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

SECOND SECTION

CASE OF PAULIUKIENĖ AND PAULIUKAS v. LITHUANIA

(Application no. 18310/06)

JUDGMENT

STRASBOURG

5 November 2013

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

In the case of Pauliukienė and Pauliukas v. Lithuania,

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

Guido Raimondi, *President*,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,
and Lawrence Early, *Acting Section Registrar*,

Having deliberated in private on 15 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 18310/06) 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 two Lithuanian nationals, Ms Zita Pauliukienė ("the first applicant") and Mr Vytautas Pauliukas ("the second applicant"), on 2 May 2006.

2. The applicants were represented by Mr T. Bezgėla, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The application concerns in particular the second applicant's complaint that he had been defamed by the media, in breach of his rights under Article 8 of the Convention.

4. On 10 December 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Written submissions were received from the Open Society Justice Initiative, the Media Legal Defence Initiative and the Romanian Helsinki Committee, which had been granted leave by the President to intervene as third parties (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court, as in force at the material time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Ms Zita Paliukienė, was born in 1954. The second applicant, her husband Mr Vytautas Pauliukas, was born in 1953. They are both Lithuanian nationals and live in Kaunas.

A. The applicants' disputes with neighbours in connection with the applicants' house

7. In December 1995 the first applicant bought a portion (339/631) of a plot of land at 40 Raseinių Street and 13 Telšių Street in Kaunas. In January 1996 the subplot was registered in her name in the Real Estate Registry.

8. It appears from a letter from the authorities of 29 April 2003 to the applicants' neighbour, Č.P., that on 3 April 2003 the Kaunas territorial planning authorities issued an administrative-law penalty notice against the first applicant on the ground that she was pursuing construction works inside a warehouse (*ūkinio pastato viduje*) built on the above-mentioned plot of land and was disregarding the orders of the official supervising construction works. The Government state that to their knowledge that decision has not been quashed. On 7 November 2003 the first applicant was again ordered to stop the building works as she had no permit to carry them out.

9. On 29 September 2003 the Kaunas region territorial planning authorities issued an administrative-law penalty notice on the ground that the first applicant had unlawfully reconstructed a house situated at 40 Raseinių Street and 13 Telšių Street in Kaunas. The first applicant was fined 1,000 Lithuanian litai (LTL). On 7 November 2003 the administrative court quashed the decision, on the procedural ground that the penalty notice of 29 September had been issued in the absence of the first applicant. The case was returned to the territorial planning authorities. On 25 November 2003 the authorities issued a repeat penalty notice about the unlawfully reconstructed house. This time the applicants' daughter was present and signed the document. She told the authorities that they could not enter the house because she had no keys to it. The first applicant was fined in the same amount, LTL 1,000.

10. By a decision of 5 February 2004 the Kaunas Regional Administrative Court quashed the decision of 25 November 2003 due to procedural flaws. The court considered that the first applicant's offence was of a continuous nature, and that it was therefore necessary to establish the date on which the offence had become known, because a fine under the Code of Administrative Law Offences could be imposed only within

six months of the date the violation became known. The territorial planning authority appealed.

11. On 20 May 2004 the Supreme Administrative Court allowed the appeal in part and returned the case for new examination due to procedural flaws. The court noted however that the legal qualification of the first applicant's actions was not questioned in that case.

12. By a decision of 1 June 2004 the Kaunas Regional Administrative Court found that the date on which the administrative violation by the first applicant had come to light was 15 May 2003. Given that the fine on the first applicant was imposed only on 25 November of that year, more than six months had passed since that violation surfaced, and therefore no administrative punishment was possible. The case was discontinued.

13. In January 2009 the first applicant asked the Kaunas territorial planning authority to approve the house in question, built on the plot of land belonging to both applicants, as fit for habitation. The authorities informed her, however, that there were certain deficiencies in respect of the arbitrarily reconstructed house. Moreover, after those deficiencies had been eliminated the second applicant was also obliged to obtain approval in relation to the building from their neighbour Č.P.

B. The applicants' disputes with neighbours in connection with the applicants' plot of land

14. The applicants' neighbour Č.P. had sued the second applicant in civil proceedings for pecuniary damage, on the ground that on 13 October 2002 the second applicant had arbitrarily and unlawfully demolished Č.P.'s fence. In that connection the municipal authorities had earlier found the second applicant guilty of a violation of administrative law. Their decision was upheld by administrative courts at two levels of jurisdiction. By a decision of 28 September 2003 the Kaunas City District Court allowed Č.P.'s civil claim in full.

15. On 4 April 2003 the territorial planning authorities gave the first applicant an administrative warning, because she had unlawfully built a wall on State land and had refused to demolish it. This conclusion was confirmed by the Kaunas City District Court on 24 April 2003.

