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This Factsheet does not bind the Court and is not exhaustive

# Protection of reputation

See also the factsheet on the ["Right to the protection of one's image"](#).

"The exercise of [the freedoms of expression, to hold opinions, to receive and impart information], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the reputation or rights of others ..." (Article 10 § 2 of the [European Convention on Human Rights](#)).

"... [T]he right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life ... In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life ... The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence ...

When examining the necessity of an interference in a democratic society in the interests of the 'protection of the reputation or rights of others', the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8" (*Axel Springer AG v. Germany*, [judgment](#) (Grand Chamber) of 7 February 2012, §§ 83-84).

## Protection of reputation as a limit to freedom of expression

Associations, non governmental organisations, a.s.o.

### Application pending before the Grand Chamber

#### [Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina \(application no. 17224/11\)](#)

13 October 2015 (Chamber) – case referred to the Grand Chamber in March 2016

This case concerns defamation proceedings brought against four NGOs following the publication of a letter they had written to the highest authorities of their district to complain about the entertainment editor of a public radio station. The applicant NGOs complain that the domestic courts' decisions against them breached their right to freedom of expression. They maintain that their intention had not been to publish the letter, which had occurred without their knowledge, but to inform those in authority about certain irregularities in a matter of considerable public interest – the suitability of a candidate for the post of a multi-ethnic public radio station – and to prompt them to investigate their allegations.

In its Chamber [judgment](#) of 13 October 2015 the Court held, by four votes to three, that there had been **no violation of Article 10** (freedom of expression) of the Convention. The Chamber found in particular that the national courts, which had heard witnesses in

the defamation proceedings, had correctly concluded that the applicant NGOs had acted negligently in simply reporting the entertainment editor's alleged misconduct without making a reasonable effort to verify its accuracy. The national courts had therefore struck a fair balance between the radio entertainment editor's right to reputation (as a prospective candidate for a position as a public servant, namely the director of a public radio station) and the applicant NGOs' right to report irregularities about the conduct of a public servant to the body competent to deal with such complaints.

On 14 March 2016 a panel of five judges accepted the applicants' request that the case be referred to the Grand Chamber.

On 31 August 2016 the Grand Chamber held a hearing in the case.

## Authors and publishers of books

### Lindon, Otchakovsky-Laurens and July v. France

22 October 2007 (Grand Chamber)

This case concerned the criminal conviction of the author and publisher of a novel, the first two applicants, for defamation against a political party of the far right and its chairman, together with the conviction for defamation of the third applicant, the director of a prominent national daily newspaper, which had published a petition reproducing the offending passages of the novel and protesting about the convictions of the author and publisher. The book had openly raised the issue of the responsibility of the party and its chairman in the development of racism in France and the difficulty of combating this scourge. The applicants argued that their criminal conviction had entailed a violation of their freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the conviction of the first two applicants and of the third. It observed in particular that the sanctions imposed on the author and publisher had not concerned the argument underlying the impugned work but three specific passages from the novel. The convictions had thus been based on relevant and sufficient grounds and the sanctions had not been disproportionate. As to the third applicant, he had overstepped the permissible limits of "provocation" by reproducing the offending passages from the novel in a widely-read national daily newspaper, also taking into consideration the need to protect the reputation of a named person and the rights of others. The fine imposed on him and the damages awarded had been moderate.

### Ileana Constantinescu v. Romania

11 December 2012

This case concerned the applicant's criminal conviction for defamation following the publication of a book on the life of her father (a well-known Romanian economist) in which she called into question certain acts which were harmful to the interests of her father and to those of the "House of Economists" and one of her father's former colleagues, who had become vice-chairman of the Romanian Association of Economists.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the grounds relied upon by the Romanian courts could not be regarded as relevant and sufficient to justify the interference with the applicant's right to freedom of expression, which had been disproportionate to the legitimate aim pursued, namely the protection of the reputation of others. The Court noted in particular that at least part of the impugned remarks had been made in the context of a debate of general interest to the community of Romanian economists. In addition, the remarks did not concern aspects of the private life of the person concerned, but conduct concerning his professional activities and involvement in an association. Lastly, whilst the applicant had not been able to prove before the domestic courts that her allegations had a sufficient factual basis, her conduct when examined as a whole showed that she had acted in good faith, being convinced that there was a problem of professional ethics.

