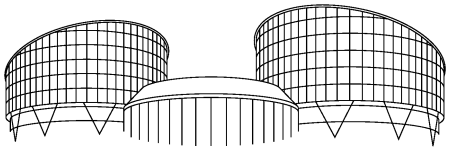

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RUNGAINIS v. LATVIA

(Application no. 40597/08)

JUDGMENT

STRASBOURG

14 June 2018

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 Rungainis v. Latvia,

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

Angelika Nußberger, *President,*
Erik Møse,
André Potocki,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 22 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 40597/08) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Ģirts Rungainis, on 4 July 2008.

2. The applicant was represented by Mr E. Radziņš, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

3. The applicant complained of an infringement of his right to freedom of expression, as guaranteed under Article 10 of the Convention.

4. On 31 January 2014 that complaint was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

5. The applicant was born in 1967 and lives in Riga. At the material time he was the chairman of the supervisory board of a Latvian bank – Latvijas Krājbanka ("Krājbanka" or "the Bank"). The State held 32.12% of its shares.

6. A.L. was one of the shareholders of Krājbanka. He was also the President of the Bank until January 2002, when he voluntarily stepped down from this position. In November 2002 he was elected as a member of the Latvian Parliament (*Saeima*), representing a newly established political party, Latvijas Pirmā Partija (the Latvia's First Party – also referred to below as the "Pastors' Party"), which had been established in the same year.

7. At the material time an advertising agency, Z., was contracted by both Krājbanka and the Latvia's First Party to provide certain advertising services.

8. *Neatkarīgā Rīta Avīze* ("NRA") was one of the main daily newspapers in Latvia at the material time. It was published by a joint-stock company, Preses Nams (until 2 January 2003) and, subsequently, by the limited liability company Mediju Nams.

B. The applicant's initial findings on Krājbanka's advertising and marketing expenses and subsequent audit reports

9. On 30 September 2002 the applicant prepared a report on the advertising and marketing expenses incurred by Krājbanka in 2001 and the first seven months of 2002, which he then presented to the Bank's supervisory board. His report was based on information which he had requested from the heads of the marketing and economics departments. According to the applicant's report, the Bank had transferred substantial sums for advertising and marketing services to, *inter alia*, Z., for which no supporting documents could be found. This raised suspicions that the Bank's funds had been misappropriated. The parties did not provide the Court with a copy of the applicant's report, nor any further details of that report.

10. On 2 October 2002 the Bank's supervisory board held an extraordinary meeting and ordered an internal audit to verify the applicant's findings. At a meeting of 16 October 2002 the head of the internal audit department informed the supervisory board that no undocumented advertising and marketing expenses had been incurred. In response to press reports (see paragraphs 13 et seq. below), the internal audit had verified all deals concluded with Z. in 2002; the internal audit in relation to 2001 was ongoing. The information published in the press had not been confirmed. The conclusions of the final report, dated 30 October 2002, indicated that in 2001 no undocumented advertising and marketing expenses had been incurred. All contracted services had been received, but on some occasions no supporting documents have been kept (for example, copies of certain advertisements in the press and some printed material – such as concert posters and tickets – were no longer available).

11. On 16 October 2002 the supervisory board ordered an additional external audit. In May 2003 the audit agency in its report concluded that

while the advertising and marketing expenses incurred in 2001 (755,000 Latvian lati (LVL), approximately 1,074,268 euros (EUR)) and 2002 (LVL 555,000, approximately EUR 789,694) had been greater than in previous years (in 1998 the figure had been LVL 374,000, approximately EUR 532,154; in 1999, LVL 324,000, approximately EUR 461,010; and in 2000, LVL 640,000, approximately EUR 910,638), this could be explained by the fact that the Bank had been in the process of changing its corporate identity during the period under consideration. This process had continued while the external audit was being carried out and the Bank had incurred more expenses in this regard. All contracts with Z. had been approved and signed by the Bank's highest management. The external audit concluded that there was no evidence that payments had been made for services or goods that had not been received or that the payments had exceeded the value of the services received. No personal links had been found between A.L. or the Bank's staff members and the advertising companies. There was no evidence that the staff members had been forced to work with the particular service provider or to prepare documents for services which the Bank had not received.

12. Meanwhile, A.L. applied to have criminal proceedings instituted in respect of the alleged intentional dissemination of false information about him. By a final decision of 13 August 2003 the prosecution refused to institute criminal proceedings. The information and conclusions, which the applicant had provided to the journalists, had been based on erroneous findings contained in the applicant's initial report on the advertising and marketing expenses. However, there was no evidence that the applicant had intentionally disseminated false information about A.L. The latter was informed of his right to lodge a civil claim in that regard.

