



Ukrainian courts were justified in not ordering rectification of article about “Death match” in 1942 between Ukrainian football team and German Luftwaffe

In today’s Chamber judgment in the case of [Putistin v. Ukraine](#) (application no. 16882/03), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned an article written about the legendary “Death Match” between Ukrainian footballers and members of the German Luftwaffe in 1942 in Kyiv. The applicant alleged that the article discredited his father, who had played in the game, as it suggested that he had been a collaborator. He claimed that, by rejecting his requests for the article to be rectified, the Ukrainian courts had failed to protect his and his family’s reputation.

The Court held that courts might sometimes be required to protect the reputation of the deceased. It accepted that the reputation of a deceased member of a person’s family might affect that person’s private life and identity, and thus came within the scope of Article 8. However, in this case the applicant was only remotely affected by the publication, because it did not mention his father’s name at all and did not directly make the allegation that his father had been a collaborator. The Ukrainian courts had therefore struck a fair balance between the applicant’s right to respect for his private life, and the right of the newspaper and journalist to freedom of expression.

Principal facts

The applicant, Vladlen Mikhaylovich Putistin, is a Ukrainian national who was born in 1934 and lives in Kiev (Ukraine). He is the son of Mikhail Putistin, now deceased, a former Dynamo Kyiv football club player who took part in a game known as the “Death Match” on 9 August 1942. The game was played between FC Start, a team which included professional players of Dynamo Kyiv who were working in a bakery at the time, and Flakelf, a team of German pilots, soldiers and technicians. Against the odds and despite allegations that the match was refereed unfairly by an SS officer, the German team were defeated 5-3. Allegedly, as a result of their victory, the team suffered reprisals. A number of Ukrainian players were sent to a local concentration camp, where four of them were executed. In 2002 the Kyiv authorities commemorated the 60th anniversary of the match, which received wide media coverage.

On 3 April 2001 the newspaper *Komsomolska Pravda* published an article entitled “The Truth about the Death Match”. It included an interview with a director and producer who discussed the possibility of making a film about the game, and contained a picture of the match poster from 1942. The poster contained the names of the players (including Mikhail Putistin), but these were not legible in the newspaper. The article included a quotation from the producer, who stated that there

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

were only four players who had worked in the bakery, that these were the ones who had been executed, and that other players “worked in the police, collaborated with the Gestapo”. Another part of the article listed the names of the players who had been executed, which did not include Mikhail Putistin.

In July 2001 Vladlen Putistin sued *Komsomolska Pravda* and the journalist who had written the article, aiming to obtain a rectification of the article. He claimed that it had suggested that his father had collaborated with the occupying police and the Gestapo. He also provided evidence that the archives held no information indicating that his father had worked for the Nazis, and documents establishing that his father had been taken to a concentration camp. In December 2001 a Ukrainian Court rejected the claim, because it found that Mr Putistin had not been directly affected by the publication: his father was not directly mentioned in the text, and it was not possible to read his name on the photograph of the match poster published along with the article. The ruling was upheld on appeal in March and November 2002.

Complaints, procedure and composition of the Court

Mr Putistin complained of the refusal of the Ukrainian courts to order the rectification of allegedly defamatory information about his father printed in the *Komsomolska Pravda* newspaper. The Court examined the complaint under Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 12 May 2003.

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

Mark **Villiger** (Liechtenstein), *President*,
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Stephen **Phillips**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The first issue that the Court addressed was whether damage to the reputation of an applicant’s family could be considered an interference with the right to respect for private life. This issue had been raised before in previous case law, but not finally decided. The Court accepted that the reputation of a deceased member of a person’s family might affect one’s private life and identity, provided that there was a sufficiently close link between them.

However, the Court went on to find, like the national courts, that Vladlen Putistin was not directly affected by the publication. This was because, though a quotation in the article did suggest that some of the members of the Ukrainian team had collaborated with the Germans, none of the pictures or words referred to Mikhail Putistin. The Court accepted that Vladlen Putistin was affected by the article, but not directly, because only a reader who already knew Mikhail Putistin’s name was on the 1942 poster might think that he had been a collaborator. The possibility that a reader might be able to make a link between the article and the applicant’s father was therefore remote. The Court also noted that the article informed the public of a proposed film on a historical subject, and that it was neither provocative nor sensationalist.

The Court therefore concluded that the effect on Vladlen Putistin was marginal and indirect, and that the Ukrainian courts struck the right balance between his rights and those of *Komsomolska Pravda* and the journalist. There had therefore been no violation of Article 8.

The judgment is available only in English.

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