



NGOs should have verified allegations about misconduct of a radio editor before complaining to the authorities

In today's Chamber judgment¹ in the case of [Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina](#) (application no. 17224/11) the European Court of Human Rights held, by four votes to three, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned defamation proceedings brought against four NGOs following the publication of a letter they had written to the highest authorities of their district to complain about the entertainment editor of a public radio station.

The Court found in particular that the national courts, which had heard witnesses in the defamation proceedings, had correctly concluded that the applicant NGOs had acted negligently in simply reporting the entertainment editor's alleged misconduct without making a reasonable effort to verify its accuracy. The national courts had therefore struck a fair balance between the radio entertainment editor's right to reputation (as a prospective candidate for a position as a public servant, namely the director of a public radio station) and the applicant NGOs' right to report irregularities about the conduct of a public servant to the body competent to deal with such complaints.

Principal facts

The applicants, the Brčko Branch of the Islamic Community of Bosnia and Herzegovina (*Medžlis Islamske zajednice Brčko*), the Bosniac Cultural Society "Preporod" (*Bošnjačka zajednica kulture "Preporod"*), the Bosniac Charity Association "Merhamet" (*"Merhamet" Humanitarno udruženje građana Bošnjaka Brčko Distrikta*) and the Council of Bosniac Intellectuals (*Vijeće Kongresa Bošnjačkih intelektualaca Brčko Distrikta*), are four non-governmental organisations from the Brčko District of Bosnia and Herzegovina.

In May 2003 the applicant NGOs wrote a letter to the highest authorities of the Brčko District of Bosnia and Herzegovina to complain about the alleged misconduct of an entertainment editor of their district's multi-ethnic public radio station. They wrote that, according to information they had received, the entertainment editor had been involved in disparaging behaviour towards Bosniacs and Bosniac culture and that this disqualified her from being a candidate for the position of the radio station's director.

Soon after, the letter was published in three different daily newspapers.

As a result, the entertainment editor brought civil defamation proceedings against the NGOs. At first-instance the claim was rejected: the court found that the NGOs could not be held liable because they had not published the letter in the media. However, in July 2007 the appellate court, after having examined several witnesses, found the applicants liable for defamation due to the inaccuracy of factual statements they had made about the entertainment editor, which had been untrue and

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.

damaging to the latter's reputation. The applicants were ordered to retract their statements and publish the judgment against them at their own expense.

Having failed to do this, the entertainment editor brought enforcement proceedings and, in December 2007, the applicants paid 2,825 convertible marks (approximately 1,445 euros) for enforcement of the judgment of July 2007.

The Constitutional Court upheld the appellate court's judgment in May 2010.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant NGOs complained that the domestic courts' decisions against them had breached their right to freedom of expression. They maintained that their intention had not been to publish the letter, which had occurred without their knowledge, but to inform those in authority about certain irregularities in a matter of considerable public interest – the suitability of a candidate for the post of a multi-ethnic public radio station – and to prompt them to investigate their allegations.

The application was lodged with the European Court of Human Rights on 21 January 2011.

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

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

It was common ground between the parties, and the Court agreed, that the national courts' decisions in the defamation proceedings against the applicant NGOs had amounted to an interference with their right to freedom of expression. That interference had been "prescribed by law", namely section 6 of the Defamation Act 2003, and pursued the legitimate aim of protecting a radio entertainment editor's reputation.

The Court noted that the defamation claim had resulted from the NGOs' private correspondence with the local authorities and that there was no evidence in the domestic proceedings to suggest that the NGOs had participated in the publication of that correspondence. That being so, the radio entertainment editor's right to reputation, as a prospective candidate for a position as a public servant (namely, the director of a public radio), had to be weighed against the NGOs' right to report irregularities about the conduct of a public servant to a body competent to deal with such complaints. The interests of the freedom of the press or of open discussion of matters of public concern did not come into play in this balancing exercise.

In the defamation proceedings against the NGOs, the national courts had distinguished between statements of fact (which can be demonstrated) and value judgments (the truth of which is not susceptible of proof). Notably, the appellate court had, after having heard witnesses, found the NGOs liable because of the inaccuracy of the factual statements made in their letter. There was nothing in the case-file to indicate that the applicant NGOs had not had the opportunity to prove that their allegations had been true. The Court therefore found that the national courts had

correctly concluded that the NGOs had acted negligently in simply reporting the entertainment director's alleged misconduct without making a reasonable effort to verify its accuracy.

The national courts had therefore struck a fair balance between the competing interests of the entertainment editor and those of the applicant NGOs. There had therefore been no violation of Article 10.

Separate opinion

Judges Nicolaou, Tsotsoria and Vehabović expressed a joint dissenting opinion, which is annexed to the judgment.

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.