



Defamation fine for former Latvian bank chairman did not violate his rights

In today's **Chamber** judgment¹ in the case of [Rungainis v. Latvia](#) (application no. 40597/08) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the applicant's being found liable for defamation after implicating a banker-turned-politician in the misappropriation of bank funds.

The Court held that Mr Rungainis's allegations of misappropriation, aimed at a man who had been president of the bank at which Mr Rungainis was chairman and who had later run as a parliamentary candidate, had not had a sufficient factual basis. Mr Rungainis had himself admitted at the first-instance trial that the information he had based his comments on, which were published in newspaper articles, was wrong.

The Court was satisfied that the domestic courts which awarded damages for defamation against Mr Rungainis had struck a fair balance between his freedom of expression and the other man's interest in the protection of his reputation.

Principal facts

The applicant, Girts Rungainis, is a Latvian national who was born in 1967 and lives in Riga (Latvia).

In 2002 Mr Rungainis was chairman of the board of Latvijas Krājbanka, in which the State held about one third of the shares.

At the start of October of that year he presented a report to the board which showed that money had been paid to an advertising agency without any supporting documents, raising suspicions that the funds had been misappropriated.

The day after he presented the report, a leading newspaper, Neatkarīgā Rīta Avīze ("NRA"), on the basis of an interview with Mr Rungainis, wrote that a former president of the bank, A.L., might have been responsible for siphoning money out of the bank to pay the advertising company. That company had in turn run an advertising campaign for a new political party, the Latvia's First Party, for which A.L. was running for Parliament. The applicant was quoted as saying: "This money has been stolen from the shareholders."

The events took place before an election that was held later in October. Internal and external audits by the bank later showed that in actual fact all the services provided by the advertising agency had been accounted for.

A.L. launched defamation proceedings in July 2003. Mr Rungainis admitted to the first-instance court that the information he had provided had been wrong and apologised to A.L. and the journalists. The first-instance court dismissed the defamation charges. However, the appeal court later found for A.L.

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.

and ordered Mr Rungainis to pay 10,000 Latvian lats (about 14,000 euros) to him. That decision was upheld by the Senate of the Supreme Court in January 2008.

Complaints, procedure and composition of the Court

Relying on Article 10, the applicant complained that the defamation judgment against him was an unjustified interference with his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 4 July 2008.

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

Angelika Nußberger (Germany), *President*,
Erik Møse (Norway),
André Potocki (France),
Síofra O’Leary (Ireland),
Mārtiņš Mits (Latvia),
Gabriele Kucska-Stadlmayer (Austria),
Lado Chanturia (Georgia),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 10

The Court observed that freedom of expression was not an unlimited right. It was open to domestic authorities to adopt appropriate measures in order to react without excess to defamatory accusations which had no foundation or had been made in bad faith. Freedom of expression also imposed duties and responsibilities, such as the need carefully to check information before disclosing it. Such a duty was all the more important for people who held a public position.

The crux of the case was whether Mr Rungainis’s statements had had a sufficient factual basis. The Court noted that his initial allegations had been based on the report that he had prepared for the board, itself based on information he had obtained from the marketing and finance departments. He had then made comments to journalists about his suspicions of money being misappropriated, which had led to the newspaper reports pointing to A.L., who had later begun a defamation action.

The Court found several factors which called Mr Rungainis’s action in speaking with the journalists into question. First of all, he had to have been aware of the status that he had under domestic law as a public official and that the journalists could rely on his statements, particularly as they concerned internal bank documents.

Secondly, he had formed his views about undocumented advertising and marketing expenses after consulting the heads of the marketing and finance departments, but it was unclear why he had not also asked for information from the internal audit department before speaking to the press. In the event, it only took that department two weeks to check and dismiss his suspicions. He had thus disclosed unconfirmed information to the media while the audit was still going on.

In addition, his comments had been made close to an election, when they were bound to be taken seriously by the media and the public, particularly as they had concerned a newly formed political party. Mr Rungainis’s position at the bank and the nature of his allegations meant that he could not rely on the degree of exaggeration or even provocation which could usually be called on in the exercise of freedom of expression in the context of a political debate.

Lastly, he had never taken any steps to distance himself from further articles containing his statements, even though the audit had been available by the time those reports were issued. He had also taken no steps to remedy the situation after the internal and external audits had taken place.

Overall, the Court found that Mr Rungainis's initial report, on the basis of which he had made serious allegations against the bank's former president who was also a candidate in elections, did not have a sufficient factual basis and that he had overstepped the limits of acceptable criticism in relation to A.L.

The Court was satisfied that the interference with Mr Rungainis's rights that had been caused by his being fined for defamation was supported by relevant and sufficient reasons. The authorities had struck a fair balance between his rights and those of A.L. and had acted within the limits of their discretion ("margin of appreciation") under the Convention.

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.