16. Further, on 12 July 2003 the applicants' neighbours Č.P., P.Ž., J.D. and L.B. addressed a written complaint to them. The neighbours stated that for the last eight years the applicants had been ignoring the law, had lied, and had used corrupt connections when managing their property. They also submitted that the second applicant had used his position as a Kaunas city elder for his personal proprietary interests, instead of trying to keep an untarnished reputation. The neighbours gave a detailed list of the applicants' misdemeanours as confirmed by the authorities' decisions, where it had been mentioned that the applicants' house was too large, and that they had

unlawfully occupied certain parts of a plot of land belonging to neighbours J.D. and L.B., and had also occupied State land. The neighbours expressed the wish, however, that in future all the neighbours would be able to live in peace, and that the applicants would abide by the law. The Government state that later on a copy of this note was given to a journalist.

17. On 27 February 2004 the first applicant was informed by the authorities that some parts of her house were outside the boundaries of the plot of land at 40 Raseinių Street and 13 Telšių Street in Kaunas and were on land belonging to the State. She was reminded that arbitrary occupation and use of State land entailed administrative liability. On 9 March 2004 a penalty notice for an administrative offence was issued to the first applicant for arbitrary occupation of State land. However, by a ruling of 14 April 2004 the court found that the boundaries between the applicants' land and the State land had been established only after those parts of the house had been built, and that therefore the first applicant could not be held liable for the offence.

18. In 2004 the first applicant brought court proceedings against her neighbour Č.P., claiming that in 1994 he had built a brick wall between her plot of land and his, and that that wall encroached on her plot by 1.16 square metres and thus breached her property rights. Her civil claim was dismissed as unfounded by both the first-instance and the appellate courts. On 2 November 2005 the Supreme Court terminated the proceedings, upholding the lower courts' conclusions.

C. Civil proceedings for defamation

19. On 11 November 2003 the daily newspaper *Respublika* published an article covering the applicants' boundary disputes with Č.P. and the other neighbours. The article mentioned that that year the second applicant had been elected elder of Kaunas city centre (*Kauno miesto centro seniūnas*). The article alleged that the applicants were illegally building on their plot of land and had occupied part of the land belonging to the other owners and the State. The relevant passages of the article stated as follows:

> "The elder was occupying the neighbours' land [*Seniūnas užėmė kaimynų žemę*];
>
> Elected Kaunas city centre elder this year, Vytautas Pauliukas has been building illegally on his plot after occupying land belonging to his neighbours and the State, and is not complying with prohibitions by various institutions on rebuilding the derelict dwelling house situated in his yard [*Šiemet Kauno miesto Centro seniūnu išrinktas Vytautas Pauliukas, pažeisdamas įstatymus, savo sklype vykdo savavališkas statybas, yra užėmęs valstybinę ir kaimynams priklausančią žemę, nepaiso įvairių institucijų draudimo rekonstruoti apleistą gyvenamąjį namą, stovintį kieme*];
>
> When going through the process of acquiring the land in 1995, [Mr and Mrs] Pauliukai enlarged their plot at the expense of the neighbours and the State – the entrance to L.B.'s yard was narrowed and the roof of [the applicants'] house overhung P.Ž.'s outhouse [*1995 metais tvarkydami žemės įgijimo dokumentus, Pauliukai*

pasididino teritoriją kaimynų ir valstybinės žemės sąskaita – susiaurėjo L.B. įvažiavimas į kiemą, o virš nedidelio P.Ž. namuko pakibo Pauliukų namo stogas];

The residential dwelling section of the city's housing department ordered Pauliukai [reference to both applicants] either to submit a reconstruction project or to demolish the building by 2 May. However, Pauliukai did not comply with the order, and continued to build a new house inside the old one without permission [*Miesto ūkio departamento būsto skyrius įpareigojo Pauliukus iki gegužės 2-osios parengti statinio kapitalinio remonto projektą arba jį nugriauti. Deja, Pauliukai nurodymo nepaisė ir senojo pastato viduje, neturėdami tam leidimų, ėmė statyti naują namą*];

V. Pauliukas has worked as deputy director of Inkaras, an enterprise belonging to EBSW [*V.Pauliukas yra dirbęs EBSW koncernui priklausančiame "Inkare" direktoriaus pavaduotoju*];

Despite several notices [warning them] not to proceed with the illegal building work, Pauliukai have disregarded letters from various institutions and have continued with the works [*Nors Pauliukai buvo kelis kartus įspėti nevykdyti savavališkų statybų, jie įvairių tarnybų raštų nepaiso ir toliau atlieka darbus*]."