C. Newspaper articles in NRA concerning A.L.

13. Between August 2002 and May 2003 NRA published numerous articles on various topics of public interest concerning the 2002 parliamentary elections. It appears that NRA journalists contacted the applicant for a comment shortly after the meeting of 2 October 2012 of the Bank's supervisory board had taken place.

14. In their submissions to the Court, the parties disagreed on the manner and form in which the applicant had provided the respective information to the NRA journalists. The Government stated that the applicant had provided this information to the journalists on several occasions, and that his comments, which had contained concrete descriptions of A.L.'s actions, had been provided in the form of facts susceptible of proof. The applicant, however, stated that he had only on one occasion provided a short comment to the journalists via telephone about the issues discussed at the meeting of the Bank's supervisory board.

Furthermore, the comments had constituted merely his own opinion about Krājbanka's management; they had still needed to be verified by the Bank's internal audit.

15. The following excerpts are from nine articles, which were published between 3 and 23 October 2002, and which were based on the information provided by the applicant in this regard:

1. " 'Krājbanka's former management accused of fraud'

...

[Since] the beginning of 2001, [LVL] 522,000 has been transferred [to finance] [Krājbanka's] advertising and marketing activities, in respect of which no documentation – the relevant contracts, delivery/acceptance deeds etc. – has been provided ... [T]he transfer of this sum in an unknown direction (*nezināmā virzienā*) actually amounts to the destruction of the Bank's [available] assets. ... As [the applicant] suggested to [NRA], either 'somebody is receiving this paid money back' or Krājbanka's money is being used to create advertising of a completely different kind than that indicated in the available documents. 'This is money that has been stolen from the shareholders', [the applicant] stated. ... Moreover, significant advance payments were made [for services to be provided within a year] shortly before [a] change in Krājbanka's management at the beginning of [2002]. The supervisory board has ordered an internal audit to discover where these funds have disappeared to ... Documents in the possession of [NRA] show that the role of A.L. in the affair of the strange advertising [funds] transfers could be quite significant ... The [Bank's] public relations unit has dispatched [LVL] 168,000 to who knows whom and who knows where. The Bank's marketing department stands out even more blatantly. Of a total of [LVL] 743,000 spent, no documentary evidence exists regarding the expenditure of [LVL] 356,000." *(Information published in NRA, 3 October 2002 edition, article written by R.P. and E.L.: "Krājbanka's former management accused of fraud".)*

2. "This week, Krājbanka's current officials discovered massive excess expenditure on advertising that was allowed during the period of management of A.L. and V.K. – evidently these persons had been advertising themselves at the expense of Krājbanka." *(Information published in NRA, 5 October 2002 edition, article written by R.R. and U.D.: "The Pastors' Party – a Šlesers' family enterprise".)*

3. " 'Advertising for the Pastors' Party – with Krājbanka's money'

...

The advertising agency, Z., responsible for creating the Latvia's First Party's pre-election campaign, is one of the companies to which Krājbanka's former management transferred several hundred thousand [Latvian] lati at the beginning of [2002]. The transfer was carried out without documentary certification as an advance payment for advertising services ... [NRA] has already announced that since the beginning of 2001, Krājbanka has transferred [LVL] 522,000 [to finance] its advertising and marketing activities, in respect of which no documentation is available. ... As [the applicant] admitted to NRA, Z. was the very agency to which more than [LVL] 200,000 of Krājbanka's funds was transferred at the beginning of [2002] as an advance payment; [details of the] subsequent expenditure [of those funds] are unknown. 'It is possible that this is the money that provided the foundation for the Latvia's First Party's sizable advertising campaign', admitted [the applicant]. ... Documents in the possession of NRA show that the role of A.L. in the affair of the strange advertising [funds] transfers could have been rather significant." *(Information*

published in NRA, 12 October 2002 edition, article written by K.P. and E.L.: "Advertising for the Pastors' Party – with Krājbanka's money".)

4. "[The applicant] confirmed to [NRA] that the advertising agency, Z., the creator of Latvia's First Party's advertising campaign, is one of the companies to which the former management of Krājbanka transferred more than [LVL] 200,000 at the beginning of [2002] without documentary certification as an advance payment for advertising services. It has already been reported that since the beginning of 2001, Krājbanka has transferred [LVL] 522,000 [to finance] its advertising and marketing activities, in respect of which no documentation – the relevant contracts, delivery/acceptance deeds, etc. – has been provided." *(Information published in NRA, 15 October 2002 edition, article written by R.P.: "Krājbanka's President concerned about his reputation".)*

5. " 'Crisis within Krājbanka's Management'

...

