



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

SECOND SECTION

CASE OF MILOSAVLJEVIĆ v. SERBIA (No. 2)

(Application no. 47274/19)

JUDGMENT

Art 10 • Freedom of expression • Civil judgment against, *inter alia*, the editor-in-chief of a weekly news magazine, for defaming the director of a State-run public utility company • Failure to comply with tenets of responsible journalism • Fair balance struck by domestic courts between competing interests at stake

STRASBOURG

21 September 2021

FINAL

21/12/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Milosavljević v. Serbia (no. 2),

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Valeriu Grițco,

Egidijus Kūris,

Branko Lubarda,

Pauliine Koskelo,

Marko Bošnjak, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 47274/19) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr Ranko Milosavljević (“the applicant”), on 26 August 2014;

the decision to give notice to the Serbian Government (“the Government”) of the complaint under Article 10 of the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 31 August 2021,

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

INTRODUCTION

1. The application concerns, under Article 10 of the Convention, the freedom of editorial expression in the context of the functioning of a State-run public utility company, as well as the alleged malfeasance and/or corruption on the part of its director.

THE FACTS

2. The applicant was born in 1960 and lives in Kragujevac. At the relevant time, he was an editor-in-chief of *Svetlost*, a weekly news magazine based in the same city.

3. The applicant was represented by Ms D. Rakićević, a lawyer practising in Kragujevac.

4. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE PUBLISHED ARTICLE

6. On 6 August 2009 *Svetlost* published an article entitled “The City’s Chief Undertaker (CCU): ... [Mr A] ... From a Smuggler to a Rich Man” (*Glavni gradski grobar (GGGr) ... [g. A] ... Od švercera do bogatuna*).¹

7. The subtitle just below states that “before you decide to die ask CCU as to whether you can do so ... since in Kragujevac only the privileged have this right” (*pre nego što odlučite da umrete, pitajte GGGr da li možete to da uradite ... jer u Kragujevcu to pravo imaju samo privilegovani*).

8. The article itself, written by Ms B, a journalist employed with *Svetlost*, in so far as referred to by the domestic courts, reads as follows:

“...

[1.] ... [In connection with an earlier case allegedly involving the building of a family crypt in the centre of the Kragujevac cemetery by a local businessman referred to as Pharaoh,] ... a case which greatly agitated the citizens [of Kragujevac] because of the digging up of multiple existing graves ... [, CCU stated that all this was] ... lawful and market-based!

...

[2.] Enforcing discipline against the dead and calling out the living for their debts, CCU, just like any other debt enforcer, started issuing threats of a most bizarre nature which this journalist cannot now convey ... [for the sake of decency.]

...

[3.] If we were a State based on the rule of law and a civil society, this man would have to be removed from his position immediately for not being up to it, both as a person and professionally.

...

[4.] ... [Instead,] walking bravely in his ‘Gianfranco Ferré’ shoes, he is ... [successfully] ... leading ... [the city’s public burial company] ...

...

[5.] Although CCU’s career ... [seems] ... fantastic, it was not easy to travel for such a short time the road from being a transitional loser ... [and] ... a cigarette smuggler ... to [being a person wearing] ‘Gianfranco Ferré’ shoes and living the high life.

...

[6.] At a time when thousands of experts and hard workers were losing their jobs, CCU went in another direction and from an ordinary worker (three years of vocational school) and a street cigarette smuggler became a director of the city’s cemetery about whose high income, both official and more often unofficial, under the counter, there are fantastical stories being told throughout the city.

...

¹ In the said title this person was referred to by his full name and surname, but in this judgment he shall instead be referred to as Mr A, except for the subtitle of the published article and the article itself where the journalist used the abbreviation CCU (*GGGr*).

[7.] Through the constant increase in the price of death and personal human tragedy, CCU is building his successful career ...

...

[8.] At the time ... [when the case referred to in paragraph 1 of this article happened] ... CCU left ... [one political party and joined another one whose boss] ... ordered him to sell to the Kragujevac Pharaoh the centre of the old city cemetery.

...

[9.] Leaving nothing to chance, CCU managed to secure for himself two diplomas, just in case they were needed! They may come in handy and it sounds better when introducing oneself.

...”

9. As part of the above article there was also a photograph of Mr A, referred to by his name and surname, and an explanation that it was taken on the occasion of a public presentation of a book about graveyards (*promocija monografije o grobljima*).