20. After the article was published, on 1 December 2003 the second applicant asked the newspaper to correct the part of the article he considered to be erroneous and damaging to his reputation as a Kaunas city centre elder. He was also dissatisfied at being linked to the Inkaras company, owned by the EBSW group of companies, which was at that time under criminal investigation for bringing Inkaras to insolvency. As the newspaper did not comply with this request, he then brought a claim in the civil courts, seeking rectification of the article and compensation for non-pecuniary damage. The third party in the civil proceedings, the applicants' neighbour Č.P., told the court that the article did not contain any untruths, and suggested that the civil claim be dismissed.

21. On 3 December 2004 the Vilnius City Second District Court dismissed the second applicant's claim. The court took into account that when preparing the publication the journalist had talked to the applicants' neighbours, examined documents, telephoned the second applicant and had regard to his opinion. The court pointed out that, in accordance with Article 2.24 § 5 of the Civil Code, the press could be held liable for defamation if it knew that information it published did not correspond to reality, that is if it acted in bad faith. However, in some circumstances the media had a right to trust certain sources of information (for example, an official police report or a document by other municipal or State authorities). In such cases the media were exempt from the obligation to verify the accuracy of that information. On this point the court noted that the applicants' neighbours had repeatedly addressed complaints to State and municipal institutions about the applicants' housing projects. Those complaints had been investigated by the authorities and official replies had been received. For the court, the case file showed that both of the applicants had been held liable under administrative law for rebuilding the house without a permit and for unlawfully occupying State land. Conversely, the

applicants' neighbours had been honest when they addressed the State and municipal institutions, because, as the replies from those institutions indicated, their accusations in respect of the applicants had proved to be true. These were precisely those written replies that were given to the journalist when she was preparing the publication. Given that they were official documents, the journalist had a right to trust their content.

22. The district court also noted that the first applicant had been named in the article as the owner of the plot of land in question. Given that no evidence had been submitted to the court to the effect that the property had been divided between the two applicants, the presumption that the plot of land was joint property of the two applicants as spouses was a valid one. This explained why the article mentioned not only the first applicant but also the second applicant. It was also noteworthy that in the civil court the second applicant had acknowledged that the authorities had ordered a halt to construction on the plot of land belonging to his wife, but argued that they had obeyed the order. However, from the letter of 29 April 2003 (see paragraph 8 above) it was clear that the reference in the article to administrative sanction was correct. As regards the second applicant's prior work at Inkaras, he himself admitted that he had worked at the Inkaras factory as head of a production unit (*cecho viršininkas*). Accordingly, the second applicant had failed to prove that his dignity had been insulted because of the published reference to his position at Inkaras.

23. The Vilnius City Second District Court next observed that defamation meant publication of material which did not correspond to reality and which in the light of law and moral and customary norms damaged a person's honour, dignity or reputation in society. It indicated further that the insulting nature of the material published did not have to be proven if the words or combination of words used were manifestly insulting. The court concluded that the publication at issue did not contain such language. Next, the court noted that in defamation cases the court had to examine the construction of the sentence as well as the whole context of the publication in order to find out the exact meaning of the word or combination of words. The court concluded that the second applicant had indicated only separate sentences but had not had regard to the whole content of the publication.

24. By a ruling of 13 April 2005, the Vilnius Regional Court allowed the second applicant's claim in part and ordered the daily to print a rectification. The appellate court considered that the lower court had erred as regards the factual circumstances of the case. Specifically, the documents from the Real Estate Registry showed that the owner of the house and of the plot of land was the first applicant. Consequently, the published material did not correspond to reality, because the evidence of inappropriate use of the property had been linked to the first applicant but not to the second. Similarly, as regards the second applicant's former post at Inkaras, which

belonged to the EBSW group, that statement was misleading, because the second applicant had in fact worked as a director at a [subsidiary] enterprise, Inkaro padai, which he did not deny. The appellate court thus concluded that naming the second applicant separately and together with the first applicant as persons who had broken the law, and linking those breaches of the law to the first applicant's employment, as well as stating that in the past the second applicant had had links to the EBSW group, was damaging to his authority as a public figure. The court considered that the journalist had deliberately ignored her obligation to provide information that was fair, accurate and impartial, in breach of Article 3 of the Law on the Provision of Information to the Public.

25. On 2 November 2005 the Supreme Court took a final decision in the case. The court indicated that Article 25 of the Lithuanian Constitution guaranteed the right to freedom of expression. Nevertheless, that right was not an absolute one, and had to be exercised taking into account the rights of others as well as the interests of society. Furthermore, Articles 4 and 19 of the Law on the Provision of Information to the Public obliged the media to present information correctly, without bias and in compliance with the requirements of journalistic ethics.