The scandal revolving around the potentially unlawful activities of A.L., the former President of Krājbanka, has reached its culmination. ... A.L. has a negative opinion of [NRA's] publications to date regarding the action of Krājbanka's former management in transferring hundreds of thousands of [Latvian] lati to advertising firms without documentary certification in respect of the expenditure of that money ... [NRA] has already repeatedly written about the long-standing battle among Krājbanka's shareholders, during which A.L. was accused several times of potentially unlawful actions ... This, however, has not prevented the friends of A.L. from resorting to extreme methods. [NRA] was informed by [the applicant] that ... at the last meeting of the supervisory board, a member of 'A.L.'s group', V.D., asked him in a forthright manner: 'Have the folks from Ventspils insured your property?' 'This is an unprecedented event – the chairman of the Bank's supervisory board being blatantly threatened!' admitted [the applicant]. He believes that A.L. is now speculating that he will soon be afforded immunity as a member of [parliament], preventing him from being criminally prosecuted without a majority vote of [the Parliament] ... Commenting on the value of marketing, advertising and public relations contracts, [the applicant] admitted that even though it is necessary to carry out in-depth market research, during A.L.'s era various procedures were breached and payments were made whose sums currently cannot be precisely determined ... NRA has already written that [LVL] 522,000 has been transferred [to finance Krājbanka's] advertising and marketing activities since the beginning of the year 2001, in respect of which no documentation – the relevant contracts, delivery/acceptance deeds, etc. – has been provided ... Additionally, doubts lie in respect of A.L. that certain actions regarding the administration of certificate accounts were also contrary to the interests of both the Bank and the State." *(Information published in NRA, 18 October 2002 edition, article written by R.P.: "Crisis within Krājbanka's management".)*

6. "[NRA] has already reported that the actions of A.L. as the President of Krājbanka are being questioned in relation to advertising contracts concluded in the amount of several hundreds of thousands of [Latvian] lati. These contracts have no documentary corroboration regarding the specific measures [financed by] the money in question." *(Information published in NRA, 19 October 2002 edition, article written by R.P., E.L. and L.T.: "Repše: the Minister must be morally clean".)*

7. "NRA has already reported that in 2001, when A.L. was still the President of Krājbanka, [LVL] 522,000 was transferred without documentation, apparently for Krājbanka's advertising and marketing activities, of which [LVL] 200,000 went to the advertising agency, Z., which also happened to be responsible for creating Latvia's

First Party's pre-election campaign." *(Information published in NRA, 22 October 2002 edition, article written by B.L.: "Parties divide money portfolios!")*

8. "It is possible that during A.L.'s term of office [LVL] 522,000 was transferred [to finance] Krājbanka's advertising and marketing activities, in respect of which the relevant documentation has not been provided." *(Information published in NRA, 22 October 2002 edition, article written by R.P.: "Krājbanka goes against A.L. at the prosecutor's office".)*

9. "[NRA] has already written that [LVL] 522,000 was transferred in 2001, without any accompanying documentation, apparently for [Krājbanka's] advertising and marketing activities, of which [LVL] 200,000 [went] to the advertising agency, Z., which was responsible for creating Latvia's First Party's pre-election campaign." *(Information published in NRA, 23 October 2002 edition, article written by B.L.: "Millionaires compete for power".)*

D. Defamation proceedings against the applicant and the newspaper

16. On 28 July 2003 A.L. lodged a claim against the applicant and the publishers of NRA seeking compensation and the retraction of a total of thirty-one allegedly defamatory articles. He also indicated that the applicant had provided false information to NRA, which had formed the basis of the above-mentioned nine articles (see paragraph 15 above).

1. Proceedings before the first-instance court

17. During a hearing of 16 January 2004 the applicant admitted before the first-instance court that the information concerning the possible misappropriation of Krājbanka's funds, which he had provided to NRA, had proved to be incorrect. He made the following statements:

"The information [was] wrong, unfounded. [As part of my duties] I was carrying out my task of managing [the Bank's] activities. I was not interested in A.L.'s private life. I have always respected him. I tried to organise [my] work correctly.

As to the mistake regarding numbers, there was one, and I apologise to A.L. and to the journalists.

A.L. worked at the Bank and worked in accordance with [its] budget. A.L. made decisions. There were others responsible for [the Bank's] budget. [The Bank] did not overpay for [its] advertisements.

The mistake regarding numbers could not have offended A.L.'s honour and dignity.

There were no public statements; maybe there were other [people] who [provided more information to the press]."

18. On 3 October 2005 the Riga Regional Court (*Rīgas apgabaltiesa*) delivered its judgment, dismissing the claims against the applicant. The court concluded that the nine articles in question (see paragraph 15 above), which had been based on the information provided by the applicant, had reported his personal opinion about the functioning of Krājbanka and its management, which could not be considered defamatory. Moreover, no

claim for defamatory information to be retracted was lodged against the applicant. The claims against both publishers of NRA (Preses Nams and Mediju nams) were partly upheld in so far as they concerned six out of the nine articles which had been based on information provided by the applicant and six other articles reporting on other matters.

