



Criminal conviction of a journalist following his critical article of local headmaster was in breach of the European Convention

In today's Chamber judgment¹ in the case of **Balaskas v. Greece** (application no. 73087/17) 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 a journalist's complaint about his criminal conviction following an article he had written criticising the headmaster of a local high school for posting the view on his personal blog that the massive student uprising of 1973 was "the ultimate lie". In his article the journalist, writing for a Lesbos daily newspaper, had referred to the headmaster as a "neo-nazi" and "theoretician of the entity 'Golden Dawn'".

The Court found in particular that the Greek courts had failed to balance the journalist's right to freedom of expression against the headmaster's right to respect for private life, taking into account the principles laid down in the Court's case-law in such cases.

In particular, the courts had not taken into account the fact that: the article had contributed to a debate on a matter of public interest; the headmaster was a public official who had himself attracted attention to his political views via his blog and should therefore have been more tolerant towards criticism; and, the applicant had brought to their attention the headmaster's previously posted articles on the Ayran Race and National Socialism as a factual basis to support the expressions he had used in his article. Moreover, the courts had found the article insulting, without taking into consideration the general context and its potential to give rise to considerable controversy, or the language used which, although caustic, had not amounted to a gratuitous personal attack on the headmaster.

Principal facts

The applicant, Efstratios Balaskas, is a Greek national who was born in 1962 and lives in Mytilene (Greece). He is a journalist.

On 17 November 2013, the anniversary of the 1973 Polytechnic School uprising which contributed to the end of the military dictatorship in Greece and now celebrated as a school holiday, the headmaster of a high school in Mytilene published an article on his personal blog under the title "The ultimate lie is one: that of the Polytechnic School of 1973".

Mr Balaskas, at the time editor-in-chief of the Lesbos daily newspaper *Empros*, published an article in reaction to the headmaster's blog, referring to him as a "neo-nazi" and "theoretician of the entity 'Golden Dawn'".

Following a criminal complaint filed by the headmaster, the first-instance court ruled that these expressions constituted value judgments, and not facts, which intentionally insulted 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.

headmaster's honour and reputation. He was thus found guilty of insult via the press and given a suspended prison sentence.

All the applicant's subsequent appeals were unsuccessful, ultimately in 2017. Both the Court of Appeal and the Court of Cassation rejected in particular his argument that the expressions at issue had been value judgments based on extensive evidence, namely numerous articles on the headmaster's website concerning the Ayrán race and National Socialism and a message in which he called for Greeks to vote for the far-right political party Golden Dawn. The courts considered that the expressions the applicant had used were unnecessary, concluding that he could have employed more decent phrases to exercise his right to inform the public.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Balaskas complained that his criminal conviction had been disproportionate and that the courts had failed to strike a fair balance between his right to inform the public on a matter of historical importance and the headmaster's right to protection of his reputation.

The application was lodged with the European Court of Human Rights on 4 October 2017.

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Lorraine **Schembri Orland** (Malta),

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

Decision of the Court

The Court considered that the Greek courts had failed to balance the applicant's right to freedom of expression against the headmaster's right to respect for private life. They had simply limited themselves to finding that the statements at issue had been value judgments and had tarnished the headmaster's reputation, without taking into account the criteria established in the Court's case-law for carrying out such a balancing exercise.

In particular, the courts had not taken into account the applicant's duty as a journalist to impart information on a matter of public interest and the contribution of his article to such a debate. The courts had focused on the expressions used by the applicant detached from their context, ignoring the fact that the headmaster's views had been capable of giving rise to considerable controversy.

Similarly, the courts had failed to explicitly address the fact that the headmaster, a civil servant vested with public functions, had previously expressed his views on political matters through his blog and had therefore willingly exposed himself to public scrutiny and journalistic criticism.

Nor had the courts assessed any good or bad faith on the applicant's part. The courts had correctly classified his expressions as value judgments, but they had failed to review whether they had been supported by a clear factual basis, despite the fact that he had brought to their attention the headmaster's previously posted articles.

Moreover, contrary to the Government's and domestic courts' conclusions, the Court saw no manifestly insulting language in the applicant's remarks and the article, although caustic and

containing serious criticism, could not as whole be understood as a gratuitous personal attack on the headmaster.

Lastly, there had been no justification for imposing a prison sentence in the applicant's case, which would inevitably have a chilling effect on public discussion.

Indeed, the Court noted that it had already found a violation of Article 10 of the Convention in a number of cases against Greece owing to the domestic courts' failure to apply standards in conformity with its case-law concerning freedom of expression when weighed up against the protection of an individual's reputation.

The Court therefore concluded that the applicant's criminal conviction had amounted to an interference with his right to freedom of expression which had not been "necessary in a democratic society". There had, accordingly, been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant 1,603.58 euros (EUR) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage and EUR 1,258.60 in respect of costs and expenses.

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.