



Allegations of businessman's involvement in organised crime: rejection of injunction against newspaper article did not breach his right to private life

In today's **Chamber** judgment¹ in the case of [Fuchsmann v. Germany](#) (application no. 71233/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the German courts' rejection of the request by an internationally active entrepreneur for an injunction against certain statements about him in an article published in the online edition of the *New York Times*.

The Court found that the German courts had struck a reasonable balance between the applicant's right to respect for his private life under Article 8 and the newspaper's right to freedom of expression guaranteed by Article 10 of the Convention. They had taken into consideration, in particular: that there had been a public interest in the alleged involvement of the applicant, a German businessman, in embezzlement and organised crime; that there had been a sufficient factual basis for the statements at issue; and that the article – which concerned mainly his professional life – was free from polemic statements and insinuations.

Principal facts

The applicant, Boris Fuchsmann, is a German national who was born in 1947 and lives in Düsseldorf (Germany). He is an internationally active entrepreneur in the media sector and runs the company Innova Film.

The article in question was published on 12 June 2001 in the print edition of the *New York Times* and, slightly modified, in its online edition, where it remains accessible. It reported on a criminal investigation in the United States against a company owned by former New York City mayoral candidate R.L. over allegations that the company had paid bribes to officials in Ukraine for a television license. In that context, the article stated that Mr Fuchsmann, who was one of the owners of a broadcasting company in Kiev, had ties to Russian organised crime, according to the FBI and European law enforcement agencies. The article further reported: that a FBI report had described Mr Fuchsmann as an embezzler, whose company in Germany was part of an international organised crime network; that he was barred from entering the United States; and that his company Innova was part of a Russian organised crime network, according to U.S. and German law enforcement agencies.

In July 2002 Mr Fuchsmann brought proceedings before the German courts seeking injunctions against those statements about him. Initially, in January 2008, the Düsseldorf Regional Court declared the action inadmissible, finding that the German courts had no jurisdiction, since the *New York Times* print edition was not distributed in Germany and its online edition was not aimed at readers in Germany. That decision was confirmed by the Court of Appeal, but quashed by the

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.

Federal Court of Justice, in 2010, as far as the claim for an injunction against the statements in the online edition was concerned. The Federal Court of Justice affirmed the German courts' jurisdiction in that respect, given that the online edition was accessible in Germany.

In June 2011 the Court of Appeal, to which the case had been referred back, granted the injunction regarding the statement that Mr Fuchsmann had been banned from entering the United States, but it dismissed the remainder of his claim. While accepting that the statements in question interfered with his personality rights, the court considered that it was necessary to balance those rights against the freedom of the press. In particular, there was a public interest in being informed about the fact that Mr Fuchsmann, a German businessman who was internationally active in the media sector, was suspected of being involved in organised crime. Furthermore, the author of the article had notified Mr Fuchsmann that the article would be published. Nevertheless the latter had waited for more than one year after publication before applying for an injunction. He therefore could not have perceived the interference with his personality rights as intolerable. In October 2012 the Federal Court of Justice rejected Mr Fuchsmann's complaint against the Court of Appeal's decision and, in April 2013, the Federal Constitutional Court declined to consider his constitutional complaint.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Fuchsmann complained that the German courts had failed to protect his reputation and right to respect for his private life.

The application was lodged with the European Court of Human Rights on 13 November 2013.

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

Erik **Møse** (Norway), *President*,
Angelika **Nußberger** (Germany),
Nona **Tsotsoria** (Georgia),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

The Court considered that the allegations made against Mr Fuchsmann in the article published in the *New York Times* had been serious enough for Article 8 to be applicable. His case required an examination of the question of whether a fair balance had been struck between his right to respect for his private life under Article 8 and the newspaper's right to freedom of expression guaranteed by Article 10 of the Convention.

The Court agreed with the conclusions of the German Court of Appeal in the applicant's case that the article had contributed to a debate of public interest, namely about the suspected involvement of a former New York City mayoral candidate in corruption. It also agreed that there had been a public interest, in this context, in the alleged involvement – even though dating back some years – of a German businessman, the applicant, in gold smuggling, embezzlement and organised crime. The Court further agreed that there was a public interest in keeping the article available in the online archive of the newspaper.

While the article had primarily concerned a prominent political figure – the former mayoral candidate – the German courts had considered that there was a certain interest also in the applicant as a German businessman internationally active in the media sector. That assessment was in

accordance with the Court's case-law, as the Court had previously held that a manager of a well-known company could be considered by his very position in society to be a public figure.

Furthermore, the Court agreed with the German Court of Appeal's conclusion that there had been a sufficient factual basis for the statements at issue and that the author of the article had fully complied with his journalistic duties and responsibilities. The main source for the statements regarding the applicant had been an internal FBI report and not an officially published report or a public statement to the press by a public official. However, the Court of Appeal had examined the factual foundation for the statements at issue in detail and had concluded that the information in the FBI report was corroborated by reports of several other law-enforcement agencies.

As to the content and form of the article, the Court agreed with the German court's finding that the article was free from polemic statements and insinuations. Moreover, the information divulged mainly concerned his professional life and no intimate details had been revealed.

Having regard to these considerations, the Court concluded that the German Court of Appeal had struck a reasonable balance between the competing rights. 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.