2. Proceedings before the appellate court

19. On 28 May 2007 the Civil Cases Chamber of the Supreme Court (*Augstākās tiesas Civillietu tiesu palāta*) – after appeals by A.L., Preses Nams, and Mediju nams – re-examined the case and delivered a new judgment. The judgment took immediate effect.

20. The appellate court noted that at the material time the press and other mass media had been widely reporting on the 2002 parliamentary elections – that is to say the political parties and their leaders, including the newly-established political party, of which A.L. was one of the leaders. He had stood for election, his candidacy had been widely advertised and it had been, accordingly, examined by the press and other mass media. NRA had published a series of articles about the money spent on the pre-election advertising of the Latvia's First Party, linking the source of these funds to Krājbanka and its former President, A.L. It had been reported that during his time in office, LVL 522,000 had been transferred for advertising and marketing purposes without any documentary proof thereof having been preserved and that this had been considered to constitute a misappropriation of the bank's funds. These funds had been spent on the party's large-scale advertising; as the applicant had put it: "[T]his money has been stolen from the shareholders". The nine articles had also contained other information provided by the applicant – that during A.L.'s time in office, there had been breaches not only in relation to the advertising expenses, but also other breaches in respect of banking operations, payments without approval, the administration of certificate accounts against the interests of the Bank and the State.

21. The appellate court stated that the information contained in those articles about the use of Krājbanka's funds and transactions had been provided by the applicant (who had mentioned specific sums), and that the articles had contained references to his statements.

22. The appellate court found that since the applicant had provided this information to NRA journalists, he had to bear responsibility for giving and disseminating false information. The court held that this information had not corresponded to the facts and that this had been acknowledged by the applicant himself during the hearing before the first-instance court (see paragraph 17 above). This had also been confirmed by the results of the external audit and by the prosecution (see paragraphs 11 and 12).

23. The court also held that the journalists had not had a responsibility to verify the accuracy of the provided information, since the applicant's status

as the chairman of the supervisory board of Krājbanka had created a legitimate expectation that the provided information was correct.

24. Lastly, the court found that, even if the margin of permissible criticism in respect of A.L. as a member of parliament was necessarily a wider one than would normally be the case, the false information had nevertheless offended his honour and dignity, as it had contained serious allegations of unlawful activities and had given the impression that A.L. was a dishonest person.

25. Given the above, and in view of the seriousness of the interference and the applicant's position in the Bank, the court ordered the applicant to pay compensation to A.L. in connection with the nine articles in the amount of LVL 10,000 (approximately EUR 14,229), together with statutory interest (6% per annum).

26. In addition, the court upheld the claim against Preses Nams alone in respect of one other article, and ordered it to pay compensation in the amount of LVL 5,000 (approximately EUR 7,114), together with statutory interest (6% per annum).

27. The applicant and Preses Nams were also ordered to pay A.L.'s legal costs in the amount of LVL 495 (approximately EUR 704) and LVL 375 (approximately EUR 534) respectively.

28. The appellate court dismissed A.L.'s claims against Preses Nams and Mediju Nams as regards all the other articles that had not been based on any information provided by the applicant.

3. Proceedings before the Senate of the Supreme Court

29. On 28 June 2007 the applicant lodged an appeal on points of law with the Senate of the Supreme Court (*Augstākās tiesas Senāts*). He did not contest that the information he had provided to the journalists had turned out not to be supported by evidence. However, this information had constituted his evaluation of the actions taken by Krājbanka's management as a whole. He had not directly mentioned A.L. by name, surname or his position when giving the information to the journalists. His allegations regarding the misappropriation of Krājbanka's funds could only have infringed the interests of the Bank as a legal entity; it could not have offended the honour and dignity of certain executives, who had been under an obligation to inform the supervisory board and the mass media of the truth. Furthermore, the applicant had provided the information in the form of a supposition by indicating that it still needed to be verified by the Bank's internal audit. It was the NRA journalists who had linked the applicant's report with the allegations of wrongdoing by A.L. Thus, the applicant could not be held responsible for the manner in which the journalists had decided to present this information, since he had had no means of influencing this.

30. On 30 January 2008 the Senate of the Supreme Court delivered a new judgment, which in essence upheld the appellate court's judgment. The relevant parts of the judgement read as follows:

> "[The appellate court's] conclusion that the applicant had disseminated defamatory and false information was supported by the applicant's own submissions before the first-instance court, in which he admitted that he had provided incorrect information to [the journalists] ... . The fact that this information was not truthful was confirmed by [the audit agency and the prosecution].
>
> The applicant in his appeal on points of law did not contest these findings. ... He merely noted that he was a source and could not influence the evaluation given by the journalists.
>
> Having examined the testimony of [the NRA journalists], the appellate court found that the false information provided by the applicant had related not to Krājbanka's management, as the applicant indicated, but specifically to A.L., as the then President of the Bank, thus infringing his honour and dignity. ...
>
> [The appellate court] found that the journalists had had no reason to doubt the credibility of the information, as it had been provided by the applicant [in his capacity as] chairman of the supervisory board of Krājbanka, and his position had undoubtedly created a legitimate expectation that this information was true ... Accordingly, the appellate court rightly held that the journalists had had no obligation to verify the accuracy of the information provided by the applicant. ...
>
> A.L. had requested compensation in the amount of LVL 10,000 from [the applicant]. By granting his claim, the [appellate] court, taking into account the scope of the distributed information and its audience, rightly considered it justified."