### **Ojala and Etukeno Oy v. Finland and Ruusunen v. Finland**

14 January 2014

In these cases the publisher and author of an autobiography referring to the relationship between the author and the former Finnish Prime Minister had been convicted by the criminal courts. They complained that their convictions had violated their right to freedom of expression.

In both cases the Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the Finnish courts had struck a fair balance between the competing interests at stake. The Court noted in particular that admittedly the prime minister was a public figure and the book contained material of public interest, but only the passages concerning intimate life had been considered in assessing the damage caused to his reputation.

### **Almeida Leitão Bento Fernandes v. Portugal**

12 March 2015

This case concerned the criminal conviction of the applicant for libelling a number of her in-laws, following publication of a novel relating family dramas in the context of the Portuguese diaspora in the United States and the colonial war. The applicant complained that her conviction for libelling her husband's family and tarnishing their honour had infringed her right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the exercise by the applicant of her freedom of expression had not been disproportionate with regard to the legitimate aim pursued, namely the protection of the reputation and rights of others. The Court agreed with the Portuguese courts that the applicants had overstepped the limits of her freedom of artistic creativity by disregarding the right of her in-laws to respect for their private life, on account of certain events narrated and value judgments made. It considered, in particular, that the room for manoeuvre (margin of appreciation) given to the authorities in assessing the necessity of the punishment imposed on the applicant was a wide one because the persons concerned were not public figures.

## Doctors and health workers

### **Frankowicz v. Poland**

16 December 2008

The applicant was a gynaecologist and the President of the Association for the Protection of the Rights of Patients in Poland. He complained about disciplinary proceedings brought against him for a report he had prepared on the treatment of a patient in which he was critical of another doctor, following which he had been sanctioned by the Medical Court and given a reprimand.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicant's freedom of expression had not been proportionate to the legitimate aim pursued, namely protecting the reputation of others. It observed in particular that, in the applicant's case, the Polish authorities had concluded, without having attempted to verify the truthfulness of the findings in the medical opinion, that the applicant had discredited another doctor. That decision was made on the basis of the absolute prohibition in Poland on any criticism between doctors. The Court considered that that absolute prohibition was likely to discourage doctors from providing their patients with an objective opinion on their health and any treatment received, which could compromise the very purpose of the medical profession, namely to protect the health and life of patients.

### **Heinisch v. Germany**

21 July 2011

This case concerned the dismissal of a geriatric nurse after having brought a criminal complaint against her employer alleging deficiencies in the care provided. The applicant

complained that her dismissal and the courts' refusal to order her reinstatement had violated her right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's dismissal without notice had been disproportionate and the German courts had failed to strike a fair balance between the need to protect the employer's reputation and the need to protect the applicant's right to freedom of expression. The Court observed in particular that, given the particular vulnerability of elderly patients and the need to prevent abuse, the information disclosed had undeniably been of public interest. Further, the public interest in being informed about shortcomings in the provision of institutional care for the elderly by a State-owned company was so important that it outweighed the interest in protecting a company's business reputation and interests.

### Ärztchamber Für Wien and Dorner v. Austria

16 February 2016

The applicants in this case, namely the Vienna Chamber of Medical Doctors and its president at the time of the events, complained about decisions by the Austrian courts prohibiting them from making certain negative statements about a private company, which was planning to provide radiology services. These decisions followed a complaint by the company regarding a letter published by the second applicant on the Chamber's website, referring in particular to the company as a "locust" company or fund.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in respect of the second applicant, finding that the interference with the exercise of his right to freedom of expression was necessary in a democratic society in order to protect the reputation and rights of the company in question. The Court further declared **inadmissible** (incompatible *ratione personae*) the application insofar as it concerned the first applicant.

## Historians

### Karsai v. Hungary

1 January 2009

In 2004 there was a public debate in Hungary as to whether a statue should be set up to commemorate the former Prime Minister Pál Teleki, who had cooperated with Nazi Germany and had been involved in the passing of anti-Semitic legislation. The applicant, who was a Hungarian historian and university professor, published an article criticising the right-wing press, and one journalist in particular, for praising Pál Teleki's role and for making anti-Semitic statements. He complained in particular that he had been ordered to publish a rectification at his expense and to bear considerable legal costs.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the Hungarian courts had not convincingly established any pressing social need for putting the personality rights of a participant in a public debate above the applicant's right to freedom of expression. It noted in particular that the applicant's article had been published in the course of a public debate of the utmost public interest. Moreover, the journalist in question had voluntarily exposed himself to public criticism by publishing articles in the popular daily press as part of that debate. Lastly, the sanction imposed on the applicant, namely the duty to retract in a matter which affected his professional credibility as a historian, was capable of producing a chilling effect.

