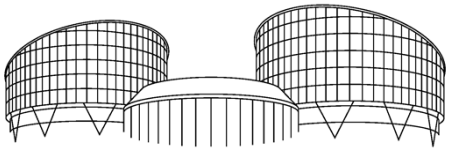

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BAENA SALAMANCA v. SPAIN

(Application no. 23236/22)

JUDGMENT

Art 8 • Positive obligations • Private life • Dismissal of civil defamation action of a forensic doctor of the *Audiencia National* against a newspaper in respect of an article alleging she "had ignored" a court order to examine an ETA member in relation to his conditional release • As a civil servant acting carrying out official duties, applicant subject to wider limits of acceptable criticism than a private individual • Fair balance struck by domestic courts between competing Art 8 and Art 10 interests in conformity with criteria laid down in the Court's case-law • Margin of appreciation not exceeded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 November 2025

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

In the case of Baena Salamanca v. Spain,

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

Kateřina Šimáčková*, President*,
María Elósegui,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 23236/22) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Ms Maria del Carmen Baena Salamanca ("the applicant"), on 29 April 2022;

the decision to give notice of the application to the Spanish Government ("the Government");

the parties' observations;

Having deliberated in private on 30 September 2025,

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

INTRODUCTION

1. The application concerns the alleged failure of the domestic courts to properly balance competing rights (Articles 8 and 10 of the Convention) in the defamation proceedings instituted by the applicant, by offering insufficient protection to the applicant's right to protect her reputation.

THE FACTS

2. The applicant was born in 1962 and lives in Madrid. She was represented by Mr J.R. López Fando de Miguel, a lawyer practising in Madrid.

3. The Government were represented by Ms H.E. Nicolás Martínez, Co-Agent of the Kingdom of Spain to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

5. In 2012 the applicant worked as a forensic doctor (*médico forense*) of the Forensic Institute of the *Audiencia Nacional* ("the forensic centre"). She explained in her submissions in the domestic proceedings that she was the only doctor assigned to the courts and sections of the *Audiencia Nacional*, and that at the time of the events of this case she was responsible for making any report requested by the court.

I. BACKGROUND TO THE CASE

6. B. was a member of the terrorist group ETA. He had been sentenced to thirty years' imprisonment for the murders of three *Guardia Civil* (civil guard) officers and the kidnapping of a prison officer and had been serving his prison sentence in the Álava Prison since 1998. At some point he was diagnosed with metastatic kidney cancer. The Central Juvenile Court (which has prison supervisory functions) of the *Audiencia Nacional* ("the prison supervision court") instituted proceedings for the conditional release of B. under section 92 of the Criminal Code.

A. Court orders of 16 and 23 August 2012 for the medical examination of B.

7. On 16 August 2012 Judge C., a judge responsible for the execution of the sentences of the prison supervision court sent an official letter (*oficio*) to the forensic centre enclosing medical reports on B. so that the forensic doctor assigned to that court could report on B.'s state of health.

8. On 17 August 2012 the letter was received by the forensic centre, and was acknowledged by a handwritten note which said "*Received*", followed by the date and an illegible signature. The applicant appeared before the court to prepare the report.

9. On 23 August 2012 the prison supervision court sent another accompanying letter (*oficio*) to the forensic centre. It stated that, "as a follow-up to the decision", the court was sending B.'s medical records so that the forensic doctor assigned to the court could prepare a report as provided (*efectos prevenidos*) in Article 92(3) of the Criminal Code (see paragraph 92 below).

10. It is not in dispute that the accompanying letter of 23 August 2012 was received by the forensic centre. A note acknowledging receipt and the signature on the copy of it provided to the Court are illegible.

B. The medical expert report prepared by the applicant

11. On 24 August 2012 the applicant compiled a new report on B.'s state of health based on the medical records provided to her (see paragraph 9 above). She addressed the general conditions of the detainee's health, his diagnosis, the progress of the disease and the prognosis. The report concluded that, despite a poor long-term prognosis (the applicant assessed the median survival time at a little over eleven months), B. was not terminally ill and was only presenting mild clinical symptoms of the disease at the time when the report was compiled. The applicant's assessment was that, at the time, medical assistance and treatment could be provided to B. by the medical services at the Mansilla de las Mulas detention centre and, if radiotherapy

and/or surgical treatment were prescribed, in a hospital. Any further symptoms were to be assessed as they appeared.

C. Subsequent developments in B.'s case

12. On 28 August 2012 Judge C. of the prison surveillance court, travelled to the D. hospital in San Sebastian to assess the situation firsthand. He met B. and the medical team, including the oncologists responsible for treating B. It appears that the public prosecutor was not informed of the visit until 29 August 2012, and nor was the applicant informed in advance.

13. On 30 August 2012 the prison surveillance court ordered the conditional release of B., based principally on the medical expert report prepared by the applicant and a report dated 22 August 2012 provided by doctors from the D. hospital which in essence assessed B.'s disease as very serious and predicted a shorter life-expectancy than that in the applicant's report. On 5 September 2012 the public prosecutor appealed against the order on both substantive and procedural grounds. Pursuant to an order of the prosecutor, on 12 September 2012 the applicant prepared a new medical expert report, which was also based on the information provided by the D. hospital. Her conclusion remained unchanged in substance. On 19 September 2012 a criminal chamber of the *Audiencia Nacional* composed of five judges rejected the appeal and upheld the conditional release order, finding, among other things, that both reports, despite certain discrepancies, showed B.'s illness to be severe and that he had a poor prognosis.

14. B. was accordingly released. His release and the related proceedings received wide media coverage in Spain and gave rise to a heated public debate.

15. In 2015 B. died at his home.

II. THE *EL PAÍS* ARTICLE AND THE ORDER (*PROVIDENCIA)* OF 17 AUGUST 2012

A. The *El País* article

16. On 5 September 2012 *El País,* one of the leading national newspapers, published an article headed "[B.'s] case" in its internet edition, with title "*The Forensic Doctor Ignored (Ignoró) the Judge's Order to Examine the ETA Member*" in bold and the subtitle "*The Prosecutor's Appeal is Based on a Report Compiled Remotely*". The article included an insert in a larger font size, "*Baena's [Report] Is Based On Reports by Other Doctors Who Treated the Detainee*", and another insert concerning the prosecutor's request for a plenary Criminal Chamber to consider granting a release. The news item read as follows:

"The [applicant], a court doctor, did not travel to San Sebastián to examine [B.], the kidnapper of [a] prison officer, to determine whether the kidney cancer with metastases to the brain and lung which has left him with less than a year to live was [sufficient grounds] to release him on parole. She failed to do so despite [(*a pesar de que*)] an order of Judge [S.] of 17 August [2012, made] at the request of the public prosecutor's office of the *Audiencia Nacional*. Now, the prosecutor is relying heavily on [the applicant's] report - which was prepared only [on the basis of an analysis of] reports from other doctors who had examined the ETA member - to appeal against the prisoner's release as proposed by the prison institutions, which are under the jurisdiction of the Ministry of the Interior, as accepted on Thursday by [Judge C.].

This report, which had been prepared remotely by the court doctor, was crucial to the prosecutor's opposition to the release of the ETA member. The public prosecutor's office is relying on this report to challenge the one prepared by the doctors at hospital D. in San Sebastián, where [B.] is being treated, and which was used by the prison institutions when they recognised him as having a [disability] in the third degree and proposed his release. The public prosecutor's office's statement of its opposition to the release of B. and also the appeal it filed yesterday against [the release] both emphasised that the detainee [was] not in a terminal state and could be treated for his conditions without leaving prison, as [the applicant] asserts.

[Judge C.] himself went to San Sebastián to meet the ETA member and the doctors who [were] treating him. He [further] decided to question the oncologists at the hospital to resolve the contradictions between the two reports (the hospital's and the court doctor's). [The oncologists] informed him that [B.'s] cancer could not be cured and that, because it had metastasised, his life expectancy would be between three and seven months. That new information was fundamental to the [judge's decision] to release him, subject to a possible appeal by the Public Prosecutor's Office.

The prosecution's view, however, was that [Judge C.] had gone in person to San Sebastián in violation of the "rules of good faith and procedural fairness." [P.R.], the prosecutor who had signed the appeal, claimed that the [fact that there had been an] interview with the oncologists in San Sebastián had only been communicated to the prosecutors the day after, "when the [examination] had already been carried out," which was why he considered that the public prosecutor's office had been deprived of an opportunity to contest the case and that there had been a breach of its right to due process. According to [Judge C.], the purpose of the process [that he had undertaken] had been to obtain "clarification" of the medical reports, "particularly from the specialists who are at the patient's bedside and who [were] treating him."

The prosecutor also accuses the judge of concealing information from him and the court doctor. He refers to another report from oncologists in San Sebastián, prepared on 22 August [2012], which certifie[d] that the nodules found in the ETA member's lungs and cerebellum [were] metastases from his kidney cancer. [Hospital D.] sent that report to the Basque Health Service, which in turn sent it to the *Audiencia Nacional*, but it never reached them. [Judge C.] learned of its existence during his visit to the centre and put it on the file.

The prosecutor is asking for the cancellation of the release order because neither the court doctor nor the public prosecutor' office had access to the [...] latest proceedings.

For the rest, the prosecutor reiterates the arguments contained in the report opposing the release. [Notably], since according to the [applicant's] report B. is not in the final stages of his terminal illness, he cannot be exempted from the requirement to sign an express declaration that he has renounced violence and asks for forgiveness from the victims. However, the public prosecutor' office did not impose [that] requirement in the

> case of [O.], [another] ETA member released from prison in January 2011 with a prognosis and life expectancy similar to [B.'s], of 12 months.
>
> However, the appeal also has a substantial depth. The public prosecutor's office requests that the final decision on [B.'s] release not be left to the five judges of the [*Audiencia Nacional's*] first section — the one responsible for prison matters and deciding upon all appeals against decisions made by [Judge C], who had the last word on [B.'s] freedom — but rather to the criminal chamber as a whole, composed of 18 judges. The reason for this, according to the letter, is "the implications this could have for other cases" and "the need to establish uniform legal criteria".
>
> This last request is of enormous importance. In judicial circles it is asserted that the First Section, given its mostly progressive composition, would confirm the [release order] by [Judge C]. However, the Plenary of the Criminal Chamber [of the *Audiencia Nacional*] ... leans more to the right, and its decision, [as] these sources maintain, [c]ould be unpredictable. President of the Criminal Chamber, [Judge G.-M.], has the power to refer the matter to the plenary, but sources from the [*Audiencia Nacional*] gave assurances yesterday that he will not do so. [The issue of B.'s] freedom will only be decided by [eighteen judges of the Plenary Criminal Chamber] if more than half, that is, ten of them, make a request to that effect."

17. The article was illustrated with a photograph of Judge P.'s published decision (*providencia*) of 17 August 2012 (see paragraph 19 below) ordering that B. be examined by a forensic expert, accompanied by the following text: "The document containing [the] judge's order. [Judge P.] made a written order for a forensic expert to examine the detainee *in situ* on 17 August 2012".