The Senate of the Supreme Court also upheld the claim against Preses Nams alone in respect of one other article; they held that A.L.'s honour and dignity had not been offended in other articles. The appellate court had referred to the Court's case-law and had taken into account A.L.'s status and the fact that he had refused to offer comment. The appellate court had correctly applied the relevant principle that the journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation; the Senate referred to *a/s Diena and Ozoliņš v. Latvia* (no. 16657/03, § 84, 12 July 2007) in this regard.

Referring to section 2352a of the Civil Law and section 29(3) of the Law on the Mass Media, the Senate of the Supreme Court ordered the applicant (who had disseminated that defamatory information), and not Preses Nams, to retract the relevant parts of the articles in question (see paragraph 15 above). The latter, however, still remained obliged to publish the retracted information.

II. RELEVANT DOMESTIC LAW

A. Civil Law

31. Section 2352a of the Civil Law (Civillikums), as worded at the material time, provided that everyone had the right to bring proceedings with a view to retracting information which offended his or her honour and dignity, if the disseminator of the information could not prove that such information was true. If information that offended a person's honour and dignity was published in the press, then in the event that such information was not true, it should also be retracted in the press. If someone unlawfully offended a person's honour and dignity orally, in writing or by deed, he or she should provide financial compensation. A court should determine the amount of such compensation.

B. Law on the Press and Other Mass Media

32. Section 7 of the Law on the Press and Other Mass Media (*likums* "*Par presi un citiem masu informācijas līdzekļiem*") prohibits the publishing of information that offends the honour and dignity of or slanders a person.

33. Under section 21(1) persons are entitled to require the mass media to retract information published about them if such information is not true.

34. Section 29 reads as follows:

Section 29 Release from Liability

"The mass media shall not be held liable for the dissemination of false information if it contains:

1) official documents of the State authorities and administrative bodies, announcements by political and public organisations;

2) announcements by official information agencies;

3) publications by officials."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicant complained that the appellate court's judgment of 28 May 2007, upheld by the Senate of the Supreme Court on 30 January 2008, had constituted an unjustified interference with his right to freedom of expression, as provided in Article 10 of the Convention, which reads as follows:

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

36. The Government contested that argument.

A. Admissibility

37. The Court notes that this 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. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

38. The applicant claimed that the interference with his right to freedom of expression, even though it had been in accordance with law and had pursued a legitimate aim, had not been proportionate. The applicant maintained that the domestic courts had failed to conduct a proper balancing exercise between the competing interests, since they had not taken into account all of the relevant criteria established in the Court's case-law (he referred to *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012).

39. First of all, his allegations contributed to a debate of general interest as they related to the manner in which the Bank's (which was partly owned by the State) funds had been spent. They also related to a political party, which had obtained 10% of the seats in Parliament. His allegations had not been directed against A.L. as a private individual; nor had he disclosed any details of A.L.'s personal life.

40. Secondly, his allegations about possible misappropriation of the Bank's funds were made on the basis on the applicant's initial report, which relied, *inter alia*, on the information provided by the marketing and economics departments. Referring to *Novaya Gazeta v Voronezhe v. Russia* (no. 27570/03, § 51, 21 December 2010), he argued that the information that he had provided to the journalists had constituted a value judgment, since he had explicitly told the journalists that this information still needed to be verified by the Bank's internal audit. The fact that the respective information had later proved incorrect should not have affected this

conclusion. Moreover, the applicant had had a sufficient factual basis for this information – namely, his report on Krājbanka's advertising and marketing expenses. He believed that there had been solid grounds for his allegations; he considered that he had acted in good faith. He admitted that his statements might have been considered provocative, but they had not overstepped the permissible degree of criticism. As the chairman of the supervisory board, he had acted in the interests of the Bank's shareholders (including the State) and was under a duty to inform the public about the supervisory board's activities, which would not have been the case had the matter concerned a private entity. Furthermore, the applicant could not be held responsible for the manner in which the journalists had decided to report the information provided by him.

41. Thirdly, the applicant noted that the press had reported on A.L.'s professional activities on a regular basis. The applicant then cited further statements, which had been reported in the other articles published by NRA (see paragraph 16 above), but which had not been made by him. He emphasised that those statements had not been found defamatory as they had either contained sufficient factual basis or had been considered as value judgments. It was his view that those publications showed that A.L.'s activities had been controversial and that criticism had been directed at various activities related to his professional conduct.