### Braun v. Poland

4 November 2014

This case concerned the complaint by a film director and historian about being ordered to pay a fine and to publish an apology for having damaged the reputation of a well-known professor to whom he had referred, in a radio debate, as an informant of the secret political police during the communist era. The applicant complained that the Polish courts' decisions had violated his right to freedom of expression, arguing in particular

that he had been active as a journalist for many years and that radio debate in which he participated concerned an important matter relating to a public figure.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the applicant had made a serious accusation against the professor which constituted an attack on his reputation. However, when faced with the task of balancing the applicant's right to freedom of expression and the professor's right to respect for his reputation, the Polish courts had made a distinction between the standards applicable to journalists and those applicable to other participants in the public debate. Under the Polish Supreme Court's case law, the standard of due diligence and good faith was to be applied only to journalists, while others, as the applicant, were required to prove the veracity of their allegations. Since he had been unable to prove the truth of his statement, the courts had concluded that he had breached the professor's personal rights. The Court was however unable to accept the approach of the Polish courts which had required the applicant to prove the veracity of his allegations and thus to fulfil a higher standard than that required from journalists.

### **Pinto Pinheiro Marques v. Portugal**

22 January 2015

This case concerned the conviction of the applicant, a historian and the chairman of a cultural association, for damaging the reputation of a municipal council with which he had signed an agreement regarding publication of the works of a poet from the region. An initial volume was published in 2003. In 2005 the council published another book on the poet's works. The applicant, who considered that the council had acted wrongfully in publishing the book on its own initiative, had an article published in a regional newspaper for which he was subsequently punished for insulting a legal entity exercising public authority. His appeal against the decision was dismissed. Before the Court, the applicant complained about his conviction for defamation.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that, even though they had been relevant, the grounds put forward by the Portuguese Government did not suffice to establish that the impugned interference was necessary in a democratic society and that there was no reasonable relationship of proportionality between the restriction of the applicant's right to freedom of expression as a result of his conviction and the legitimate aim pursued, namely the protection of the credibility and honour of the municipal council and the citizens' trust in that institution. The Court found in particular that the applicant's comments had not exceeded the limits of permissible criticism under Article 10 of the Convention. The limits of permissible criticism were wider with regard to a public institution than in relation to a private citizen, or even a politician, especially where the institution had executive authority, as in the present case. In a democratic system its actions or omissions must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion.

## Journalists and publishing companies

### **Radio France and Others v. France**

30 March 2004

This case concerned the conviction of radio journalists following the broadcasting on the radio over a twenty-four-hour period of a number of bulletins attributing to a former *sous-préfet* an active personal role in the deportation of a thousand Jews in 1942. The applicants complained in particular of a violation of their right to impart information as a result of the sanctions and measures imposed on them by the French courts.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the measures taken against the applicants had not been disproportionate to the legitimate aim pursued, namely the protection of the reputation or rights of others, and could therefore be considered necessary in a democratic society. As to the disputed broadcasts in particular, they admittedly quoted from a detailed and

well-documented article and interview published in a reputable weekly magazine. However, they alleged that the former *sous-préfet* had admitted “having organised the departure of a convoy of deportees to Drancy”. According to the Court, that allegation did not accurately reflect the published article or interview. Moreover, although the broadcasts were subsequently slightly amended, and pointed out that the person concerned denied the allegations, the original bulletin was nonetheless broadcast several times.

### **Chauvy and Others v. France**

29 June 2004

The applicants in this case were a journalist and writer, a publishing company and the president of that company. In 1997 the company published a book by the first applicant entitled *Aubrac-Lyons 1943*, which recounts the arrest by Klaus Barbie of the main Resistance leaders in Caluire, including Jean Moulin and Raymond Aubrac. Following a complaint by Raymond and Lucie Aubrac, the applicants were found guilty of criminal libel and ordered, *inter alia*, to pay a fine and damages. They submitted that their conviction had infringed their right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicants’ freedom of expression had not been disproportionate to the legitimate aim pursued, namely to protect the Aubracs from damage to their reputation. Noting in particular that the quest for historical truth was an integral part of freedom of expression, the Court considered that it was not its task to settle the substantive historical issue, which was part of an ongoing debate among historians and even public opinion about the events and their interpretation. However, in order to determine whether the measure in question had been necessary in a democratic society, the Court had to balance the public interest in knowing the circumstances of Jean Moulin’s arrest against the requirement of protecting the reputation of Mr and Mrs Aubrac, who had themselves been major figures of the Resistance.

