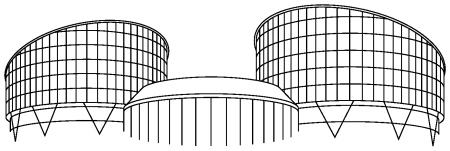

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PAULIKAS v. LITHUANIA

(Application no. 57435/09)

JUDGMENT

STRASBOURG

24 January 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Paulikas v. Lithuania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 January 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 57435/09) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Saulius Paulikas ("the applicant"), on 19 October 2009.

2. The applicant was represented by Mr M. Kepenis, a lawyer practising in Klaipėda. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that he had not received a fair trial because of media publications and comments by State officials concerning the criminal case against him, contrary to Article 6 §§ 1 and 2 of the Convention.

4. On 24 February 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Skuodas. He worked as a traffic police officer in the Skuodas Region.

A. The accident of 7 November 2007

6. On 7 November 2007, at around 2 p.m., three ten-year-old children were hit by a car in the village of Aleksandrija in the Skuodas Region. Two of the children died at the scene and the third died later that day in hospital. The car left the scene of the crash immediately. A criminal investigation was opened the same day.

7. The following morning, at around 7 a.m., the applicant turned himself in to the police and confessed that he had been driving the car. The applicant submitted that he had not drunk any alcohol before the accident and that he was unable to give the exact speed he had been going. He stated that he had seen a group of children walking in front of him and "had briefly lost control of the car", the car had gone off the road and "hit something". The applicant submitted that he did not remember hitting the children "because everything had happened very fast". Nor did he remember anything that had happened after the accident because he "had been in shock". He stated that the only thing he remembered was waking up in a summer house the morning after the accident, after which he had gone to the police to confess.

8. On the same day the applicant was served with an official notice that he was suspected of a breach of road traffic safety regulations which had resulted in the death of other persons (Article 281 § 5 of the Criminal Code) and of a failure to provide assistance to persons in a life-threatening situation (Article 144 of the Criminal Code). He was detained on remand and suspended from his post as a police officer.

B. Press articles and public statements following the accident

9. The accident attracted considerable media attention. On 8 November 2007 one of the biggest national newspapers, *Lietuvos rytas*, published an article entitled "A police officer's BMW crushed fourth-graders" (*Policijos patrulio BMW traiškė ketvirtokus*). The article stated that it was "suspected that the car was being driven by the police officer S. Paulikas" because the car belonged to his mother. It published interviews with several of the village's residents, who described the details of the accident and alleged that the applicant may have been drunk. The article also mentioned that two years previously another police officer had caused a traffic accident in the Skuodas Region in which two children had received fatal injuries, but that the criminal proceedings against the officer had been discontinued.

10. On the same day the website of *Lietuvos rytas* carried an article headlined "After horrific accident in Skuodas Region [the Minister of the Interior] suggests [the Police Commissioner General] should resign". It quoted a statement made by the Minister:

> "Apologies will not suffice. The chief of the police must assume personal responsibility for this terrible incident. Especially as this was not the first time that police officers, who are supposed to stop traffic violations, have themselves caused terrible accidents. If I do not receive any reaction from the police chief, I believe that further efforts to improve the work of the police will be impossible and I will be ready to step down myself."

The Police Commissioner General told journalists that he "accepted responsibility" because "the chief is responsible for what happens in the police organisation". However, he expressed doubts whether "every such incident" should lead to the resignation of senior police officers.

The article also quoted the President's spokesperson as questioning "how many more victims of the war on the roads will it take for politicians and State officials to finally notice and start solving the problems on the roads". The article stated that the President was awaiting a response from the Ministry of the Interior and from the police on whether they had been making sufficient efforts to create "an atmosphere of absolute intolerance" for officers and public officials who abused intoxicating substances.

11. On 9 November 2007 *Lietuvos rytas* published a photograph of the applicant on its front page, with a caption reading "the man who caused the horrific accident (*kraupios avarijos kaltininkas*), S. Paulikas, turned himself in only after it was no longer possible to detect if he had been driving while drunk". It also published an article entitled "Both [the Police Commissioner General] and [the Minister of the Interior] must resign", providing comments from the leaders of the main political parties about who should take political responsibility for the accident and for the "ineffective road traffic safety policy". That day and the day after *Lietuvos rytas* published details of over a dozen traffic accidents which had been caused by police officers since 2000, where it had been suspected that the officers had driven while being drunk and where people had been killed or seriously injured but the officers had received mild sentences or had escaped criminal liability altogether.

