CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF BALSYTĖ-LIDEIKIENĖ v. LITHUANIA

(Application no. 72596/01)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Balsytė-Lideikienė v. Lithuania,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer, *judges,*
Ineta Ziemele, *appointed to sit in respect of Lithuania,*
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 72596/01) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mrs Danutė Balsytė-Lideikienė ("the applicant"), on 23 May 2001.

2. The applicant was initially represented before the Court by Mr A. Vallieres; later she revoked her authorisation and appointed Mr F. Ruhlmann, a lawyer practising in Strasbourg, as her representative. On 14 February 2006 the applicant again revoked her authorisation and from that date had no representation. The Lithuanian Government ("the Government") were represented by their Agents, Ms D. Jočienė and Ms E. Baltutytė.

3. The applicant alleged a violation of Article 6 § 1 of the Convention in that her case had been examined by the first-instance court without experts having been summoned to the hearing despite the fact that their conclusions had central value for the merits of the case. She also asserted that she had been unable to state her case before the Supreme Administrative Court because the latter had not held a hearing on appeal.

Relying on Article 10 of the Convention the applicant alleged that her right to freedom of expression had been violated because the State authorities had confiscated a calendar she had published and banned its further distribution.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). The Government designated John Hedigan, the judge elected in respect of Ireland, to sit as a national judge in this case. As John Hedigan left the Court, the Government accordingly

appointed Ineta Ziemele, the judge elected in respect of Latvia, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 24 November 2005 the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Mrs Danutė Balsytė-Lideikienė, is a Lithuanian national, who was born in 1947. At present she lives in Lithuania.

8. The applicant is the founder and owner of a publishing company "Metskaitliai". Since 1995 the company has published "Lithuanian calendar" (*Lietuvio kalendorius*), a yearly calendar with notes by the applicant and other contributors describing various historic dates from the perspective of its authors. The calendar could be purchased in bookstores. It was distributed in Lithuania and among Lithuanian immigrants living abroad.

9. On 4 January 2000 a Member of the Lithuanian Parliament (Seimas) distributed a public announcement, stating that the texts published in "Lithuanian calendar 2000" insulted persons of Polish, Russian and Jewish origin. The relevant parts of "Lithuanian calendar" read as follows:

> [First page of the calendar]: "Lietuva – the land of the Lithuanians, as each footprint here bears traces of our Nation's blood"
>
> 15 February: "In 1998, on the eve of the 80th anniversary of the restoration of the independence of Lithuania, a Pole insidiously killed nine Lithuanians living in Širvintų district's Draučių village – all the inhabitants of the village were shot. (...) The Nation was informed about the tragedy after thirty six hours – during this time Lithuanian [high society] were celebrating and enjoying themselves, hugged the Polish president, put flowers [on the monuments] to Pilsudski's army, drank and danced their ghastly dance on the freshly spilled blood of Lithuanians whose whole village had been murdered."
>
> 17 March: "The new Lithuanian government (...) puts on trial the Lithuanian nation for the extermination of the Jews (...) but is not interested in the genocide of the Lithuanians and dances Jewish foxtrots to the music of the Wiesenthals and Zurroffs."
>
> 26 April: "In 1944 in the vicinity of Rodūnia the Polish Krajova Army killed 12 Lithuanians for the sole reason that they were Lithuanians."

15 June: “The soviet occupying power, with the help of the communist collaborators, among whom, in particular, were many Jews, for half a century ferociously carried out the genocide and colonisation of the Lithuanian nation.”

23 June: “In 1944 in Dubingiai and its surrounding area the Polish Krajova Army brutally killed more than a hundred Lithuanians (...) among whom were women, little children, even babies and old people. This was the way the Poles, in war conditions, carried out ethnic cleansing. In the whole territory of Lithuania [the members of the Krajova Army] killed about 1 000, and in the ethnic Lithuanian lands about 3 000 more innocent people, for the sole reason that they were Lithuanians. The Dubingiai events should be regarded as the genocide of the Lithuanian nation. But the Lithuanian authorities [who associate themselves with the Poles] ignore obvious facts and do not even attempt to evaluate these war crimes.”

15 July: “Through the blood of our ancestors to the worldwide community of the Jews”

18 July: “In 1999 the monument to the victims of the Polish Krajova Army was put up and consecrated in Dubingiai. (...) In 1944 in the environs of Dubingiai the Polish Krajova Army plundered and killed innocent people solely because they were Lithuanians. The killings of 8 March and 23 June 1944 are horrible [acts of] ethnic cleansing and cruel war crimes that cannot be solved by simply constructing a monument to the victims. There is no statutory time-limit on prosecution of war crimes, the war criminals should be identified and tried. (...)”

31 August: “occupying Russian army”, “Russian occupants”

10 September: “The March of the Beggars. In 1997 (...) about fifty Lithuanian beggars demonstrated in front of the Parliament. They were joined by a few thousand Vilnius residents. The purpose of this act was to attract the Parliament's and the Government's attention to poverty (...) in Lithuania. Unfortunately, the public gathering of the beggars did not receive any attention from the heads of the Lithuanian State. At the same time a banquet for the Jews took place in Vilnius. The banquet cost Lithuania a million litas. A feast during the plague. (...) The Jews were managing the Parliament; from the tribune of the Parliament the Jews were insulting and scolding the Lithuanian nation, asking for Lithuanian blood and Lithuanian property. The majority of the ruling Conservative party (...) greeted the swearing Jews with standing ovations.”

24 November: “The Lithuanian nation will only survive by being a nationalist nation – no other way exists!”

5 December: “In 1991 the Supreme Council (Parliament) of the Republic of Lithuania (...) adopted the “zero” citizenship law, proposed by V. Landsbergis. The law illegally gave citizenship to occupants and colonists and the Lithuanians became worthless.”