### **Cumpănă and Mazăre v. Romania**

17 December 2004 (Grand Chamber)

The applicants, a journalist and the editor of a local newspaper, had written an article about the management of the local city council’s finances, accusing a council official and the deputy mayor of certain criminal offences and depicting them in a cartoon as rejoicing in their misdeeds. The official in question lodged a criminal complaint alleging insult and defamation. The applicants complained that their freedom of expression had been infringed on account of their criminal conviction following the publication of the article.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention finding that, although the interference with the applicants’ right to freedom of expression might have been justified by the concern to restore the balance between the various competing interests at stake (the right to impart ideas and facts and the protection of the reputation of representatives of the public authorities), the criminal sanction and the accompanying prohibitions imposed on them had been manifestly disproportionate in their nature and severity to the legitimate aim pursued. In this case the Court pointed out in particular that, while the press had a duty to inform the public about presumed misappropriation on the part of local elected representatives and public officials, the fact of directly accusing specified individuals by mentioning their names and positions gave rise to an obligation to provide a sufficient factual basis. Moreover, when exercising their freedom of expression, journalists were required to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. That had not been the case in this instance. However, in regulating the exercise of freedom of expression so as to ensure adequate protection by law of individuals’ reputations, States should avoid taking measures that might deter the media from fulfilling their role of alerting the public to apparent or suspected misuse of public

power. In addition, investigative journalists were liable to be inhibited from reporting on matters of public interest if they ran the risk, as one of the standard sanctions imposable for unjustified attacks on the reputation of private individuals, of being sentenced to prison or to a prohibition on the exercise of their profession.

### **Katamadze v. Georgia**

14 February 2006 (decision on the admissibility)

This case concerned the conviction of the applicant, a journalist, following the publication of an editorial criticising the founder and editor and three journalists of another local newspaper. They had complained that the applicant had been spreading rumours through the press and that the expressions used in the impugned article undermined their dignity and reputation.

The Court declared the application **inadmissible** as being manifestly ill-founded. Since the complainants had objectively shown that the impugned allegations were capable of interfering with their rights, the fact that domestic law required the applicant to adduce evidence as to the veracity of her statements did not in particular seem in itself to run counter to Article 10 (freedom of expression) of the Convention. The applicant had however been unable to show that it had not been a gratuitous personal attack with pointlessly harmful comments. The finding against her had therefore been a necessary measure in a democratic society for the protection of the reputation and rights of others. Moreover, having regard to the public insult to those individuals, without any valid justification, the penalty imposed did not appear excessively harsh.

### **Leempoel & S.A. ED. Ciné Revue v. Belgium**

9 November 2006

The applicants were a publishing company and its publisher. The case concerned the withdrawal from sale and the prohibition on distribution of an issue of the magazine *Ciné Télé Revue* which had published notes prepared by an investigating judge for a hearing before the parliamentary commission of inquiry into the Dutroux case<sup>1</sup>. The applicants submitted that the ruling against them had infringed their right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the article in question and its circulation could not be regarded as having contributed to any debate of general interest to society, and that the grounds given by the Belgian courts to justify the applicants' conviction had been relevant and sufficient. The impugned interference had thus been proportionate to the aim pursued, namely the protection of the reputation or rights of others, and necessary in a democratic society. In that case the Court observed in particular that, while there was a right of the public to be informed – an essential right in a democratic society which, in particular circumstances, could even concern aspects relating to the private life of public figures – publications with the sole aim of satisfying the curiosity of a certain readership about the details of someone's private life, however famous that person might be, could not be regarded as contributing to any debate of general interest for society.