12. On 12 November 2007 the Police Commissioner General and the Minister of the Interior resigned. In an official statement issued on the same day, the President of Lithuania stated:

> "Over the past few days the whole of Lithuania has shared the pain of [the three families] who lost their children in an accident caused by a police officer. The seventh of November was not only the day of their tragedy but also reflected a serious crisis within the police force. The tragedy in the Skuodas Region emphasised the problems ingrained in the system of interior affairs and further diminished public trust in the police. The loss of children's lives, the crime committed by an officer and its circumstances require clear answers why that happened, and determined solutions. It is intolerable that crimes committed by officers are justified or punished by relatively mild sentences.
>
> A police officer must feel a higher degree of responsibility than an ordinary citizen and he must by his actions set an example to society because he has been obliged by the State to protect public order and thus ensure the safety of society. A crime

committed by an officer cannot be a simple statistical fact. It must be thoroughly examined and especially strictly evaluated (*kruopščiai ištirtas ir itin griežtai įvertintas*).

..."

The rest of the statement discussed problems within the police force, such as a lack of qualified personnel, inadequate training and low pay. It also urged all police officers to act in accordance with their mandate and asked the general public not to judge all officers on the basis of offences committed by a few.

13. Many more articles in the press reported on the accident, the suspicion that the applicant had driven while being drunk, the funerals of the three children, reactions within the village, public protests in front of Skuodas police station, previous traffic accidents caused by police officers, and the resignations of the Minister of the Interior and the Police Commissioner General.

C. Criminal proceedings against the applicant

14. On 29 December 2007 the applicant was charged with a breach of road traffic safety regulations while being under the influence of alcohol which resulted in the death of other persons (Article 281 § 6 of the Criminal Code) and with a failure to provide assistance to persons in a life-threatening situation (Article 144 of the Criminal Code).

15. According to the rules of territorial jurisdiction, the case against the applicant should have been examined by the Skuodas District Court. However, it was transferred to the Klaipėda District Court because two of the Skuodas District Court judges had participated in the pre-trial investigation and the chairperson of the court had previously worked with the applicant's father.

16. On 31 January 2008 the Klaipėda District Court began its examination of the applicant's case. The court heard testimony from the applicant, his colleague M.K., who had been in the car with the applicant at the time of the accident, and another colleague V.J., who had been driving in a different car and had helped the applicant to leave the scene of the accident. It also heard other workmates who had seen the applicant before or soon after the accident, as well as the waitress from the restaurant where the applicant and M.K. had had lunch before the accident, the parents of the three children who had died, residents of the village who had witnessed the accident, and several court-appointed experts.

The applicant admitted that he had been driving the car and that the three children had died as a result of the accident. However, he stated that he had not been drunk and had not exceeded the speed limit. He also argued that the accident had been caused by the weather and the reckless actions of some of the children.

17. All the hearings were held in public as none of the parties had asked for them to be closed, and several newspapers reported on the witness evidence. In a number of publications the applicant was called "a killer of children" (*vaikų žudikas*) and mocked for "suddenly losing his memory" (*staiga sutriko atmintis*) when testifying in court. The colleagues who testified in favour of the applicant were collectively called "defenders of the killer of children" (*vaikų žudiko užtarėjai*) who were "trying to get him off" (*bando išsukti*). The newspapers also expressed sympathy to the children's families for having to "relive those cruel events". Excerpts of the testimony of many of the witnesses, both in favour of and against the applicant, as well as the applicant's final statement, were reprinted word-for-word.

18. On 17 March 2008 the Klaipėda District Court found the applicant guilty of both charges. The court established that the accident had occurred when the applicant had been under the influence of alcohol. It examined a video-recording from the restaurant where the applicant and M.K. had had lunch before the accident, showing that the two men had each drunk half a bottle of vodka. Another video-recording from the petrol station in which the applicant and M.K. had stopped after lunch showed the applicant buying two more bottles of vodka. Several witnesses – the waitress from the restaurant, some of the applicant's colleagues, and people who had been present when the accident had happened – stated that the applicant had looked and sounded drunk. On the basis of that evidence, the court found that before the accident the applicant had consumed between 200 and 250 grams of alcohol. A court-appointed expert stated that after consuming so much alcohol the alcohol level in the applicant's blood must definitely have been above the legally permitted threshold of 0.4 per mille (see paragraph 29 below). The court also noted that even though tests of the applicant's blood and urine had not detected any traces of alcohol, they had not been reliable because they had been taken more than seventeen hours after the accident. The court held that since the applicant had deliberately hidden from the authorities during that period and had only given himself up the morning after the accident (see paragraph 7 above), he could not use the negative blood and urine tests to his advantage.

19. The Klaipėda District Court also established that at the time of the accident the applicant's car must have been going at a speed of at least 105 km/h. A court-appointed expert examined the tyre marks at the scene of the accident, the damage done to nearby objects and the positions in which the three children had been found, and reconstructed the course of events of the accident. The applicant's colleague V.J., who had been driving in the car behind the applicant, testified that he himself had been going at around 100 km/h but had been unable to keep up with the applicant. Several people who had been present at the accident also stated that the noise made by the applicant's car had indicated a very high speed. The court noted that the speed limit in the village was 50 km/h and that this must have been known

to the applicant, who had worked as a police officer in the area. The court concluded that the accident had been caused by the excessive speed of the applicant's car and not by the weather or the actions of the children.

