



Serbian courts went too far in their criticism of broadcasting company's reporting on swine-flu-vaccine controversy

In today's **Chamber judgment**¹ in the case of [Radio Broadcasting Company B92 AD v. Serbia](#) (application no. 67369/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned civil proceedings brought against the applicant broadcasting company by a former assistant health minister for its reporting in 2011 that she had been suspected of abuse of office, amid an ongoing controversy over the procurement of swine flu vaccines.

The Court found that the Serbian courts had acknowledged that the information published by the applicant company had contributed to a public debate and that someone in the assistant health minister's position should have shown a greater degree of tolerance.

The courts had gone too far, however, in their criticism of the applicant company's fact-checking. The company had based its reporting on a note obtained from police officers about the investigation into the controversy, and there had been no doubts over the note's credibility. The language used in the reporting had been accurate and not exaggerated, and all the parties had been contacted to obtain their version of events.

The Court found that, overall, the applicant company had acted in good faith and with the diligence expected of responsible journalism.

Principal facts

The applicant, Radio Broadcasting Company B92 AD, is a company based in Serbia which owns a television channel and an Internet portal.

On 27 November 2011 one of the items on its 11 o'clock evening news slot was about an ongoing controversy over the procurement of AH1N1 flu vaccines. The applicant company reported that 12 names, including Z.P., an assistant health minister at the time, had disappeared from a police list of suspects of abuse of office in relation to the controversy, allegedly because of pressure exerted by the Special Prosecutor on the Ministry of the Interior.

In the following days similar news slots were broadcast, and articles were published on the company's Internet portal.

The reporting was based on an investigation by a team of B92 journalists in the preceding months and in particular a note obtained from two police officers which had been drawn up by a division of the Fight Against Organised Financial Crime Department.

In April 2012 Z.P., who had been named in the note, instituted civil proceedings against the applicant company.

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.

The courts found that the company's TV broadcasts and online articles had damaged the assistant minister's reputation, and ordered it to pay 1,750 euros (EUR) in respect of non-pecuniary damage and EUR 900 for costs. It was also ordered to remove the article in question from its Internet portal and to publish the judgment against it.

All the courts, and ultimately the Constitutional Court in 2016, found that the applicant company had failed to check their facts with due diligence, particularly with regard to the allegation that the criminal complaint against Z.P. had not been filed because of pressure on the Ministry of Interior.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant company alleged that ordering it to pay compensation and costs had been in breach of its right to impart information. It argued in particular that its intention had not been to attack Z.P.'s honour and reputation, but to provide faithfully information from an official police document which contributed to a debate of interest – namely irregularities in the public procurement of swine-flu vaccines and pressure on investigative bodies.

The application was lodged with the European Court of Human Rights on 9 November 2016.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

First, the Court noted that the final civil judgment against the applicant company had amounted to an interference with its right to freedom of expression. That interference had been "prescribed by law", namely it had been based on the Public Information Act and the Obligations Act, and aimed to protect "the reputation or rights of others".

Furthermore, the information which the applicant company had broadcast and published had clearly concerned an issue of public interest, in particular irregularities in the procurement of swine flu vaccines. The assistant minister had been a public official and as such should have shown a greater degree of tolerance. The Serbian courts had acknowledged both those aspects of the conflict.

However, the courts had taken a rather limited view when characterising all of the allegations in the applicant company's reporting as statements of facts, for which proof had to be given. The Court agreed that the first two allegations – that Z.P. had been among those the police had reason to suspect of abuse of office and the 12 names disappearing from the list of suspects – had been statements of facts. Those allegations had been confirmed by the police note, and there were no doubts over its credibility. Nor did the courts find that the applicant company had breached laws on confidentiality by publishing information from the note.

The courts had failed, on the other hand, to consider whether the third allegation – concerning pressure on the Ministry of the Interior – could have been a value judgment (which would not have been susceptible of proof) or to assess the language used in the applicant company's reporting of it.

The Court considered that the expressions “a reason to suspect” and “the police’s list of suspects” had been accurate and without exaggeration.

Nor had the courts taken into account the fact that the applicant company had sought to achieve a balance in their reporting. The company had contacted Z.P., the Ministry of the Interior and the Special Prosecutor’s Office, to give them an opportunity to give their version of events.

The Court therefore found that the applicant company could not be criticised for not having taken further steps to establish the truth of the disputed allegations and was satisfied that it had acted in good faith and with the diligence expected of responsible journalism.

In conclusion, the courts had overstepped their limited leeway (“narrow margin of appreciation”) to restrict discussion on matters of public interest and the interference with the applicant company’s freedom of expression had been disproportionate to the aim pursued and not “necessary in a democratic society”, in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Serbia was to pay the applicant 2,740 euros (EUR) in respect of pecuniary damage, EUR 2,500 in respect of non-pecuniary damage and EUR 2,400 in respect of costs and expenses.

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.