### **Tønsbergs Blad AS and Haukom v. Norway**

1 March 2007

This case concerned orders against the applications – the publisher and editor-in-chief of a newspaper – to pay compensation and costs as a result of a newspaper article identifying a leading industrialist as being on a list of householders suspected of contravening local regulations

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the reasons relied on by the Norwegian authorities,

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<sup>1</sup> The "Dutroux case" led to the prosecution of a number of suspected paedophiles in Belgium in the 1990s. In 2004 the main defendant, Marc Dutroux, was found guilty of having abducted, held captive, raped and murdered several young girls and was sentenced to life imprisonment.

although relevant, had not been sufficient to show that the interference complained of had been necessary in a democratic society. There had been no reasonable relationship of proportionality between the restrictions on the applicants' right to freedom of expression and the legitimate aim pursued, namely the protection of the rights and reputation of the industrialist. In this regard, the Court noted in particular that the article had not set out to damage the industrialist's reputation, but to illustrate a problem which the public had an interest in being informed about. Nor did the article relate exclusively to his private life, as it concerned a possible failure by a public figure to observe laws and regulations whose purpose was to protect serious public interests, albeit in the private sphere.

**Colaço Mestre and SIC - Sociedade Independente de Comunicação S.A. v. Portugal**

26 April 2007

This case concerned the conviction for defamation of the applicants – a journalist and the company which employed him and to which belonged the national television channel SIC – on account of remarks made by the journalist during an interview with the then General Secretary of UEFA and broadcast by SIC in a television programme. The interview focussed on allegations concerning bribery of referees in Portugal and the actions of the then President of the Portuguese Professional Football League and Chairman of the football club FC Porto.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Taking into account, in particular, all the aspects of the case, it found that a fair balance had been struck in the case between the need to protect the applicants' rights to freedom of expression and that of protecting the rights and reputation of the complainant. It noted among other things that the latter was well known to the general public and played a major role in Portuguese public life. Moreover, the interview had not concerned his private life but solely his public activities as Chairman of a leading football club and President of the League. Lastly, the Court found that the punishment of a journalist by sentencing him to pay a fine, together with an award of damages against him and the television channel employing him, might seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. In those circumstances, whilst the reasons advanced by the Portuguese courts to justify the applicants' conviction might be regarded as relevant, they were not, however, sufficient and, accordingly, did not serve to meet a pressing social need.

**Lindon, Otchakovsky-Laurens and July v. France**

22 October 2007 (Grand Chamber)

See above, under "Authors and publishers of books".

**Mihaiu v. Romania**

4 November 2008

A journalist, the applicant was sentenced to a criminal fine for defamation and ordered to pay damages for publishing an article in which he claimed that another journalist had accepted a luxury wrist-watch from the an industrial group during a press conference organised by the group, which – according to the article in question – had brought about the insolvency of one of Romania's biggest businesses. The applicant submitted in particular that his conviction for defamation had resulted in a violation of his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's conviction had not been disproportionate to the legitimate aim pursued, namely the protection of the reputation of others, and that the impugned interference could therefore be deemed necessary in a democratic society. The Court considered in particular that in levelling a direct accusation at a particular person, specifying his name and occupation, the onus had been on the applicant to provide a sufficient factual basis in the proceedings against him. In the

present case, however, the Court was not convinced of the applicant's alleged good faith. On the contrary, it considered that when repeating statements attributed to third parties, the applicant should have exercised the utmost rigour and special care before publishing the article. Accordingly, in the absence of good faith and any factual basis, and although the article in question had been published in the context of a broader and highly topical debate in Romania, namely, the independence of the press, the Court did not discern in the applicant's comments the expression of a degree of exaggeration or provocation that were covered by journalistic licence.

### **Standard Verlags GmbH v. Austria (no. 2)**

4 June 2009

This case concerned the conviction for defamation of the applicant publishing company arising out of the publication of an article in a daily newspaper owned by the applicant commenting on rumours that the wife of the then Austrian President intended to divorce and had close contacts with two men, an Austrian politician and a foreign ambassador.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention in the present case. Considering that even public figures could legitimately expect to be protected against the propagation of rumours relating to intimate aspects of their private life, it found that the interference in question had been necessary in a democratic society for the protection of the reputation and rights of others. Furthermore, the measures imposed on the applicant company had not been disproportionate.