18. On 6 September 2012 the article was reproduced in the Spanish edition of the *El País* newspaper, headed "Controversial Release".

B. The order (*providencia*) of 17 August 2012

19. As subsequently established by the domestic courts in the proceedings summarised below, on 17 August 2012 Judge P. of the prison supervision court substituting Judge C., issued an order (*providencia*) for B. to be medically examined by a forensic doctor for a report on his state of health, the progress of his disease, his short- and medium-term prognosis and the appropriate place for the treatment of his condition. The forensic doctor was also required to specify whether the disease could be adequately treated in the prison hospital. The same order asked the Central Prison Service and the detention centre to provide information about the medical treatment the detainee was receiving and the capacity of the prison system to adequately deal with his condition. The prison authorities were further asked to provide the court with the administrative file on B's application for a conditional release on health grounds, if there was one.

20. The applicant said she had never received the order and had been unaware of its existence or contents before the newspaper article appeared.

21. According to the Government, (a) the order was one of the documents in the prison supervision court's Petitions and Complaints file (no. 138/2003 0006), and (b) that file did not contain either an accompanying letter

addressed to the forensic centre or any evidence of its having been received by the applicant or any other member of staff at the forensic centre.

22. It is not in dispute that the order was sent to and received by the Secretariat General of Prison Institutions and the Mansilla de las Mulas detention centre. On 21 August 2012 the detention centre informed the prison court that B. was at the disposal of the forensic doctor who could make any report he or she considered appropriate.

23. The parties agreed that there was no evidence that the order had been communicated to the forensic medical clinic or the applicant.

III. CORRECTION OR RIGHT OF REPLY PROCEEDINGS

A. Information provided by the applicant in her application form

24. On 12 September 2012 the applicant unsuccessfully asked the editor-in-chief of *El País* to publish a correction of the article by way of allowing her the right of reply to state that she had never received the judge's order to travel to San Sebastián to personally examine B. so as to report on the detainee's state of health.

25. In late September 2012 the applicant filed a claim against the *EDICIONES EL PAÍS, S.L.* ("*El País*") under the Right to Rectification Law no. 2/1984 of 26 March 1984 (see paragraphs 81-85 below), asking for a correction to the false information since, as she claimed, she had never received the order to examine B.. She claimed to have prepared her medical expert report in strict compliance with the decision of the surveillance court of 16 August 2012, which did not contain an order to personally examine B.

26. *El País* contested that claim, providing the first-instance court with the following documents in particular:

(a) a copy of the order (*providencia*) of Judge P. dated 17 August 2012 (see paragraph 19 above), which did not specify the recipient and had not been signed by a judge; and

(b) a document which, according to *El País*, was a copy of an official letter dated 17 August 2012 (*oficio,* hereinafter "the accompanying letter") which read: "I enclose herewith a decision issued by the Petitions and Complaints' Section [of the court], so that you can proceed to execute it". It appears that the part of the document containing the addressee had been deleted (see paragraph 35 below for details).

27. *El País* argued in court that information provided to the journalist by an unspecified source indicated that the order had been placed in an envelope and pushed under the door of the forensic centre's premises, the centre being closed because it was August.

28. Between 13 May 2013 and 21 April 2016, the proceedings were suspended pending the determination of the applicant's criminal complaint

alleging that the documents submitted by *El País* as evidence (see paragraphs 32-35 below) had been altered.

29. On 20 May 2016 Judge no. 35 of the Madrid Court of First Instance dismissed the applicant's application for a right of reply. The judge found, in essence, that (a) on 17 August 2012 the judge had ordered a personal examination of the prisoner by the forensic doctor, even though there was no evidence that the order had been received by the forensic centre; and (b) that the prison institution had, pursuant to the order, informed the court that B. had been available for medical examination. The court therefore concluded that the article had not contained inaccurate information.

B. Information submitted by the Government

30. In their observations of 14 February 2023, the Government informed the Court that the applicant had successfully appealed against the decision of 20 May 2016 (see paragraph 29 above). On 29 June 2017 the 12th Section of the Madrid *Audiencia Provincial* set the above decision aside on appeal and ordered *El País* to publish the following corrigendum in both digital and printed editions: "Contrary to what was stated in [the newspaper *El País*], at no time did [Judge P.] order [the applicant] to carry out the court order by going to San Sebastián to examine [B.] personally ... in order to draw up a report on his state of health", and that she had drawn up the medical expert report "in strict compliance with the order issued on 16 August 2012 by the [prison supervision court] ....". The Madrid *Audiencia Provincial* also ordered *El País* to pay the costs of the first-instance proceedings.

31. The appellate decision of the *Audiencia Provincial* became final and *El País* paid the costs of EUR 4,600.77. The remainder of the court order in the right of reply proceedings had still not been enforced when the Government made its observations to this Court (see paragraphs 70-72 for further details).

IV. THE CRIMINAL PROCEEDINGS BROUGHT BY THE APPLICANT

32. In 2013 the applicant filed a criminal complaint against the journalist (the author of the article) and the lawyer representing *El País* in the right of reply proceedings, alleging that the order and the accompanying letter of 17 August 2012 produced by them as evidence in those proceedings had been tampered with (see paragraph 26 above).

33. The Investigating Court no. 12 of Madrid heard the journalist and the lawyer. They denied the allegations of tampering with evidence and stated that they were unaware of any "alteration" of the documents. The Investigating Court also studied copies of the reports, resolutions and documents held by the prison supervision court in relation to this case, as well

as documents from the Petitions and Complaints file of the Prosecutor's Office at the *Audiencia Nacional*.

34. In response to an inquiry from the Investigating Court, the *Audiencia Nacional* prosecutor advised that the accompanying letter produced by the defendants appeared to be a copy of a cover document addressed to the Alava Prison Centre, with its upper part removed. The prosecutor observed that the documents kept by the prosecutor's office of the *Audiencia Nacional* were neither numbered nor underlined in the same manner as the accompanying letter put in evidence had been. The prosecutor was unaware "who and how, when, or for what reason" had put the copies of the documents (that is, the copies of the accompanying letter and the order) on the prosecutor's file. In any event, it was evident to the prosecutor that the accompanying letter was the same as the one addressed to the prison, albeit without the upper part (above the cross on the crown of the national coat of arms).

35. By a decision (*auto*) of 4 August 2015 (as rectified on 11 September 2015) the Investigating Court no. 12 of Madrid declared that the cover letter produced by the defendants in the right of reply proceedings had been tampered with (*encuentra manipulado*). The upper part of the letter, where the recipient(s) of the document would be indicated, had been deleted. The Investigating Court provisionally dismissed the case and discontinued the proceedings, as it could not be established that either the lawyer or the journalist had altered the document, or that they had been aware of the modification.

V. THE APPLICANT'S CIVIL CLAIM IN RESPECT OF DAMAGE TO HER REPUTATION

36. In 2016 the applicant brought a civil claim against the newspaper in defamation. She sought compensation of 100,000 euros (EUR) and a court order for the newspaper to admit that the information about her which had been published in the article in the digital and paper versions was inaccurate. She further sought an immediate order to take the article down from the internet and order for all possible measures to be taken to make the news inaccessible by the use of search engines and to publish any judgment in her favour in the newspaper's digital and paper versions.

A. The judgment of the first-instance court

37. On 28 November 2017 Judge no. 51 of the Madrid Court of First Instance ("the first-instance court") dismissed the applicant's claims as follows.

38. In the first-instance court's view, its task was to analyse whether the article had violated the applicant's right to her reputation, or whether it was protected by freedom of expression or freedom of the press, in the light of the

principles developed in the case-law of the Supreme Court and the Constitutional Court of Spain. The court reiterated that freedom of expression prevailed over privacy rights (*derechos de la personalidad*) as long as the information was truthful, was a matter of public interest or relevance, and was not expressed unnecessarily offensively or harmfully.

39. The first-instance court had no doubt that the information published by *El País* was of public interest, not so much because of the person concerned (that is, the applicant), but because of the subject matter – the release on health grounds of an ETA member convicted of several serious criminal offences including the kidnapping of a police officer.

40. The first-instance court further found, in essence, that the "truthfulness" criterion was met, and the journalist had displayed due diligence in checking the accuracy of the information to be published. The journalist had referred in the article to the court order. Regardless of whether or not the applicant had been aware of its contents, that required the prisoner to be examined by a forensic doctor. Further, it was not disputed that the applicant had drawn up her medical report without examining the detainee. The first-instance court found that the key matter of disagreement in the case was whether the applicant had been notified about the order:

> "The [applicant claimed] that she had not received the order, that no official letter had been sent to her and that therefore she had not gone to examine the prisoner in person [but had prepared] her report in accordance with the previous orders of another judge. The journalist in his court statement said that he had checked his information; that the order [*(la providencia)*] in question was sent to him by the Press Office (*Gabinete de Prensa)*; and that his "sources" had confirmed to him that the accompanying letter had been pushed under the door of the forensic [centre], as the building had been closed because it was August. The [applicant] is therefore demanding that the media not only prove [that the court order was made] but also investigate whether the [applicant] received it."

41. Turning to the evidence submitted by the applicant (that is, the two court orders of 16 and 23 August 2012 which she received and said she had complied with, see paragraphs 9-10 above), the first-instance court observed, in particular, that the receipt of the court documents had been acknowledged solely by a handwritten note. Neither an entry stamp, nor an acknowledgment of receipt, or any other reliable means of acknowledging notification had been used. The court further observed that the medical expert report prepared by the applicant had been fully in accordance with the order of 17 August 2012 and indeed addressed the issues specified in that order point by point. Therefore, it was "plausible to find (*verosímil pensar*) that the journalist, at the time of writing the news item, having seen the content of the order and the report, [had] reasonably concluded" that the doctor had received the order. Moreover, the court observed that the way the legal documents had been received in the forensic centre had been "entirely irregular", consisting only of a simple handwritten note of the date of receipt. The court further noted the applicant's submissions that she had been the only doctor assigned to the

courts and sections of the *Audiencia Nacional* and that she had written all the reports requested by that court.

42. Turning to the proceedings for the publication of a correction, the first-instance court observed, *inter alia*, that at no point had it been established in those proceedings whether there had been a violation of the applicant's right to her reputation. The court further observed that "the right of reply was no more than a possibility for a person to submit a counter-opinion about a published fact, without having the burden of proving the inaccuracy of the news item".

