



A finding of civil liability against the author of a historical book for remarks deemed defamatory by the Italian courts did not breach the Convention

In today's Chamber judgment¹ in the case of [Marinoni v. Italy](#) (application no. 27801/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights, and no violation of Article 10 (freedom of expression).

The case concerned a finding of civil liability against the author of a book on account of two sets of remarks deemed by the Italian courts to be defamatory. The book included a reconstruction of the events preceding the summary execution of 43 captured soldiers of the Italian Social Republic (an episode known as the “*strage di Rovetta*”). The historical account was overlaid with the author's private and personal recollections centred on his family life. The applicant was acquitted in the criminal proceedings at first instance but was found civilly liable following an appeal by the civil parties.

The Court held that the domestic courts had not used language liable to cast doubt on the applicant's acquittal at first instance, and that the judgments of the Court of Appeal and the Court of Cassation did not disclose any breach of his right to be presumed innocent.

In the Court's view, the interference with the applicant's freedom of expression had not been disproportionate and the finding of civil liability against him did not disclose any appearance of a violation of Article 10 of the Convention. It observed in particular that the book, which combined the author's personal recollections with material obtained through his research in the archives, fell into a specific category of historical research known as “microhistory”. The domestic courts had taken this aspect into consideration in their assessment of the book. As to the two sets of remarks, the Court found that the first was not justified in the public interest and that the second did not add anything to the reconstruction of events surrounding the “*strage di Rovetta*”.

Principal facts

The applicant, Nazareno Marinoni, is an Italian national who was born in 1938 and lives in Albinea (Italy). He is the author of a book entitled *The Courtyard Terrace. The events of 28 April 1945 in Rovetta: a child's recollections*, published in 2005.

In his book the applicant, who was six years old at the time of the events, recounted his childhood and the events of the weeks leading up to the fall of the Italian Social Republic (RSI), the State established by the Italian fascists in central and northern Italy between September 1943 and April 1945. In particular, the book contained a reconstruction of the events preceding the summary execution of 43 RSI prisoners (an episode known as the “*strage di Rovetta*”). The historical account was overlaid with private and personal recollections centred on the author's family life. The book devoted a number of pages to the tensions between the author's relatives and family M., who lived

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.

in a part of the family house. The conflict stemmed from the differing political views of the applicant's family, who were anti-fascist, and family M., who supported the fascist regime.

Some of the remarks made by the applicant in referring to the members of family M. were perceived as defamatory by their heirs, who lodged a criminal complaint.

In 2007, following summary proceedings, the judge acquitted the applicant, finding that the offence was not punishable. The judge held that the remarks complained of, although "objectively defamatory", were not punishable since they had been made by the applicant in the exercise of his right to report and comment on historical events, a circumstance which exempted him from responsibility under the Criminal Code. The civil parties appealed.

In 2010 the Court of Appeal ordered the applicant to pay a total of 16,000 euros in damages to the civil parties (Mr and Ms M.'s heirs). The court took the view that two sets of remarks used in the book were defamatory. The applicant appealed on points of law, without success.

Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (presumption of innocence), the applicant alleged a breach of his right to be presumed innocent.

Under Article 10 (freedom of expression), he argued that the decisions of the domestic courts finding him civilly liable had infringed his right to freedom of expression, and in particular his right to report and comment on historical events.

The application was lodged with the European Court of Human Rights on 20 April 2012.

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

Ksenija **Turković** (Croatia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Ioannis **Ktistakis** (Greece),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

[Article 6 § 2 \(presumption of innocence\)](#)

The Court noted that the criminal proceedings had not ended with the applicant's acquittal at first instance, as the civil parties had lodged an appeal with the criminal courts seeking compensation for the damage they had allegedly sustained. Under domestic law, the decision had not become final and binding between the civil parties and the person being investigated in connection with the civil aspects of the offence.

The Court added that the Court of Appeal had confined its assessment to the constituent elements of the criminal offence, which had inevitably been the same as those examined at first instance, before finding, in accordance with the rules on civil liability, that the applicant was civilly liable and was thus required to compensate the civil parties for the damage sustained. The same observation applied to the Court of Cassation proceedings.

