



Conviction for an allegedly defamatory article about the 1980 terrorist murder of journalist Walter Tobagi: breach of freedom of expression

In today's Chamber judgment¹ in the case of [Magosso and Brindani v. Italy](#) (application no. 59347/11) 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 the conviction for defamation of two applicants, a journalist and a publishing director, following the publication of an article concerning the murder of the journalist Walter Tobagi in 1980 by a terrorist group close to the Red Brigades.

With regard to news reporting based on interviews, the Court reiterated its previous finding that a distinction had to be made between the journalist's own statements and those made by third parties and quoted in an article or report. In the present case the Court held that the domestic courts had not differentiated between the statements made by the first applicant and those made by D.C., who was quoted in the article.

The Court also noted that the applicants had produced a very large number of documents and substantial factual evidence enabling the version of facts presented in the article to be regarded as credible and as having a sound factual basis. It was also to be noted that the contested statements concerned events dating back to the end of 1979 and that the article had been published 25 years later, in 2004.

In conclusion, the Court held that the national courts, in finding that D.C.'s remarks had been untruthful and contrary to "the truth as established by the courts at final instance", had not given relevant and sufficient reasons for discounting the information provided by the applicants.

Principal facts

The applicants, Mr Renzo Magosso and Mr Umberto Brindani, are two Italian nationals who were born in 1947 and 1958 respectively and live in Milan. The first applicant was a journalist with the weekly magazine *Gente*, while the second was its publishing director.

On 28 May 1980 the journalist Walter Tobagi was killed by a group of left-wing extremists known as the "28th of March Brigade". The group's leader was arrested in late September 1980. He decided to cooperate with the investigation and made a confession. In June 1983 Bettino Craxi, the then Prime Minister, stated publicly that a few months before Mr Tobagi's death the *carabinieri* had received information concerning a planned terrorist operation targeting the journalist.

On 17 June 2004 Mr Magosso wrote an article entitled "Tobagi could have been saved", in which he reported on the statements made by D.C., a former brigadier with the anti-terrorist branch of the Milan *carabinieri*, who said that a few months before the killing he had received information from an informant concerning a possible planned attack on Mr Tobagi. Mr Magosso also quoted another

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.

former *carabinieri* officer, General N.B., as saying that he had been excluded from the investigative activities of the Milan *carabinieri*.

Following a complaint lodged by some individuals named in the article, Mr Magosso and Mr Brindani were committed for trial in the Monza District Court on charges of defamation through the medium of the press. The former brigadier D.C. was prosecuted in separate proceedings and convicted at first instance. On 20 September 2007 the District Court found the applicants guilty of defamation and sentenced them to fines of 1,000 euros (EUR) and EUR 300 respectively. The court ordered the applicants jointly to pay the costs of the proceedings and made an order for publication of an extract from the judgment in the magazine *Gente* and in the daily newspaper *Corriere della Sera*. The applicants were also ordered to pay EUR 120,000 and EUR 90,000 for non-pecuniary damage to the two people referred to in the article and EUR 20,000 to cover their procedural costs. The applicants appealed and requested that their case be joined to the proceedings against D.C. The Court of Appeal dismissed the appeals by the applicants and D.C. and upheld the first-instance decision. The applicants lodged an appeal on points of law. The Court of Cassation dismissed the appeal, upheld the order for the applicants to pay an interim amount of EUR 120,000 and ordered them, jointly with D.C., to pay EUR 7,000 to the civil parties for costs and expenses.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained of interference with their right to freedom of expression.

The application was lodged with the European Court of Human Rights on 16 September 2011.

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

Krzysztof **Wojtyczek** (Poland), *President*,
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 10

The Court noted that the events described in the contested article concerned a matter of public interest and had contributed to public debate, particularly with regard to disputed events in recent Italian history, namely the murder of a journalist by a terrorist group and the influence of the P2 masonic lodge on the Italian institutions during the “years of lead” (“*anni di piombo*”). The Court found, however, that the national courts had not taken account of this circumstance and that, on the contrary, they had stressed the “sensational” aspect of the article in question.

With regard to news reporting based on interviews, the Court reiterated that a distinction had to be made according to whether disputed statements had been made by journalists themselves or were a quotation of others. The Court considered that the national courts had not differentiated between the statements made by the first applicant and those by D.C. The second applicant had been held liable for omission, for failing to conduct a prior check of potentially defamatory statements.

Firstly, while the Court, like the national courts, accepted that the allegations contained in the article were such as to harm the reputation of the civil parties, it noted that the contested statements had not been made by the first or the second applicant themselves, but by D.C. In that connection, in so far as the applicants' conviction had pursued the protection of the civil parties' legitimate interests against the defamatory statements made by D.C., this interest had already been largely preserved by the defamation proceedings brought against D.C., which had, moreover, resulted in his conviction.

Secondly, the Court reiterated that where journalists reproduced statements made by third parties, it was first necessary to establish whether they had acted in good faith and had complied with the obligation to verify the facts, relying on a sufficiently accurate and reliable basis that was proportionate to the nature and degree of the allegations.

The Court noted that the applicants had produced a very large number of documents and substantial factual evidence enabling the article's version of facts to be considered as credible and as having a sound factual basis. The Court also noted that, with the passage of time, it was more difficult to prove the facts on which the statements had been based and the harm to the allegedly defamed persons was likely to disappear. In the present case the contested statements concerned events dating back to the end of 1979 and the article had been published 25 years later, in 2004.

In conclusion, the Court found that the national courts, in holding that D.C.'s remarks had been untruthful and contrary to "the truth as established by the courts at final instance", had not given relevant and sufficient reasons for discounting the information provided by the applicants and the checks carried out in the course of a serious and substantiated investigation.

The applicants had been convicted of defamation and had each been ordered to pay a criminal fine, which meant that the measure was very serious. A criminal sanction was one which, as such, was likely to have a chilling effect on the exercise of freedom of expression. The courts had ordered the two applicants and D.C. to pay the civil parties an interim amount of EUR 120,000 in respect of damages and EUR 33,500 for costs and expenses incurred at three levels of jurisdiction, and had referred the case back to the civil court to determine the exact extent of the non-pecuniary damage sustained by the civil parties.

The Court concluded that the applicants' conviction had amounted to a disproportionate interference with their right to freedom of expression, which had not been "necessary in a democratic society" for the purposes of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Italy was to pay each of the applicants 15,000 euros (EUR) in respect of non-pecuniary damage, and EUR 3,500 jointly in respect of costs and expenses.

The judgment is available only in French.

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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.