22 December: “The politicians adopted legislation demonstrating their anti-Lithuanian attitude. This way, the conservative neo-Bolsheviks took their revenge on the Lithuanian nation, executing the will of the Jewish extremists. ”

24 December: “21 Lithuanians were brutally killed during the Christmas of 1944. Half a century passed and on Christmas Eve the Pharisees (...) who took power started

new executions against the Lithuanians and the Lithuanian nation, carrying out pro-Jewish politics."

10. The back cover of "Lithuanian calendar 2000" contained a map of the Republic of Lithuania. The neighbouring territories of the Republic of Poland, the Russian Federation and the Republic of Belarus were marked as "ethnic Lithuanian lands under temporary occupation".

11. On 10 January 2000 a Seimas committee requested the Office of the Prosecutor General to investigate whether the publication was compatible with the Lithuanian Constitution and other legal acts.

12. On 12 January 2000 the Prime Minister wrote a letter to the State Security Department, requesting it to examine whether "the contents of 'Lithuanian calendar 2000' contained the elements of violations of ethnic and racial equality".

13. On the same date the Lithuanian Foreign Ministry also received a note from the Russian Embassy, expressing its dissatisfaction with the publication's map describing certain territories of the Russian Federation as "ethnic Lithuanian lands under temporary occupation".

14. On 13 January 2000 a similar note was received from the Embassy of Belarus.

15. On 14 January 2000 the State Security Department requested Vilnius University to submit an experts' opinion as to whether "Lithuanian calendar 2000" promoted ethnic, racial or religious hostility. In this regard the security intelligence authorities requested the experts to examine whether "Lithuanian calendar 2000" contained anti-Semitic, anti-Polish, anti-Russian expressions, or assertions of the superiority of Lithuanians *vis-à-vis* other ethnic groups.

16. On 20 January 2000 two experts, history and political science professors at Vilnius University, found that "Lithuanian calendar 2000" could be characterised as promoting the radical ideology of nationalism, which rejected the idea of the integration of civil society, incited ethnocentrism, contained xenophobic and offensive statements, in particular with regard to the Jewish and Polish populations, and promoted territorial claims and national superiority *vis-à-vis* other ethnic groups. The experts nonetheless noted that the calendar did not directly incite violence against the Jewish population, nor did it advocate implementing discriminatory policy against this ethnic group.

17. At the end of January 2000 the security intelligence authorities seized a number of copies of "Lithuanian calendar 2000" in various bookstores in Lithuania. The distribution of the publication was stopped.

18. By a letter of 31 January 2000 the Prosecutor General informed the Prime Minister that, following the examination of the content of "Lithuanian calendar 2000", no elements of a criminal offence (instigation of ethnic or racial hatred) had been found in the applicant's releasing of the publication. However, the Prosecutor General held that in this respect the

applicant should have been punished by way of the administrative procedure under Article 214^{12} of the Code on Administrative Law Offences (Production, storage and distribution of information materials promoting ethnic, racial or religious hatred). He stated that the security intelligence authorities had applied to an administrative court for a penalty to be imposed on the applicant under the domestic provision. The Prosecutor General also informed the Prime Minister that the distribution of the calendar had been suspended pending the determination of the case by a court.

19. On 14 February 2000 the officers of the State Security Department held that the applicant should be punished by the administrative procedure provided by Article 214^{12} of the Code on Administrative Law Offences.

20. On 28 June 2000 the Vilnius City Second District Court found that the applicant had produced 3,000 copies of "Lithuanian calendar 2000", 588 of which had been sold. By reference mostly to the experts' conclusion of 20 January 2000, the court held that the applicant thereby intended to distribute material promoting ethnic hatred in breach of Article 214^{12} of the Code of Administrative Law Offences. The Court imposed an administrative fine in the amount of 1,000 Lithuanian litai (LTL) on the applicant and ordered confiscation of all copies of "Lithuanian calendar 2000" seized in the bookstores.

21. The court examined the case in the absence of the applicant or her lawyer. It was noted however that she had been duly informed of the date and place of the hearing, but that she had not submitted a request to postpone the examination or an explanation of the reasons for her absence. Therefore the court had concluded that the case could be examined without the applicant being present.

22. The applicant appealed, claiming in particular a violation of Article 10 of the Convention. She also argued that she had been tried *in absentia*.

23. On 16 August 2000 the Vilnius Regional Court quashed the first-instance judgment on the ground that the applicant had been in hospital from 27 June to 3 July 2000 and could not take part in the first-instance hearing. The case was remitted for a fresh examination at first instance.

24. On 28 September 2000 a judge of the Vilnius City Second District Court ordered another expert examination to be carried out. The court requested Vilnius University to form a group of experts representing various fields of social science in order to produce a conclusion on whether "Lithuanian calendar 2000" promoted ethnic, racial or religious hatred, whether it contained anti-Semitic, anti-Polish, anti-Russian expressions, or assertions of the superiority of Lithuanians *vis-à-vis* other ethnic groups.

25. In reply to the court's decision, four separate expert opinions were produced, reflecting the point of view of Vilnius University professors specialising in the following fields: history, psychology, political science and library science.

26. On 12 March 2001 the applicant submitted a written request, received by the Vilnius City Second District Court the following day, by which she asked the court to postpone the hearing as the experts had not appeared at the hearing for the third time in a row. The applicant also asked the court to determine the reasons behind the experts' absence and to sanction them. The court did not grant the applicant's requests.

27. On 13 March 2001 the Vilnius City Second District Court found that by publishing and distributing "Lithuanian calendar 2000" the applicant had breached Article 214^{12} of the Code on Administrative Offences. The court imposed an administrative penalty in the form of a warning on her, while the unsold copies of the calendar and the means to produce it were confiscated.