### **Kuliś and Różycki v. Poland**

6 October 2009

The first applicant in this case owned a publishing house which published a weekly magazine and a supplement for children. The second applicant was the magazine's editor-in-chief. The case concerned the publication in the supplement of an article containing satirical cartoons which referred to an advertising campaign for potato crisps marketed by a food manufacturer and aimed at children. The applicants complained that the sanction imposed on them for having published the cartoon was not justified.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the reasons adduced by the Polish courts could not be regarded as relevant and sufficient to justify the interference, which had been disproportionate to the legitimate aim pursued, namely the protection of the reputation or rights of others. It noted in particular that the applicants' primary aim had not been to denigrate the quality of the crisps but to raise awareness of the type of slogans used by the manufacturer and the unacceptability of such tactics to generate sales. Moreover, in performing its duty to impart information and ideas on matters of public interest, the press was entitled to have recourse to a degree of exaggeration or even provocation. While the wording employed by the applicants had been exaggerated, this had only been in reaction to an advertising campaign which had displayed a lack of sensitivity and understanding for the age and vulnerability of children. The style of the applicants' expression had thus been motivated by the type of slogans to which they were reacting and, in the context, had not overstepped the boundaries permissible to a free press.

### **Ruokanen and Others v. Finland**

6 April 2010

The applicants were an editor-in-chief and a journalist and a publishing company. They complained about their conviction of defamation following publication of an article stating that a student had been raped in September 2000 by members of a baseball team at a party to celebrate their victory in the Finnish championship. The applicants had been ordered to pay over 80,000 euros in damages to compensate each member of the baseball team.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the domestic courts had struck a fair balance between the competing interests involved, i.e. the applicants' right to freedom of expression and the

right to reputation of the alleged perpetrators of a crime. It observed in particular that imperatives other than matters of public concern had to be weighed up before an incident was reported by the media to the public as fact. The right to presumption of innocence and reputation of third parties was of equal importance especially where serious accusations of sexual misconduct were concerned.

### **Brunet Lecomte and Lyon Mag' v. France**

6 May 2010

The applicants were the publication director and publisher of a news magazine. They complained about their conviction for defamation following the publication, in an article about the Islamist networks in Lyons, of allegations insinuating that a Muslim professor had taken part in terrorist activities.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that such a penalty had been disproportionate and that the interference in the exercise by the applicants of their right to freedom of expression had not therefore been necessary in a democratic society. The Court observed in particular that the offending remarks were not devoid of factual basis and that, in view of the quantity and seriousness of the sources consulted, the investigation carried out and the moderation and prudence shown in the article, the applicants had been acting in good faith. Furthermore, the offending articles, published shortly after the 11 September 2001 attacks, had contributed to a political debate of immediate interest, resituating it in the local context. Therefore, the applicants' interest in imparting and the public's interest in receiving information about a subject in the general interest, and its repercussions for the Lyons area as a whole, had prevailed over the right of the professor concerned to the protection of his reputation.

### **Uj v. Hungary**

19 July 2011

A journalist, the applicant complained about his conviction for libel for harshly criticising the quality of a well-known variety of Hungarian wine, produced by a State-owned company, in a national daily newspaper. The Hungarian courts found that although the applicant was entitled to express his opinion about the wine, characterising it as "shit" was unduly insulting and had infringed the wine producer's right to a good reputation.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the necessity for interfering with the applicant's freedom of expression had not been convincingly justified. It noted in particular that there was a difference between damaging an individual's reputation concerning his or her social status, with the repercussions that that could have on his or her dignity, and a company's commercial reputation, which had no moral dimension. In addition, the article had expressed a value judgment or opinion whose primary aim was to raise awareness about the disadvantages of State ownership rather than to denigrate the quality of the company's products. Lastly, raising as it did the question of government policies on the protection of national values and the role of private enterprise and foreign investment, it concerned a matter of public interest in respect of which the press had a duty to impart information and ideas, even if exaggerated or provocative. Since the domestic courts had failed to have regard to these considerations, Hungary could not establish that the restriction had been proportionate.