26. As regards the circumstances of the case, the Supreme Court noted that the publication at issue described a situation in which there was conflict among four co-owners of the plot of land over the boundaries of that plot, the applicants' illegal construction and their unlawful occupation of the neighbours' and State land. It was clear from the content of the applicants' neighbours' complaints to various institutions and the replies they had received that those neighbours were trying to protect their rights which had been breached, and also to make sure that the second applicant, who was a public figure, abided by the law. The neighbours, acting in good faith, gave copies of those complaints and replies to the journalist, who in turn wrote an article on the subject. The first-instance court was correct to find that the official replies from municipal and State institutions, which referred to violations of law committed by both applicants in that they had reconstructed the house without a permit and had also occupied State-owned land and demolished part of a neighbour's wall, among others, were a sufficient basis for publication of information about a public figure, the second applicant, who had been elected Kaunas city centre elder.

27. The Supreme Court also emphasised that the mere fact that the second applicant was not mentioned in the replies from the municipal authorities did not confirm that the violations could not be linked to him. Despite the fact that the plot of land and the house where both applicants lived were registered in the first applicant's name, that property had been acquired during their marriage. Accordingly, this was their joint property which they had equal rights to manage and use, in accordance with Article 21 of the Code of Marriage and Family. Moreover, in the event that

a co-owner of the property of a public figure exercised their co-ownership rights inappropriately, the public figure (in this case the second applicant) had a duty to control his co-owner's actions and to prevent violations of the law, as in this case. For the Supreme Court, if a co-owner exercising the joint property rights of both spouses violated the pecuniary and non-pecuniary rights of other persons, the other co-owner incurred liability as well, the more so if that other co-owner was a public figure. Having regard to the above arguments, the Supreme Court concluded that the appellate court had wrongly interpreted Article 3 of the Law on the Provision of Information to the Public and erred in finding that the journalist had deliberately violated that law by breaching her responsibility to present correct, precise and impartial information. The Supreme Court concluded that those errors made the decision of the appellate court invalid. The decision of the first-instance court was upheld.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. Article 22 of the Lithuanian Constitution provides that the private life of a person is inviolable. Information concerning private life may be collected only in accordance with the law, which protects everyone from arbitrary and unlawful interference and from encroachment upon his or her honour or dignity. Article 25 provides for a right to seek and impart information. This right may not be limited unless it is necessary to do so to protect a person's private life or dignity.

29. As regards the right to privacy and protection of honour and dignity, the Civil Code reads as follows:

Article 2.23. Right to Privacy and Secrecy

"1. The privacy of a natural person shall be inviolable. Information on a person's private life may be made public only with his consent ...

3. Establishment of a file on another person's private life in violation of law shall be prohibited. A person may not be denied access to the information contained in the file except as otherwise provided by the law. Dissemination of information on a person's private life shall be prohibited unless, taking into consideration the person's official position and his status in society, dissemination of the said information is in line with a lawful and well-grounded public interest in having the said information.

4. Publication of matters related to a person's private life, however truthful they may be, as well as making private correspondence public in violation of the procedure prescribed in paragraphs 1 and 3 of the given Article, and invasion of a person's dwelling without his consent except as otherwise provided by the law, keeping his private life under observation or gathering information about him in violation of law as well as other unlawful acts, infringing the right to privacy, shall all form the basis for bringing an action for compensation for pecuniary and non-pecuniary damage incurred by the said acts..."

Article 2.24. Protection of Honour and Dignity

"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 redress for pecuniary and non-pecuniary damage incurred by the placing in the public domain of the said data ... Data which have 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 by mass media (including the press, television and radio) the person who is the subject of the publication shall have the right to provide a refutation and demand that the media outlet concerned publish the said refutation free of charge or make it public in some other way ...

3. A request for redress for property, pecuniary or non-pecuniary damage shall be investigated by the court, irrespective of whether or not those responsible for the dissemination of those data have refuted them.

4. Where a media outlet refuses to publish a refutation or make it public in some other way, or fails to do so within the term provided in paragraph 2 of the given Article, the person concerned thereby acquires the right to apply to court in accordance with the procedure established in paragraph 1 of the given Article. The court shall establish the procedure and the term for the refutation of data which were erroneous or abased the person's reputation.

5. Media outlets which publicise erroneous data abasing a person's reputation shall provide redress for damage to property, pecuniary and non-pecuniary damage incurred only in cases when it knew or should have known that the data were erroneous, as well as in cases when the data have been made public by its employees or anonymously and the media outlet refuses to name the person who supplied the said data.

6. A person who places erroneous data in the public domain shall be exempted from civil liability in cases when the publicised data relates to a public figure and his State or public activities, and the person who has placed them in the public domain can show that his actions were in good faith and meant to introduce the person and his activities to the public ..."

30. The relevant parts of the Law on the Provision of Information to the Public read as follows:

Article 3. Basic Principles of Provision of Information to the Public

"1. In the Republic of Lithuania freedom of information is enshrined in the Constitution, this and other laws, and international treaties of the Republic of Lithuania.

