



In defamation case against historian for allegations about secret service involvement of public figure: Polish courts should not have applied stricter standards than for journalists

In today's **Chamber judgment**¹ in the case of **[Braun v. Poland](#)** (application no. 30162/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned the complaint by a film director and historian about being ordered to pay a fine and to publish an apology for having damaged the reputation of a well-known professor to whom he had referred, in a radio debate, as an informant of the secret political police during the communist era.

The Court was unable to accept the approach of the Polish courts which had required Mr Braun to prove the veracity of his allegations and thus to fulfil a higher standard than that required from journalists.

Principal facts

The applicant, Grzegorz Michał Braun, is a Polish national who was born in 1967 and lives in Wrocław (Poland). He is a film director, historian and author of press articles on current issues.

In a radio debate about lustration in April 2007, Mr Braun referred to a well-known professor as an informant for the secret political police during the communist era.

In allowing a civil action brought by the professor for the protection of his personal rights, a regional court, in July 2008, ordered Mr Braun to pay a fine and to publish an apology for having damaged the professor's reputation. The court noted that the professor had been examined by a special commission set up by his university to deal with the problem of covert surveillance of academics, but that the commission had been unable to reach any unequivocal conclusions. While notes from the Institute of National Remembrance indicated that a secret service file on the professor existed, the file could no longer be found. The court concluded that it could not be proven that he had intentionally and secretly collaborated with the regime within the meaning of the Polish law on lustration. Mr Braun's statement was therefore considered untrue.

Mr Braun's appeal was eventually dismissed by the Supreme Court, but the obligation to publish an apology, initially ordered for several media, was limited to one national daily newspaper and one radio station. The Supreme Court noted in particular that while a journalist reporting on an issue of public interest could not be obliged – under its case-law – to prove the veracity of each statement, Mr Braun could not be considered a journalist and his statement had been of a private nature.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Braun complained that the Polish courts' decisions had violated his right to freedom of expression, arguing in particular that he had been active as a journalist for many years and that radio debate in which he participated concerned an important matter relating to a public figure.

The application was lodged with the European Court of Human Rights on 29 May 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta Ziemele (Latvia), *President*,
Päivi Hirvelä (Finland),
George Nicolaou (Cyprus),
Nona Tsotsoria (Georgia),
Zdravka Kalaydjieva (Bulgaria),
Krzysztof Wojtyczek (Poland),
Faris Vehabović (Bosnia and Herzegovina),

and also Fatoş Aracı, *Deputy Section Registrar*.

Decision of the Court

Article 10

It was undisputed that the proceedings against Mr Braun had interfered with his right to freedom of expression, that the interference had been prescribed by law and had pursued a legitimate aim within the meaning of Article 10, namely to protect "the reputation or rights of others".

As regards the question of whether the interference had been necessary, the Court noted that Mr Braun had made a serious accusation against the professor which constituted an attack on his reputation. However, when faced with the task of balancing Mr Braun's right to freedom of expression and the professor's right to respect for his reputation, the Polish courts had made a distinction between the standards applicable to journalists and those applicable to other participants in the public debate. Under the Polish Supreme Court's case law, the standard of due diligence and good faith was to be applied only to journalists, while others, as Mr Braun, were required to prove the veracity of their allegations. Since he had been unable to prove the truth of his statement, the courts had concluded that he had breached the professor's personal rights.

Contrary to the Polish courts' findings, Mr Braun insisted that he had indeed been active as a journalist for many years. However, it was not of particular relevance to the Court, for examining the complaint under Article 10, whether or not he was a journalist under Polish law. Neither was it its task to decide whether Mr Braun had relied on sufficiently accurate and reliable information, or whether the facts at hand had justified the serious allegation he had made.

What mattered was that Mr Braun had been involved in a public debate on an important issue. As had been acknowledged by the Polish courts, he was a specialist on the subject of lustration and he had been invited to participate in a radio programme about that issue. The Court was therefore unable to accept the approach which had required Mr Braun to prove the veracity of his allegations and thus to fulfil a higher standard than that of due diligence only on the ground that under national law he was not considered to be a journalist. The reasons on which the Polish courts had relied could thus not be considered relevant and sufficient under the Convention. There had accordingly been a violation of Article 10.

Just satisfaction (Article 41)

The Court held that Poland was to pay Mr Braun 8,000 euros (EUR) in respect of pecuniary damage, EUR 3,000 in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.