20. The Klaipėda District Court also found the applicant guilty of failing to provide assistance to persons in a life-threatening situation. The court noted that the applicant had not shown any interest in the condition of the three children or called an ambulance but had immediately fled the scene of the accident. The court observed that the obligation to help people in life-threatening situations was enshrined in the Law on Police Activity, with which the applicant had had to comply. By failing to do so, he had breached Article 144 of the Criminal Code (see paragraphs 29-30 below).

21. The court found no mitigating circumstances in the applicant's favour. However, the fact that the victims had been minors was considered as an aggravating circumstance. The court also took the applicant's character and his behaviour during and after the accident into account: he had been under the influence of alcohol, three people had died as a result of his actions, he had fled from the scene of the accident, had not expressed any remorse, had attempted to mislead the court by providing contradictory testimony, and his actions had discredited the authority of the police. As a result, the Klaipėda District Court held that the applicant's punishment should be close to the maximum provided by law (see paragraph 29 below). He was given a consolidated sentence of ten years' imprisonment, prohibited from driving a vehicle for three years, and ordered to pay a total of 3,000,000 Lithuanian litai (LTL, approximately 870,000 euros (EUR)) in non-pecuniary damages to the families of the three children.

22. Reporting on the sentence, *Lietuvos rytas* quoted excerpts from the judgment and published a brief statement by the mother of one of the children, who expressed her overall satisfaction with the judgment but stated that criminal laws should be changed to provide for stricter punishments.

23. The applicant appealed against the judgment. Among other things, he argued that he had not received a fair trial because of a media campaign against him. He argued that the media had ridiculed and discouraged the witnesses who had testified in his favour and that journalists and high-level State officials had urged the court to order the strictest sentence possible. The applicant stated that this had prevented the first-instance court from examining his case objectively. The applicant also argued that he had been given a stricter punishment because he was a police officer, which had constituted discrimination on the grounds of social status.

24. On 5 December 2008 the Klaipėda Regional Court partly amended the first-instance judgment. It upheld the lower court's findings concerning the applicant's drunkenness and the speed of his car, and dismissed the applicant's complaint concerning discrimination. However, the Klaipėda Regional Court accepted the applicant's argument that the age of the victims

should not have been considered as an aggravating circumstance because the criminal offence had not been premeditated. Accordingly, the court reduced the consolidated sentence to nine years' imprisonment. It also considered that the amount of non-pecuniary damages awarded by the first-instance court had been excessive and not reasonably related to the applicant's means. Instead, the court awarded a total of LTL 900,000 (approximately EUR 261,000) to the three families. The prohibition on driving a vehicle for three years was upheld.

25. In response to the applicant's complaints concerning the lack of a fair trial, the Klaipėda Regional Court stated that the media interest in the case had been understandable owing to its sensitive nature and that the media could not be prevented from reporting on public hearings. However, the court held that the first-instance judgment had been well-reasoned and based on reliable evidence, so there were no grounds to find that the judges had been influenced by the media or the statements of any of the officials.

26. On 8 May 2009 the Supreme Court dismissed a cassation appeal by the applicant and upheld the judgment of the Klaipėda Regional Court. It stated that the appellate court had provided an adequate examination of the applicant's complaints concerning the fairness of his trial and that there was no need to re-examine them.

27. In January 2015 the applicant was released on probation. According to the Government's observations submitted to the Court on 21 June 2016, the applicant had up to that date paid a total of LTL 2,268 (approximately EUR 657) in non-pecuniary damages to the victims' families.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

28. The relevant provisions of the Constitution of the Republic of Lithuania read:

Article 31

"A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment.

A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.

...

Punishment may be imposed or applied only on the grounds established by law.

..."

Article 109

"In the Republic of Lithuania, justice shall be administered only by courts.

When administering justice, judges and courts shall be independent.

When considering cases, judges shall obey only the law.

...”

Article 114

“Interference with the activities of a judge or court by any institutions of state power and governance, Members of the Seimas or other officials, political parties, political or public organisations or by citizens shall be prohibited and shall lead to liability provided for by law.

...”

29. At the material time, the relevant provisions of the Criminal Code read:

Article 54. General principles of determining punishments

“...

2. When determining a punishment, a court shall take into consideration:

1) the dangerousness of the criminal act;

2) the form and type of guilt;

3) the motives and objectives of the criminal act;

4) the stage the criminal act was at;

5) the character of the offender;

6) the form and type of participation of the person as an accomplice in the commission of the criminal act;

7) mitigating and aggravating circumstances.

...”

Article 144. Leaving a person in a life-threatening situation without providing assistance

“A person who, having caused a threat or having an obligation to take care of the victim, fails to provide such assistance in a situation threatening the latter’s life, despite being able to provide the assistance, shall be punished by deprivation of the right to be employed in a certain position or to engage in a certain type of activities, or a fine, or restriction of liberty, or detention, or imprisonment for a term of up to two years.”

Article 281. Violation of regulations governing road traffic safety or the operation of vehicles

...