II. THE CIVIL PROCEEDINGS

10. In August 2009 Mr A lodged a civil defamation claim against the applicant, Ms B and *Svetlost* regarding the published article and the said photograph.

11. On 13 September 2010 the Kragujevac High Court (*Viši sud u Kragujevcu*) ruled partly in favour of Mr A and ordered the applicant, Ms B and *Svetlost* to pay him jointly: (i) 100,000 Serbian dinars (RSD), equivalent to approximately 955 euros (EUR) at the time, on account of the mental anguish which he had suffered as a consequence of the breach of his honour and reputation; (ii) RSD 50,000, equivalent to approximately EUR 477 at the time, for the violation of his right to privacy; and (iii) RSD 47,025 in litigation costs, equivalent to approximately EUR 449 at the time, all with statutory interest as of the date of adjudication. The Kragujevac High Court explained, *inter alia*, that there had been no justified interest for the public to be informed about Mr A’s private life, including as regards how he had opted to dress. In any event, according to his own statement which the court accepted, Mr A had never worn Italian shoes and had properly obtained his diplomas. He had, however, used to sell cigarettes for a while. The respondents had furthermore failed to verify the other allegations against Mr A, thus harming his honour and his reputation. In particular, the court could not accept that the allegations regarding the functioning of the public burial company had been based on a press conference which had taken place in 2006 or on statements which had been given by a number of its former employees, as suggested by the respondents, since there was no evidence in support of those claims. In fact, the witnesses, including the Mayor personally, who had been heard in the

course of the proceedings all explicitly stated otherwise. Following the publication of the article, Mr A had been contacted by many friends, colleagues and business partners, as well as by the Mayor. They had all wanted to know whether the allegations contained in the article were accurate, which in turn had caused him great mental anguish. The respondents had likewise failed to obtain the consent of Mr A for the publication of the photograph in question. The remaining text, including the title and the subtitle, amounted to a mixture of value judgments and unverified statements of fact which had been intended to belittle Mr A's person in breach of the relevant journalistic and ethical standards.

12. On 23 December 2010 the Kragujevac Appeals Court (*Apelacioni sud u Kragujevcu*) upheld the Kragujevac High Court's ruling as regards the compensation which had been awarded to Mr A on account of the mental anguish suffered due to the breach of his honour and his reputation. At the same time, however, the appellate court rejected altogether Mr A's claim for compensation regarding the violation of his privacy, in connection with the photograph which had been published as part of the article, and amended the amount which had been awarded for litigation costs to RSD 30,621, equivalent to approximately EUR 286 at the time. In its reasoning, which was otherwise essentially along the lines of the reasons which had been offered at first instance, the Kragujevac Appeals Court pointed out, *inter alia*, that Mr A was not entitled to any compensation for the alleged violation of his privacy since he had been a public function holder and the photograph in question had been taken during a public event related to the performance of his duties. Mr A's consent had therefore not been necessary for its publication.

13. The above rulings relied on, *inter alia*, some of the relevant provisions of the Obligations Act and the 2003 Public Information Act summarised in paragraphs 22, 27, 28, 29 and 31-34 below.

III. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

14. On 9 February 2011 the applicant lodged a constitutional appeal (*ustavnu žalbu*) against the Kragujevac Appeals Court's judgment of 23 December 2010.

15. On 25 February 2014 the Constitutional Court (*Ustavni sud*) dismissed the appeal and, in so doing, endorsed the reasoning of the Kragujevac Appeals Court.

16. The applicant was served with the Constitutional Court's decision on 27 February 2014.

IV. OTHER RELEVANT FACTS

17. On 16 March 2011 Mr A lodged an enforcement request (*predlog za izvršenje*) with the Kragujevac Court of First Instance (*Osnovni sud u Kragujevcu*) on the basis of the civil judgments of 13 September 2010 and 23 December 2010 respectively (see paragraphs 11 and 12 above).