28. By reference to the conclusions of the experts in the field of political science the court stated that a one-sided portrayal of relations among nations obstructed the consolidation of civil society and promoted ethnic hatred. The court also noted that "Lithuanian calendar 2000" had caused negative reactions from part of society as well as from the diplomatic representations of some neighbouring States, including Poland, Belarus and Russia, who had expressed their concerns about the map denoting some of the territories of those countries as "ethnic Lithuanian lands under temporary occupation". Relying on the conclusion of the bibliographic expert report the Vilnius City Second District Court noted that the publication did not meet the prescribed standards because, among other things, the calendar contained no indication of the sources and literature that had been used, and the name of the author of each statement in the calendar was not provided. The court concluded that the applicant had prepared, published and distributed the calendar and was therefore responsible for its content.

29. By reference to the conclusions of the experts in the fields of history and psychology the court held that the applicant's actions had not been deliberate, but reckless. The court relied on the psychological experts' report that "Lithuanian calendar 2000" represented the personal character, values and emotions of the applicant. The court noted the conclusion of the experts in psychology that the publication did not contain expressions of hatred against the Polish population, the superiority of the Lithuanians over other nationals was not emphasised, and the negative statements about the Jewish population were not to be seen as anti-Semitic. However the Vilnius City Second District Court concluded that the psychology experts' conclusion did not refute the other evidence collected and the remaining evidence confirmed that there had been a violation of administrative law.

30. The court emphasised that the breach of the administrative law committed by the applicant was not serious, and that it had not caused significant harm to society's interests. The court also noted the applicant's disability and absence of previous convictions.

31. In view of those circumstances and given the negligent nature of the offence, the court decided to impose an administrative warning under Article 30^1 of the Code on Administrative Law Offences, which was a milder administrative penalty than the fine of between LTL 1,000 and LTL 10,000 prescribed by Article 214^{12}.

32. The case was examined in the presence of the applicant and a representative of the security intelligence authorities. The applicant left the hearing in the course thereof. At the hearing she was not represented by a lawyer.

33. The applicant appealed, claiming in particular that Article 10 of the Convention had been violated. She also complained that the first-instance court had not called the experts to the hearing, thereby violating her defence rights.

34. On 4 May 2001 the Supreme Administrative Court reviewed the case under written procedure. The applicant relied on the conclusion of the psychological experts' report, arguing that "Lithuanian calendar 2000" did not promote hatred against the Poles, Jews or Russians, nor did it claim the superiority of the Lithuanians over other nations. According to the appellate court, these were the conclusions of experts in one field only, whereas the rest of the evidence, namely the political science and bibliographical experts' reports, attested that the comments in the calendar were based on the ideology of extreme nationalism, which rejected the idea of civil society's integration and endorsed xenophobia, national hatred and territorial claims.

35. The court disagreed with the applicant's argument that her defence rights had been violated because the first-instance court had failed to call the experts to have them challenged at the hearing. The Supreme Administrative Court stated:

> "The [applicant's] argument that the [first-instance] court violated procedural legal norms because the experts were not present at the court hearing, is not valid. The first-instance court, relying on its inner belief, evaluated the experts' conclusions both as to their reasonableness and as to their comprehensiveness. Article 277 § 1 of the Code on Administrative Law Offences provides for a possibility to summon the experts if there is a need to explain the conclusions the latter had presented. The fact, that this possibility had not been used, cannot be regarded as a violation of procedural legal norms."

Relying on the above arguments, the Supreme Administrative Court dismissed the appeal.

36. On an unspecified date the applicant left Lithuania. She applied for political asylum in Switzerland. Later the applicant returned to Lithuania. She lives in Vilnius.

II. RELEVANT DOMESTIC LAW

37. The Constitution of the Republic of Lithuania, as relevant in this case, provides as follows:

Article 25

"Everyone shall have the right to hold opinions and freely express them.

No one may be prevented from seeking, receiving and imparting information and ideas.

Freedom of expression, freedom to receive and impart information may not be restricted in any way other than by law and when it is necessary for the protection of health, dignity, private life, and morals, or for the defence of the constitutional order.

Freedom of expression and freedom to impart information shall be incompatible with criminal actions - incitement of national, racial, religious, or social hatred, violence or discrimination, slander or disinformation."

38. The Code on Administrative Law Offences ("the Code") punishes with administrative penalties various minor offences which are not provided for in the domestic substantive criminal law.

Article 1 of the Code provides that all citizens must ensure respect for legal rules and the rights of other citizens. Article 9 of the Code defines an administrative offence as a wrongful act which causes danger to public order, citizens' rights or the established order of administration.

Article 20 of the Code provides that administrative punishment is a form of establishing responsibility that has the aim of punishing offenders, educating them to observe the law and preventing them reoffending.

An administrative warning is a penalty under Article 30^{1} and it can be used to replace a harsher penalty the Code prescribes for a particular offence; the administrative warning is also intended to serve as a preventive measure, in the same way as a suspended sentence in criminal law.

Article 214^{12} of the Code punishes the production, storage and distribution of information material promoting national, racial or religious hatred by a fine of between LTL 1,000 and LTL 10,000 with the confiscation of the material, with or without confiscation of its main means of production.

Article 256 provides that an expert's conclusion can be considered as evidence. Pursuant to Article 277, an expert can be appointed when special knowledge is required for solving the case.

Under Article 272 of the Code, a person who is liable for an administrative sanction has the right to familiarise himself with the material of the case and to submit explanations and evidence, as well as to lodge requests.

Article 314 of the Code stipulates that if a fine has been imposed on a person and the latter does not possess the means to pay it, a court can substitute the fine with administrative arrest of up to 30 days.

39. Article 53 of the Law on Administrative Proceedings (LAP), as in force at the material time, provided that, among other procedural rights, the parties were entitled to question other participants in the process, including witnesses and experts, to take part in the examination of evidence and to present explanations.