5. A person who, while driving a vehicle, violates the regulations governing road traffic safety or the operation of vehicles, where this results in an accident causing another person’s death, shall be punished by imprisonment for a term of up to eight years.

6. A person who commits the act indicated in paragraph 5 of this Article under the influence of alcohol, narcotic, psychotropic or other psychoactive substances, shall be punished by imprisonment for a term of between three and ten years.

...

8. A person shall be considered to be under the influence of alcohol if 0.4 per mille or more alcohol is found in his or her blood.

..."

30. At the material time, Article 21 § 1 (3) of the Law on Police Activity provided that a police officer had an obligation, *inter alia*, to immediately provide assistance to a person who had been a victim of a criminal offence or who was in a state of helplessness.

31. At the material time, Article 12 §§ 4 and 6 of the Law on Police Activity provided:

"4. The Police Commissioner General is appointed by the President, at the proposal of the Minister of the Interior and the referral of the Government. The Police Commissioner General is directly subordinate to the Minister of the Interior and reports to the President.

...

6. The Police Commissioner General shall be removed from office:

1) at his or her request;

2) for health reasons, when an expert medical body has adopted a conclusion as to his or her inability to continue in service;

3) for discrediting the title of State officer, when the Chief Official Ethics Commission has adopted a conclusion to that effect;

4) if he or she is convicted of a criminal offence by a final court judgment;

5) if his or her performance is assessed as unsatisfactory in line with the procedure provided by law;

6) if he or she is transferred or elected to a different office;

7) if he or she loses citizenship of the Republic of Lithuania;

8) at the end of his or her term, if the term is not renewed."

32. At the material time, Article 10 §§ 1-3 of the Law on the Government of the Republic of Lithuania provided:

"1. Ministers are appointed and removed by the President, at the referral of the Prime Minister. ...

2. A minister has the right to resign. The minister shall inform the Prime Minister about his resignation in writing. The Prime Minister shall refer the resignation to the President within five working days. Until the referral of the resignation to the President, the minister has the right, at the suggestion of the Prime Minister, to withdraw his or her resignation.

3. A minister must resign when more than half of the members of the Seimas express a lack of confidence in him or her by secret ballot. ..."

B. Courts' practice

33. In a ruling of 29 December 2004 the Constitutional Court held:

> "The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution is one of the most important guarantees of the implementation of justice in a democratic state. It is a fundamental principle of the implementation of justice in the process of criminal cases, an important guarantee of human rights and freedoms. A person is considered as having not committed a crime until his or her guilt has been proven in accordance with a procedure established by law and he or she has been found guilty by a court judgment that has come into effect. The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights. It is especially important that State institutions and officials respect the presumption of innocence. It should be noted that public persons should in general restrain from referring to a person as a criminal until the guilt of that person in committing the crime has been proven in accordance with the procedure established by law and he or she has found guilty by a court judgment that has come into effect. Otherwise, human honour and dignity may be violated and human rights and freedoms may be undermined."

34. In a ruling of 18 September 2003 in criminal case no. 2A-2/2003 the Supreme Court held:

> "The principle of the independence of judges and the courts not only prohibits any interference with the activities of the latter but also obliges judges who examine cases not to yield to the influence of State institutions, officials, the media, society or individuals. Thus, even when there has been an attempt to influence a judge with the aim of preventing a fair examination of a case, such an attempt in and of itself does not mean that a court's subsequent judgment will always be unfair and unjust. In such cases courts at a higher level of jurisdiction must assess the lawfulness and reasonableness of the procedural measures and decisions taken, and only if those are found to be unlawful or unfounded shall they be annulled or changed."

35. In a ruling of 20 January 2011 in criminal case no. 2K-83/2011 the Supreme Court held:

> "[The appellants] based their complaint of a violation of the principle of the presumption of innocence on the fact that events related to the case had been widely publicised in the media before the handing down of the final judgment, thereby forming an opinion among the public that they were guilty.
>
> The Chamber notes that there is no information in the case that State officials made any statements in the press about the appellants' guilt; nor were any public statements made to that effect by the judges examining the case (see *Butkevičius v. Lithuania*, no. 48297/99, ECHR 2002-II (extracts)).
>
> The appellate court, examining analogous complaints by the appellants, made a well-founded conclusion that there was nothing in the case to indicate that the judges of the first-instance court had in any way been influenced by such publications. There is no indication that either the judges of the first-instance court or the judges of the appellate court had a pre-conceived opinion about the guilt of the accused, or that other participants in the proceedings may have formed such an opinion because of the judges' behaviour during the proceedings. There is no information in the case about the content of any publications or TV broadcasts, their connection to the courts' judgments or the individual judges examining the case. ... In its admissibility decision

in the case of *Daktaras v. Lithuania* (no. 42095/98, 11 January 2000) the ECtHR noted that press coverage of current events is an exercise of the freedom of expression guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding a trial, what is decisive is not the subjective apprehensions of the suspect concerning the absence of prejudice required of trial courts, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified. [The appellants] in their complaints did not indicate any objective circumstances to show how the judges at either level of jurisdiction may have been influenced. Therefore, the media campaign did not affect the fairness of the courts or the proceedings as a whole."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