18. On the same day the Kragujevac Court of First Instance issued the enforcement order (*rešenje o izvršenju*).

19. On 11 July 2011 the Kragujevac Appeals Court upheld this decision at second instance.

20. On 28 May 2013, however, Mr A “withdrew his enforcement request” in respect of the applicant and the other two respondents. He did so before the Kragujevac Court of First Instance, as part of a separate criminal case which he had brought against Ms B regarding the same article, and furthermore renounced his right (*odrekao se prava*) to reinstitute the enforcement proceedings at any point subsequently. This declaration was also accepted by Ms B’s defence counsel in the criminal proceedings. On the same occasion, Mr A dropped his criminal charges against Ms B and the criminal case itself was thus concluded.

21. On 8 February 2018 the Kragujevac Court of First Instance discontinued the enforcement proceedings, Mr A having taken no steps to have the civil judgments in question enforced since March 2013.

RELEVANT LEGAL FRAMEWORK

I. THE OBLIGATIONS ACT (*ZAKON O OBLIGACIONIM ODNOSIMA*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA NOS. 29/78, 39/85, 45/89 AND 57/89, AS WELL AS IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA NO. 31/93)

22. Under Articles 199 and 200, *inter alia*, anyone who has suffered mental anguish as a consequence of a breach of his or her honour or reputation may, depending on the duration and intensity of the said mental anguish, sue for financial compensation before the civil courts and, in addition, request other forms of redress “which may be capable” of affording adequate non-pecuniary satisfaction.

23. Article 379 § 1 provides, *inter alia*, that all claims recognised by a final court decision shall become time-barred within ten years, including those claims which would otherwise have become time-barred within a shorter period of time.

24. Article 392 provides, *inter alia*, that procedural steps aimed at the collection of an outstanding judgment debt, including those undertaken as part of the enforcement proceedings, shall cause the relevant negative

prescription period to run anew as of the date of conclusion of the enforcement proceedings in question.

25. Article 344 § 1 provides that an obligation shall cease to exist when a creditor declares that he or she shall not seek its fulfilment and the debtor accepts this.

26. Article 416 provides, *inter alia*, that, in principle and unless specified otherwise, the renouncement of a creditor's claim in agreement with one of the debtors jointly concerned shall also exempt the other debtors from any continuing liability.

II. THE 2003 PUBLIC INFORMATION ACT (*ZAKON O JAVNOM INFORMISANJU*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA NOS. 43/03, 61/05 AND 71/09)

27. Article 3 § 1 provided that prior to the publication of information regarding "an event, an occurrence or a certain person", the journalist and the responsible editor were to "verify its origin, veracity and comprehensiveness" with due diligence.

28. Article 9 provided, *inter alia*, that the right to the protection of one's privacy was to be limited for holders of State or political positions if the information in question was of public relevance given their functions. The rights of such persons were to be limited in proportion to the justified interest of the public in each case.

29. Article 30 §§ 2 and 4 provided, *inter alia*, that the editor-in-chief of a media outlet was to have the status of the responsible editor of that outlet. The responsible editor of a specific edition, column, or programme was to be held responsible for the contents which he or she edited.

30. Article 37 provided, *inter alia*, that a media outlet could not pronounce anyone guilty of an offence in the absence of a final judicial or another decision rendered in this connection.

31. Article 43 provided, *inter alia*, that information regarding one's private life, including photographs, could not be published without the consent of the person concerned.

32. Article 45 provided, *inter alia*, that, exceptionally, information regarding one's private life, including photographs, could be published without his or her consent if it had to do with a public event or referred to a matter of public interest, the latter particularly if the person concerned was a public function holder and this was deemed important in connection with the performance of his or her duties.

33. Article 79 provided, *inter alia*, that any person who suffered pecuniary and/or non-pecuniary harm as a consequence of incorrect or incomplete information published by a media outlet, or due to the publication of other information in breach of this Act, was entitled to adequate compensation quite apart from any other available redress.

34. Article 80 provided, *inter alia*, that the editor-in-chief and the founder of a media outlet, who would have been able to establish through due diligence the inaccuracy or incompleteness of the information prior to its publication, were to bear joint liability for any pecuniary and/or non-pecuniary damage caused by the publication of the information in question. The same obligation, for example, also applied when harm was caused by an “inadmissible publication” of accurate information regarding one’s private life or concerned accusations involving the commission of a criminal offence.