42. Fourthly, it had to be taken into account that the published articles had not caused any obstacles for A.L. to be elected as a member of parliament and later to hold the position as the chairman of *Saeima's* defence and home affairs commission. Although the applicant's allegations and criticism regarding A.L.'s professional activities might have been unpleasant, they had not harmed A.L.'s reputation.

43. Lastly, the applicant submitted that the appellate court, while awarding damages in the amount of LVL 10,000, had failed to specify any grounds for its decision to award this specific sum; they had merely referred to the applicant's position and had noted that "[this amount] corresponds to the seriousness of the delict". Such reasoning was, in his view, insufficient. The applicant considered that he had been imposed with a severe sanction taking into account the economic situation in the country – average net monthly salary at the material time had stood at EUR 407 (LVL 286); Therefore, the award had amounted to 35 average monthly salaries. He also referred to the so-called "Talsi tragedy" cases, where the non-pecuniary damage awards in connection with an incident of 28 June 1997, where several children had lost their lives, had been LVL 20,000 (see, for more information, *Elberte v. Latvia*, no. 61243/08, § 71, ECHR 2015).

(b) The Government

44. The Government acknowledged that the impugned court decisions had amounted to an interference with the applicant's right to freedom of

expression. However, the interference had been prescribed by law and had pursued the legitimate aim of protecting the reputation of A.L., as guaranteed by Article 8 of the Convention. Referring to *Kasabova v. Bulgaria* (no. 22385/03, § 54, 19 April 2011) and *Axel Springer AG* (cited above, §§ 85-86, 89), the Government also claimed that the interference had been proportionate. They maintained that the States must be given a certain margin of appreciation in striking the appropriate balance between the right to freedom of expression and the right to respect for private life (*Kasabova*, cited above, § 60).

45. First of all, the Government did not agree that the applicant's allegations had contributed to a debate of public interest. They agreed that the public had an interest in being informed about any criminal proceedings, but emphasised that it had to be done observing the principle of presumption of innocence. The applicant did not observe this principle as had provided the journalists with false and defamatory information. Similarly, the public had the right to know about the use the funds partly owned by the State, however, the applicant's conduct had created an adverse effect as he had mislead society with false information and injured the reputation of A.L.

46. Secondly, they argued that the information provided by the applicant had not constituted a value judgment, but had been a statement of fact, as established by the domestic courts. The Government noted that the domestic courts, when examining A.L.'s claims concerning all thirty-one articles published by NRA (see paragraphs 13 et seq. above), had made a clear distinction between the comments made by the applicant and the opinions expressed by the journalists. Furthermore, the applicant himself had admitted that the information provided by him to the journalists had been incorrect. Alternatively, even if the information provided by the applicant had constituted a value judgment, the Government claimed that it had lacked a sufficient factual basis. The Government emphasised that the nine articles in issue had been published between 3 and 23 October 2002, whereas already on 16 October 2002 the supervisory board had received the first results of the internal audit dismissing the applicant's allegations. Nor did the final report of 30 October 2002 confirm the applicant's allegations. Given the applicant's professional qualification and previous experience, he must have been aware that his allegations of the misappropriation of funds (including the statement "this is money that has been stolen from the shareholders") – which could amount to such criminal offences as fraud, misappropriation of funds or abuse of official authority – could only be substantiated by confirmed results of internal or external audits. Even assuming that the applicant indeed believed that there had been solid grounds for his allegations, he did not retract those allegations as soon as he learned that they had not been confirmed by the internal audit either on 16 or 30 October 2002. Nor did he retract them after receiving the results of

an external audit in May 2003. The Government concluded that the applicant's allegations fell outside the limits of acceptable criticism and that he had not acted in good faith.

47. Thirdly, the Government did not dispute that, during his time in office as the President of the Bank and throughout the pre-election period, A.L. had acted in a public context. They added, however, that he had not previously been held criminally liable for his professional or private activities. Also, the applicant's prior conduct had to be addressed. They emphasised his professional qualification and previous experience and noted that he had to be aware of the fact that his allegations could only be disclosed if he had credible information.

48. Fourthly, the Government reiterated that the domestic courts had found the applicant liable for nine false and defamatory publications, which in essence had been related to the same issue (as stated by the Government):

> "[LVL] 522,000 was transferred without documentation, apparently for Krājbanka's advertising and marketing activities, of which [LVL] 200,000 went to the advertising agency, Z., which also happened to be responsible for creating Latvia's First Party's pre-election campaign."

49. Lastly, as regards the amount of compensation, the domestic courts had taken note of similar cases examined by the Court. Taking into account the applicant's status, the award was not capable of having a chilling effect on the applicant.