43. The first-instance court concluded as follows:

> "To sum up, the news item merely reflected two objective facts: that there was an order for the [medical] examination of the detainee; and the production of a medical report which is in all respects consistent with the content of the order, but which ... was prepared [from an analysis] of [other] medical reports. From these two facts, the newspaper concluded that the [applicant] "ignored" the judge's order to examine B. The reasons why [she] had not gone in person to examine the prisoner have ... not been clarified in any of the proceedings. [The applicant] insists that she had never received either the order or the accompanying letter.
>
> From the documents submitted [by the applicant herself] it can be inferred that an accompanying letter was not always necessary [the court referred in its order of 23 August 2012 to a handwritten note "received", see paragraphs 9-10 above], and that the way of proving the receipt of official letters depend[ed]... exclusively on the [applicant] herself writing "received" and adding a date in pencil ... Such "receipts" did not contain the name of the [applicant], [but only] an illegible signature. It was therefore extremely difficult for the [journalist] to check how whether the [applicant] had become aware of the order. In fact, even the investigation carried out by the Investigating Judge No. 12 of Madrid was unable to clarify that.
>
> There is a statement of the Secretary of the Juvenile Court with Prison Surveillance Functions [from which it can be inferred that] there was no official [accompanying] letter sent to [the applicant] ordering her to comply with the order of 17 August 2012. [However], there is a record of notifications indisputably made (by fax), and there is also a copy of a letter addressed to the General Secretariat of Prisons.
>
> To summarise, in order to [be protected by] Article 20(1)(d) of the Constitution [see paragraph 80 below], information published by journalists must be truthful, must relate to matters of public interest because of the person concerned or the subject matter, and must not be unnecessarily offensive towards those affected by the information. [These] requirements were met in the present case, [which this court finds from] the [submissions of the parties], and it does not appear that the news item treated the applicant in an unnecessarily offensive manner."

B. The applicant's appeal and the decision of the Audiencia Provincial

44. The applicant appealed, arguing that the journalist had not acted in good faith and had not taken all necessary steps to check the accuracy of the defamatory statements in question. The seriousness of those statements called for the highest possible degree of fact-checking before publication. She argued that, as a consequence of the publication, she had been subjected to

"moral and professional lynching", and that the article had accused her of a serious lack of professional diligence – that is, a failure to obey a lawful court order – which could constitute a criminal or administrative offence in Spain. The lower court had incorrectly addressed the veracity of the information issue. Veracity could not be equated to the journalist thinking it was "plausible" that the applicant had received the court order. Information reported in the article was not true, nor had it been properly checked. The journalist's explanations had not been plausible or sufficient. The fact that the medical report corresponded to all aspects of the order was irrelevant. The structure and contents of the report reflected that it had been prepared in accordance with section 92(3) of the Criminal Code (see paragraph 92 below) and other relevant domestic regulations.

45. El Pais argued, in essence, that the newspaper merely reported two objective facts: the existence of a court order to perform a medical examination of B. for preparing a medical report, and the fact that such report had been prepared by the applicant without examination of the patient.

46. The prosecutor's office supported the applicant's appeal. It pointed out that the information about the applicant's failure to comply with the court order was widely disseminated, given the media impact of the news outlet and that the disputed information damaged the applicant's reputation and constituted a clear attack on her professional reputation. In the prosecutor's view, the first-instance court's judgment was not in line with the legal doctrine established by the higher domestic courts. The prosecutor also pointed out the applicant's submission that she had not received the order of 17 August 2012. However, the article had stated that the applicant had been aware of the court order but had failed to comply with it. That fact should have been verified (*debio ser contrastado*) before publication. Contrary to the first-instance judge's findings, it was not sufficient to say it was "certainly plausible" (*cierta verosimilitud*), since the journalist had merely stated that, according to his "sources", the accompanying letter had been pushed under the door of the forensic clinic because the building was closed in August."

47. On 27 December 2018 the 14th Section of the Madrid *Audiencia Provincial* quashed the first-instance judgment on appeal and granted the applicant's claim against *El País*, ordering it to pay the costs of the proceedings. The appellate court summarised the facts, including the findings reached in the criminal proceedings (see paragraph 35 above); noted the final decision given in the right of reply proceedings (see paragraph 30 above); described the parties' statements and the evidence given in the various proceedings (see, in particular, paragraphs 26 and 27 above); and observed that it appeared from the facts that the forensic centre had not had a reliable system of acknowledging receipt of documents and notifications at the time.

48. The appellate court found, in so far as relevant, as follows:

> "At the time [of the events of the case], the state of health of [B.] and [the issue of] his conditional release were matters of public interest, and from the standpoint of

journalistic logic, the fact that there was a court order for a medical examination that had not been complied with and a subsequent report on the state of health of the prisoner, was enough[.] However, [given the importance of the case], we have to go a bit further: why was the order not complied with[?]

According to the [academic dictionary of the Spanish language] the verb *ignorar* has two meanings. The first [is] not knowing something or not having news of it, and the second [is] to ignore something or someone, or to treat them as if they did not deserve attention.

The heading of the news item and the way it is written suggests that the verb *ignorar* is used in its second meaning, portraying [the applicant] as having disobeyed a court order.

The final question is to decide whether the duty to check facts was [adequately complied with]. [W]e believe [that] it was not.

[One of the documents] submitted by the defendant in the right of reply proceedings is the order from the petitions and complaints file ... concerning prisoner B., which requires the prisoner to be medically examined by the doctor. [The second of the documents submitted in the right of reply proceedings] is an official letter, the addressee of which is unknown, [and which] states that a copy of the order [from] the petitions and complaints file [was] attached to ensure that it was complied with.

The worst part of the case is that these altered documents had been put onto the public prosecutor's petitions and complaints file ... and there was no investigation of how, why, when, and by whom they had been put [there].

On page ..., there is a statement by the Secretary of the Court of Instruction No. 12 of Madrid, reproducing a report by the [prosecutor] stating that in the file of petitions and complaints ... concerning B. [t]here is no official letter addressed to the [applicant] requiring [her] to comply with the order of 17 August 2012 requiring the medical examination of the detainee.

These facts lead [the appellate court] to the conclusion that the fact-checking was inadequate, and that the sources of information were not very accurate.

The assertion based on these sources that the forensic centre of the *Audiencia Nacional* was closed in August and that, for that reason, the order [to examine B.] was communicated by means of placing it in an envelope and pushing it under the door does not align with [the fact that] the accompanying letter ordering the examination has been proven to have been faked, [or] with the two reports on B.'s state of health that were issued in August."

49. The appellate court further observed that the applicant had requested the right of reply, but that the correction had not been published, which had triggered her formal pursuit of her right of reply. The court found that the "publication of [the] reply would have been sufficient to repair the reputation ... of the [applicant]".

50. The appellate court further found that the damages claimed by the applicant were reasonable in view of two factors: (a) the circulation of the *El País* printed edition and the number of visits to its digital edition, and (b) the defendant's having "disregarded the opportunity to resolve [the matter] once it knew about the error."

C. The cassation proceedings in the Supreme Court

1. Cassation appeal by El País

51. *El País* lodged a cassation appeal, alleging that the appellate judgment had erred in law in dealing with the requirement of "truthfulness" (veracity) of the information was concerned. *El País* submitted that the news report which had become subject of the proceedings was part of an extensive media coverage of B.'s case. The applicant, along with other court experts who had intervened in the domestic proceedings relating to his release, had played "a prominent role" in that case. The disputed item of information referred to a very specific fact, namely the court order for a doctor to examine B. in person.

52. In *El País*'s view, the journalist had fact-checked the information diligently. There was indeed a court order for the applicant to examine the detainee. The applicant had issued her report without going to San Sebastian to examine B. She had not been able to clarify why she had not examined him personally (*El Pais* accordingly assessed the text of the corrigendum it had been ordered to publish in the right of reply proceedings outlined in paragraph 30 as inaccurate). The first-instance court had rightly concluded that the applicant had been aware of the order, as the conclusions reached in her medical report had been fully in line with its contents. If there had been an internal communication error between the court and the doctor, that was irrelevant for the assessment of the veracity of the information. The error had been an exceptional circumstance that was almost impossible to check. An expectation that the journalist would check for that would significantly exceed the general duty of professional diligence. The reasons why the forensic doctor had not gone in person to examine the prisoner had not been established after several rounds of court proceedings. Against that background, there was no basis for the appellate court's finding that the matter could have been remedied by the publication of a "report" on what had happened, as that remained unknown. The copy of the accompanying letter submitted by *El País* in the domestic proceedings could not be assessed as "altered". A part of the document had indeed been removed. However, this was a common practice aimed at protecting the anonymity of journalists' sources.

53. As regards the use of the word "ignored" in the heading of the news item, *El País* argued that the word "ignoring" clearly did not have the same meaning as "disobeying" but obviously had a different scope and different connotations. Even had the applicant been unaware of the order (whether that was true or not), that would not have been incompatible with her having "ignored" the court order. Citing domestic case-law, *El País* reiterated that the proportionality requirement did not imply that headlines should sacrifice brevity or other distinctive traits of journalistic language. They rather had to be read in the context of the article and assessed together with the contents of the news item. Lastly, *El País* submitted that the amount of compensation it

had been ordered to pay had been punitive in nature, arbitrary and grossly disproportionate; that the order had lacked a legal basis; and that the reference to the circulation of the newspaper had been irrelevant and that that could not be a sole or key criterion for the determination of the amount of compensation.

2. The applicant's reply and the prosecutor's position

54. The applicant argued in reply that the appellate court's findings had been lawful and accurate. Firstly, in her view the appellate court's interpretation of the title of the news item had been consistent with the text of the article which said that the applicant had not gone in person to examine the detainee "despite the fact that [the Judge] had ordered her to do so". Secondly, the *Audiencia Provincial*'s interpretation of the requirement to check the facts had not been unreasonable. The appellate court had rightly found that, given the public importance of the information, the journalist had had to go "a bit further" in checking the facts. The applicant reiterated the domestic superior courts' case-law, according to which the level of diligence expected from the media varied depending on several factors, such as the importance of the information and the public or private status of the person about whom the report was made, and that the level "would be highest ... when the [information contained in the news] might, by its very content, discredit the person to whom it refers". The circumstances of the case required thorough fact-checking of what was to be reported, especially given that the incorrect information affected the essence of the news. In the applicant's view, the only "newsworthy" fact contained in the relevant part of the article was her failure to visit the detainee, despite her having been ordered to do so. However, *El País* had failed to check the information it was reporting against other material (*comprobada y contrastada*). It was not sufficient for *El País* to merely check whether there had been a court order, given that the key reported fact was the applicant's failure to obey it. They should have checked – but had never attempted to do so – whether the applicant had been informed of the order, even though that was a prerequisite for the conclusion that she had "ignored" (or disregarded) it. She suggested that it would have been sufficient to contact her and ask her about the matter. She reiterated that, as established by the appellate court, there had been no letter on the official petitions and complaints file advising her of the order of 17 August 2012. To put their case, *El País* had recklessly relied on a document that was "false" (as confirmed by the Investigating Judge's findings, and as noted in the summary of the facts in the Madrid *Audiencia Provincial*'s judgment). *El País*'s reference to the protection of journalists' sources had not been sufficient. Either the accompanying letter had been received by *El País* from its source without an addressee, or the newspaper had known at the outset that the letter had been sent to the prison service and not to the applicant.

55. She further observed that a publication of a correction was irrelevant to the defamation proceedings. She argued that the violation of her right to her reputation would not be remedied by the publication of a correction, but that *El País* was liable to "acknowledge the lack of truthfulness" of the published information. Lastly, she maintained that the appellate court had correctly determined the amount of the compensation, having duly considered the relevant criteria (including the general importance of the news item).