35. This Act was subsequently amended, through decisions rendered by the Constitutional Court, but was ultimately repealed and replaced by other legislation in 2014.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

36. The applicant complained, under Article 10 of the Convention, that he had suffered a breach of his freedom of expression. In particular, he maintained: (i) that the printed article in question legitimately raised serious issues to do with the functioning of a State-run public utility company, as well as the alleged malfeasance and/or corruption on the part of its director; and (ii) that he had ultimately ended up being punished for the article’s publication by losing a civil defamation case and being ordered to pay compensation plus costs to Mr A.

37. Article 10 of the Convention, in so far as relevant, reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to ... impart information and ideas without interference by public authority ...

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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

38. The Government maintained that given that the civil court judgments rendered against the applicant have not been enforced he could no longer claim to be a victim of the violation alleged.

39. The applicant disagreed.

40. It is the settled case-law of the Court that the word “victim” in the context of Article 34 of the Convention denotes the person directly affected

by the act or omission at issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012, with further references).

41. Turning to the present case, the Court observes that, quite apart from the issue of redress, the domestic authorities have never acknowledged, either expressly or in substance, the violation of the Convention alleged by the applicant. Accordingly, the applicant may still claim to be a “victim” of a breach of his rights under Article 10 of the Convention and the Government’s objection in this regard must be dismissed.

42. The Court furthermore notes that the application is neither manifestly ill-founded nor inadmissible on any of the other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

43. The applicant reaffirmed his complaint. He furthermore added that the article consisted of a combination of statements of facts and value judgments. Ms B had also carried out proper research before its publication and had enquired with the management of the city’s cemetery for information concerning the price of a burial plot while pretending to be interested in buying one. The management, however, had been concealing information and avoiding transparency. The public had nevertheless “learned about several cases involving the resale of burial plots” where the mortal remains of people who had passed away long ago, and whose relatives had either died or had left the country, had been removed and the plots then resold to the “newly-rich who had gained their wealth by doing business in the grey zone” or even by engaging in crime.

44. The applicant maintained that Mr A had been a public official and had therefore had to endure more criticism, particularly since the article focused on an important local issue. Mr A had likewise never disputed that at one time he had in fact been smuggling cigarettes, which had itself always been an illegal activity. While in his 40s, Mr A had furthermore obtained his diplomas “in the shortest possible time [and] at a private university which [had] been linked to multiple scandals involving the ‘printing’ of diplomas”. As for the possibility to refute the allegations

contained in the article, Mr A could have done so but had opted instead in favour of a civil defamation lawsuit.

45. Lastly, the applicant argued that the statement of 28 May 2013 to the effect that Mr A had apparently wanted to withdraw his enforcement request (see paragraph 20 above) had had no legal effect as it had been given in the criminal context and not as part of the pending enforcement proceedings. It was furthermore unclear as to whether Mr A's counsel had even had the authorisation to do so on behalf of his client and the applicable enforcement regulations themselves had not envisaged such a possibility. In any event, the enforcement request had never been withdrawn in the enforcement proceedings, nor had the enforcement judge been informed of what had transpired in the criminal context. Ultimately, the enforcement proceedings had been discontinued only because Mr A had not informed the enforcement judge as to how he would have liked to proceed with the case (see paragraph 21 above). Hence Mr A could have reinstituted the enforcement proceedings at any point. In the meantime, however, the applicant had been subjected to public humiliation and emotional distress since, *inter alia*, enforcement officers had come to his home on several occasions, had made an inventory of his property and had even threatened to seize it up until it had become clear that the applicant's assets were insufficient to cover the judgment debt.

(b) The Government

46. The Government endorsed the reasoning of the civil courts (see paragraphs 11 and 12 above) and maintained that there had been no violation of Article 10 in the present case. In particular, the interference with the applicant's freedom of expression had been in accordance with the law and necessary in a democratic society for the protection of the reputation of others. Admittedly, Mr A had been a public figure and the limits of acceptable criticism had thus been broader in his case than with respect to a private individual but even so there had to be some reasonable limits applicable. The article had also contained a series of false claims concerning Mr A's private and professional life, which claims had not been properly verified before being published.

47. The Government reiterated that even where allegations are pure value judgments, rather than statements of fact, they must still have some factual basis or be deemed as not being in accordance with Article 10 of the Convention. In any event, the general tone of the article had been such that it had been clearly intended to belittle Mr A and portray him as a dishonest and immoral person prone to breaking the law, none of which had been proved in the course of the civil proceedings. Furthermore, even though Ms B had communicated with the public burial company, for research purposes and regarding the lease of a burial plot, she had not obtained a statement from Mr A personally before the publication of the article and had

tried to reach him only once. There had, in any event, been no attempt to conceal any information from Ms B and the amount of compensation awarded to Mr A had not been disproportionate.