2. The Court's assessment

(a) Existence of an interference, lawfulness and legitimate aim

50. It is common ground between the parties that the award of damages against the applicant amounted to an "interference" with his right to freedom of expression and that it was "prescribed by law". The parties also agreed that the interference pursued the legitimate aim of the protection of the rights of others – namely the reputation of A.L. What remains to be established is whether the interference was "necessary in a democratic society".

(b) Necessary in a democratic society

(i) General principles

51. The Court has already had occasion to lay down the relevant principles which must guide its assessment – and, more importantly, that of domestic courts – of necessity. It has thus identified a number of criteria within the context of balancing the competing rights. The relevant criteria have thus far been defined as: the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the news report; the prior conduct of the person affected; and the content, form and

consequences of the publication. Where it examines an application lodged under Article 10, the Court will also examine the way in which the information was obtained and its veracity, as well as the severity of the sanction imposed (see, for recent authorities, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, §§ 88 and 118, ECHR 2017 with further references, and *Ärztekammer für Wien and Dorner v. Austria*, no. 8895/10, § 64, 16 February 2016).

52. Furthermore, the Court draws a distinction between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement; if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015 with further references).

53. The Court also emphasises that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are interrelated and operate to reinforce each other. For that reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see, for a recent authority, *Cheltsova v. Russia*, no. 44294/06, § 96, 13 June 2017 with further references).

54. However, Article 10 does not guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern and relating to politicians or public officials (see, among other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999 III). It is open to the relevant State authorities to adopt appropriate measures in order to react without excess to defamatory accusations that are devoid of foundation or formulated in bad faith. Moreover, freedom of expression carries with it duties and responsibilities, and any person who chooses to disclose information must carefully verify, to the extent permitted by the circumstances in question, that it is accurate and reliable (see *Guja v. Moldova* [GC], no. 14277/04, § 75, ECHR 2008). Furthermore, the more serious the allegation, the higher the level of diligence that must be exercised before bringing it to the attention of the relevant authorities or the public (see *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 115). When the freedom of

expression of persons with public responsibilities is at stake, the "duties and responsibilities" referred to in Article 10 § 2 are of particular importance. In that regard, an important aspect is the privileged position that persons with public responsibilities enjoy in accessing the media owing to their position of authority (see *Poyraz v. Turkey*, no. 15966/06, § 78, 7 December 2010).

(ii) Application of the relevant general principles to the present case

55. The present case concerns defamation proceedings against the applicant, who was in office as the chairman of the supervisory board of the Bank, which was partly owned by the State. He provided comments to the journalists regarding allegations of undocumented advertising and marketing expenses that he had raised at the Bank's supervisory board meeting. As a result, during the month which preceded the 2002 parliamentary elections, NRA published numerous articles about the upcoming elections, including nine articles referring to the applicant's allegations, which later turned out to be unfounded.

56. The Court can accept that the applicant's allegations were made in the context of a public debate prior to the 2002 parliamentary elections and concerned A.L., who was one of the leaders of a newly established political party and who stood for election. Also, it was undisputed in the domestic proceedings and before the Court that A.L. – during his time in office as the President of the Bank and throughout the pre-election period – had acted in a public context. While the domestic courts' did not provide full analysis of the criteria laid down in the Court's case-law (see paragraph 51 above), the Court does not consider it necessary to examine this further because the crux of the present case is the question of whether the applicant's allegations contained a factual basis that was sufficient in view of the particular circumstances of the present case.

57. The Court notes that the parties to the present case disagreed as to whether the applicant's allegations of undocumented advertising and marketing expenses in the Bank constituted statements of fact or value judgments. The domestic courts' reasoning in this respect was rather succinct as they limited themselves to finding that the applicant's allegations turned out to be unfounded – which fact the applicant did not contest – and had thus been false from the very beginning. While the Court considers that some of the applicant's assertions could be regarded as constituting value judgements, his pronouncements also included statements of fact susceptible of proof. In any event, the Court is of the view that the issue that must be determined in the present case is whether there was at least a "sufficient factual basis" for the applicant's allegations. The reasonableness of the efforts made to verify the accuracy of the information disclosed must be determined in the light of the situation at the time that the statements were made, rather than with the benefit of hindsight, on the basis of the subsequent internal and external audit reports (see, *mutatis mutandis*,

Medžlis Islamske Zajednice Brčko and Others, cited above, § 109). The Court also refers here to the "duties and responsibilities" associated with freedom of expression (see paragraph 54 above) and notes their pertinence to the present case, given the applicant's public status under the domestic law as the chairman of the supervisory board of the partly State-owned Bank, as well as his own affirmation that he had the duty to inform the public of the supervisory board's activities.