56. The prosecutor's office considered that *El País*'s appeal should be dismissed.

3. The Supreme Court's judgment of 26 February 2020

57. On 26 February 2020 the Supreme Court quashed the judgment of the Madrid *Audiencia Provincial* in the cassation proceedings and upheld the judgment of the first-instance court. It dismissed the applicant's claims and ordered her to pay the costs of the appeal proceedings. Having summarised, among other things, the evidence submitted by *El País* in the right of reply proceedings and the findings reached by the Investigating Judge in the criminal proceedings, the Supreme Court reached the following conclusions.

58. The Supreme Court held that it was not in dispute that the case concerned a conflict between two fundamental rights, that is, the applicant's right to her reputation and the *El País*'s right to freedom of information. The Supreme Court further found that there was no dispute that the information reported in the article was of general interest, since it concerned the controversy triggered by the decision to conditionally release Mr B., the ETA member convicted of kidnapping of a police officer, on health grounds.

59. Referring to the case-law of the Constitutional Court and its own earlier findings, the Supreme Court reiterated the relevant principles as follows:

> " ...for the exercise of freedom of expression ... to take precedence over the right to one's reputation, [it must be borne in mind that] the concept of truthfulness [*veracidad*] is not the same as the truth [*verdad*] of what is published or disseminated. When the Constitution requires information to be truthful, it does not exclude protection for information that may be erroneous - it establishes that the [informant] has a duty of diligence. [The person publishing the information] should be required to ensure that what is [reported] as fact has previously been checked against objective data in accordance with professional standards and any [other] relevant circumstances, even if the information may later be refuted or not confirmed."
>
> Diligence would be lacking in a case where mere rumours or inventions were presented as facts ... [However], this does not mean that a reporter cannot make reasonable conjectures [(*formular razonademente conjeturas)*] based on facts and indications. ... Likewise, freedom of expression protects the reporter even if he/she makes circumstantial errors that do not affect the essence of what is reported ... since, otherwise, the ability of the press to act would be jeopardised[.] [Indeed,] it is not easy to communicate information with the immediacy [inherent to] the news media without committing inaccuracies or minor [(*intrascendentes)*] errors."

60. In the Supreme Court's view, the facts reported by *El País* were correct in substance (*sustancialmente ciertos*). The judge had ordered a medical examination of the detainee so that a report could be made for the court. However, report had been prepared without the detainee being examined in person. In its appeal judgment, the Madrid *Audiencia Provincial* itself accepted that, as a matter of fact, there had been "a court order for a [personal] examination [which had] not [been] complied with".

61. As regards the title of the article, the Supreme Court reiterated that, according to its own doctrine and that of the Constitutional Court, the requirement of proportionality "did not mean that the brevity typical of headlines or other unique features of spoken or written reporters' language" would have to be given up. However, that approach did not apply where a headline "include[d] expressions which, beyond the need for brevity, [were] likely to create specific doubts about [a person's] reputation without a direct link to the remainder of the [text]". Turning to the applicant's case, the Supreme Court found that the disputed sentence – "The court doctor ignored the [Judge's] order" - summarised what had happened and was directly linked to the remainder of the news item. In any event, the headline and the remainder of the news item, if read together, "allowed for a full understanding of the information provided by the newspaper, that is, as the *Audiencia Provincial* had put it, that there had been a court order for a medical examination that had not been complied with".

62. According to the Supreme Court, the fact that the media did not elaborate (*no profundizara*) on the reasons why the court order was not complied with did not undermine the truthfulness of the information. The Supreme Court found as follows:

> "[*El País*] could reasonably believe [(*confiar razonablemente*)] that the judge's orders had been transmitted to the official who was providing the services to the court, to whom those orders were addressed, namely the court doctor. On the other hand, given the internal nature of the problem and the lack of a reliable system for recording communications to the medical examiner's clinic, even if the media had attempted to conduct such an investigation, it would likely have been unproductive. [Indeed, to date] it remains unknown what exactly happened with the communication of the judge's decision on the medical examination of the prisoner to the court doctor."

63. The Supreme Court therefore concluded that confusion about what had really happened was not attributable to the media and did not affect the truthfulness (*veracidad*) of the information in the news item. In the domestic court's view, that information was based on data that had been sufficiently checked (*suficientemente contrastados*), that is, there had been a court order for the detainee to be medically examined in order for a medical report to be prepared, and the applicant had written the forensic report without examining the detainee.

64. Lastly, the Supreme Court found the Madrid *Audiencia Provincial*'s reference to the failure by *El País* to publish a "report" clarifying what had

really happened once the error had been discovered to be invalid. The Supreme Court observed that the facts established by the courts did not lead to the conclusion that there had been an error in the news item. Indeed, it was "still unknown what [had] really happened with the communication between the court and the [applicant]". In the Supreme Court's view, it could not be said that the information, as published by the newspaper, was untrue (*inveraz*).

D. The applicant's application for review

65. The applicant lodged an application for the review of the Supreme Court's judgment, seeking a declaration that it should be revoked.

66. On 27 July 2020 the Civil Chamber of the Supreme Court dismissed the request, finding that the applicant was, in essence, seeking to reopen the case because she disagreed with the findings of the court of cassation. The Civil Chamber of the Supreme Court held that, contrary to the applicant's submissions, the judgment of 26 February 2020 was properly reasoned and consistent and that it did not contain obvious mistakes – notably, there was no "obvious error" in the finding that there had been an order for the applicant to examine the detainee.

E. The applicant's constitutional (*amparo*) appeal

67. The applicant lodged a constitutional (*amparo)* appeal against the Supreme Court's judgment of 26 February of 2020 and the order of 27 July 2020. On 29 October 2021 the Constitutional Court rejected it because the case had no special constitutional significance.

F. The costs order

68. Judge no. 51 of the Madrid Court of the First Instance the Madrid *Audiencia Provincial* made final rulings (*decretos*) on 9 October 2020 and 30 September 2020 respectively ordering the applicant to pay EUR 17,235.29 and EUR 9,435.52 in costs in the defamation proceedings.

69. On 31 May 2021 Judge no. 51 of the Madrid Court of the First Instance, referring to those rulings, ordered the applicant to pay *El País* a total of EUR 26,670.81 in costs plus EUR 8,001.24 interest.

VI. THE SETTLEMENT AGREEMENT BETWEEN THE APPLICANT AND EL PAÍS

A. The Government's submissions

70. The Government pointed out in their observations dated 14 February 2023 that there was no evidence that the court order for the publication of a

correction (see paragraph 30 above) had been carried out, or that any execution proceedings had been brought by the applicant in that respect. They suggested that the applicant and *El País* might have reached a private out-of-court agreement in respect of that part of the court order of 29 June 2017.

B. Information provided by the applicant

71. In her observations dated 4 April 2023 in reply to the Government, the applicant admitted that on 14 July 2021 she had reached the following agreement with *El País*.

72. The parties confirmed, firstly, that on 29 June 2017 the Madrid *Audiencia Provincial* had ordered *El País* to publish the correction requested by the applicant in its print and digital editions (see paragraph 30 above). Secondly, on 26 February 2020 the Supreme Court had dismissed the applicant's claim for protection of her right to her reputation against *El País* and had ordered her to pay EUR 17,235.29 and 9,435.52 in costs for the first-instance proceedings and the appeal respectively. *El País* had neither requested payment up to the date of the agreement nor published the correction. The applicant, in her turn, had not paid the costs of EUR 26,670.81 or the interest of EUR 8,001.24, in respect of which execution proceedings had already been commenced. Against that background, the parties agreed, in so far as possible, to "waive the execution of the [above] orders, which they consider[ed] settled".

73. The case material contains no information as to whether any steps were taken by the parties to comply with the settlement agreement.

VII. OTHER INFORMATION CONCERNING THE NEWS ITEM

74. According to the Government and the domestic civil case material, the digital version of the news item published on the *El País* website had been accessed by 13,058 unique visitors. A total of 171,119 copies of the Spanish edition of *El País* of 6 September 2012 were printed.

75. By the time of the exchange of the parties' observations, there were 132 comments under the news item. Five of the comments concerned the court doctor and read, notably, as follows:

> "Look what [famous court doctor] Doctor E. says about the court doctors of the *Audiencia Nacional*: "At that time, and one can say also throughout the entire subsequent period, the court doctors who were at the *Audiencia Nacional* did not put in the minimum of the effort that corresponded to their ethical and professional duties. There are, and have always been, cover-ups. I have known them personally and would [readily] say [the same] to their face."

> "This court doctor is as professional as the one who confused rodents and [humans]. Of course, writing reports without even [having gone in person] to establish the facts... Resignation now!"

"A forensic doctor [is] writing reports as important as the one [referred to], on which the availability of adequate medical treatment to alleviate the consequences of a person's illness, and to allow him to spend the last months of his life with his family, depends, and ... doesn't even bother to see the patient? ... [A] complete disaster of the sort you expect in a third-world country."

"...[Just] look at [the judge], ordering [the expert] to travel to San Sebastian ..., in the middle of 17 August [2012], when the poor [thing] would be enjoying herself on the beach."

"What amazes me about this news is that court experts make reports based on hearsay. Between this and the scientific police, I feel like I'm paying taxes for nothing. I also want to get paid without working ... You can't trust them."

76. The remainder of the comments concerned various other aspects of B.'s release case unrelated to the application at hand.

77. According to the Government, the news item is available only to people who subscribe to the digital edition of the newspaper; and *El País* had at some point blocked access to the comments to the news item.

78. It appears that the news item is still accessible in the digital edition of the newspaper and can be found using search engines.

VIII. SUBMISSIONS UNDER ARTICLE 41 OF THE CONVENTION IN RESPECT OF COSTS AND EXPENSES MADE IN THE APPLICATION FORM

79. On page 9 of the application form dated 29 April 2022 (section F, Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments) the applicant referred to Article 41 of the Convention and invited the Court to find that there had been a violation of her right to honour and that, inter alia, "the respondent State ... should pay [her] EUR 26,670, plus any tax that may be chargeable, in costs and expenses", along with compensation of non-pecuniary damage.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE SPANISH CONSTITUTION

80. Under Article 20 of the Constitution, the following rights are recognised and protected: the right to freely express and spread thoughts, ideas and opinions orally, in writing or by any other means of dissemination (Article 20 (1)(a)); and the right to freely communicate or receive truthful information by any means of dissemination whatsoever. Conscience clause and professional secrecy in the exercise of these freedoms are regulated by law (Article 20 (1)(d)). These freedoms are limited by respect for other rights recognised under the Constitution, by the legal provisions implementing it, and especially by the right to one's reputation, to privacy, to one's own image and to the protection of youth and childhood Article 20 (4)).

II. THE RIGHT TO CORRECTION OR THE RIGHT TO REPLY

A. Organic Law 2/1984 of 26 March 1984

81. The right of reply, or the right to have a correction published (*derecho de rectificación*), is governed by Organic Law 2/1984 of 26 March 1984 ("the Law"). Under section 1 of the Law, any natural or legal person has the right to the publication of a correction of information disseminated by any social communication organisations if it concerns facts that affect them which they consider inaccurate and the dissemination of which may cause them harm.

