

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

SECOND SECTION

CASE OF ARNARSON v. ICELAND

(Application no. 58781/13)

JUDGMENT

STRASBOURG

13 June 2017

FINAL

13/09/2017

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



In the case of Arnarson v. Iceland,

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

Julia Laffranque, *President,*
Robert Spano,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 58781/13) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Mr Ólafur Arnarson ("the applicant"), on 21 August 2013.

2. The applicant was represented by Mr Gunnar Ingi Jóhannsson, a lawyer practising in Reykjavik. The Icelandic Government ("the Government") were represented by their Agent, Mr Einar Karl Hallvarðsson, the State Attorney General.

3. The applicant complained under Article 10 of the Convention that the District Court judgment of 29 November 2012, in respect of which leave to appeal was refused by the Supreme Court on 25 February 2013, entailed an interference with his right to freedom of expression under Article 10 of the Convention that was not necessary in a democratic society.

4. On 20 November 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Garðabær. At the material time, the applicant was a journalist and a freelance writer for the web-based media site *Pressan*.

6. The Federation of Icelandic Fishing Vessel Owners (hereafter "the LIU") represented fishing vessel owners in Iceland and safeguarded their common economic, financial, legal, technical and social interests.

7. The applicant claimed that a private website, B, was publishing anonymous blogs, constantly lobbying for the LIU and discrediting persons who spoke against it.

8. On 21 July 2010 a newspaper, *DV,* published an article regarding rumours that the LIU was providing financial support to website B. It was alleged that this support amounted to 1,500,000 Icelandic *Krónur* (ISK) each month. In the article, no mention was made of the LIU's chief executive office (hereafter "A").

9. On the same day the applicant published an article on *Pressan* under the headline "*LIU pays 20 million for offensive material"* and referred to the article in *DV*. A sent a short statement to *Pressan* submitting that the LIU had not supported website B. The statement was published on *Pressan* on 23 July 2010.

10. On 24 July 2010 the applicant published an article on *Pressan* where he responded to A's statement. The article stated that A had to do better than just denying that direct payments had been made to website B and that the LIU, directed by A, was accountable for the offensive material published anonymously on website B. Furthermore, the applicant called into question whether or not the respectable representatives of the LIU's member companies had agreed to the organisation's funds being paid through intermediaries to gossips such as the owners of website B.

11. On 26 July 2011 the applicant published a third article on the matter on *Pressan*. The article stated that the LIU supposedly supported website B with ISK 20 million annually through companies owned by [Mr Y], who was also the owner of website B. Furthermore, the article stated that the applicant knew that not all LIU board members were aware of the organisation's support for the offensive material on website B since the payments were well-disguised in the organisation's financial records.

12. Moreover, it stated that the applicant had been told that it was possible that none of the LIU's board members knew about the organisation's millions being used to support anonymous slander on website B and that A alone had decided to use the funds in this way. The applicant added that he had not received confirmation of the last statement. A picture of A appeared beside the text of the article.

13. On 28 December 2011 A lodged defamation proceedings against the applicant before the Reykjaness District Court and requested that the following statements be declared null and void:

> "A. The LIU, directed by [A], is left accountable for the offensive material that is published anonymously on the gossip [website B]

B. Then there is the question of whether respectable representatives of the LIU's member companies would accept that the organisation's funds are being paid through intermediaries to gossips such as the owners of [website B]

C. The LIU supposedly supports [website B] with almost ISK 20 million annually through companies owned by [Mr Y]

D. I know that some of the LIU's board members are not aware of the support for the offensive material on [website B], because the payments are well-disguised in the organisation's financial statements. I have been told that it is possible that no LIU board members know that the organisation's millions are being used to support anonymous slander on [website B] - that the CEO alone decided to use the organisation's funds in this way."

14. By judgment of 29 November 2012 the District Court found that only one of the statements, namely that under item D above, had been defamatory and ordered the applicant to pay A ISK 300,000 (approximately 2,500 euros (EUR)) in non-pecuniary damages under the Tort Liability Act, plus interest, and ISK 450,000 (approximately 3,750 EUR) for A's costs before the District Court. It declared the statement null and void.