58. It is undisputed that the applicant's allegations were based on his initial report that he had prepared for the purposes of the supervisory board's meeting (see paragraph 9 above). He had requested and received internal information from the marketing and economics departments in this regard and informed the supervisory board about his personal findings of undocumented advertising and marketing expenses in the Bank. He also commented on his allegations to the journalists, who – on the day after the supervisory board's extraordinary meeting – published the first article alleging that under the Bank's previous management large sums of money had been transferred without any documentation in order to finance advertising and marketing activities. The applicant was directly quoted as stating that "somebody is receiving this paid money back" and "this is money that has been stolen from the shareholders." In later newspaper articles the applicant was also quoted as saying: "It is possible that this is the money that provided the foundation for the Latvia's First Party's sizable advertising campaign." These statements made by the applicant (see also paragraph 15 above) contained serious allegations. The Senate of the Supreme Court, relying on the journalists' testimony, held that the applicant's allegations had specifically concerned A.L. and not – as claimed by the applicant – the Bank's management as a whole. What is in issue in the present case is whether the applicant exceeded the limits of acceptable criticism by commenting on his allegations to the journalists at the material time.

59. The Court agrees with the domestic courts that the limits of acceptable criticism are wider for politicians than in relation to private individuals. Moreover, candidates in parliamentary elections are exposed to the widest scrutiny by the press and by the public. That being said, in view of the consequences that serious allegations of misconduct may have on public opinion and, potentially, on the results of elections, "duties and responsibilities" inherent in freedom of expression require particularly close scrutiny as to whether there was a sufficient "factual basis" for such serious allegations.

60. The applicant's initial report not having been made available, the Court notes several factors which call into question the way in which the applicant acted when commenting on his allegations to the journalists in the present case, given his position, his knowledge of the relevant events, and the point in time at which he made his allegations.

61. First of all, the applicant must have been aware of his status under domestic law as a public official and that the journalists could – in accordance with section 29(3) of the Law on the Mass Media – rely on his statements (see paragraphs 30 and 34 above). The domestic courts established that the journalists had had no reason to doubt the credibility of the information provided by the applicant owing to his position as the chairman of the supervisory board. Indeed, the journalists could not further verify the applicant's allegations given that they concerned the Bank's internal documents and did not appear to have been publicly available (compare *Bladet Tromsø and Stensaas, cited above,* § 68).

62. Secondly, the Court notes that the applicant formed his views concerning undocumented advertising and marketing expenses after consulting the heads of the marketing and economics departments. It is unclear – given the seriousness of the allegations – why he did not solicit any relevant information from the internal audit department before giving his comments to the press. The Court notes that it took only around fourteen days for the internal audit department to carry out its preliminary verification of the applicant's allegations and to dismiss them. Nonetheless, the applicant commented on his allegations to the press without awaiting the outcome of the internal audit, which was still ongoing when he made those comments. Thus, the applicant knowingly chose to disclose unverified information to the journalists.

63. Thirdly, the applicant's comments were made during the month preceding the elections, at the time when a political debate was at its peak. Such allegations were capable of carrying a certain weight on public opinion about the newly established party and one of its leaders. Given the applicant's position at the Bank and the nature of his allegations, the Court does not consider that the applicant could rely on the degree of exaggeration or even provocation that can usually be used in the exercise of freedom of expression in the context of a political debate (see, *mutatis mutandis*, *Petrina v. Romania,* no. 78060/01, § 48, 14 October 2008; compare also *Standard Verlagsgesellschaft mbH v. Austria (no. 2)*, no. 37464/02, § 42, 22 February 2007). Therefore, given the circumstances of the case, the need for a sufficiently accurate and reliable factual basis was particularly relevant.

64. Lastly, it appears that the applicant took no steps to voice his disagreement (a press release, official comment or retraction etc.) with the publication of further articles, citing him as a source and providing further quotes of his statements, when – as early as 16 October 2002 – the first results of the internal audit were made available to the supervisory board, finding no proof for undocumented advertising and marketing expenses in the Bank. As noted by the Government, he appears not to have taken any further steps to remedy the situation after the final results had been made available by the internal audit and external audit.

65. In view of the foregoing, the Court concludes that the applicant's initial report, on the basis of which he made comments on such serious allegations as misappropriation of the Bank's funds by its former President, who was a candidate in the parliamentary elections, contained no sufficient factual basis, even if the applicant's comments were to be regarded as constituting value judgments. The applicant, accordingly, overstepped the limits of acceptable criticism in relation to A.L.

66. The Court is therefore satisfied that the disputed interference was supported by relevant and sufficient reasons and that the authorities of the respondent State struck a fair balance between the applicant's freedom of expression, on the one hand, and A.L.'s interest in protection of his reputation on the other hand, thus acting within their margin of appreciation (compare *Poyraz*, cited above, § 79).

67. Accordingly, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention;

Done in English, and notified in writing on 14 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President