82. The right of reply is exercised by sending a letter requesting it to the head of the communication organisation within seven calendar days following the publication or dissemination of the information to be corrected. The correction should be limited to the facts of the information to be corrected (section 2 of the Law). If a correction is not published within the time-limit prescribed by law, the affected person has seven working days to bring a right of reply claim before a first-instance judge (section 4).

83. Under section 5 of the Law, a claim for the right of reply should be made in writing, and there is no need for legal representation. The claim should be accompanied by evidence that a request for the right of reply was sent within the time-limit provided by law. The information to be corrected should also be provided if it was disseminated in writing; in other cases, a quotation or description, as accurate as possible, should be provided. The claim will be considered by a judge acting *ex officio*, without hearing the defendant. The judge will decline to admit the claim if he or she is not competent to decide on the matter or if the requested correction is "manifestly inappropriate". Otherwise, the editor or the head of the communication medium, or their representatives will be called to a summary hearing, which will be held within seven days of the making of the request.

84. Under section 6 of the Law, the proceedings are conducted under the rules for summary ("verbal") proceedings set out in the Civil Procedure Law, with the following modifications:

(a) a judge may ask the defendant to file or present the information in question, including as a recording or a transcript;

(b) only evidence which is relevant and can be examined at the hearing can be admitted; and

(c) the decision will be given on the same day as the trial or the day after.

85. The ruling should be limited to either a refusal of the right of reply or an order to publish the correction and disseminate it in the manner and within the time limits provided for in the Law, and the losing party will be ordered to pay costs. An order granting a request for the right of reply must be complied with in its own terms (*en sus propios términos*). This procedure may be undertaken alongside a criminal or civil action of another nature that may provide redress to the injured party for the information originally

disseminated (*que pudieran asistir al perjudicado por los hechos difundidos*) (section 6 of the Law).

B. The Civil Procedure Act

86. Under section 248 of the Civil Procedure Act no. 1/2000 of 7 January 2000 (*Ley de Enjuiciamiento Civil*), there are two types of civil proceedings by way of declaration: ordinary proceedings and "verbal proceedings" (that is, summary proceedings). Claims involving the right of reply to the dissemination of inaccurate and harmful information are decided in summary proceedings (section 250.1.9 of the Act).

C. The Constitutional Court's Ruling no. 168/1986 of 22 December 1986

87. In ruling no. 168/1986 of 22 December 1986, the Constitutional Court held that the summary nature of the procedure means that the judge does not have to examine whether the published facts and those contained in the reply are true. A judicial decision granting a request for the right of reply does not guarantee that the version of the facts presented by the complainant is correct and it does not make the issue *res judicata* if there is subsequently a procedure which includes an examination of the facts. For this reason, the right of reply procedure can be pursued alongside a criminal action or a civil action in defence of the rights of the person affected by the published information, particularly a civil action for the protection of the right to one's reputation.

III. PROTECTION OF THE RIGHT TO ONE'S REPUTATION IN CIVIL PROCEEDNIGS

88. The civil judicial protection of the right to one's reputation is governed by Basic Law 1/1982 of 5 May 1982 "On the civil protection of the right to one's reputation to personal and family privacy, and to one's image", which implements Article 18 of the Spanish Constitution. This right can be used to protect against an illegal interference with the right to one's reputation, such as the imputation of facts or the expression of value judgments that in any way harms the dignity of another person, undermining his or her reputation or self-esteem (section 7.7 of the Law as in force at the material time).

89. Judicial protection of the right to one's reputation can be sought using the ordinary procedures provided for by the Civil Procedure Act, or through a special procedure provided for in Article 53.2 of the Constitution.

90. Under section 9 of the Organic Law no. 1/1982, if an unlawful interference is established, the judgment should specify all the necessary measures to put an end to the disputed unlawful interference and, in

particular, whatever is necessary to restore the injured person to the full enjoyment of their rights, with a declaration of the interference suffered, an order that it cease immediately, and the restoration of the previous situation. Where there has been an interference with the right to one's reputation, the restoration of the violated right includes, without prejudice to granting the right of reply under the procedure provided by law, the publication of the ruling in full or in part, at the expense of the party found to be in breach of the right to one's reputation, with the publication being at least equal in visibility to that of the original publication. The judgment should specify, in particular, what should be done to prevent imminent or future interference, as well as compensation for the damage already caused.

IV. THE STATUS OF FORENSIC DOCTORS

91. Basic Law no. 6/1985 of 1 June 1985 says that forensic doctors are career civil servants who constitute a National Corps of Senior Graduates within the Administration of Justice. Forensic doctors assist, notably, courts and public prosecutors' offices in the areas of their professional expertise. For this purpose, they issue reports and medico-legal opinions for legal proceedings, carry out regular monitoring of injured parties and assess personal injuries that are the subject of legal proceedings. In proceedings initiated by the Public Prosecutor's office, forensic doctors are under the orders of, principally, judges and public prosecutors. They are fully independent in the exercise of their functions and are strictly bound by scientific criteria.

V. RELEVANT PROVISIONS ON CONDITIONAL RELEASE

92. Convicted persons who are "very seriously ill" with incurable diseases (as confirmed by a medical report) may be granted conditional release (section 92(1) of the Criminal Code, as in force in 2012). If a detainee's life is obviously endangered because of a disease or advanced age, as confirmed by the opinion of the forensic doctor and the medical services of the detention centre, a prison supervision judge may... authorise conditional release without any further formality other than requesting the prison to submit the final prognosis report in order to make the assessment, without prejudice to the monitoring and control set out in the law (section 92(3)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

93. The applicant complained that, by rejecting her civil claim against *El País*, the domestic courts failed to protect her right to reputation. She referred to Article 8 of the Convention which reads as follows:

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

A. Admissibility

1. Abuse of the right of application and application of Article 37 § 1 of the Convention

(a) The parties' submissions

94. The Government argued in further observations that the applicant had failed to inform the Court about (a) the final appellate decision in the right of reply proceedings; and (b) the settlement she had reached with *El País*. They noted that she had only disclosed its terms in her observations in reply to the Government's first submissions, which amounted to an abuse of the right of application. They considered that the applicant's failure to inform the Court that there had been a final judgment ordering the correction – which, in their view, showed that the domestic courts had effectively protected the applicant by granting the request she had made - and, more importantly, her failure to inform the Court of the settlement reached between her and *El País*, amounted to manifest procedural unfairness on the applicant's part and showed that she had failed to comply with Rule 47 § 7 of the Rules of Court. As they noted in that regard, the applicant, while stating in application form that she had been ordered in the domestic proceedings to pay *El País* the amount of EUR 26,670.81 plus interest in respect of costs and lawyers' fees (and submitting the court order of 31 May 2021, see paragraph 69 above), had deliberately omitted the fact that she had entered into an out-of-court agreement *with El País* by which the newspaper waived its right to claim that amount, and she had waived her right to claim at the domestic level that *El País* publish a correction as ordered in the final domestic decision of 29 June 2017. Turning against this background to the applicant's claims in respect of costs and expenses submitted after notice of the application was given to them (see paragraph 95 below), the Government noted that the applicant had claimed exactly the amount of the settlement she had reached with *El País,*

which, in their view, amounted to yet another attempt to mislead the Court. They invited the Court to consider whether it would be appropriate to reject the application as manifestly ill-founded or otherwise, based on Articles 37 § 1 (Striking out applications) or 35 § 3 of the Convention.

95. The applicant admitted in her observations dated 4 April 2023 that she had reached an out-of-court agreement with *El País* but considered that irrelevant to her application to the Court. She argued that the agreement was unrelated to the substance of the defamation proceedings that she had complained to the Court about. It only concerned the costs and expenses incurred in those proceedings. By reaching the agreement with *El País*, the applicant had merely avoided paying a costs order almost equal to her annual salary. Nor did her having settled amount to a waiver of her Convention rights, as it was "merely a civil agreement" which the applicant had concluded for financial reasons. The issues of costs and the right of reply were not to be confused with the applicant's right to her reputation. In the same document as her observations in reply to the Government's ones, the applicant submitted her claims for just satisfaction, as invited by the Court. In the initial (Spanish) text of the observations, she formulated her claim in respect of costs and expenses as follows:

> "In this last section, the settlement concluded with *El País* is worth being noted: [the applicant] has exchanged the publication of the correction for EUR 26,670, plus EUR 8,001.40 [of interest] in costs and expenses, which can be compensated [(*compensable*)] with the publication, of which she has been deprived by virtue of the contested decision. In total, taking into account the compensation of [non-pecuniary damage which she claimed in the amount of EUR 100,000] and costs and expenses, not including those of this defence, except for the EUR 6000 [in respect of the Court's proceedings, [she claims] EUR 140,000".

96. The English translation of the observations that followed on 5 May 2023 contained similar submissions, with the final sentence being slightly different:

> "In total, taking into account the compensation [of non-pecuniary damage] and costs and expenses (not including those incurred in the proceedings [before the Court] in the amount of EUR 6,000), [the applicant claims] EUR 134,671".

(b) The Court's assessment

97. An application may be rejected as an abuse of the right of individual application under Article 35 § 3 (a) of the Convention if, among other reasons, the applicant has knowingly based it on untrue facts. The submission of incomplete and therefore misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments occur during the proceedings before the Court and, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the

applicant fails to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. In such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 149, 9 June 2022, and the case-law cited therein; and *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). Applicants are not expected to set out all information possible about a case in their application. It is their duty, however, to present, at least, the essential facts at their disposal which are clearly of significance for the Court to be able to assess the case properly (see *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

98. It is not disputed that the applicant did not specifically mention the final decision in the right of reply proceedings on her application form and did not inform the Court at that stage she had reached a settlement with *El País*. However, she informed the Court of the settlement in her observations in reply to those of the Government (see paragraphs 71-72 above).

(i) As regards the final decision of 29 June 2017

99. The Court observes that the domestic judicial decisions in the defamation proceedings, which the applicant provided in support of her complaint together with her application form to this Court, contain references to the right of reply proceedings and their outcome. For instance, the appellate court in its judgment of 27 December 2018 referred to the court's summary of the facts of the case in its final ruling in the right of reply proceedings (see paragraph 47 above). It therefore cannot be said that the applicant deliberately concealed that information from the Court.

(ii) As regards the out-of-court settlement reached between her and El País

100. The Court observes that in 2021 the applicant waived her claim to have the right of reply order executed. The newspaper, in its turn, agreed to not to enforce the costs order made against the applicant in the defamation proceedings, in respect of which the applicant brought her complaint to this Court. That information directly concerned the proceedings now considered by the Court. In the Court's view, the settlement agreement between the parties to the domestic proceedings was a relevant issue of fact which the applicant was required by Rule 47 § 7 of the Rules of Court to bring to the attention of the Court. The Court further notes that the gist of the present case is the alleged failure of the domestic courts in the defamation proceedings to strike a fair balance when protecting the two values guaranteed by the Convention, namely, on the one hand, freedom of expression as protected by Article 10 and, on the other, the right to respect for one's private life enshrined in Article 8, in accordance with the criteria established by it for that purpose (see among many others, *Medžlis Islamske Zajednice Brčko*

and Others v. Bosnia and Herzegovina [GC], no. 17224/11, § 77, 27 June 2017; and *Rodina v. Latvia*, nos. 48534/10 and 19532/15, § 112, 14 May 2020). In order to assess whether the domestic courts had struck a fair balance when protecting the two values guaranteed by the Convention, the Court will examine a range of relevant factors, as described below (see, for a summary, paragraphs 115-117 below). The private agreement reached between the parties in respect of the costs award in the defamation proceedings and the publication of the correction are relevant to the determination of whether the authorities complied with their positive obligations in the domestic proceedings in respect of which the applicant brought her complaint to the Court, but did not concern the very core of the case being decided (see, *mutatis mutandis*, *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 47, 19 July 2018).