Under Article 130 of the LAP, parties had the right to bring an appeal against a decision of a first-instance court. The appeal should indicate, among other things, evidence to support its grounds.

Article 144 of the LAP stipulated that appeal proceedings against a decision or ruling in cases relating to administrative law offences were conducted in writing. Upon the decision of the chamber of judges, an oral hearing of a specific case could be held.

III. RELEVANT INTERNATIONAL LAW

40. Article 20 § 2 of the International Covenant on Civil and Political Rights, in force in the Republic of Lithuania since 20 February 1992, provides:

> "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

41. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the Republic of Lithuania on 9 January 1999, provides, insofar as relevant, as follows:

Article I

> "1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on ... national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Article 2

> "1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means ... of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
>
> ...
>
> (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization ..."

Article 3

"States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

Article 4

"States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin ..."

42. According to Article 6 § 2 of the Framework Convention for the Protection of National Minorities, signed within the framework of the Council of Europe and in force in the Republic of Lithuania since 1 July 2000:

"The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."

43. The European Commission against Racism and Intolerance General Policy, in its Recommendation no. 1: Combating racism, xenophobia, anti-Semitism and intolerance, recommends that the Governments of the member States, insofar as relevant, "ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-Semitism and intolerance".

44. Appendix to Recommendation no. R (97) 20 of the Committee of Ministers to Member States on "Hate speech", drafted within the framework of the Council of Europe, provides, insofar as relevant, as follows:

Scope

"The principles set out hereafter apply to hate speech, in particular hate speech disseminated through the media.

For the purposes of the application of these principles, the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."

Principle 2

"The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others."

Principle 3

"The governments of the member states should ensure that ... interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover ... any limitation of or interference with freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others."

Principle 4

"National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein."

Principle 5

"National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. The parties' submissions

1. The applicant

45. The applicant alleged a breach of Article 6 of the Convention, which provides, insofar as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ... .
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ... ."

46. The applicant submitted that her case had been examined by the first-instance court without the experts having been summoned, even though their conclusions were essential to the determination of the merits of the case. In view in particular of the fact that some of the expert conclusions were controversial, the applicant should have been given the opportunity to have the experts examined at a hearing. The applicant also claimed that she had been unable to state her case properly before the Supreme Administrative Court, as it had not held a hearing on appeal.

2. The Government

47. The Government stated at the outset that in the present case Article 6 was not applicable under either its "civil" or "criminal" head. With regard to the non-applicability of Article 6 under the civil head the Government stressed the public-law nature of the dispute. The imposition of the administrative punishment – warning with confiscation of the calendars – had exclusively concerned relations between the citizens and the state. In any event, even assuming that Article 6 applied under its civil head, there had been no need for the domestic courts to call and examine witnesses or experts at a hearing. The Government submitted that at no stage of the proceedings had the applicant requested the examination of the experts. Moreover, there was no reason to doubt the objectivity of the experts'

conclusions. The applicant had been able to familiarise herself with the material of the case, including the conclusions, and comment on them either by submitting written explanations or orally at the hearing.

48. Regarding the examination of the applicant's appeal by the written procedure at the Supreme Administrative Court, the Government relied on Article 137 § 2 of the Law on Administrative Proceedings, which prescribed that proceedings on appeal against court rulings in cases of administrative law offences were normally conducted in writing. Moreover, even if the applicant had made a request for an oral hearing, which she failed to do, the court would not have been obliged to grant such a request. The Government also noted that in line with the practice of the Supreme Administrative Court, an oral hearing is held in cases where the court decides that not enough evidence has been gathered, or that it is controversial, and thus that it is necessary to hear submissions from the parties in person. In the present case the Supreme Administrative Court took into account the clarity of the factual circumstances and the clarity of the applicant's submissions as well as the fact that Vilnius City Second District Court had duly and thoroughly examined the questions of fact and law. Therefore the Government concluded that there had been no breach of Article 6 under its civil head.

49. As to the applicability of Article 6 of the Convention under its "criminal" head the Government turned to the criteria developed in the *Engel* case: the legal classification of the offence in domestic law, the nature of the offence and the nature and degree of severity of the possible penalty (*Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, § 82). It observed that the offence which the applicant committed under Lithuanian law was administrative, while admitting that the criterion had limited relevance. More importantly, elaborating on the scope of the violated legal norm, the Government acknowledged that it had a general effect. Nonetheless, on the question of the purpose of the penalty for breach of Article 214^{12} of the Code on Administrative Law Offences, the Government contended that it was more preventive than punitive.

50. As to the nature and severity of the penalty, the Government stressed that, having taken into consideration the degree of the applicant's guilt and extenuating circumstances, the latter received only a warning under Article 30^{1} of the Code as opposed to a fine of between 1,000 LTL (approximately EUR 290) and 10,000 LTL (approximately EUR 2,900) which Article 214^{12} of the Code prescribes. Moreover, the administrative punishment imposed could not be converted into a prison sentence. Therefore the Government maintained that the severity of the punishment imposed in no way attained the level required for it to be considered criminal for the purpose of Article 6 of the Convention.

51. According to the Government, even assuming that Article 6 applied under its "criminal" head, the requirement of fairness of the proceedings had been respected. The Convention does not give the defence an absolute right

to question every witness it wishes to call. The Vilnius City Second District Court had exercised its discretion and rightly decided that in view of the clarity of the submitted information there was no need to call the experts to the hearing. The first-instance court had then based its decision not only on the experts' conclusions, but also on other evidence, such as the protocol of the administrative law offence and the submissions of the applicant. The Government stressed that at no stage of the proceedings had the applicant, either in writing or during the hearing, explicitly requested the examination of the experts.