15. The judgment contained the following reasons:

"... [A] is the chief executive officer of the Federation of Icelandic Fishing Vessel Owners or LIU, as the Federation is called in everyday speech, and he has held the job for almost 12 years. Part of his job is, *inter alia,* to participate in public debate on maritime affairs and to express the views and policies of the LIU.

...

In recent years there has been extensive debate on the advantages and flaws of the current fisheries management system. There are different views on this system in society, and it is of great concern, as the fishing industry is one of the fundamental and most important industries of this country. [A] has, because of his occupation, appeared publicly on behalf of the LIU and advocated the organisation's views. The defendant, who writes on a regular basis about various social matters, has discussed the fisheries management system though his writings and criticised certain aspects of it.

...

According to Article 73(1) of the Constitution no. 33/1944 everyone has the right to freedom of opinion and belief. Article 73(2) of the Constitution states that everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression. Article 73(3) of the Constitution states that freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions. Article 10 of the European Convention on Human Rights and Fundamental Freedoms contains an equivalent provision, cf. Act no 62/1994 on the European Convention on Human Rights and Fundamental Freedoms.

Therefore, the present case concerns balancing the fundamental provisions on freedom of expression and the right to respect for private life.

...

In the court's view the following statement applies directly to [A]: "I know that some of the LIU board members are not aware of the financial support for the offensive writings on [website B], because the payments are well-disguised in the organisation's financial statements. I have been told that it is possible that no members of the LIU board know that the organisation's millions are being used to support anonymous slander on [website B] - that the CEO alone decided to use the organisation's funds this way". [The applicant] does not maintain that this does not apply directly to [A], his plea for acquittal is based on the fact that the statement does not imply that [A] has committed a criminal offence; furthermore he claims that this is not something he maintains, since he pointed out [in the article] that he was not able to confirm that statement.

The evaluation of whether or not the statement includes an accusation of a criminal act or is defamatory will not be based on how [the applicant] understands it but on how readers are expected to perceive and interpret it. The claim that the payments to [website B] have been disguised in the organisation's financial statements seems to imply that [A], who is responsible for the LIU's financial accounts as the CEO of the organisation, condones accounting deception to hide the alleged support to [website B]. [The applicant] cannot prove the statement so it is considered not to be proved.

The court considers that the second part of the statement, "I have been told that it is possible that no LIU board members know that the organisation's millions are being used to support anonymous slander on [website B] - that the CEO alone decided to use the organisation's funds in this way", can be understood as an insinuation of fraud by abuse of position [*umboðssvik*] and negligence at work as it implies that [A] allocated LIU funds against the board's will and without authorisation. [The applicant] has not shown that the statement is true, for this he carries the burden of proof.

The aforementioned statement is considered to be defamatory for [A] and likely to damage his reputation and honour. In accordance with the aforementioned, and with reference to Article 241(1) of the Penal Code no. 19/1940, the statement is declared null and void."

16. The applicant sought leave to appeal to the Supreme Court, which was refused on 25 February 2013.

II. RELEVANT DOMESTIC LAW

17. The relevant provisions of the Icelandic Constitution (*Stjórnarskrá lýðveldisins Íslands*), the Penal Code (*Almenn Hegningarlög*) and the Tort Liability Act (*Skaðabótalög*) are set out in the case of *Erla Hlynsdottir v. Iceland (no. 3)*, no. 54145/10, §§ 18 to 22, 2 June 2015.

18. Section 51 of the Media Act No. 38/2011 (*Lög um fjölmiðla*) reads:

Article 51

"Liability for textual content**.**

If textual content is in violation of the law, penalties and criminal and compensatory liability shall be as follows:

a. An individual shall be liable for the content he writes in his own name or with which he clearly identifies himself if he is domiciled in Iceland or is subject to

Icelandic jurisdiction on other grounds. If textual content is correctly quoted as being that of a named individual, the person quoted shall be liable for his own statements if he gave consent for their being published or made available and he is either domiciled in Iceland or is subject to Icelandic jurisdiction on other grounds.

b. The purchaser of commercial communications, whether an individual or a legal person, shall be liable for their content if he is domiciled in Iceland or is subject to Icelandic jurisdiction on other grounds.

c. In instances other than those covered by items a and b above, the content manager in question and/or the person liable for the media service provider shall be liable for the content published.