101. The Court further accepts that the settlement between the applicant and *El Pais* was also a relevant issue of fact for the purposes of the Court's determination of the just satisfaction issue under Article 41 of the Convention. In the application form dated 29 April 2022 the applicant indicated her wish for reparation in respect of the alleged violations, that is, invited the Court to award her EUR 26,670 in costs and expenses (see paragraph 79 above). This claim was, with some ambiguity, reiterated by her in April 2023, after notice of the application had been given to the Government, and the applicant clearly stated in the relevant part of her claim that she had "exchanged" the publication of the correction against the payment of the costs (see paragraph above). In these circumstances, without prejudice to any further finding under Article 41, and bearing in mind its case-law concerning claims for just satisfaction (see *Nagmetov v. Russia* [GC], no. 35589/08, § 59, 30 March 2017 and*, mutatis mutandis*, *Andriy Rudenko v. Ukraine*, no. 35041/05, § 24, 21 December 2010), the Court finds that the manner in which the claim was articulated during the communication stage of the proceedings does not affect its ability to decide, as the case may be, on the amount of just satisfaction to be awarded under Article 41.

102. The Court therefore finds that the information which the applicant failed to disclose, albeit relevant, did not concern the very core of the case being decided (see, *mutatis mutandis*, *Makraduli,* cited above), and, in in relation to the question of just satisfaction, that her intention to mislead the Court cannot be established with sufficient certainty. The Court is therefore of the view that that the manner in which the applicant presented her case did not amount to an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention. This objection must therefore be dismissed.

103. As regards the Government's reference to Article 37 § 1 of the Convention, the Court observes that Article 37 § 1 (a) of the Convention is not engaged in the present case because the applicant did not state that she was withdrawing her application. Further, the Court considers that is does not

appear that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention; and, having, notably, regard to its findings in paragraphs 99-102, it finds no other reason to find that it is no longer justified to continue to the examination of the application within the meaning of Article 37 § 1 (c) of the Convention (contrast, for instance, to *Belošević v. Croatia* (dec.), no. 57242/13, §§ 50-54, 3 December 2019, where the out-of-court settlement had the practical effect of remedying to a large extent the applicant's grievances, which does not appear to be the case in the application at hand). Accordingly, the Court sees no reason to strike the application out of its list of cases.

2. Applicability of Article 8

(a) The parties' submissions

104. The Government argued that the interference did not attain the threshold of severity required under Article 8 of the Convention. They considered that the applicant had failed to submit sufficient evidence that her professional reputation had been affected by the *El País* publication.

105. The applicant insisted that the publication of a news item accusing her of a failure to comply with a court order, which was a criminal offence, had clearly had a serious impact on her professional reputation. She had been subjected to media and social lynching.

(b) The Court's assessment

106. The right to the protection of one's reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for one's private life. In order for Article 8 to come into play, an attack on a person's reputation or honour must attain a certain level of seriousness and must be carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 72, ECHR 2016; and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; and, in so far as relevant, *Denisov v. Ukraine* [GC], no: 76639/11, § 112, 25 September 2018). Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (see *Axel Springer AG*, cited above, § 83).

107. The Court notes that the domestic courts acknowledged that the provisions of domestic law and the Convention and the principles developed in the Court's case-law concerning the right to respect for one's private life and reputation were engaged in the applicant's case and that the applicant had standing to complain of a violation of her right to respect for her reputation and to bring defamation proceedings against *El País.*

108. The Court finds no reason to hold otherwise. In the Court's view, the allegations made in the *El País* article to the effect that the applicant - a

forensic doctor of the Forensic Institute of the *Audiencia Nacional* - had failed to personally examine the detainee despite the existence of a court order to do so were capable of seriously tarnishing her professional reputation and discrediting her in the eyes of the public. The disputed article was available to a wide public readership. In these circumstances, the Court finds that the statements made in the disputed article affected the applicant's private life to a degree attracting the application of Article 8 of the Convention.

3. Conclusion on admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

110. The applicant argued that the domestic courts had failed to properly balance the two competing rights protected under Articles 8 and 10 of the Convention. The courts had failed to give sufficient consideration to the duties and responsibilities inherent in a journalist's exercise of the freedom of expression.

111. The applicant insisted that an ordinary reader could understand the relevant part of the disputed article only in one possible meaning, that is, that she had failed to conduct a personal examination of B. despite the court order requiring her to do so. A failure to obey a court order constituted a criminal offence punishable under the Spanish law. In these circumstances, in the applicant's view, it was crucial to establish whether the applicant knew about the order of 17 August 2012. She maintained, however, that the order had never been communicated to her. No evidence had been obtained in the domestic proceedings to demonstrate that the order was received at the forensic centre. The explanations advanced by *El País* in the right of reply proceedings were not credible. Moreover, the defendant had provided the domestic court with an "altered" document "claiming that it [was] the same as the document the applicant had received". If the journalist's allegations that the documents had been passed "under the door" of the forensic clinic were accepted, there would be no reason to submit an altered accompanying letter to the domestic court in the right of reply proceedings to prove the delivery. She maintained that only the prison service had been notified of the order and had duly acknowledged that it had received it. In these circumstances, there was no reason to find that journalist could have reasonably believed that the applicant had been notified of the order. Therefore, contrary to the Supreme Court's findings, the journalist had failed

to act in good faith and with due diligence when checking the relevant facts. Lastly, the applicant submitted that she had been used by the press as a tool in a highly controversial politically sensitive matter. She considered that the political context of the case should be taken into account. She had been subjected to pressure from both her colleagues and the media for the sole reason that she had issued a forensic medical report which, in the end, was subsequently shown to be accurate.

(b) The Government

112. The Government argued that the domestic courts, and notably the Supreme Court, had appropriately balanced the competing rights under Article 8 and 10 of the Convention, while taking into account the relevant case-law of the Court and the margin of appreciation afforded to the State. The domestic courts had made an acceptable assessment of the relevant facts. In the Government's view, the author of the article did not give a critical assessment of the applicant's conduct but merely reported two objective and true facts: that the court had ordered a personal examination of the prisoner and that the applicant had made a medical report without examining B. in person. The courts had correctly found that the journalist had acted in good faith and with due diligence. The journalist could not have reasonably foreseen, at the time the article was published, that the principal addressee of the order had not been notified about it. It would have been disproportionate to expect the journalist to check that point, given that even the domestic courts in several rounds of the domestic proceedings had not managed to establish what exactly had happened.

113. Lastly, the Government pointed out that only about five of the 132 comments under the digital version of the article referred to the applicant's actions. In those comments, the readers did not criticise the applicant as unprofessional because she had disobeyed a court order; they rather observed that she had written an important forensic report without examining the patient in person - a fact that the applicant had never disputed. Moreover, contrary to the applicant's submissions, the comments to the news item did not display any trace of "lynching" or social and political mockery of her.

2. The Court's assessment

114. The Court observes that in cases such as the present one, what is in issue is not an act of the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicant's private life. The Court will therefore focus on whether the authorities complied with their positive obligations.

(a) General principles

(i) On balancing competing rights under Articles 8 and 10 of the Convention

115. The positive obligation inherent in Article 8 of the Convention may oblige the State to adopt measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The applicable principles are, nonetheless, similar, and regard must be had to the fair balance that has to be struck between the relevant competing interests (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 98 and 99, ECHR 2012) Where the interests of the "protection of the reputation or rights of others" bring Article 8 into play (see the case-law cited in paragraph 106 above), the Court may be required to consider 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. The general principles applicable to the balancing of these rights were summarised in *Perinçek v. Switzerland* [GC], no. 27510/08, § 198, ECHR 2015 (extracts) as follows:

> "(i) In such cases, the outcome should not vary depending on whether the application was brought under Article 8 by the person who was the subject of the statement or under Article 10 by the person who has made it, because in principle the rights under these Articles deserve equal respect.
>
> (ii) The choice of the means to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the High Contracting Party's margin of appreciation, whether the obligations on it are positive or negative. There are different ways of ensuring respect for private life and the nature of the obligation will depend on the particular aspect of private life that is at issue.
>
> (iii) Likewise, under Article 10 of the Convention, the High Contracting Parties have a margin of appreciation in assessing whether and to what extent an interference with the right to freedom of expression is necessary.
>
> (iv) The margin of appreciation, however, goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. In exercising its supervisory function, the Court does not have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied on.
>
> (v) If the balancing exercise has been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs."

116. The Court has previously identified a number of criteria to be met when balancing the two competing rights under Articles 8 and 10 of the Convention, which include the following: the subject of the publication and its contribution to a debate of public interest; how well known the person concerned is; the prior conduct of the person concerned; the content, form

and consequences of the publication; and, where appropriate, the manner in which the relevant information was obtained (see *Couderc and Hachette Filipacchi Associés v. France*([GC], no. 40454/07, § 93, ECHR 2015 (extracts)).

117. The Court's task, in exercising its supervisory function, is not to take the place of the national authorities but rather to review under Article 8 of the Convention the decisions they have taken pursuant to their power of appreciation (see, in the context of Article 10, *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016, with further references).

(ii) On press freedom, responsible journalism, method of obtaining the information and its veracity

118. The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, as well as the need to prevent the disclosure of information received in confidence, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest. The protection afforded by Article 10 of the Convention to journalists 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 *Bédat,* cited above, § 50, with further references). Under paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Special grounds are therefore required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI, with further references; and*, mutatis mutandis*, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 115, 27 June 2017, with further references).

119. The concept of responsible journalism requires that journalists check the accuracy and reliability of information provided to the public to a reasonable extent (see, among others, *Kącki v. Poland*, 10947/11, § 52, 4 July 2017). The press is in principle entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 68 and 72, ECHR 1999-IIIB;; V*erlagsgruppe Droemer Knaur GmbH & Co. KG*

v. Germany, no. 35030/13, § 46, 19 October 2017; and *Mityanin and Leonov v. Russia*, nos. 11436/06 and 22912/06, § 109, 7 May 2019). The mere fact that an official report may be subject to challenge cannot, on its own, be considered decisive in determining whether a journalist had a duty to verify the truth of the critical factual statements contained in the report (see *Bladet Tromsø and Stensaas,* cited above, § 70).

