



Well-known Italian journalist's prison sentence following his conviction for defamation was "manifestly disproportionate"

In today's **Chamber** judgment¹ in the case of [Sallusti v. Italy](#) (application no. 22350/13) 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, Alessandro Sallusti, who was found guilty of defamation, fined and given a prison sentence, part of which he served under house arrest. The national courts found that articles published under his control had falsely reported that a 13-year old girl had been forced to have an abortion by her parents and a guardianship judge, despite clarifications in the press the day before that the girl had wanted the abortion.

The Court found that Mr Sallusti had tarnished the honour and privacy rights of the girl, her parents and the judge, but that there had been no justification for giving him a prison sentence. Such a sanction had gone beyond what would have amounted to a "necessary" restriction on Mr Sallusti's freedom of expression.

Principal facts

The applicant, Alessandro Sallusti, is an Italian national who was born in 1957 and lives in Carate Urio (Como) (Italy).

In 2007 Mr Sallusti was editor-in-chief of the *Libero* newspaper. In February that year *Libero* published two articles stating that a 13-year-old girl had been forced to have an abortion by her parents and a guardianship judge. Other media had covered the incident the previous day but they had ultimately reported that she had not been forced into the abortion but had wanted it herself.

In April 2007 the guardianship judge filed a criminal complaint of defamation against Mr Sallusti. He was found guilty in January 2009 of failure by a newspaper editor-in-chief to control what had been published (*omesso controllo sul contenuto dell'articolo diffamatorio*) in relation to one of the articles and of aggravated defamation with regard to the other. He was fined, ordered to pay damages and costs and to publish the court's judgment.

On appeal, the penalty was increased in June 2011 to one year and two months' imprisonment and the damages were tripled to 30,000 euros. The Court of Cassation upheld the custodial sentence in September 2012, however, the court executing the sentence let him serve it under house arrest.

In December 2012 Italy's President, referring in his decision to criticism by the European Court of Human Rights of custodial penalties for journalists, commuted the applicant's sentence into a fine. He had by that time spent 21 days under house arrest.

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.

Complaints, procedure and composition of the Court

Mr Sallusti argued that his conviction for defamation through the press and for failure to exercise control over the content of a publication had breached his rights under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 18 March 2013.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Guido **Raimondi** (Italy),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

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

Decision of the Court

There was no dispute that Mr Sallusti's conviction had constituted an interference with his right to freedom of expression and that it had been prescribed by law, namely Articles 57 and 595 of the Criminal Code and section 13 of the Press Act.

The Court accepted that that interference had been intended to protect the reputation and rights of the 13-year old girl and her parents as well as those of the guardianship judge.

The Court also agreed with the national courts' findings that the articles under Mr Sallusti's control had given false information, despite the clarifications reported the day before. He had thus seriously tarnished the honour and privacy rights of all those involved.

Imposing a criminal sanction had, however, been manifestly disproportionate. There had been no justification for imposing a prison sentence. Even though it had been commuted into a fine, that measure had been subject to the discretion of Italy's President. In any case, even if Mr Sallusti had been dispensed from serving his sentence, his conviction had not been expunged.

The courts had thus gone beyond what would have amounted to a "necessary" restriction on Mr Sallusti's freedom of expression, in violation of Article 10 of the Convention.

The Court nonetheless pointed out that positive steps had been taken in Italy recently, such as limiting the use of criminal sanctions for defamation and introducing the removal of imprisonment as a sanction for defamation.

Just satisfaction (Article 41)

The Court held that Italy was to pay Mr Sallusti 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 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.