### **Axel Springer AG v. Germany**

7 February 2012 (Grand Chamber)

The applicant company is the publisher of a national daily newspaper with a large-circulation which in September 2004 published a front-page article about the star of a popular television series who had been arrested at the Munich beer festival for possession of cocaine. The article was supplemented by a more detailed article on another page. Immediately after that article appeared, the actor obtained an injunction restraining any further publication of the article. The applicant company complained

about the injunction imposed on it against reporting on the arrest and conviction of the actor in question.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the restrictions imposed on the applicant company had not been reasonably proportionate to the legitimate aim of protecting the reputation or rights of others. The Court noted, in particular, that the articles in question concerned public judicial facts that could be considered to present a degree of general interest. In addition, the actor was sufficiently well known to qualify as a public figure and the fact that he had been arrested in public and had actively sought the limelight by revealing details about his private life in a number of interviews meant that his legitimate expectation that his private life would be effectively protected was reduced. Moreover, there was nothing to suggest that the applicant company had not undertaken a balancing exercise between its interest in publishing and the actor's right to respect for his private life. As to the content, form and consequences of the publications, the articles had not revealed details about the actor's private life, but had mainly concerned the circumstances of his arrest and the outcome of the criminal proceedings.

### **Tănăsioaica v. Romania**

19 June 2012

The applicant, who was a journalist, complained about his conviction for insults on account of the publication of an article about environmental pollution by a company.

In this case the Court reiterated that the press played a key role in a democratic society and that, while it could not cross certain bounds, concerning in particular the protection of the reputation and the rights of others, it was nevertheless entitled to impart, in accordance with its duties and responsibilities, information and ideas on all questions of general interest. There had thus been a **violation of Article 10** (freedom of expression) of the Convention, in particular because there had been a debate in the general interest, a lack of bad faith in the publication, and a sufficient factual basis.

### **Smolorz v. Poland**

16 October 2012

This case concerned the conviction of the applicant, a journalist, for having damaged the good reputation of one of the architects named in a highly critical article he had published on the subject of communist-era architecture in the city of Katowice, Poland.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Whilst the interference with the applicant's freedom of expression had been prescribed by law and pursued the legitimate aim of the protection of the reputation of others, the Court took the view that the Polish courts had demonstrated rigidity and had given insufficient consideration to the context and nature of the disputed article. Obliging the applicant to demonstrate the truth of his statements amounted to imposing an unreasonable, if not impossible task. The Court reiterated that a degree of exaggeration, or even provocation, was permitted to the press, which had a duty to comment on matters of public interest. Lastly, although the penalty imposed on the applicant had been a minor one, the important point was that he had been required to apologise publicly for his comments.

### **Mladina D.D. Ljubljana v. Slovenia**

17 April 2014

This case concerned the applicant publisher's complaint that it was ordered by the national courts to pay damages to a parliamentarian for insulting him in an article concerning a parliamentary debate on the legal recognition of same-sex relationships. The article was published in the publisher's magazine in June 2005. The applicant complained, in particular, that the national courts had been unwilling to expose harmful, homophobic stereotypes and had not taken into consideration that the exaggerated, satirical style of the article was a reaction to the parliamentarian's own controversial behaviour.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It pointed out that the limits of acceptable criticism were wider as regards a politician, especially when he himself had made controversial public statements, than as regards a private individual. Both the context in which the publisher's article had been written (an intense political debate) and the style used (matching the parliamentarian's own provocative comments and behaviour) had not been given sufficient consideration by the national courts. The article had not, therefore, been a gratuitous personal attack on the parliamentarian, but a counter-response to the parliamentarian's own public remarks and, in particular, conduct which could be regarded as a ridicule of homosexuals and promoting negative stereotypes. Accordingly, the national courts had failed to strike a fair balance between the competing interests of protecting the reputation or rights of the parliamentarian and the publisher's right to freedom of expression.

**Mustafa Erdoğan and Others v. Turkey**

27 May 2014

See below, under "Teachers and university lecturers".

**Axel Springer AG v. Germany (no.2)**

18 July 2014

This case concerned the publication of an article in the daily newspaper *Bild* repeating suspicions and doubts on the part of the deputy president of the Liberal Democratic Party's (FDP) parliamentary group with regard to the conditions and circumstances preceding former Chancellor Schröder's appointment as chairman of the supervisory board of a German-Russian consortium. The applicant company alleged a violation of its right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that *Bild* had not exceeded the limits of journalist freedom in publishing the disputed passage and that the German courts had failed to establish that there was a pressing social need to put the protection of the reputation of the former Federal Chancellor Gerhard Schröder above the right of the press to freedom of expression. The Court noted, in particular, that the case concerned matters of public interest and that the former Chancellor, having held one of the highest political offices in the Federal Republic of Germany, had a duty to show a much greater degree of tolerance than a private citizen.