48. Finally, the Government argued that the applicant had not suffered any adverse consequences since the civil judgments in question had not been enforced. In particular, on 28 May 2013 Mr A had withdrawn his enforcement request and had renounced his right to have the enforcement proceedings reinstituted subsequently (see paragraph 20 above). Moreover, this declaration had also been accepted by Ms B's representative personally (see paragraphs 20, 25 and 26 above) and on 8 February 2018 the Kragujevac Court of First Instance had itself discontinued the enforcement proceedings (see paragraph 21 above). In any event, after 23 December 2020 the civil judgments could not have been enforced based on the relevant provisions of the Obligations Act (see paragraph 23 above).

2. *The Court's assessment*

(a) **Existence of an interference**

49. It is not disputed between the parties that the final civil judgment rendered against the applicant, as an editor-in-chief, by the Kragujevac Appeals Court on 23 December 2020 amounted to an "interference by [a] public authority" with his right to freedom of expression (see paragraph 12 above; see also, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, §§ 9 and 66, ECHR 2007-IV, *Orban and Others v. France*, no. 20985/05, § 47, 15 January 2009, with further references, and *Gutiérrez Suárez v. Spain*, no. 16023/07, §§ 28 and 29, 1 June 2010, as regards the situation of authors as well as publishers, publication directors and editors responsible for their publications). It is, however, understood that the publication of Mr A's photograph in the impugned article was not ultimately deemed to amount to a violation of his privacy by the said appellate court, which was why the applicant clearly suffered no interference with his freedom of expression on this account in particular (see paragraph 12 above *in fine*).

50. An interference with one's freedom of expression will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" in order to achieve those aims.

(b) **Whether the interference was prescribed by law**

51. The Court notes that the legal basis for the adoption of the final civil judgement in question was, *inter alia*, the relevant provisions of the Public Information Act and the Obligations Act (see paragraphs 13, 22, 27, 28, 29 and 31-34 above). The Court finds that these provisions were both

adequately accessible and foreseeable, that is to say that they were formulated with sufficient precision to enable an individual – if need be with appropriate advice – to regulate his or her conduct (see, for example and among many other authorities, *The Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, § 49, Series A no. 30, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 123-125, 17 May 2016; see also, in the Serbian context, *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 64, 11 February 2014). The Court, therefore, concludes that the interference at issue was “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

(c) Whether the interference pursued a legitimate aim

52. In agreement with the position of the domestic courts, the Government argued that the interference in question had pursued the legitimate aim of “the protection of the reputation or rights of others”. The Court finds no reason to hold otherwise and accepts therefore that the interference with the applicant’s freedom of expression pursued one of the legitimate aims envisaged under Article 10 § 2 of the Convention.

(d) Necessary in a democratic society

(i) General principles

53. The Court refers to the general principles for assessing the necessity of an interference with the exercise of freedom of expression as set out in *Morice v. France* [GC], no. 29369/10, § 124, ECHR 2015; *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016; and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 75, 27 June 2017.

54. The Court has also held in numerous cases that a lack of relevant and sufficient reasoning on the part of the national courts or a failure to consider the applicable standards in assessing the interference in question will entail a violation of Article 10 (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 46, ECHR 2003-XI; *Uj v. Hungary*, no. 23954/10, §§ 25 and 26, 19 July 2011; and *Mariya Alekhina and Others v. Russia*, no. 38004/12, § 264, 17 July 2018).

55. It should furthermore be reiterated that the right to protection of reputation is a right which is guaranteed under Article 8 of the Convention as part of the right to respect for private life (see, for instance, *Denisov v. Ukraine* [GC], no. 76639/11, § 97, 25 September 2018). In order for Article 8 to come into play an attack on a person’s reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to the personal enjoyment of one’s right to respect for his or her private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February

2012; *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 76; and *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020).