2. Producers and disseminators of public information as well as journalists shall be governed in their activities by the Constitution and laws, international treaties of the Republic of Lithuania, also by the principles of humanism, equality, tolerance, and respect for an individual person; they shall respect freedoms of speech, creativity, religion, and conscience, variety of opinion, adhere to the norms of professional ethics of journalists, support the development of democracy and public openness, promote civil society and State progress, enhance State independence, and develop national culture and morality.

3. Public information must be presented in the media fairly, accurately and in an unbiased manner.

4. The use of freedom of information may be restricted by the requirements, conditions, restrictions or penalties set out in the laws and necessary in a democratic society to protect Lithuania's State security, its territorial integrity, public order and constitutional system, to guarantee the impartiality of its judicial authority in order to prevent law violations and crimes, disclosure of confidential information and protect people's health and morality as well as their privacy, dignity and rights.

5. Persons shall be held accountable for violating the freedom of information and statutory restrictions on the use of freedom of information in accordance with the procedure established by this and other laws."

Article 4. Freedom of Information

"1. Every person shall have the right to freely express his ideas and convictions. This right encompasses freedom to maintain one's opinion, to seek, receive and disseminate information and ideas in accordance with the conditions and procedure set out in the laws..."

Article 14. Protection of Private Life

"1. When producing and disseminating public information, a person's right to have his personal and family life respected must be ensured.

2. Information about a person's private life may be published only with the consent of that person, except for the cases specified in paragraph 3 of this Article and if the publication of such information does not cause harm to that person.

3. Information concerning private life may be published without a person's consent in cases where the publication of such information helps to reveal violations of law or criminal acts, also where such information is presented in open court. Furthermore, information about the private life of a public figure (State political figures, public servants, heads of political parties and public organisations, as well as other persons participating in public or political activities) may be made public without his consent where such information discloses the circumstances of the aforementioned person's private life or his personal characteristics which are of public significance ..."

Article 19. Information not to be Published

"...

2. It shall be prohibited to disseminate disinformation and information which is slanderous and offensive to a person or degrades human dignity and honour..."

31. The Law on Civil Service provides that the civil service is based on the principles of rule of law, transparency and responsibility for the decisions taken. One of the basic principles of conduct for civil servants is exemplariness: he or she must duly perform his or her duties and be of irreproachable reputation, respectful and orderly (Article 3).

32. The Law on Local Government provides that the neighbourhood (*seniūnija*) is a structural territorial unit of a municipality. The neighbourhood is headed by the elder (*seniūnas*), who is appointed by the director of the municipal administration in accordance with the Law on Civil Service. The elder carries out internal management of the neighbourhood (Articles 30 and 31).

33. On 15 May 1998 the Supreme Court adopted a ruling concerning courts' practice in civil cases concerning protection of honour and dignity (*Teismų praktika*, 1998, Nr. 9). The court ruled that a person's privacy and his or her honour and dignity should be protected when it is established that information about him has been disseminated without his consent and in the absence of lawful public interest. When assessing non-pecuniary damage caused it was important to take into account such criteria as the form and the manner of dissemination, the guilt of the defendant, and the content of the information.

34. Article 21 of the Code of Marriage and Family (*Santuokos ir šeimos kodeksas*) provided that property obtained by spouses during their marriage was their common and joint property. They had equal rights to manage and use that property. Even if the property had been registered in the name of one of the spouses, it was considered to belong to both spouses.

III. RELEVANT INTERNATIONAL LAW

35. Article 17 of the International Covenant on Civil and Political Rights, acceded by Lithuania on 20 November 1991, provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The second applicant complained that the article in the daily *Respublika* had tarnished his reputation, and thus breached his right to respect for his private life, as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicant

37. The second applicant argued that the facts presented in the impugned article were aimed at creating a sensation and represented him negatively to the public eye, thus insulting his dignity and honour and damaging his reputation. He maintained that even though the journalist had relied on numerous documents issued by the authorities before 11 November 2003, the day of the publication, those decisions on the applicants' behaviour had later been revoked by the domestic courts. The second applicant also argued that the plot of land at issue belonged to his wife (the first applicant). On this point he strongly objected to the Supreme Court's conclusion to the effect that the co-owners of a property were jointly responsible for it in the event of any misconduct, and that if one of the co-owners was a public figure he had a duty to prevent violations of the law (see paragraph 27 above). The second applicant vehemently asserted that neither he nor his wife had ever unlawfully occupied land belonging either to the State or to their neighbours, nor had they committed any of the other violations of the law attributed to them in the publication. He also maintained that reference to his previous employment as deputy director of the Inkaras enterprise, part of the EBSW group, was defamatory, because, given the bad publicity surrounding the EBSW group, he had thereby been classified as a person linked to criminal activities in the past.