36. The applicant complained that he had not received a fair trial because of media reports and comments by State officials concerning the criminal case against him, in particular because those reports and comments had breached the right to the presumption of innocence. He relied on Article 6 §§ 1 and 2 of the Convention, which read:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

1. The parties' submissions

37. The Government submitted that the applicant had failed to exhaust domestic remedies. They argued that the applicant had not properly raised his complaints concerning the fairness of the trial and the presumption of innocence before the domestic courts in criminal proceedings because he had not indicated any specific publications or statements. They also argued that the applicant should have lodged a separate claim for damages against the media outlets and State officials whom he considered responsible for making defamatory statements about him.

38. The applicant contested that argument.

2. The Court's assessment

39. The Court reiterates that the rule concerning the exhaustion of domestic remedies set forth in Article 35 § 1 of the Convention is based on the assumption that there is an effective domestic remedy available in

respect of the alleged violation. The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. 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 *Konstas v. Greece*, no. 53466/07, § 28, 24 May 2011, and the cases cited therein).

40. As to the Government's submission that the applicant did not properly raise his complaints before the domestic courts in criminal proceedings, the Court observes that in his appeal against the judgment of the first-instance court the applicant complained that he had not received a fair trial because of the media campaign against him (see paragraph 23 above). The Klaipėda Regional Court and the Supreme Court did not find that that complaint had not been submitted "properly" – to the contrary, the courts examined its merits and dismissed it as unfounded (see paragraphs 25-26 above). In those circumstances, the Court is of the view that the applicant exhausted the domestic remedies available to him in the context of criminal proceedings (see also *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000).

41. As to the Government's submission that the applicant should have instituted separate civil proceedings, the Court has previously held that an award of damages cannot fully remedy an infringement of the right to the presumption of innocence and thus cannot constitute an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Daktaras*, and *Konstas*, § 29, both cited above). Furthermore, and even assuming that the civil remedy suggested by the Government was capable of providing adequate redress, the Court considers that, having raised the issue of a fair trial in the context of the criminal proceedings in question, the applicant should not be required to embark on another attempt to obtain redress by bringing a civil action for damages (see *Fatullayev v. Azerbaijan*, no. 40984/07, § 153, 22 April 2010, and the cases cited therein).

42. In the light of the above, the Court dismisses the Government's preliminary objection as to the exhaustion of domestic remedies.

43. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant submitted that the court judgments against him and the sentence that had been imposed on him had been influenced by the virulent media campaign and statements by high-level State politicians against him. He submitted that the media had branded him as "a killer of children" before he had been officially found guilty, that newspapers had expressed solidarity with the families of the three children, that witness testimony had been made public in the media and that the witnesses who had testified in his favour had been publicly ridiculed. He further submitted that the courts had been pressured by high-level State officials to impose the strictest possible punishment, with such pressure coming from the President's public statement and the resignation of the Minister of the Interior and the Police Commissioner General (see paragraph 12 above). As a result, the applicant argued that his right to be presumed innocent had been breached and that his trial and sentence had been unfair.

(b) The Government

45. Firstly, the Government submitted that the attention of the media and State officials to the case had been justified by the serious consequences of the accident and by the fact that it had been caused by a police officer. They submitted that the media coverage had contributed to the public debate concerning structural problems within the police and had therefore corresponded to a legitimate public interest. The Government also contended that the articles in the media and the statements by officials had not been "a targeted campaign against the applicant" because they had presented the accident in the broader context of the organisation of the police system and problems related to the behaviour and criminal liability of police officers.

46. The Government further submitted that the language used in the media articles and statements by officials had not contained declarations about the applicant's guilt. The Government argued that the statements by the President, the Minister of the Interior and other officials had to be seen in a political context, and that they had discussed political liability for the shortcomings within the police system, not the applicant's criminal liability for the accident. As for the President's statement (see paragraph 12 above), the Government submitted that it had aimed to demonstrate his determination to demand a responsible attitude from leading police officers and the executive in response to the problems within the police system, and that it had highlighted the need to investigate offences committed by police officers with due diligence and to ensure effective deterrence. Invoking the

Court's judgment in *G.C.P. v. Romania* (no. 20899/03, 20 December 2011), the Government argued that statements by politicians made in a political context should be allowed "a certain degree of exaggeration and liberal use of value judgments". The Government also argued that the words used by State officials in respect to the applicant's case could not be compared to those which the Court had considered as contrary to the presumption of innocence in the cases of *Lavents v. Latvia* (no. 58442/00, 28 November 2002) or *Butkevičius v. Lithuania* (no. 48297/99, ECHR 2002-II (extracts)).