56. In instances where, in accordance with the criteria set out above, the interests of the “protection of the reputation or rights of others” bring Article 8 into play, the Court may be required to verify whether the domestic authorities struck a fair balance when protecting the two values guaranteed by the Convention, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 77). The general principles applicable to the balancing of these rights were first set out in *Von Hannover v. Germany* (no. 2) [GC] (nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012) and *Axel Springer AG* (cited above, §§ 85-88), then restated in more detail in *Couderc and Hachette Filipacchi Associés v. France* [GC] (no. 40454/07, §§ 90-93, ECHR 2015 (extracts)) and more recently summarised in *Medžlis Islamske Zajednice Brčko and Others* (cited above, § 77).

57. Lastly, the Court has held that the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by Article 10 of the Convention. Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court’s case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see *Bédat*, cited above, § 54, with further references). The relevant criteria, when it comes to the balancing exercise between the rights protected under Article 8 and Article 10 of the Convention, include: (a) the contribution made by the article in question to a debate of public interest; (b) how well known is the person concerned and what is the subject of the report; (c) the conduct of the person concerned prior to the publication of the article; (d) the method of obtaining the information and its veracity; (e) the content, form and consequences of the publication; and (f) the severity of the sanction imposed (see, for example, *Axel Springer AG*, cited above, §§ 89-95, and *Milisavljević v. Serbia*, no. 50123/06, § 33, 4 April 2017). Of course, some of the above criteria may have more or less relevance given the particular circumstances of a given case (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 166, 27 June 2017) and other relevant criteria may also be taken into account depending on the situation (see *Axel Springer SE and RTL Television GmbH v. Germany*, no. 51405/12, § 42, 21 September 2017).

(ii) *Application of these principles to the present case*

58. In assessing the relevant statements contained in the published article and the reasons given in the domestic civil judgments to justify the interference with the applicant’s freedom of expression, the Court finds the following issues of particular relevance, having regard to the criteria

identified in paragraphs 56 and 57 above: whether the statements in question made a contribution to a debate of public interest; whether Mr A can be considered a “public figure”; the content and form of the information contained in the article and, lastly, the consequences of the publication of the article in respect of Mr A and the severity of the sanction imposed on the applicant himself.

(α) Whether the article made a contribution to a debate of public interest

59. The public interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (see, among others, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 171).

60. With this in mind, the Court considers that the published article in the present case clearly concerned an issue of public interest in so far as it referred to the functioning of a public burial company entrusted with the management of the Kragujevac City’s cemetery. The domestic civil courts, for their part, agreed with this by noting that there had been no justified interest for the public to be informed of Mr A’s private life but then going on to carry out an analysis of the allegations to do with the functioning of the public burial company (see paragraphs 11 and 12 above).

(β) Whether Mr A can be considered a “public figure”

61. The Court reiterates that a distinction has to be made between private individuals and persons acting in a public context, as political or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005; *Petrenco v. Moldova*, no. 20928/05, § 55, 30 March 2010; and *Milislavljević*, cited above, § 34) in respect of whom the limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a particularly high degree of tolerance (see *Kuliš v. Poland*, no. 15601/02, § 47, 18 March 2008; *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 25, 13 January 2009; and *Milislavljević*, cited above, § 34). Persons may, in this context, be considered as public figures based on, *inter alia*, their acts and/or position through which they have entered the public arena (see *Kapsis and Danikas v. Greece*, no. 52137/12, § 35, 19 January 2017, with further references), as well as in view of the institutional dimension and importance of their duties

(see, for example, *Chalabi v. France*, no. 35916/04, § 42, 18 September 2008).

62. In their observations, both parties agreed that Mr A had been a “public figure” within the meaning of Article 10 of the Convention at the material time (see paragraphs 44 and 46 above), as did the civil courts in their judgments rendered earlier (see paragraph 12 above in particular). Given the above case-law on the issue and the fact that Mr A had in fact been responsible for the management and operation of an important public utility company, the Court finds no reason to disagree and concludes that as a public figure Mr A had to show, in general, a greater degree of tolerance than a private individual faced with criticism in a printed publication.

(γ) The content and form of the information contained in the article

63. The Court would stress that in the context of freedom of expression, it 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, for instance, *Morice*, cited above, § 126, with further references).