38. Lastly, whilst acknowledging the importance of freedom of expression, the second applicant maintained that in his case the journalist had overstepped the bounds of responsible journalism. She had not tried to check the information, and her intention had been not to present relevant information to the reader, but to humiliate him and tarnish his reputation. This conclusion could be drawn from the context, the headlines and the absence of official documents supporting the material published. Accordingly, there had been a breach of his rights under Article 8 of the Convention.

2. The Government

39. The Government firstly argued that there had been no interference with the second applicant's right to respect for his private life. They noted that civil servants acting in an official capacity were, like politicians, subject to wider limits of acceptable criticism than others (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I). Under Lithuanian law, civil servants had a duty to behave in an exemplary manner and to have an irreproachable reputation. This obligation extended beyond official duties, and was not exclusively associated with actions performed in an official capacity. The Government thus believed that the actions of civil servants

should continually be subject to public scrutiny and be open to criticism, especially when it came to cases of disregarding the law. The Government also submitted that the adverse effect of the publication was limited only to possibly unpleasant feelings for the second applicant, given that, to their knowledge, he continued to hold the position of neighbourhood elder at least until April 2009, when the Government submitted their observations on admissibility and merits. Accordingly, the severity of the adverse effects on his reputation were not sufficiently serious to give rise to an interference with his private life (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C).

40. Should the Court nevertheless find that there was an interference, the Government maintained that it was in conformity with the requirements of Article 8 § 2. Firstly, the interference was prescribed by law. The Civil Code and the Law on Provision of Information to the Public contained provisions on the protection of privacy in the context of freedom of expression. However, they equally stipulated that information on a person's private life could be made public without his consent, taking into consideration his official position and his position in society, if the dissemination of the said information corresponded to a lawful and well-founded public interest in that information. Furthermore, the interference had a legitimate aim, that of protecting the rights and interests of others. In the instant case the protection of private life had to be balanced against freedom of expression. Above all, the principal aim of the publication was not to tarnish the second applicant's reputation, but to disclose information of public importance, after the applicants' neighbours had approached the journalist with documents indicating that their legitimate interests were being violated by the applicants' actions.

41. The Government also considered that in balancing two interests the Lithuanian courts had given sufficient weight to the second applicant's rights under Article 8 of the Convention. Firstly, they had rightly qualified the statements in the article as statements of fact and thus susceptible to proof, therefore placing a more stringent test on the journalist. The courts had emphasised that the journalist had acted in good faith. When preparing the article she had gathered information from all available sources: she had spoken not only with the applicants' neighbours, but with the second applicant himself. It was also critical that the journalist had relied on official documents – sources of information which, according to the Supreme Court, she had a legitimate right to trust. Taking into account the systemic, multiform nature of administrative-law violations attributed to the property jointly owned by both applicants and that they had acted in an extremely abusive and inappropriate manner, the statements in the publication were accurate enough to allow the conclusion that the right to freedom of expression did not overstep the bounds of responsible journalism. In the

light of the above, the Government considered that there was a fair balance in the instant case in favour of freedom of expression.

3. Third-party interveners

42. The representatives of the Open Society Justice Initiative, the Media Legal Defence Initiative, and the Romanian Helsinki Committee firstly submitted that to the extent the Court recognised that a right to reputation resided in Article 8 of the Convention, it should define and circumscribe that right carefully. The interveners endorsed what they understood as the Court's view in *Karakó v. Hungary* (no. 39311/05, 28 April 2009) that an alleged defamation victim was not automatically entitled to Article 8 protection, in so far as not every injury to public standing constituted an encroachment on that person's right to respect for his or her private life. The threshold for Article 8 protection had to be clear and convincing evidence that defamatory allegations were a) factual in nature; b) primarily intended to insult the applicant (rather than to honestly contribute to public debate); and c) "of such a seriously offensive nature" that the publication had "an inevitable direct effect on the applicant's private life". In judging whether the criteria have been met the Court should take into account the extent to which the applicant had entered the public arena and should therefore demonstrate a higher degree of tolerance to criticism. For the interveners, such a standard was not only required by the established tenets of the Court's case-law on Article 10, but was also consistent with the interpretation of Article 17 of the International Covenant for Civil and Political Rights and the prevailing practices of the Council of Europe States. Most importantly, such a standard would provide media outlets with clear direction in making their decisions to publish important material on matters of public concern. Uncertainty would only encourage caution and thus deprive the public of material that should be published.