Media service providers shall be liable for the payment of fines and compensation payments that their employees may be ordered to pay under this Article.

Media service providers shall be obliged to provide any persons who consider they are the victims of a violation as a result of the publication of text content with information indicating who is liable for the content."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained that the District Court judgment of 29 November 2012, in respect of which leave to appeal was refused by the Supreme Court on 25 February 2013, entailed an interference with his right to freedom of expression that was not necessary in a democratic society and thus violated Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

20. The Government contested that argument.

A. Admissibility

21. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

22. The applicant maintained that the subject matter of the article, how an organisation like the LIU chooses to divert its funds to promote and safeguard its interests, was an issue of public concern; this had not been disputed in the case. The applicant further maintained that A was a public person due to his occupation and was often in the public eye advocating on behalf of the LIU, the largest lobbying organisation in Iceland.

23. The applicant argued that his comments had not been statements of fact, but value judgments which had contained several important reservations. The District Court had not taken these into account or evaluated the article as a whole. His statement had not implied dishonesty by A or insinuated criminal behaviour in any way, nor could it have been perceived to do so. Furthermore, the District Court made no attempt to explain its conclusion that the impugned statement could be perceived by the ordinary reader as an allegation that A had committed criminal acts. In this respect, the applicant referred to the case of *Erla Hlynsdóttir v. Iceland*, no. 43380/10, 10 July 2012).

24. The applicant submitted that the District Court had not relied on the standards applied by the Court. He had published his remarks in good faith and based on an article published a year before in the newspaper *DV*. He had no reason to believe that the information was untrue. The requirement of proof beyond doubt for the statement had left him faced with an unreasonable and impossible task. The presentation of the remarks had been fair and the manner of publication could in no way be interpreted as accusing A of a criminal offence.

25. The applicant claimed that the compensation and costs he had been ordered to pay had been substantial compared to his monthly income at the time, and therefore not proportionate to the aim pursued.

(b) The Government

26. In the Government's opinion, the impugned restrictions on the applicant's exercise of freedom of expression had corresponded to a pressing social need and had been justified by relevant and sufficient reasons, namely the protection of A's reputation and rights. The measures taken had been proportionate to the legitimate aim pursued. The Government maintained that the District Court, in its judgment, had applied

standards that were in conformity with the principles embodied in Articles 8 and 10 of the Convention, as interpreted in the Court's case law.

27. The Government claimed that the statement published by the applicant had been deemed to constitute facts, and therefore the Icelandic courts had enjoyed a greater margin of appreciation in restricting the applicant's freedom of expression. The applicant had not been able to confirm his statement and had therefore made several reservations in the article. Nevertheless, he had chosen to publish it, which in the Government's opinion indicated that he had not acted in good faith.

28. The Government agreed with the applicant that the management of the fisheries system was a matter of public interest and subject to ongoing public debate in Iceland. However, the disputed statement concerning A had not been a necessary contribution to this debate.

29. The Government argued that the compensation and costs that the applicant was ordered to pay amounted to civil liability. The amount had not been particularly onerous for the applicant and was fully consistent with the recognised practice of the Icelandic courts. Furthermore, the applicant had not submitted any documentation to show he had paid the full amount.

2. The Court's assessment

(a) Whether there was an interference

30. It is common ground between the parties that the impugned judgment constituted "interference by [a] public authority" with the applicant's right to freedom of expression as guaranteed under the first paragraph of Article 10.

(b) Whether it was prescribed by law and pursued a legitimate aim

31. Furthermore, it is not in dispute that the impugned measure had a basis in Articles 235 and 241 of the Penal Code, Section 51 of the Media Act and Section 26 of the Tort Liability Act and had a legitimate aim, namely the protection of the reputation and rights of A.