47. Lastly, the Government submitted that the applicant's case had been decided by professional judges who were capable of rejecting any external influence. The Government contended that the courts had based their decisions on the testimony of several witnesses, expert opinions, video-recordings and other evidence, so that the burden had at no point been shifted onto the applicant to prove his innocence, and there had been no preconceived idea that he was guilty. The Government noted that the applicant had not asked the domestic courts to hold hearings behind closed doors or to prevent journalists from attending them, and that none of the witnesses had changed their testimony to the applicant's detriment. The Government also drew attention to the fact that the Klaipėda Regional Court, after examining the case on appeal, had remedied a legal error committed by the first-instance court and had reduced the applicant's sentence (see paragraph 24 above). Accordingly, they argued that all the court judgments in the case against the applicant had been based on evidence and thoroughly reasoned and that his trial had been fair.

2. The Court's assessment

(a) As to public statements by State officials

(i) General principles

48. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see, among many other authorities, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 103, ECHR 2014 (extracts)). Article 6 § 2 prohibits the premature expression by the tribunal of the opinion that the person "charged with a criminal offence" is guilty before he or she has been so proved according to law (see, among many other authorities, *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62, and *Peša v. Croatia*, no. 40523/08, § 138, 8 April 2010). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and

prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius*, cited above, § 49).

49. The Court also reiterates that the freedom of expression guaranteed by Article 10 of the Convention includes the freedom to receive and impart information, including, to a certain extent, the right to seek and access information (see *Maygar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 155-156, 8 November 2016). Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38, and *Karakaş and Yeşilırmak v. Turkey*, no. 43925/98, § 50, 28 June 2005). The Court has previously considered that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought or where an applicant was an important political figure at the time of the alleged offence. However, this circumstance cannot justify every possible choice of words by officials in interviews with the press (see *Butkevičius*, cited above, § 50; *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005; and *Fatullayev*, cited above, § 161). Nevertheless, judging whether a statement by a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43; *Böhmer v. Germany*, no. 37568/97, § 60, 3 October 2002; and *Peša*, cited above, § 141).

(ii) Application of the above principles in the present case

50. At the outset the Court notes that in the present case the impugned statements were made by the President, the Minister of the Interior, several other politicians and the Police Commissioner General in a context that was independent of the criminal proceedings themselves, that is by way of public statements or interviews in the national press (see paragraphs 10-12 above). The Court acknowledges that the circumstances of the accident of 7 November 2007 – the deaths of three children and the involvement of a police officer, which followed the pattern of several similar accidents caused by officers – created a legitimate public interest to be informed about the alleged offence and the ensuing criminal proceedings (see paragraph 45 above). The Court is also of the view that those same circumstances justified the wish of high-level State officials to express their reaction to the accident, particularly as seen in its broader context of several other similar accidents, as well as to keep the public informed about the institutional reforms carried out in its aftermath. However, the Court reiterates that those circumstances in and of themselves could not justify any and every use of

words by the officials in their statements to the press (see, *mutatis mutandis*, *Butkevičius*, cited above, § 50).

51. The Court observes that the public statement issued by the Minister of the Interior on 8 November 2007 did not specifically discuss the applicant's case but stated that "this was not the first time police officers, who are supposed to stop traffic violations, have caused terrible accidents" (see paragraph 10 above). While that statement implied that the applicant had "caused" the accident of 7 November 2007, the Court notes that by the time the statement was made the applicant had confessed to driving the car (see paragraph 7 above), so his involvement in the accident could not be disputed. Given the status of the Minister of the Interior, the Court is of the view that he should have exercised particular caution in his choice of words (see, *mutatis mutandis*, *Peša*, cited above, § 150). Nonetheless, the Court considers that the Minister's statement, seen in context, cannot be construed as a declaration of the applicant's guilt of the criminal offence he was suspected of, nor could it have influenced courts examining the case against the applicant.

52. The Police Commissioner General, in his interview to the press on 8 November 2007, the President's spokesperson, in her statement given that same day, and the politicians who provided comments to a newspaper on 9 November 2007, expressed their opinion as to who should take political responsibility for the accident and the overall situation concerning road traffic safety, but they did not specifically discuss the applicant's criminal liability (see paragraphs 10-11 above). The Court considers that the statements were of a general nature related to shortcomings within the police and problems concerning road traffic safety, and could not be seen as breaching the applicant's right to the presumption of innocence (see, *mutatis mutandis*, *Natsvlishvili and Togonidze*, § 104, and *Konstas*, § 41, both cited above).

53. The Court further observes that the resignation of the Minister of the Interior and the Police Commissioner General five days after the accident (see paragraph 12 above) cannot be seen as a declaration of the applicant's guilt. The Court notes that in line with domestic law the resignation of a minister or the Police Commissioner General is not necessarily related to criminal liability on the part of either those individuals themselves or of anyone else (see paragraphs 31-32 above), and the applicant did not argue that they expressed any views as to his guilt in their resignation statements. Accordingly, the Court is of the view that by resigning from their posts the Minister of the Interior and the Police Commissioner General took political responsibility for a series of events which had occurred within the police, and that their resignation could not have affected the applicant's right to the presumption of innocence.