43. Finally, the interveners considered that in cases involving Article 8 based challenges to expressions on matters of clear public interest, the findings of national courts in favour of free expression should be "set aside" only if they can be shown to be clearly arbitrary or summarily dismissive of the privacy/reputation interests at stake. A different approach risked both unravelling the hard-won victories in domestic implementation of the Court's case-law on Article 10 of the Convention and opening the Strasbourg floodgates to ill-founded claims of damage to reputation.

B. The Court's assessment

1. Admissibility

44. The Government have argued that the publication at issue did not affect the second applicant's rights under Article 8 seriously enough for that

provision to be applicable. The Court reiterates, however, that in the article the second applicant had been named as a person holding public office and repeatedly breaking the law. It has already been accepted in the Convention organs' case-law that a person's right to protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life. The Court therefore considered that a person's reputation, even if that person was criticised in the context of a public debate, formed part of his or her personal identity and psychological integrity and therefore also fell within the scope of his or her "private life" (see *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007, with further references). The Court explained its approach to such cases in its judgment in *A. v. Norway* (no. 28070/06, § 64, 9 April 2009), holding that in order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Mikolajová v. Slovakia*, no. 4479/03, § 55, 18 January 2011; *Roberts and Roberts v. the United Kingdom*, (dec.), no. 38681/08, §§ 40-41, 5 July 2011). Having regard to the accusations in respect of the second applicant, the Court sees no reason to hold otherwise. Article 8 of the Convention thus applies. The Court also finds that the second applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. The complaint must therefore be declared admissible.

2. Merits

(a) General principles

45. Starting from the premise that the present case requires an examination of the fair balance that has to be struck between the second applicant's right to the protection for his private life under Article 8 of the Convention and the publisher's right to freedom of expression as guaranteed by Article 10, the Court finds it useful to reiterate some general principles relating to the application of both articles.

46. The Court firstly notes that the second applicant did not complain of an action by the State but rather of the State's failure to protect his reputation against interference by third persons, in breach of Article 8 of the Convention. It reiterates that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundary between the State's positive and negative

obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Von Hannover v. Germany*, no. 59320/00, § 57, ECHR 2004-VI, and *Pfeifer*, cited above, § 37). In this context, the Court considers that the State's obligation under Article 8 to protect the applicant's reputation may arise where statements going beyond the limits of what is considered acceptable criticism under Article 10 are concerned.

47. The Court has held on numerous occasions that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 78, 7 February 2012 and the case-law cited therein).

48. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI).

49. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see the *Prager and Oberschlick v. Austria* judgment of 26 April 1995, § 38, Series A no. 313). Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Eerikäinen and Others v. Finland*, no. 3514/02, § 65, 10 February 2009).

50. The Court has recently set out the relevant principles to be applied when examining the necessity of an interference with the right to freedom of

expression in the interests of the "protection of the reputation or rights of others". It noted that in such cases the Court may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases: namely, on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see *Axel Springer AG*, cited above, § 84, and *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011; for the criteria relevant for the balancing exercise see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 108-113, ECHR 2012).

51. Lastly, in cases such as the present one the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending article or under Article 8 of the Convention by the person who was the subject of that article. Indeed, as a matter of principle these rights deserve equal respect (see *Hachette Filipacchi Associés* (ICI PARIS) *v. France*, no. 12268/03, § 41, 23 July 2009; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011). Accordingly, the margin of appreciation should in principle be the same in both cases. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, ECHR 2011).

(b) Application of these principles to the present case

52. In the instant case the Vilnius City Second District Court and the Supreme Court found that the six statements published in *Respublika* on 11 November 2003 were not defamatory and thus did not breach the second applicant's right to protection of his privacy. The Court therefore has to examine whether those two courts balanced the second applicant's right to protection of his private life in respect of the statements made in *Respublika* against the publisher's right to freedom of expression in accordance with the criteria laid down in its case-law.

53. Much of the parties' argument in the present case related to the definition of the ownership of the plot of land situated at 40 Raseinių Street and 13 Telšių Street in Kaunas and the buildings built on it, which had been the cause of the neighbour dispute and thus were mentioned in the publication. The second applicant claimed that that property had been registered in his wife's name and that therefore he should not be held liable for any wrongdoing. The Government contested that argument, claiming

that the property was jointly owned by both applicants, who thus were equally responsible for its management. Even though it is not for the Court to resolve the questions of application of the domestic law, the Court is inclined to share the Government's argument, which appears to be based on Article 21 of the Code of Marriage and Family (paragraph 34 above) and, above all, has been upheld not only by the Vilnius City Second District Court, but also by the Supreme Court – the highest level of jurisdiction for interpretation of the domestic law. Accordingly, the Court will continue its examination on the premise that it was for both applicants to make sure that their property was properly managed.