52. On the issue of the fact that a hearing on appeal had not been held before the Supreme Administrative Court, the Government maintained that the applicant had not lodged any request for a hearing to be held. Moreover, the applicant's rights under Article 6 had been fully respected by the first-instance court, thus the appellate court could have reasonably considered that there had been no need for a hearing and had been right to decide the case under the written procedure as the national law prescribed.

B. The Court's assessment

1. Applicability of Article 6 of the Convention

53. Having regard to the fact that the applicant was sanctioned with an administrative warning and the confiscation of the unsold copies of "Lithuanian calendar 2000" , the question arises whether the proceedings were "criminal" within the autonomous meaning of Article 6 and thus attracted the guarantees under that head. In determining whether an offence qualifies as "criminal", three criteria are to be applied: the legal classification of the offence in domestic law, the nature of the offence and the nature and degree of severity of the possible penalty (see, among other authorities, *Engel and Others*, cited above, § 82, and *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2504, § 56).

54. As to the first criteria the Court acknowledges, and it was not disputed by the parties, that the Code on Administrative Law Offences is not characterised under domestic law as "criminal". However, the indications furnished by the domestic law of the respondent State have only a relative value (see *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, p. 19, § 52).

55. In addition, it is the Court's established jurisprudence that the second and third criteria are alternative and not necessarily cumulative: for Article 6 to be held applicable, it suffices that the offence in question is by its nature to be regarded as "criminal" from the point of view of the Convention, or that the offence made the person liable to a sanction which, by its nature and degree of severity, belongs in general to the "criminal"

sphere (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 86, ECHR 2003-X). This does not exclude that a cumulative approach may be adopted where the separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a "criminal charge" (see *Lauko*, cited above, § 57).

56. On the question of the nature of the offence committed by the applicant, the Court recalls that she was sanctioned for the production and distribution of "Lithuanian calendar 2000" under Articles 30^1 and 214^{12} of the Code on Administrative Law Offences. The latter provision regulates administrative law offences against the established order of administration (*Administraciniai teisės pažeidimai, kuriais kėsinamasi į nustatytą valdymo tvarką*). Accordingly, this legal rule is directed towards all citizens and not towards a given group possessing a special status. The general character of the legal rule in question is further confirmed by Chapter 1 of the Code on Administrative Law Offences, which refers to the fact that all citizens must ensure respect for legal rules and the rights of other citizens, as well as by Article 9 of the Code, which defines an administrative offence as a wrongful act which causes danger to public order, citizens' rights and the established order of administration. It follows that the legal norm in question is of general effect and therefore falls under the second *Engel* criterion (*Lauko*, cited above, § 58).

57. The Court now has to look at the third criterion – the nature and severity of the penalty. The domestic courts found the applicant guilty under Article 214^{12} of the Code on Administrative Law Offences, which stipulates a fine of between 1,000 LTL and 10,000 LTL, although, taking into consideration that there were mitigating circumstances, the fine was substituted by a warning under Article 30^1 of the Code.

58. As to the nature of the penalty the Court attaches particular significance to Article 20 of the Code on Administrative Law Offences, which stipulates that the aim of administrative punishment is to punish offenders and to deter them from reoffending. The Court recalls that a punitive character is the customary distinguishing feature of a criminal penalty (see the above-mentioned *Öztürk* judgment, § 53).

59. As to the degree of severity of the penalty the Court reiterates that the actual penalty imposed on the applicant is relevant to its determination but cannot diminish the importance of what was initially at stake (see *Ezeh and Connors*, cited above, § 120, and the jurisprudence cited therein).

60. Thus, even though in the present case the national courts issued only a warning under Article 30^1 of the Code on Administrative Law Offences, the applicant was punished under Article 214^{12}, which stipulates a fine of between 1,000 LTL and 10,000 LTL. The Court has particular regard to the fact that if a fine has not been paid, Article 314 of the Code provides a possibility to substitute the fine with administrative arrest of up to 30 days. It should not be forgotten that in addition to the warning, the published and

undistributed copies of the calendar were confiscated, and confiscation is often regarded as a criminal punishment.

61. In sum, the general character of the legal provision infringed by the applicant together with the deterrent and punitive purpose of the penalty, as well as the severity of the punishment the applicant risked incurring, suffice to show that the offence in question was, in terms of Article 6 of the Convention, criminal in nature. Therefore the Court considers that Article 6 § 3 (d) is applicable in the instant case.

2. Opportunity to examine the experts

62. The Court recalls that the requirements of paragraph 3 of Article 6 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 (see *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports of Judgments and Decisions* 1996-II, § 66). In this respect the Court has previously held that all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (*Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, § 51). However, the use as evidence of statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3 (d) and 1 of Article 6, provided the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings (see, among many authorities, *Isgrò v. Italy*, judgment of 19 February 1991, Series A no. 194-A, p. 12, § 34, and *Lüdi v. Switzerland*, judgment of 15 June 1992, Series A no. 238, p. 21, § 47). The corollary of that, however, is that where a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the pre-trial stage or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see the following judgments: *Unterpertinger v. Austria*, 24 November 1986, Series A no. 110, §§ 31-33, and *Saïdi v. France*, 20 September 1993, Series A no. 261-C, §§ 43-44). With respect to statements of witnesses who proved to be unavailable for questioning in the presence of the defendant, the Court recalls that paragraph 1 of Article 6 taken together with paragraph 3 requires the Contracting States to take positive steps, in particular to enable the accused to examine or have examined witnesses against him (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII).

63. In the present case the Court notes that sub-paragraph (d) of paragraph 3 of Article 6 relates to witnesses and not experts. However the Court would like to recall that the guarantees contained in paragraph 3 are

constituent elements, amongst others, of the concept of a fair trial set forth in paragraph 1 (art. 6-1) (see, *inter alia*, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 15, § 32; *Goddi v. Italy*, judgment of 9 April 1984, Series A no. 76, p. 11, § 28; and *Colozza and Rubinat v. Italy*, judgment of 12 February 1985, Series A no. 89, p. 14, § 26). In the circumstances of the instant case, the Court, whilst also having due regard to the paragraph 3 guarantees, including those enunciated in sub-paragraph (d), considers that it should examine the applicant's complaints under the general rule of paragraph 1 (see the above-mentioned *Colozza* judgment, loc. cit.).