64. Being mindful of the above and as regards the present case, the Court notes that the article (see paragraph 8 above) reads, *inter alia*, as follows:

“[6.] At a time when thousands of experts and hard workers were losing their jobs, CCU went in another direction and from an ordinary worker (three years of vocational school) and a street cigarette smuggler became a director of the city’s cemetery about whose high income, both official and more often unofficial, under the counter, there are fantastical stories being told throughout the city.

...

[9.] Leaving nothing to chance, CCU managed to secure for himself two diplomas, just in case they were needed! They may come in handy and it sounds better when introducing oneself.”

65. Even assuming that the above-quoted statements were exaggerated value judgments rather than statements of fact or even that they amounted to journalistic provocation (see, for example, *Kuliš*, cited above, § 47, with further references), the applicant, Ms B and their publication provided

absolutely no evidence in the civil proceedings in support of the contention, implicit or otherwise, that Mr A had in fact obtained any financial gain illegally or had somehow secured his two diplomas improperly or unlawfully (see paragraphs 11 and 12 above). Mere speculation or at best conjecture in this regard (see paragraph 43 above), clearly, could not suffice as a proper basis for such serious allegations despite the fact that Mr A had indeed been a public figure at the material time and that the article itself concerned generally a topic of some public interest. It follows, therefore, that the two paragraphs in question were intended to belittle Mr A's person in breach of the relevant journalistic and ethical standards, as suggested by the Government in their observations and explained by the civil courts in their judgments (see paragraphs 11 and 12 above; also, compare and contrast to, for example, *Ziemiński v. Poland (no. 2)*, no. 1799/07, §§ 7, 8, 44 and 45, 5 July 2016, where the publication in question was deemed satirical and did not involve accusations of criminal wrongdoing by the local government officials).

66. Concerning the remainder of the impugned article, the Court has emphasised, on many occasions, that Article 10 of the Convention 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 being the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Indeed, the role of the press as a public watchdog allows journalists and publishers to have recourse to a certain degree of exaggeration, provocation or even harshness (see *Kuliś*, cited above).

(8) The consequences of the publication of the article in respect of Mr A

67. As already noted above, the right to protection of reputation is a right which is guaranteed under Article 8 of the Convention as part of the right to respect for private life (see paragraphs 55 and 56 above).

68. Given the nature of the allegations concerning Mr A published in paragraphs 6 and 9 of the impugned article (see paragraph 8 above), as well as its own conclusions set out in paragraph 65 above, the Court considers that the consequences of their publication were clearly sufficiently serious so as to attract the protection of Article 8 in respect of Mr A's reputation (see paragraph 55 above). The domestic civil courts were, clearly, also of this opinion, having ruled that Mr A had in fact suffered a breach of his honour as well as his reputation (see paragraphs 11 and 12 above).

(e) The severity of the sanction imposed on the applicant

69. The nature and severity of the sanction imposed is also a matter of particular importance in assessing the proportionality of the interference under Article 10 § 2 (see paragraph 57 above). The amount of any compensation awarded must likewise “bear a reasonable relationship of proportionality to the ... [moral] ... injury ... suffered” by the plaintiff in question (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B; see also *Tešić*, cited above, § 63).

70. Turning to the present case, the Court considers that the final civil court judgment rendered against the applicant, ordering him, together with the other two respondents jointly, to pay an RSD equivalent of approximately EUR 1,241 for the mental anguish suffered and the costs incurred, plus statutory interest, cannot as such be deemed severe, particularly given the number of the respondents in question and the fact that the amounts awarded were never enforced against any of them (see paragraphs 20 and 21 above; also, compare and contrast to *Tešić*, cited above, §§ 67 and 68).

(ζ) Conclusion

71. In the light of the above considerations, the Court is of the opinion, particularly given some of the allegations contained in paragraphs 6 and 9 of the article, that a fair balance has been struck between the applicant’s freedom of expression, on the one hand, and Mr A’s interest in the protection of his reputation on the other. It finds therefore no need to substitute its views in this regard for those of the domestic courts (see paragraph 57 above).

72. It is further noted that despite the essential role of the press in a democratic society, paragraph 2 of Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage involving matters of serious public concern (see, for example, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III, and *Monnat v. Switzerland*, no. 73604/01, § 66, ECHR 2006-X). The protection afforded by Article 10 of the Convention to journalists, as well as to editors by implication, is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see, for example, *Bédat*, cited above, § 50).

73. In view of the foregoing, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Jon Fridrik Kjølbro
President