54. The Court reiterates that the first-instance and the cassation courts found that the publication at issue was in accordance with the provisions of the Civil Code and of the Law on the Provision of Information to the Public (see paragraphs 21 and 25 above), and thus had a basis in domestic law. Those two courts also attached due importance to the link between the second applicant's position as an elder of Kaunas city centre and the subject matter of the article – abuse of powers and interference with the rights of others by a public official when managing the applicants' property. In view of the second applicant's position as a representative of local government and the powers stemming from his post, the public had a right to be informed about conduct of a municipal official which was openly at odds with that position. In the view of those two courts, the publication thus contributed to a debate of general interest.

55. The Court agrees with this assessment. It notes in particular that the definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court has already recognised the existence of such an interest where publication concerned political issues or crimes (see *Rothe v. Austria*, no. 6490/07, § 55, 4 December 2012).

56. The role or function of the person concerned and the nature of the activities that are the subject of the report constitute another important criterion. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions (see *Von Hannover v. Germany (no. 2)*, cited above, § 110, with further references). Given that there were repeated accusations of breaches of administrative law, and having regard to the second applicant's position in local government, the Court agrees with the domestic courts' conclusion that public interest in the

report clearly prevailed over his interest in the protection of his private life and of his reputation.

57. The Court reiterates that the way in which the information was obtained and its veracity are also important factors. Indeed, it has held that the safeguard afforded by Article 10 of the Convention to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see *Axel Springer AG*, cited above, § 93). In the instant case the Court observes that the domestic courts considered the information published in the article of 11 November 2003 to be a question of fact, rather than a value judgment, and accordingly required more accuracy from the journalist. In setting out their reasons the first-instance and the cassation courts observed that the journalist had acted in good faith. She had questioned not only the neighbours, who represented the opposing side in the conflict, but also the second applicant himself. Most importantly, those two courts emphasised that when gathering her facts the journalist had relied on official documents issued by the State and municipal authorities (see paragraphs 21, 23 and 26 above). For those two courts, the journalist had no reason to doubt the veracity of that information. On this last point the Court reiterates its position that the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press may be undermined (see *Bladet Tromsø and Stensaas*, cited above, § 68).

58. The second applicant has argued that the appellate court apparently did not follow that approach, given that some of the administrative-law violations had eventually been revoked by courts (see paragraphs 10, 12 and 17 above). While this is true, the Court cannot overlook the fact that in April 2003 the first applicant had twice been warned by the territorial planning authorities because she had been pursuing construction works without permission and had unlawfully built a wall on State land (see paragraphs 8 and 15 above). Similarly, the first applicant's administrative-law violation in connection with unlawful reconstruction of the applicants' house had been established in September 2003 (see paragraph 9 above). Furthermore, the same month the court allowed a civil claim by Č.P., the applicants' neighbour, against the second applicant for unlawful demolition of Č.P.'s wall (see paragraph 14 above). These facts had been clearly established by the State and municipal authorities before the article was printed in *Respublika* on 11 November 2003, and no final administrative court decision had yet been taken until that day (see paragraphs 12 and 17 above). Accordingly, the Court is not prepared to disagree with the first-instance and cassation courts' finding that there was sufficient evidence supporting the allegations against the second applicant of wrongful

management of property. Lastly, whilst noting that reference to the second applicant's former job at the Inkaras enterprise had not been entirely accurate, the Court does not find it utterly misleading either, for the second applicant has himself admitted that he worked at a related enterprise, Inkaro padai, in the past (see paragraph 22 above). The Court thus considers that that reference alone did not overstep the limits of careful journalism. Moreover, the impugned article apparently had no serious consequences, because, as has been argued by the Government and not denied by the second applicant, he kept his post of a Kaunas city elder long after the article was printed (see paragraph 39 above).

59. In sum, the domestic courts found that the text of the article published in *Respublika* on 11 November 2003 fell within the limits of permissible reporting on a matter of general interest. They took extensive evidence, in particular from a number of official documents, and came to the conclusion that in essence the allegations made in the article were true. The Court sees no reason, let alone any strong reason, to deviate from the domestic courts' findings, which were based on thoroughly established facts and a detailed assessment of the conflicting interests, in accordance with the criteria established by the Court's case-law. Accordingly, nothing in the case file discloses a failure on the domestic authorities' part to protect the second applicant's right to respect for his private life and reputation.

60. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The first applicant complained under Article 1 of Protocol No. 1 to the Convention that she had been deprived of the effective control and use of 1.16 square metres of her land through the unlawful construction of a fence by a neighbour, Č.P., on her plot. The Court notes, however, that the claim was examined and dismissed as unfounded by domestic courts at three levels of jurisdiction (see paragraph 18 above). Having had regard to the documents submitted by the parties, the Court sees no reason to question that finding. It follows, that this complaint must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the second applicant's complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 5 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Acting Registrar	Guido Raimondi President