64. In the circumstances of the case in issue the Court disagrees with the Government's claim about the lack of significance of the experts' conclusions *vis-à-vis* the other pieces of evidence. The Court takes into consideration the fact that the first-instance court appointed experts to produce political science, bibliographical, psychological and historical reports with the aim of establishing whether "Lithuanian calendar 2000" posed a danger to society, which was the precondition of an administrative law offence. The Court draws particular attention to the fact that when finding the applicant guilty, the national courts of both instances extensively quoted the experts' conclusions. In particular, the Vilnius City Second District Court quoted the conclusions of the political science experts' report that a biased and one-sided portrayal of relations between the nations obstructed the consolidation of civil society and propagated national hatred. The first-instance court also directly relied on the bibliographical experts' report that "Lithuanian calendar 2000" did not meet the generally applied bibliographical standards as to the sources and literature quoted. In determining guilt and coming to the conclusion that the administrative offence had been committed due to the applicant's negligence, the first-instance court relied on the conclusion of psychological experts. From all the foregoing, the Court concludes that in the instant case the conclusions provided by the experts during the pre-trial stage had a key place in the proceedings against the applicant. It is therefore necessary to determine whether the applicant expressed a wish to have the experts examined in open court and, if so, whether she had such an opportunity.

65. Relying on the documents at its disposition the Court draws attention to the applicant's written request of 12 March 2001, received by the Vilnius City Second District Court the following day, by which the applicant asked the court to postpone the hearing as the experts had not appeared at the hearing for the third time in a row (see § 26 above). The applicant also asked the court to determine the reasons behind the experts' absence and to sanction them. Furthermore, in her appeal the applicant referred to her request to have the experts present at the hearing at the first-instance court and the refusal of that court to summon them. However, the Supreme Administrative Court rejected the applicant's request, noting that under the

circumstances of the case her inability to question the experts did not violate any of the procedural legal norms.

66. Having analysed all the material submitted to it, the Court considers that neither at the pre-trial stage nor during the trial was the applicant given the opportunity to question the experts, whose opinions contained certain discrepancies, in order to subject their credibility to scrutiny or cast any doubt on their conclusions. Relying on its case-law on the subject, the Court concludes that in the instant case the refusal to entertain the applicant's request to have the experts examined in open court failed to meet the requirements of Article 6 § 1 of the Convention. Taking into consideration the above conclusion, the Court finds it unnecessary to separately examine the question of the absence of a public hearing before the Supreme Administrative Court.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. The parties' submissions

1. The applicant

67. The applicant alleged a breach of Article 10 of the Convention, the relevant part of 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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others (...)."

68. The applicant argued that the interference with her freedom of expression had been disproportionate within the meaning of Article 10 § 2 of the Convention in view of the minor threat posed by the publication to the interests of the Lithuanian State or any ethnic groups living in Lithuania or the neighbouring countries. In this connection the applicant emphasised that "Lithuanian calendar" had been edited and officially distributed by her for 6 years in the whole territory of Lithuania, attracting no great attention from the public or from State institutions. Similarly, the 2,000 edition of "Lithuanian calendar" had been released in a very limited print run of 3,000 in the second half of the year 1999, and for the following five months had caused no significant interest or exaggerated reactions, up until the State

authorities' intervention in January 2000 after they received a note from the embassy of the Russian Federation. The applicant likewise noted that the Prosecutor General had refused to start criminal proceedings against her as the publication had not had the elements of the criminal offence of instigation of ethnic or racial hatred. She also observed that the information published in "Lithuanian calendar 2000" had already been made public in other historical documents. The applicant also relied on the fact that the publication had contained mainly the expression of her own opinions on and assessment of various historical events, and the State had presented no evidence proving the necessity of such a serious interference. As a result of the proceedings, she had not only received an administrative penalty in the form of a warning, but had also lost the main source of her income, in view of the confiscation and destruction of all the unsold items of "Lithuanian calendar 2000" and her resultant inability to continue editing the publication she had created. The applicant further submitted that the authorities could have pursued means other than halting the distribution of the calendar, such as giving her the opportunity to make certain rectifications or announcements, if necessary, on the cover of the remaining, unsold, versions of the publication. Finally, the domestic courts' finding of a lack of intent on the part of the applicant, as well as the minor danger which the publication represented, were also to be taken into account in discarding the argument that the interference had been necessary in a democratic society.

2. The Government

69. The Government argued that Article 10 of the Convention had not been violated. According to them it is of essential importance that the freedom of expression not only stipulates the right to hold opinions, but also imposes duties and responsibilities, and therefore cannot be interpreted as allowing the promotion or dissemination of the ideas of ethnic hatred, hostility and the superiority of one nation *vis-à-vis* other ethnic groups. The Government admitted that by imposing an administrative punishment there was interference with the applicant's freedom of expression; however it had been justified by the necessity to protect the democratic values on the basis of which Lithuanian society is based. Stressing the sensitivity of the questions related to national minorities and territorial integrity after the re-establishment of independence on 11 March 1990, the Government submitted that "Lithuanian calendar 2000" was clearly promoting the extreme ideology of nationalism, which rejected the idea of the integration of civil society, incited ethnic hatred and intolerance, and questioned territorial integrity and promoted national superiority, which had been proved by the notes sent by the embassies of the Republic of Poland, the Republic of Belarus and the Russian Federation. By withdrawing the publication from distribution and imposing an administrative warning on the applicant, the authorities had sought to prevent the spreading of ideas which

might violate the rights of ethnic minorities living in Lithuania as well as endanger Lithuania's relations with its neighbouring countries. In view of the clear threat to these legitimate interests posed by the publication, as well as the minor nature of the penalty ordered against the applicant, the Government considered that the interference had been compatible with the second paragraph of Article 10 of the Convention.