54. As to the President's statement issued on 12 November 2007, the Court notes that it was not disputed by the parties that it directly related to

the criminal case in question: it mentioned the date and location of the accident and the names of the victims' families, thereby making it very easy to identify the applicant (see, *mutatis mutandis*, *Konstas*, cited above, §§ 39-40). At the same time, the Court observes that the President's statement did not discuss the applicant's case in isolation but placed it in the context of inappropriate behaviour by police officers and recurring problems within the police, stressing the need to ensure an adequate level of criminal liability and political responsibility (see paragraph 12 above). The Court considers that the President's decision to make a public statement is understandable not only in the light of the public attention to such accidents but also in the aftermath of the resignation of the two highest-level State officials responsible for the work of the police – the Police Commissioner General and the Minister of the Interior – who were appointed by and reported to the President (see paragraphs 31-32 above).

55. The Court also reiterates that although the President's statement implied that the applicant had "caused" the accident of 7 November 2007, the applicant had by that time already confessed to driving the car (see paragraph 7 above), so his involvement in the accident could not be disputed. The Court emphasises that the President did not make any specific statements about the factual or legal aspects of the criminal case against the applicant, for example, that he had driven while being drunk or that he had exceeded the speed limit, which were the key circumstances in determining his guilt (see paragraphs 18-19 above), or that he had been guilty of any particular criminal offence (compare and contrast *Allenet de Ribemont*, § 41; *Lavents*, §§ 119 and 127; *Butkevičius*, § 53; *Fatullayev*, § 162; and *G.C.P. v. Romania*, § 57, all cited above). The President's statement spoke of the need to "thoroughly examine" and "especially strictly evaluate" offences committed by police officers, criticising the past trend of "relatively mild punishments" (see paragraph 12 above). The Court has some concerns about the choice of wording, as the call to "strictly evaluate" offences caused by police officers and to avoid "mild punishments" could be regarded as expressing an opinion about the sentence to be handed down to the applicant and thus implying his guilt, and reiterates that the President should have exercised particular caution in his choice of words (see, *mutatis mutandis*, *Peša*, cited above, § 150). However, the Court reiterates that each statement must be seen in the context of the particular circumstances in which it was made (see, among other authorities, *Daktaras*, cited above, § 43). In the present case, regard being had to the history of traffic accidents caused by police officers who had then avoided criminal liability, as well as the ongoing discussion concerning the political responsibility of high-level officials for problems within the police, the Court is unable to conclude that the President's statement of 12 November 2007, taken as a whole, should be seen as prejudging the criminal proceedings against the applicant.

56. Accordingly, the Court considers that the public statements by State officials made in relation to the accident did not breach the applicant's right to fair trial and to the presumption of innocence under Article 6 §§ 1 and 2 of the Convention.

(b) As to the media publications

(i) General principles

57. The Court reiterates that, in certain situations, a virulent media campaign can adversely affect the fairness of a trial and involve the State's responsibility. This is so with regard to the impartiality of courts under Article 6 § 1, as well as with regard to the presumption of innocence embodied in Article 6 § 2 (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, ECHR 1999‑V; *Shuvalov v. Estonia*, no. 39820/08 and 14942/09, § 82, 29 May 2012; and *Natsvlishvili and Togonidze*, cited above, § 105). At the same time, the Court notes that press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding a trial, what is decisive is not the subjective apprehensions of the suspect concerning the absence of prejudice required of the trial courts, however understandable, but whether, in the particular circumstances of the case, his or her fears can be held to be objectively justified (see *Butkevičius v. Lithuania* (dec.), no. 48297/99, 28 November 2000, and *G.C.P. v. Romania*, cited above, § 46).

58. The Court also reiterates that a fair trial can still be held after intensive adverse publicity. In a democracy, high-profile criminal cases will inevitably attract comment by the media; however, that cannot mean that any media comment whatsoever will inevitably prejudice a defendant's right to a fair trial – otherwise the greater the notoriety of a crime, the less likely that its perpetrators will be tried and convicted. The Court's approach has been to examine whether there are sufficient safeguards to ensure that the proceedings as a whole are fair. It will require cogent evidence that concerns about the impartiality of judges are objectively justified before any breach of Article 6 § 1 can be found (see *Craxi v. Italy (no. 1)*, no. 34896/97, §§ 99 and 103, 5 December 2002, and *Mustafa (Abu Hamza) v. the United Kingdom* (dec.), no. 31411/07, § 39, 18 January 2011, and the cases cited therein).

59. The Court has previously identified some of the factors relevant to its assessment of the impact of a media campaign on the fairness of a trial. Such factors include the time which has elapsed between the press campaign and the commencement of the trial, and notably the determination of the trial court's composition; whether the impugned publications were attributable to, or informed by, the authorities; and whether the publications influenced the judges and thus prejudiced the outcome of the proceedings

(see *Sutyagin v. Russia* (dec.), no. 30024/02, 8 July 2008, and *Beggs v. the United Kingdom* (dec.), no. 15499/10, § 124, 16 October 2012).