(c) Whether the interference was necessary in a democratic society

(i) General principles

32. The principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" are well-established in the Court's case-law (see, among other authorities, *Delfi AS v. Estonia* [GC], no. 64569/09, § 131 to 132, ECHR 2015, with further references). Furthermore, the Court has addressed the distinction between the Internet, as an information and communication tool, and the printed media (see, among other authorities, *Delfi AS v. Estonia,* § 133, cited above, *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 58,

16 July 2013, *Editorial Board of* Pravoye Delo *and Shtekel v. Ukraine*, no. 33014/05, § 63, ECHR 2011 (extracts) and *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009).

33. Having been required on numerous occasions to consider disputes requiring an examination of the fair balance to be struck between the right to respect for private life under Article 8 and the right to freedom of expression, the Court has developed general principles emerging from abundant case-law in this area (see, among other authorities, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83 to 93, ECHR 2015 (extracts)).

34. In particular, it will be recalled that in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life. The criteria which are relevant when balancing the right to freedom of expression against the right to respect for private life are: the contribution to a debate of general interest; how well-known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed (see, for example, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 83 and 89 to 95, 7 February 2012 and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 108 to 113, ECHR 2012).

35. Finally, the Court reiterates that where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see, *Bédat v. Switzerland* [GC], no. 56925/08, § 54, ECHR 2016).

(ii) Application of those principles to the present case

36. The Court notes, as observed by the District Court in its judgment of 29 November 2012, that the impugned statement in the article published on *Pressan* consisted of insinuations about A's accounting deceptions, fraud by abuse of position and negligence at work. The Court sees no cause to question the District Court's assessment that the allegations were defamatory.

37. The Court is satisfied that the attack on A's reputation reached the level of seriousness, and that its manner caused prejudice to A's enjoyment of the right to respect for private life, so as to fall within the scope of Article 8 of the Convention (see, *inter alia*, *A v. Norway*, no. 28070/06, § 64, 9 April 2009). In this respect, it is noted that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's

access to news and facilitating the dissemination of information in general. At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see, *inter alia, Delfi AS v. Estonia,* § 133, cited above).

(α) Contribution to a debate of general interest

38. The District Court, in its judgment of 29 November 2012, stated*: "*In recent years there has been extensive debate on the advantages and flaws of the current fisheries management system. There are different views on this system in society, and it is of great concern, as the fishing industry is one of the fundamental and most important industries of this country. [A] has, because of his occupation, appeared publicly on behalf of the LIU and advocated the organisation's views. The defendant, who writes on a regular basis about various social matters, has discussed the fisheries management system though his writings and criticised certain aspects of it." Thus, the District Court adequately took into account that the subject matter of the disputed article was, as such, an issue of public interest. The Court notes that the Government did not dispute that finding (see paragraph 28 above).

(β) How well-known the person concerned is, the subject matter of the report and A's conduct prior to the publication of the impugned article

39. The Court notes that the subject matter of the report was the suspicion of criminal misconduct by A (see paragraph 36 above). As regards whether A was well-known, and his prior conduct, the District Court stated that A was the chief executive officer of the LIU. Part of his job was to participate in public debate on maritime affairs and to express the views and policies of the LIU. Furthermore, A had, because of his occupation, appeared publicly on behalf of the LIU and advocated the organisation's views.

40. In the light of the District Court's findings, that A was a regular participant in societal debates on an issue of public interest, the limits to acceptable criticism must accordingly be wider in the present case than in the case of a private individual (see *Couderc and Hachette Filipacchi Associés v. France*, §§ 117-123*, cited above*). However, while reporting on true facts about politicians or other public persons' private life may be admissible in certain circumstances, even persons known to the public, like A, have legitimate expectations of protection of, and respect for, their private life (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05 § 53, 4 June 2009).

