



Rejection of defamation claim lodged by blogger concerning rape accusation against him breached his right to respect for private life

In today's **Chamber judgment**¹ in the case of [Egill Einarsson v. Iceland](#) (application no. 24703/15) the European Court of Human Rights held, by five votes to two, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the complaint by a well-known blogger about a Supreme Court ruling, which found that he had not been defamed by the words "Fuck you rapist bastard" used in an Instagram post about him. Prosecutors had just before dismissed rape and sexual offence accusations against him.

The European Court of Human Rights found that the domestic courts had not taken sufficient account of the fact that the remarks, notably the word "rapist", had been posted just a week after prosecutors had discontinued sexual offence proceedings against Mr Einarsson. The courts had also not provided a sufficient explanation in the context of the case for their justification for finding that the word "rapist" could be used as a value judgment.

Overall, the domestic courts had not struck a fair balance between Mr Einarsson's right to respect for his private life under Article 8 of the Convention and the right to freedom of expression under Article 10 of the person who had posted the remark.

Principal facts

The applicant is an Icelandic national who was born in 1980. At the time of the events he was a well-known writer of blogs, articles and books, who had also appeared on television. In 2011, he was accused of rape, and in early 2012 of having committed another sexual offence a few years earlier. Prosecutors later dismissed the cases for lack of evidence, the second decision being delivered on 15 November 2012. Seven days later, Mr Einarsson gave an interview to a local magazine, which included his picture on the front page and his comments on the rape accusation. He stated several times that the accusations were false.

On the same day as the interview, a private person, X, posted an altered version of the magazine photograph of Mr Einarsson on the Internet picture-sharing service Instagram, accompanied by the caption, "Fuck you rapist bastard". X had changed the picture by drawing an upside-down cross on Mr Einarsson's forehead and writing "loser" across his face.

Mr Einarsson's lawyer wrote to X to ask him to withdraw the statement, apologise in the media and pay damages. X's lawyer replied in an email that X had not distributed the picture online as it had been posted to a closed group on Instagram and had been distributed by others. The email also said that X was sorry and that the picture had been shared without his consent or knowledge.

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.

Mr Einarsson brought defamation proceedings before the Reykjavik District Court in December 2012, seeking X's punishment under the Penal Code for altering the picture and publishing it on Instagram with the caption. He also requested that the words in the caption be declared null and void and that X be ordered to pay damages.

The District Court dismissed Mr Einarsson's claim in November 2013. The judgment was upheld on appeal by the Supreme Court in November 2014. The Supreme Court found that X's remarks were not a statement of fact, but a value judgment. The court considered that the words had to be seen in the context of a public debate instigated earlier by Mr Einarsson.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 May 2015.

Relying on Article 8 (right to respect for private and family life), Mr Einarsson complained that the Supreme Court judgment meant that he could be called a rapist without being charged or convicted of such a crime and without being able to defend himself.

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

Julia **Laffranque** (Estonia), *President*,
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Paul **Lemmens** (Belgium),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

The Court considered that the crux of the case before the domestic courts had been whether the words "Fuck you rapist bastard" had been a value judgment or a statement of fact. The domestic courts had found that the remarks were a value judgment when viewed "in context", referring to "a ruthless public debate" instigated by Mr Einarsson when he had made comments in the interview given to the magazine about the sexual offence accusations against him.

The Court noted that the word "rapist" was objective and factual in nature and that an allegation of rape could be proven. Although it did not exclude the possibility that an objective statement could, contextually, be classified as a value judgment, the contextual elements leading to such a conclusion had to be convincing when it came to the word "rapist".

The Court observed that the domestic courts in their conclusion had relied primarily on Mr Einarsson's involvement in a public debate as the context for the Instagram post and their finding that the statement was a value judgment. However, the domestic courts had failed to take adequate account of the chronology of the events in question: proceedings for one of the sexual offence allegations had been discontinued only a week before the Instagram post. That meant that the factual context of the statement was the criminal proceedings in which Mr Einarsson had been accused of the act the Instagram post had referred to, but which had been discontinued for lack of evidence.

The Court considered that the domestic courts had not taken account of relevant and sufficient elements to justify their conclusion that the disputed remarks were a value judgment. Even assuming that the Court accepted that conclusion, it noted that under its case-law the statement

would still need a sufficient factual basis. However, the domestic courts had failed to explain sufficiently the factual basis for their decision given that the sexual offence proceedings had been discontinued. The Court underlined that Article 8 had to be interpreted to mean that even public persons who had begun a heated debate did not have to tolerate being accused of violent criminal acts without such statements being supported by facts.

Overall, the domestic courts had failed to strike the required fair balance between the competing rights of Mr Einarsson and of X, under Article 8 and Article 10 respectively. There had therefore been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Einarsson.

Separate opinions

Judges Lemmens and Mourou-Vikström each expressed a dissenting opinion. These separate opinions are 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.