B. The Court's assessment

70. The Court finds it clear, and this has not been disputed, that there has been an interference with the applicant's freedom of expression on account of the administrative penalty and the confiscation of the publication, which were applied under Articles 30^1 and 214^{12} of the Code on Administrative Law Offences.

71. The above-mentioned interference contravened Article 10 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 of Article 10 and was "necessary in a democratic society" for achieving such aim or aims. The Court will examine each of these criteria in turn.

1. Prescribed by law

72. The applicant and the Government did not question that the interference was in accordance with the law. Taking into consideration that the interference was prescribed by Articles 30^1 and 214^{12} of the Code on Administrative Law Offences, the Court sees no reason to depart from the position of the parties.

2. Legitimate aim

73. The Court agrees with the Government's submissions that the punishment imposed aimed to protect the values laid out in Article 10 § 2 of the Convention, in particular the reputation and rights of the ethnic groups living in Lithuania and referred to in "Lithuanian calendar 2000". It remains to be determined whether the interference was necessary in a democratic society.

3. "Necessary in a democratic society"

74. According to the Court's well-established case-law, 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 (see, among other authorities, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 41). 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" (see *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, pp. 23-24, § 31 and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II).

75. The Court also acknowledges that, 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 *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Lingens*, cited above, § 41; *Jersild v. Denmark*, cited above, § 37; *Piermont v. France*, 27 April 1995, § 26, Series A no. 314; *Lehideux and Isorni v. France*, 23 September 1998, § 55, *Reports of Judgments and Decisions* 1998-VII; *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I; *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

76. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Court recognises that the Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" or "penalty" is reconcilable with freedom of expression as protected by Article 10 (see *Lingens*, cited above, p. 25, § 39, and *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I).

77. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which she made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient" (see *The Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62; *Lingens*, cited above, pp. 25-26, § 40; *Barfod v. Denmark*, judgment of 22 February 1989, Series A no. 149, p. 12, § 28; *Janowski*, cited above; and *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see *Jersild*, cited above, § 31).

(a) "Pressing social need"

78. Turning to the facts of the present case, the Court notes that the applicant was sanctioned on the basis of the statements she had made in her capacity as an editor and publisher. Regarding the context in which "Lithuanian calendar 2000" was published, the Court has particular regard to the general situation of the Republic of Lithuania. The Court takes into account the Government's explanation as to the context of the case that after the re-establishment of the independence of the Republic of Lithuania on 11 March 1990 the questions of territorial integrity and national minorities were sensitive. The Court also notes that the publication received negative reactions from the diplomatic representations of the Republic of Poland, the Russian Federation and the Republic of Belarus. In this regard the Court also notes the obligations of the Republic of Lithuania under international law, namely, to prohibit any advocacy of national hatred and to take measures to protect persons who may be subject to such threats as a result of their ethnic identity (see 40-44 above).

79. The Court now turns to the question of the specific language the applicant used in "Lithuanian calendar 2000". The applicant expressed aggressive nationalism and ethnocentrism ("The Lithuanian nation will only survive by being a nationalist nation – no other way exists!"), repeatedly referred to the Jews as perpetrators of war crimes and genocide against the Lithuanians ("The soviet occupying power, with the help of ... many Jews... carried out the genocide and colonisation of the Lithuanian nation", "Through the blood of our ancestors to the worldwide community of the Jews", "... executions against the Lithuanians and the Lithuanian nation, carrying out pro-Jewish politics"). She also used the same language with reference to the Poles ("In 1944 ... the Polish Krajova Army killed 12 Lithuanians for the sole reason that they were Lithuanians", "In 1944 ... the Polish Krajova Army brutally killed more than a hundred Lithuanians ... the Poles, in war conditions, carried out ethnic cleansing. In the whole territory of Lithuania [the members of the Krajova Army] killed about 1 000, and in the ethnic Lithuanian lands about 3 000 more innocent people for the sole reason that they were Lithuanians. The ... events should be regarded as the genocide of the Lithuanian nation..."). The impugned passages contained statements inciting hatred against the Poles and the Jews. The Court considers that these statements were capable of giving the Lithuanian authorities cause for serious concern.

80. In considering the approach of the domestic courts when deciding whether a "pressing social need" indeed existed and the reasons the authorities adduced to justify the interference, the Court observes that the Vilnius City Second District Court appointed experts, who provided conclusions as to the gravity of the applicant's statements and the danger they posed to society. The courts agreed with the conclusion of the experts that a biased and one-sided portrayal of relations among nations hindered

the consolidation of civil society and promoted national hatred. The national courts noted the negative reaction which the publication received from a certain part of Lithuanian society and some foreign embassies. They also took into consideration the experts' conclusions that the applicant's statements could be attributed to the "ideology of extreme nationalism", which promoted national hatred, xenophobia and territorial claims. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court considers that the domestic authorities, in the circumstances of the case, did not overstep their margin of appreciation when they considered that there was a pressing social need to take measures against the applicant.

(b) "Proportionality"

81. Noting the political dimension of the instant case, the Court nevertheless recalls that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports* 1996-V, pp. 1957-58, § 58). The Court would also like to reiterate that the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it certainly remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, pp. 1567-68, § 54, and the Appendix to Recommendation no. R (97) 20 of the Committee of Ministers to Member States on "Hate speech", quoted in § 42 of this judgment).