(γ) Method of obtaining the information and its veracity

41. The applicant's main arguments are two-fold. Firstly, he submits that he published his remarks in good faith and based on an article previously

published in the newspaper *DV*. Secondly, he argues that he had no reason to believe that the information was untrue. The requirement of proof beyond doubt left him faced with an unreasonable and impossible task (see paragraph 24 above). On this point, the District Court found that the applicant could not prove the first part of the statement ("*I know that some of the LIU's board members are not aware of the support for the offensive material on [website B], because the payments are well-disguised in the organisation's financial statements.*") and that he had not shown that the second part of the statement ("*I have been told that it is possible that no LIU board members know that the organisation's millions are being used to support anonymous slander on [website B] - that the CEO alone decided to use the organisation's funds in this way.*") was true, for which he had to carry the burden of proof.

42. The Court reiterates that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism, (see, for example, *Bédat v. Switzerland* [GC], no. 56925/08, § 58, ECHR 2016). The Court finds that there were no special grounds in the present case to dispense the media from their ordinary obligation to verify factual allegations that are defamatory (see, *inter alia, Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 71, 10 July 2012).

43. As to the applicant's first argument, the Court notes that although the substance of the issue, the LIU's support to website B, discussed in the applicant's publication, had been dealt with in *DV*, printed a year before, the statements he made, directed at A's alleged misconduct, were his own further elaboration of the issue in question. Furthermore, as found by the District Court, the applicant did not offer any proof for the factual allegations or demonstrate that they were based on a sufficiently accurate and reliable factual basis. The fact that the applicant submitted that his allegations could not be confirmed does not, in the Court's view, detract from the sufficient basis upon which the District Court classified the statement in question as constituting "insinuations of fraud by abuse of position and negligence at work" and thus defamatory. The Court thus concludes that by publishing his allegation without confirmation on its veracity, the applicant could not have been acting in good faith, and thus in accordance with the standards of responsible journalism (see, for example, *Thoma v. Luxembourg*, no. 38432/97, §§ 62 and 64, ECHR 2001-III, *Kuliś v. Poland*, no. 15601/02, § 38, 18 March 2008 and *Bédat v. Switzerland*, cited above, § 50).

(δ) Content, form and consequences of the impugned statement

44. The applicant argues that the statements constituted value judgments, not statements of fact. His statements had not implied

dishonesty by A or insinuated criminal behaviour in any way, nor could they be interpreted as doing so (see paragraph 23 above). On this point, the District Court disagreed with the applicant, concluding that the substance of the statement referred to A's alleged "[condoning of] accounting deception" and that it constituted "insinuations of fraud by abuse of position and negligence at work" (see paragraph 15 above).

45. After assessing the statements in question as a whole and in context, the Court finds that it does not have grounds to call into question the District Court's conclusion on the nature and scope of the statement which was assessed within the national court's margin of factual appreciation. The Court observes that the District Court also stated clearly that, in its assessment of the defamatory nature of the statements, account could not be taken of the way in which the applicant understood them but of how readers were expected to perceive and interpret the statement.

(ε) Severity of the sanctions imposed

46. The Court notes that the defamation proceedings brought by A against the applicant ended in an order by the District Court declaring the impugned statement null and void and requiring the applicant to pay A ISK 300,000 (approximately 2,500 EUR) in compensation for non-pecuniary damage under the Tort Liability Act, plus interest, and ISK 450,000 (approximately 3,750 Euro) for A's costs before the District Court.

47. The Court does not find these penalties excessive in the circumstances or to be of such a kind as to have a "chilling effect" on the exercise of media freedom (see, *inter alia, Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 93, ECHR 2004-XI, with further references).

(ζ) Conclusion

48. In the light of all the above-mentioned considerations, the Court considers that the District Court sufficiently balanced the right to freedom of expression with the right to respect for private life, and took into account the criteria set out in the Court's case-law. The Court reiterates that, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken 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 own view for that of the domestic courts" (see paragraph 35 above). The national court acted within the margin of appreciation afforded to it and struck a reasonable balance of proportionality between the measures imposed, restricting the right to freedom of expression, and the legitimate aim pursued.

49. The Court therefore concludes that there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Julia Laffranque President