(ii) Application of the above principles in the present case

60. Turning to the circumstances of the present case, the Court observes that there was extensive media coverage of the accident and the criminal proceedings against the applicant (see paragraphs 9-13, 17 and 22 above). Taking note of the Government's submission as to the existence of a legitimate public interest to be informed about the applicant's trial (see paragraph 45 above; see also, *mutatis mutandis*, *Ninn-Hansen*, *Daktaras* and *Craxi*, § 102, all cited above), the Court accepts that the media interest in the case was largely the result of the serious consequences of the accident, the fact that it had involved a police officer, and the fact that it had followed the pattern of several similar accidents. Therefore, although various State officials discussed the applicant's case in the media, it cannot be said that the coverage was prompted by the authorities (see *Butkevičius* and *Beggs*, § 127, both cited above); nor did the applicant allege otherwise (see, *mutatis mutandis*, *Craxi*, cited above, § 105).

61. The Court notes that the media coverage began immediately after the accident and coincided in time with the domestic court proceedings. It also observes that the language used in the publications was strong and unambiguous – the applicant was called "a killer of children" and "the man who caused the horrific accident" (see paragraphs 11 and 17 above) – so even though those same publications referred to him merely as a suspect in the case, such language could nonetheless have influenced the public's perception of the applicant's guilt.

62. However, the Court emphasises that the charges against the applicant were determined by professional judges who would have been less likely than a jury to be influenced by the press campaign against the applicant on account of their professional training and experience, which allows them to disregard improper external influence (see *Craxi*, § 104, and *G.C.P. v. Romania*, § 48, both cited above). Furthermore, domestic courts at three levels of jurisdiction issued well-reasoned judgments based on the testimony of several witnesses, expert opinions, and other evidence (see paragraphs 16, 18-21 and 24-26 above). The appellate court upheld some of the applicant's arguments and reduced his sentence (see paragraph 24 above; see, *mutatis mutandis*, *Mustafa (Abu Hamza)*, cited above, § 38). Accordingly, there is no evidence in the case file to suggest that the judges who assessed the arguments put forward by the applicant and who examined the charges brought against him were influenced by any of the publications in the press (see *Ninn-Hansen*, *Daktaras*, *Butkevičius* and *Craxi*, § 104, all cited above).

63. The foregoing considerations are sufficient to enable the Court to conclude that the media coverage of the accident and the criminal

proceedings against the applicant did not breach his right to a fair trial and the presumption of innocence under Article 6 §§ 1 and 2 of the Convention.

(c) Conclusion

64. In the light of the above, the Court is of the view that there has been no violation of Article 6 §§ 1 and 2 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 6

65. The applicant also complained that his status as a police officer had been unfairly taken into consideration by the domestic courts when determining his guilt and setting the sentence. He relied on Article 14 of the Convention, read in conjunction with Article 6. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

66. The Government submitted that the applicant had been sentenced according to the severity of the criminal offence, and that his job as a police officer had been only one of several circumstances relevant for determining the dangerousness of that offence (see paragraph 21 above). They further submitted that the criminal offence of failing to provide assistance to persons in a life-threatening situation could be committed by anyone who had an obligation to provide such assistance – the fact that the applicant was a police officer was relevant only in determining the origin of that obligation but not its existence (see paragraph 20 above). The Government therefore argued that no discrimination had occurred.

67. The Court reiterates that Article 14 of the Convention has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. For Article 14 to become applicable, what is necessary, and also sufficient, is for the facts of the case to fall "within the ambit" of one or more of the Articles of the Convention or its Protocols (see *Novruk and Others v. Russia*, nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14, § 84, 15 March 2016, and the cases cited therein). The Court further reiterates that matters of appropriate sentencing largely fall outside the scope of the Convention (see *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI). As a result, the part of the applicant's complaint concerning the sentence imposed on him does not fall within the ambit of Article 6. That part of his complaint must therefore be dismissed as incompatible *ratione materiae*, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

68. As to the applicant's complaint that his status as a police officer was taken into consideration by the domestic courts when determining his guilt, the Court observes that the domestic courts did so when convicting the applicant of failing to provide assistance to persons in a life-threatening situation (see paragraph 20 above). According to Article 144 of the Criminal Code, that criminal offence could be committed by a person who, *inter alia*, had an obligation to take care of persons in a life-threatening situation and failed to do so (see paragraph 29 above). The domestic courts found that the applicant had such an obligation arising from the Law on Police Activity (see paragraph 30 above) which was applicable to him as a police officer. In such circumstances, the Court sees no grounds to find that the reference to the applicant's legal obligation, which he had undertaken when becoming a police officer, was discriminatory. This part of the complaint must therefore be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 6 §§ 1 and 2 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 2 of the Convention.

Done in English, and notified in writing on 24 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	András Sajó
Registrar	President