82. The examination of the domestic courts' decisions reveals that the courts recognised that the present case involved the conflict between the right to freedom of expression, established in Article 25 of the Constitution of the Republic of Lithuania, and the protection of the reputation of the rights of others. The courts acknowledged the applicant's right to express her ideas, nonetheless stressing that along with freedoms and rights a person also has obligations, *inter alia*, the obligation not to violate the Constitution and domestic law. They also stressed that personal beliefs cannot justify the breach of national law and the commission of administrative offences. Having balanced the relevant considerations, the national courts found no reason not to apply the relevant articles of the Code on Administrative Law Offences.

83. The nature and severity of the penalties imposed are among the factors to be taken into account when assessing the proportionality of an interference with the freedom of expression (see *Ceylan v. Turkey* [GC],

no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; and *Skałka v. Poland*, no. 43425/98, §§ 41-42, 27 May 2003). The Court must also exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern (see *Jersild*, cited above, § 35).

84. In the instant case, the Court notes that the confiscation measure imposed on the applicant could be considered relatively serious. However, the applicant did not have a fine imposed on her, which is the punishment Article 214^{12} of the Code on Administrative Law Offences stipulated for the acts she had committed. The domestic courts took into account that the applicant had been negligent and had not acted deliberately, that it was her first administrative offence, as well as the fact that she was handicapped, and instead imposed a warning under Article 30^{1} of the Code on Administrative Law Offences, which is the mildest administrative punishment available.

85. Having regard to the foregoing, the Court considers that the applicant's punishment was not disproportionate to the legitimate aim pursued and that the reasons advanced by the domestic courts were sufficient and relevant to justify such interference. The interference with the applicant's right to freedom of expression could thus reasonably be considered necessary in a democratic society for the protection of the reputation or rights of others within the meaning of Article 10 § 2 of the Convention.

86. There has consequently been no breach of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

88. The applicant claimed EUR 2,285,050 for pecuniary damage caused by the confiscation of the calendar. She also claimed EUR 2,000,000 for non-pecuniary damage because she had had to leave her homeland and had suffered damage to her health.

89. The Government submitted that the applicant's claims for just satisfaction were absolutely unreasoned, unsubstantiated and excessive.

90. The Court is of the view that there is no causal link between the violation found under Article 6 § 1 of the Convention and the alleged pecuniary damage. Consequently, it finds no reason to award the applicant any sum under this head.

91. However, the Court considers that, in view of the violation of Article 6 § 1, the applicant has suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 2,000 under this head.

B. Costs and expenses

92. The applicant also claimed EUR 2,000 for the legal costs and expenses incurred before the Court.

93. The Government contested the claim.

94. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme, under which the sum of EUR 355 has been paid to the applicant's lawyer to cover the submission of the applicant's observations and additional expenses.

95. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the claim in full, less the sum already paid under the Court's legal aid scheme (EUR 355). Consequently, the Court awards the final amount of EUR 1,645 in respect of the applicant's costs and expenses.

C. Default interest

96. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;

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

3. *Holds* by six votes to one

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros) for non-pecuniary damage;

(ii) EUR 1,645 (one thousand six hundred and forty-five euros) in respect of costs and expenses;

(iii) plus any tax that may be chargeable;

these amounts are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Myjer is annexed to this judgment.

J.C.M.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE MYJER

The Court held unanimously that there has been no violation of Article 10 of the Convention.

In paragraph 79 of the judgment the Court stated with regard to the language used by the applicant in the Lithuanian calendar 2000 that 'the applicant expressed aggressive nationalism and ethnocentrism (..), repeatedly referred to the Jews as perpetrators of war crimes and genocide against the Lithuanians (..) (and) used the same language with reference to the Poles. (..)' The Court concluded: 'The impugned passages contained statements inciting hatred against the Poles and the Jews.' I fully agree with this conclusion.

Still, my colleagues also held that in the national proceedings the refusal to entertain the applicant's request to have the experts examined in open court failed to meet the requirements of Article 6 of the Convention. I did not agree with them.

The first, rather formalistic, reason is that it is not clear from the facts that the applicant ever requested to have the opportunity to put questions to the experts. From the facts mentioned in paragraph 26 it is only clear that she asked for a postponement of the hearing and for the establishment of the reasons behind the experts' absence and that they be sanctioned. Only on appeal, when the case was reviewed under a written procedure, did she mention that her defence rights had been violated (paragraph 33).

My second reason is related to the issues at stake. The national judge had to decide if the Lithuanian calendar 2000 contained information material promoting national, racial or religious hatred. That is first and foremost a legal question which should of course be based on an assessment of the facts. As mentioned above, the affirmative answer to that question was clear to our Court.

Still, at the national level the Vilnius City Second District Court decided to ask for four separate expert opinions, reflecting the point of view of Vilnius University professors specialising in the following fields: history, psychology, political science and library science. Personally, I fail to see what these expert opinions could reasonably contribute to the legal issues which had to be decided by the national court (did the calendar contain information material promoting national, racial or religious hatred?) and what could be the additional use of putting questions in open court to these experts. In that respect, I fully understand that apparently the Vilnius City Second District Court finally decided that there was no need for the experts to be present at the hearing to explain their written conclusions (as summarised by the Supreme Administrative Court, see paragraph 35).

When an expert is needed to explain if a painting is a real Rembrandt or not, an expert opinion will be very relevant, and if there is a disagreement between experts there is every reason to question these experts in open

court. The same happens for instance when complex technical or medical issues are at stake. Then indeed special knowledge is required for solving a case.

However, here the experts' opinions are just certain views from different scientific angles on an issue which ultimately only a judge has to decide on as a legal issue. Certainly, the applicant will have given her views on the issue as well. Yet to require in the circumstances of the case – also taking into account that according to the Lithuanian legislation the issues at stake only concerned minor administrative offences – that the experts who wrote these different views should come to the court and explain their written submissions, is to me one bridge too far.