120. In its assessment, the Court has had regard, notably, to the issue whether the nature of the allegation at stake made it very difficult, if not impossible, for a journalist to provide direct corroboration of it (see *Bozhkov v. Bulgaria*, no. 3316/04, § 47, 19 April 2011, with further references; and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, §§ 63-65, 14 February 2008, cited therein, where the task of researching the allegation and demonstrating it was not found by the Court, in the circumstances of the case, to be unreasonable or impossible). The Court has also acknowledged that distorting the truth, in bad faith, can sometimes overstep the bounds of acceptable criticism: a correct statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind (see *Mesić v. Croatia (no. 2)*, no. 45066/17, § 67, 30 May 2023; and *Kaboğlu and Oran v. Turkey*, nos. 1759/08 and 2 others, § 67, 30 October 2018).

121. Lastly, the Court on several occasions reiterated the importance of reading the impugned statements in context (see *Morice v. France* [GC], no. 29369/10, § 156, ECHR 2015) and looking at the interference complained of in the light of the case as a whole, as opposed to the authorities' relying on sentences or their parts taken out of context (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 35, 27 November 2007 and *Khural and Zeynalov v. Azerbaijan*, no. 55069/11, § 48, 6 October 2022). The Court considered the impugned publications as a whole and had particular regard to the words used in its disputed parts, the context in which they were published and the manner in which it was prepared (see, among others, *Fedchenko v. Russia (no. 3)*, no. 7972/09, § 49, 2 October 2018; *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV, and *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 90, ECHR 2007-III).

(b) Application to the present case

122. It is not in dispute that the present case concerns a conflict between competing rights - on the one hand, the right of *El País* to respect for its freedom of expression, and on the other, the applicant's right to respect for her private life - requiring an assessment that conforms with the principles laid down in the Court's above-cited case-law.

123. The Court observes that the title and the first paragraph of the disputed article suggested that the applicant had prepared a medical report about B. based on the medical documents provided to her, and that she had

done so despite an order of the domestic court for her to examine the detainee in person.

(i) Contribution to a debate of public interest

124. In order to ascertain whether a publication relates to a subject of general importance, it is necessary to assess the publication as a whole, having regard to the context in which it appears (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 162, 8 November 2016). The Court shares the domestic courts' view that B.'s conditional release and the circumstances in which that release was ordered were a matter of serious public concern. In this connection the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate concerning questions of public interest (see *Bédat,* cited above*,* § 49; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 144, 17 May 2016).

(ii) The degree of notoriety of the applicant and her prior conduct

125. As the domestic courts observed, the public interest in the information reported in the article was related to the overall context of the case. It has not been alleged by the parties that the applicant had appeared in or had been the subject of any prior publications in the media, or that she was a public figure or had ever sought public attention. There is no information in the file about her prior conduct.

126. The Court further observes that the domestic courts did not consider how well known the applicant was and did not assess her prior conduct. As a forensic doctor of the *Audiencia Nacional* (see, for the relevant domestic framework, paragraph 91 above) the applicant was responsible for preparing the forensic medical reports requested by that court (see paragraph 5 above). The Court reiterates that it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the same extent as politicians and they should therefore be treated on an equal footing with the latter when it comes to criticism of their actions (see *Milosavljević v. Serbia*, no 57574/14, § 60, 25 May 2021; and *Stancu and Others v. Romania*, no. 22953/16, § 116, 18 October 2022). Nevertheless, the Court has recognised that in some circumstances civil servants acting in an official capacity may be subject to wider limits of acceptable criticism than private individuals (see *Chkhartishvili v. Georgia*, no. 31349/20, § 56, 11 May 2023; *Bild GmbH & Co. KG v. Germany*, no. 9602/18, § 33, 31 October 2023; and *Fürst-Pfeifer v. Austria*, nos. 33677/10 and 52340/10, § 46, 17 May 2016 concerning an expert who was frequently appointed in domestic custody proceedings). As the disputed article concerned the manner in which the applicant had carried out her official duties, the Court is prepared to accept

that she was subject to wider limits of acceptable criticism than private individuals.

(iii) The content, form and consequences of the publication and the manner in which the relevant information was obtained

127. The Court reiterates that a careful distinction is to be made between factual statements on the one hand and value judgments on the other. While facts can be demonstrated, the truth of value judgments is not susceptible of proof (see *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103). It is undisputed that the matter at hand concerned statements of fact.

128. The Court agrees with the domestic courts' findings that the disputed article, in so far as relevant, reported two facts, namely: (1) that the domestic court had ordered B. to be medically examined; and (2) that the applicant had prepared her court report from existing medical documents and not from a personal examination of the detainee. The Court further notes that the crux of the applicant's complaint is the link made in the text of the article between those two elements, or, in other words, the conclusion drawn by the journalist from those elements taken together which has allegedly not been sufficiently fact-checked. The Court is of the view that the text of the article, the heading, and the insertion in a larger print indeed highlighted the applicant's failure to conduct B.'s examination "despite" (*a pesar de que)* the order for her to do so (see paragraph 16 above). The title used the word "*ignoró*" (ignored, disregarded). In the Court's view, that choice of words, used unequivocally in both the title and the relevant paragraph of the article, accentuates the applicant's failure to comply with the court order, whether intentionally or not.

129. The Court notes that it is indeed unfortunate that no steps were taken to qualify the above assumption in the text of the article, given that both parties acknowledged that there was no evidence that the order of 17 August 2012 had actually been communicated to the forensic medical clinic or the applicant (see paragraph 23 above). For example, it could be accepted that warning potential readers that it was unclear whether the applicant had been notified of the court order could have led to more accurate reporting on the topic of public interest (compare, in so far as relevant, *Oleg Balan v. the Republic of Moldova*, no. 25259/20, § 40, 14 May 2024).

130. However, it is not the Court's role to determine, in place of the domestic authorities, why, as the case could be, the applicant allegedly remained unaware of the court order of 17 August 2012 until the article was published. Nor is it for the Court, any more than it is for national courts, to substitute its own views for those of the press regarding the techniques of reporting to be adopted in a particular case. (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 127, 27 June 2017, with further references). The issue is not how the Court or a national court have worded the disputed statements, but whether they went beyond the limits of

responsible journalism (see *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 53, 2 October 2012).

131. When analysing this issue, the domestic courts, including the Supreme Court in the final instance, considered the statements concerning the applicant in detail.

132. Regarding the first reported fact, the journalist had been in possession of the court order instructing an expert to examine the detainee in person, and to provide the Central Prison Service and the detention centre with information about the detainee's medical treatment. The domestic courts accepted the journalist's assertion that he had obtained knowledge of the order and a copy of it — which was also reproduced as an illustration in the article (see paragraph 17 above) — from an official source, that is, the press office (see paragraph 40 above). The Court finds nothing in the case material that would enable it to depart from this finding. The Court reiterates that when contributing to public debate on matters of legitimate concern and acting in good faith, the press should normally be entitled to rely on the content of official reports without having to undertake independent research (see the case-law cited in paragraph 119 above). This means that journalists must be free to report on events based on information gathered from official sources without further verification, specifically as regards the veracity of the facts presented in the official document (see *Selistö v. Finland*, no. 56767/00, § 60, 16 November 2004, and *Yordanova and Toshev*, cited above, § 51).

133. Regarding the second reported fact, the parties agree that the applicant's court report of 24 August 2012 regarding B. was based solely on medical documents.

134. For the domestic courts, the journalist had no reason to doubt the accuracy of the above two items information, and he therefore concluded that the applicant had failed to examine the prisoner despite the court order instructing her to do so. The Court notes the Supreme Court's findings that the journalist could reasonably have believed that the judge's orders had been transmitted to the court doctor, who was providing services to the court and to whom the orders were addressed. Bearing in mind that the domestic courts are better placed to assess the relevant evidence, the Court sees no reason to depart from this conclusion. In the Court's view, it is relevant that the applicant herself stated in the domestic proceedings that she was the only doctor assigned to *Audiencia Nacional*, and that at the time of the events in question she was responsible for any reports requested by the court (see paragraph 5 above and, for the domestic court's relevant finding, paragraph 41 above).

135. The Court will now turn to the notification issue which, as the applicant seems to suggest, should have been explored by a diligent journalist in more detail. The Court notes the Supreme Court's conclusion that, due to the absence of an effective system for documenting communications with the forensic centre and the internal nature of the issue, any attempt by the media

to further investigate the notification issue would likely have been fruitless. This conclusion aligns with the Court's approach of considering whether the nature of an allegation could make it difficult, if not impossible, for a journalist to provide direct corroboration of it (see *Bozhkov*, cited above, § 47). Given the specificity of the internal communication between the impugned State bodies as revealed and highlighted by the domestic courts, and in the absence of a firm version of what had happened with the court order of 17 August 2012 even after several rounds of the domestic proceedings, the Court accepts the domestic courts' reasoning that it would be excessive to expect the journalist to establish what exactly had happened with the notification, if any had indeed been sent to the applicant whether on 17 August 2012 or later (contrast to *Rumyana Ivanova*, cited above). Therefore, the Court finds no grounds in the applicant's submissions or other case materials to deviate from its above-mentioned settled approach or to disagree with the domestic courts' findings that the journalist in this case verified the information provided to the public to a reasonable extent (see *Kacki,* cited above, § 52). Likewise, the Court accepts the domestic courts' findings that the article in question accurately reflected the information available to the journalist at the time of publication (see *Gutiérrez Suárez v. Spain*, no. 16023/07, § 37, 1 June 2010).

136. Further, mindful that a correct statement can be qualified by additional remarks, suppositions or even insinuations, which are liable to create a false image in the public mind (see the case-law cited in paragraph 121 above), the Court notes the applicant's argument about the editorial choice to highlight her alleged failure to comply with the court's order of 17 August 2012, notably, in the title of the article. It is true that, while the article addressed various aspects of the proceedings which led to B.'s release, the heading emphasised the applicant's failure to comply with the court order, thus reinforcing the reader's impression of the applicant's alleged disregard for the court's binding ruling. However, considering the publication as a whole, the Court sees no reason to depart from the Supreme Court's conclusion that the headline, the remainder of the news item and the text of the court's order reproduced as illustration to the journalist's text, if read together, allowed for a full understanding of the information provided by the newspaper (see *Pauliukienė and Pauliukas v. Lithuania*, no. 18310/06, § 58, 5 November 2013; and *Rothe v. Austria*, no. 6490/07, § 76, 4 December 2012).

137. The Court further notes the applicant's argument raised both in the proceedings before it and before the domestic courts that the journalist had not contacted her before publishing the article (see, by contrast, *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 50, 21 September 2010.) The Court reiterates in this respect that Article 8 does not require States to impose a legal duty to notify people in advance of publishing a report about them (see, *mutatis mutandis, Mosley v. the United Kingdom*,

no. 48009/08, § 132, 10 May 2011). In addition, in so far as the applicant may be understood to be arguing that publishing her own account could have led to a more accurate presentation of the facts for the reader, the Court notes that in 2017 the applicant obtained a final ruling in her favour to that effect in the right to reply proceedings (see paragraph 30 above) but eventually chose to waive her right to have the reply published, pursuant to the private out-of-court settlement reached with the newspaper (see paragraph 72 above).