Thus, the Court found that the domestic courts had not used language liable to cast doubt on the applicant's acquittal. Consequently, it held that the judgments given by the Court of Appeal and the

Court of Cassation did not disclose any breach of the applicant's right to be presumed innocent following his acquittal in the criminal proceedings. There had therefore been no violation of Article 6 § 2 of the Convention.

Article 10 (freedom of expression)

The finding of civil liability against the applicant amounted to interference with the exercise of his right to freedom of expression. The interference had been prescribed by law and had been aimed at the "protection of the reputation or rights of others".

The Court noted that the book in question, which combined the author's personal recollections with material obtained through his research in the archives, fell into a specific category of historical research known as "microhistory". The main aim of microhistory was to reconstruct experiences that other historiographical approaches overlooked, by focusing on local history and first-hand accounts. The domestic courts had taken this aspect into consideration in their assessment of the applicant's book.

The Court considered that the book could, to a large extent, be said to concern a historical debate. According to the Court's settled case-law, it was an integral part of freedom of expression to seek historical truth, and a debate on the causes of acts which might amount to war crimes or crimes against humanity should be able to take place freely.

More specifically, the Court considered that the historical nature of the book lay in the passages dealing with the reconstruction of the Rovetta massacre, which, the author argued, had violated the principles of international humanitarian law, and with the activities of resistance groups in the towns and villages around Rovetta during the months preceding the fall of the fascist regime.

Nevertheless, the Court observed that the book had a dual, somewhat "hybrid", character. The historical part *per se*, which dealt with a matter of public interest entitled to heightened protection under Article 10 of the Convention, was overlaid with the applicant's personal account based on his childhood memories and his views on the people in and around his family home. Among these, the book described Mr and Ms M. (S.M. and G.G.) and the relationship between the couple and the author's family, which had been a source of tension and some bitter verbal exchanges.

Two sets of remarks had been deemed defamatory by the domestic courts: the description of S.M. as G.G.'s "puppet husband", and a remark holding G.G. responsible for adding the name of the applicant's grandfather to the list of persons to be arrested and shot as reprisals for a possible attack against the German occupying forces.

With regard to the former, the Court had taken the view that the expression in question, read in context and as part of the overall account, had not been justified by any public interest but on the contrary had concerned S.M.'s private sphere.

As to the latter, the Court noted at the outset that in identifying G.G. as the person responsible for the decision in question, the applicant had attributed responsibility to her for a specific and particularly heinous act. In the Court's view, the assertion that G.G. had been involved in drawing up the list of hostages to be shot was not mere speculation but a specific statement of fact capable of being substantiated by relevant evidence.

The Court considered that, within the framework of the book's view of history, that assertion did not add anything to the reconstruction of the events surrounding the "*strage di Rovetta*", but on the contrary was unconnected to the fresh historical elements which the applicant, to his credit, had identified and made available to the public.

As to the balance to be struck between the right to freedom of expression and protection of personality, the Court considered that the act which G.G. was alleged to have committed, giving effect to the "Kesslering proclamation", undoubtedly portrayed her personality in a very negative

light. In the Court's view, it was in the context of this claim, damaging to the couple's reputation, that the description of her husband as a puppet (*fantoccio* – a pejorative term used to refer to someone lacking character and free will) was to be read.

In any event, the Court observed that the applicant had not produced any information, either in the book or during the proceedings, enabling the truth of the allegations to be established, as indeed pointed out by the Court of Appeal in its meticulous analysis of the book. The Court therefore saw no reason to depart from the assessment of the case made by the domestic courts.

As to the consequences of the order against the applicant to pay compensation to the civil parties, the Court noted at the outset that the applicant had not addressed this point in his observations. Furthermore, the Court of Appeal, in determining the amount of damages, had taken into account the limited circulation of the book and the length of time that had elapsed between the events described (1945) and publication of the memoir (2005). Hence, the Court considered that the amount to be paid to the civil parties did not appear disproportionate, especially in view of the seriousness of the claims made concerning G.G.

In sum, the interference with the applicant's freedom of expression had not been disproportionate in the present case and the finding of civil liability against him did not disclose any appearance of a breach of Article 10 of the Convention. There had therefore been no violation of that provision.

Separate opinion

Judge Wojtyczek expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in French.

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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.