *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 96-97, ECHR 2005-II) or criminal sanctions against the journalists (see *Cumpănă and Mazăre*, cited above, §§ 111-117). Again, the Court places emphasis on the fact that, in the present case, the first applicant was sued before the civil courts and was ordered to correct the prejudicial statements publicly and to pay LTL 1,000 (approximately EUR 290) in compensation for non-pecuniary damage, as well as LTL 4,091 (approximately EUR 1,185) in compensation for pecuniary damage, plus litigation costs. In the circumstances of the case, the Court does not find these sanctions excessive.

Having regard to the above, the Court concludes that the domestic courts' finding against the applicants and the sanctions imposed were not disproportionate to the legitimate aim pursued, and that the reasons they gave to justify those measures were relevant and sufficient. The interference with the applicants' exercise of their right to freedom of expression can therefore reasonably be regarded as having been necessary in a democratic society for the protection of the interests of the honour and reputation of S.J.

In these circumstances, the Court concludes that the present case does not disclose any appearance of a violation of Article 10 of the Convention, and that it should be rejected, therefore, as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

S. Naismith

Stanley Naismith
Registrar

Françoise Tulkens
President