138. On a more general note, the Court further reiterates that if the national courts apply an overly rigorous approach to the assessment of journalists' professional conduct, journalists could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings not only on the individual cases before them but also on the media in general (see *Yordanova and Toshev v. Bulgaria*, cited above, § 55, with further references) – the approach taken by the domestic courts including the Supreme Court in the present case.

139. Lastly, as regards the consequences of the publication, the Court accepts that the allegation that the applicant, in her capacity of forensic doctor of the *Audiencia Nacional,* had disregarded a court order, was serious enough to have adversely impacted her reputation. However, it agrees with the Government that there is nothing in the case file to suggest that the applicant had become a victim of "social and media lynching". The Court cannot but observe that the applicant was never charged with or convicted of any criminal or administrative offence.

(iv) Conclusion

140. In the light of the above, the Court finds that the domestic courts acted within their margin of appreciation when seeking to establish a balance between the applicant's rights under Article 8 and the newspaper's opposing right to freedom of expression under Article 10. The Court considers that the national courts conducted the required balancing exercise between the competing rights at stake in conformity with the criteria laid down in the Court's case-law, and discerns no strong reasons to substitute its view for that of the domestic courts. It cannot therefore be said that by dismissing the applicant's claim, the courts failed to comply with the positive obligation incumbent on the domestic authorities to protect the applicant's rights under Article 8 of the Convention.

141. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by four votes to three, that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 6 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Kateřina Šimáčková President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

Joint dissenting opinion of Judges Serghides, Elósegui and Felici.

JOINT DISSENTING OPINION OF JUDGES SERGHIDES, ELÓSEGUI AND FELICI

1. As was set out in the introduction to the judgment, the application concerns the alleged failure of the domestic courts to properly balance competing rights under Articles 8 and 10 of the Convention in defamation proceedings instituted by the applicant, so that they gave insufficient weight to the applicant´s right to protect her reputation.

2. We do not share the reasoning and conclusions of our colleagues who gave the majority judgment in this case. We consider that an appropriate evaluation of the present case would necessarily lead to the conclusion that there had been a violation of the Article 8 of the Convention, for the reasons we will develop below. For that reason, we voted against point 2 of the operative part of the judgment.

3. We agree with the domestic courts' findings that the disputed article, in so far as relevant, reported two key facts, namely: (1) that the domestic court had ordered B. to be medically examined, and (2) that the applicant had prepared her court report from existing medical records and not from a personal examination of the detainee. Those two statements should have been carefully and separately scrutinised. The journalist was in possession of the court order for an expert to examine the detainee in person and for the Central Prison Service and the detention centre to provide information about the detainee's medical treatment, which was the first part of the report. In our view, that order, which was reproduced as an illustration to the article (see paragraph 17 above), clearly came from an official source and therefore did not require checking (see the case-law cited in paragraph 119 of the judgment). It is common ground between the parties that the applicant's report on B. was prepared only from the medical records. The article therefore reflected the information available to the journalist at the time of publication (see *Gutiérrez Suárez v. Spain*, no. 16023/07, § 37, 1 June 2010).

4. However, the crux of the applicant's complaint is the link made in the text of the article between those two points, or, in other words, the conclusion drawn by the journalist from those points taken together. The text of the article highlighted the applicant's failure to conduct an examination of B. "despite" (*a pesar de que)* the order for her to do so. Even though the article dealt with various events in B.s case which were unrelated to the court report about the applicant, the newspaper editor had chosen to highlight the way the applicant had prepared the report in the heading and in an inset comment that was printed in larger type (see paragraph 16 of the judgment). The heading used the word "*ignoró*" (ignored, disregarded). In our view, that choice of words, which was used unequivocally in both the heading and the body of the

article, indeed accentuates the applicant's failure to comply with the court order. Nevertheless, in the Spanish language to ignore something means to disregard having knowledge of it. The Spanish dictionary says that "ignorar" is synonymous of "disregard, neglect, discard, disdain, dismiss, scorn, despise, reject, dispense with", normally intentionally.

5. We find that the content of the relevant part of the article, viewed as a whole and in context, went further than merely setting out the nature and scope of the two facts discussed above - the court order and the preparation of the report from written records - which were the basis of the journalist's report (see, by contrast, *Traustason and Others v. Iceland*, no. 44081/13, § 51, 4 May 2017). In our view, a statement alleging that the applicant had failed to comply with a court order, which was reported in the article without nuance or further clarification, should also have been fact-checked.

6. We will now deal with how the relevant information was obtained and whether it was accurate. The crux of the case is whether the journalist acted in good faith and complied with the ordinary journalistic obligation to check his facts (see the General Principles of the case-law of the Court on responsible journalism, paragraphs 119-20 of the judgment). That obligation required the journalist to have a sufficiently accurate and reliable factual basis for his report, proportionate to the nature and degree of the allegation, given that the more serious an allegation is the more firmly it must be based in fact (see *Pedersen and Baadsgaard v. Denmark* [GC], nº 49017/99, § 78, ECHR 2004-XI). In our view, the allegation against the applicant was serious enough to require a very solid basis in fact. The accuracy and reliability of information provided to the public had to be checked to a reasonable extent (see, among others, *Kącki v.Poland*, nº10947/11, 4 July 2017). The newspaper *El Pais* has suggested that regard must be had to whether the allegation at issue made it very difficult, if not impossible, to obtain corroboration (see the case-law cited in paragraph 120 of the judgment). We agree with the argument made by *El País* in the domestic proceedings that it would clearly have been excessive to expect the journalist to establish exactly what had happened when the applicant was notified of the court order, or to ascertain that notification had indeed been given to the applicant whether on 17 August 2012 or later. Nonetheless, we find several factors which raise doubts as to whether the journalist in this case made a sufficient effort to fact-check his allegation that the applicant had "ignored" the court order and acted as she did "despite" it. In our view, this required him as a minimum to check whether the applicant had been the intended recipient of the order and, if so, that she had been aware of it.

7. Firstly, in so far as the Supreme Court, like the first-instance court, agreed with *El País* that the applicant's medical report had been fully in line

with the order of 17 August 2012, it did not elaborate further on this conclusion. For instance, it did not address the applicant's submission that the report had been a standard one, drawn up in accordance with the provisions of the domestic law (see, notably, the requirements of Article 92 of the Criminal Code as summarised in paragraph 92 of the judgment).

8. Secondly, in both the defamation proceedings and the right of reply process *El País* referred to their source, without giving any further details. Their source had said that the order and the accompanying letter had been pushed under the door of the forensic medical centre, which had been closed because it was August. Although that allegation was vague and imprecise, it did not receive any detailed assessment from the Supreme Court, even though all three levels of the domestic courts had pointed out the apparent lack of a reliable notification system at the forensic centre at the time of the events.

9. Thirdly and most importantly, in the domestic proceedings *El País* relied on an incomplete copy of the accompanying letter, from which the name of the addressee had been deleted. An inquiry into that document concluded that, apart from the part that had been tampered with, it corresponded to the letter sent to - and received by - the prisons, but which was apparently not sent to the applicant or the forensic centre. It was not disputed that the domestic material did not include a copy of an accompanying letter addressed to the forensic centre or the applicant. *El País* argued that its submission of an incomplete, or edited, document was normal practice designed to protect journalistic sources. We are prevented from concluding to what extent the journalist could reasonably have relied on his sources when writing the article, since the identity of those sources is unclear (see, *mutatis mutandis*, *McVicar v. the United Kingdom*, no. 46311/99, § 86, ECHR 2002-III). In any event, bearing in mind the need to protect journalistic sources, and without speculating whether the document had already been tampered with when the journalist received it from his source, we are not convinced that a reference to the edited copy of an accompanying letter initially addressed to the prison was enough to demonstrate that the journalist had sufficiently fact-checked the information before reporting it.

10. In these circumstances, we respectfully disagree with the Supreme Court's finding that the journalist could have reasonably assumed that the order had been transmitted to the applicant. We are not persuaded that the journalist had made a reasonable check on the accuracy and reliability of the information that the applicant had "ignored" the court order (see *Kącki,* cited above). Further, in our view it has not been shown that there were any "special reasons" in the present case which meant that the media did not need to fact-check the disputed statements.

11. We further consider that (a) the information the journalist allegedly had that the order had been pushed under the door of the closed forensic centre and (b) there being no accompanying letter addressed to either the clinic or the applicant or any other evidence of notification should have invited a more cautious approach to checking the facts. For instance, if the journalist had warned potential readers that it was not clear that the applicant had been notified of the court order, that would have contributed to more accurate reporting on a topic of public interest (see, in so far as relevant, *Oleg Balan v. the Republic of Moldova*, no. 25259/20, § 40, 14 May 2024). However, as the article was worded affirmatively, and was explicit in suggesting to readers that the court doctor had "ignored" the directions the court had given her, and as no further steps were taken in the article either to suggest that that assumption should not be taken to be absolute or to check it fully before publication, we find that the article overstepped the limits of careful journalism (contrast to *Pauliukienė and Pauliukas v. Lithuania*, no. 18310/06, § 58, 5 November 2013).

12. We do not consider it our role to make a list of the actions the journalist should have taken to fact-check the allegations made in the disputed article. Nonetheless, we note the argument made by the applicant in the domestic courts to the effect that the journalist had not contacted her before publishing the article (see, by contrast, *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 50, 21 September 2010.) The Court reiterates in this connection that Article 8 does not require States to impose a legal duty to notify people in advance of publishing a report about them (see, *mutatis mutandis, Mosley v. the United Kingdom*, no. 48009/08, § 132, 10 May 2011). However, we consider it important for the purposes of our analysis that the Supreme Court did not address that argument in its reasoning (see, by contrast, *Kajganić v. Serbia*, no. 27958/16, § 72, 8 October 2024). Further, notwithstanding the subsequent developments in 2021 (see paragraphs 71-72 of the judgment), the Court notes that by early 2020 – that is, when the domestic courts heard the defamation case – the media still had not published a reply from the applicant.

13. Lastly, as regards the consequences of the publication, we think that the allegation that the applicant, in her capacity as a forensic doctor of the *Audiencia Nacional,* had disregarded a court order was serious enough to have adversely impacted her reputation.

14. By way of conclusion, we accept that the domestic courts generally relied on the appropriate Convention principles in conducting a balancing exercise between the two Convention rights in issue (see *Oleg Balan*, cited above, § 43; and, in so far as relevant, *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 3)*, no. 37986/09, § 83, 7 January 2014). However, we are not

convinced that the domestic courts struck a fair balance between the competing Convention rights involved when they analysed the way in which the information was obtained and whether it was accurate. In particular, we do not consider that the domestic courts struck a fair balance when they considered whether the journalist had showed the required diligence in checking the information reported in the disputed article and whether he had carried a reasonable fact-check on the information he was providing to the public. We therefore conclude that, notwithstanding the margin of appreciation allowed to domestic courts in this field, the respondent State has failed to fulfil its positive obligations under Article 8 of the Convention and that there has accordingly been a violation of Article 8 of the Convention.