**Stankiewicz and Others v. Poland**

14 October 2014

The applicants were two journalists and the publisher of the national daily newspaper where they both worked. The case concerned an article they published in that paper, in which they alleged that a high official of the Ministry of Health was involved in corrupt practices. The applicants complained that the Polish courts' decisions had violated their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding in particular that the Polish judicial authorities had not carried out a careful balancing exercise between the right to impart information and protection of the reputation or rights of others. The reasons relied on by Poland to justify the interference with the applicants' right to freedom of expression, although relevant, were not sufficient to show that that interference was necessary in a democratic society.

**Erla Hlynisdóttir v. Iceland (no. 2)**

21 October 2014

This case concerned the complaint by a journalist of having been found liable for defamation following the publication in 2007 of an article about a high-profile criminal case involving the director of a rehabilitation centre and his wife, who were suspected of sexual abuse.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the Icelandic courts had not based their judgment on relevant and sufficient grounds demonstrating that the applicant had acted in bad faith or without the due diligence. Moreover, they had not balanced her right to freedom of expression as a journalist and the right of the director's wife to her reputation.

### **Haldimann and Others v. Switzerland**

24 February 2015

This case concerned the conviction of four journalists for having recorded and broadcast an interview of a private insurance broker using a hidden camera, as part of a television documentary intended to denounce the misleading advice provided by insurance brokers. The applicants complained that their sentence to payment of fines had amounted to a disproportionate interference in their right to freedom of expression.

In this case, the Court was for the first time called on to examine an application concerning the use of hidden cameras by journalists to provide public information on a subject of general interest, whereby the person filmed was targeted not in any personal capacity but as a representative of a particular professional category. The Court held that, in the applicants' case, there had been a **violation of Article 10** (freedom of expression) of the Convention, considering in particular that the interference in the private life of the broker, who had turned down an opportunity to express his views on the interview in question, had not been serious enough to override the public interest in information on malpractice in the field of insurance brokerage. The Court further also asserted that the applicants deserved the benefit of the doubt in relation to their desire to observe the ethics of journalism as defined by Swiss law, citing the example of their limited use of the hidden camera.

### **Hlynisdottir v. Iceland (no. 3)**

2 June 2015

This case concerned defamation proceedings against the applicant, a journalist, following publication of an article about an ongoing set of criminal proceedings against a man suspected of importing a large quantity of cocaine into Iceland. After the first-instance court had initially found for the applicant, the Supreme Court overturned the judgment. It also ordered her and the publisher to pay the claimant compensation.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It agreed that the Icelandic Supreme Court's reasoning was relevant to the legitimate aim of protecting the rights and reputation of the man suspected of the offence but later acquitted from the charge of importing drugs. However, it found that the reasons relied on by the Supreme Court had not been sufficient to show that the interference with the applicant's rights had been necessary in a democratic society. In particular, it was clear from the article that the proceedings were pending and had not been concluded at the time. Moreover, the impugned statement used the exact wording from the indictment, and there was no reason for the applicant to believe that the indictment was not a source on which she could rely.

### **Morar v. Romania**

7 July 2015

This case concerned the criminal conviction and civil liability of a journalist working for a satirical weekly for defamation against the political adviser to an electoral candidate. The applicant alleged that his freedom of expression had been impeded.

In this case the Court reiterated, in particular, that while Contracting States were permitted, or even obliged, to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputations, they could not do so in a manner that deterred the media and opinion formers from fulfilling their role of alerting the public to questions of general interest – such as the relationships between public figures and the former repressive Romanian regime before 1989. Having regard above all to the importance of the debate on a matter of general interest in the context of

which the impugned comments had been made and to the amount of damages awarded against the applicant, the Court found that the interference with the applicant's freedom of expression had not been justified by relevant and sufficient reasons. It thus found that there had been a **violation of Article 10** (freedom of expression) of the Convention, as the interference could not be regarded as necessary in a democratic society within the meaning of Article 10.

### **De Carolis and France Télévisions v. France**

21 January 2016

This case concerned an accusation of defamation brought by Saudi Prince Turki Al Faisal on account of a documentary on the France 3 television channel concerning complaints lodged by families of the victims of the 11 September 2001 attacks. The first applicant and the journalist who made the documentary were found guilty of public defamation against an individual, Prince Turki Al Faisal, who had joined the proceedings as a "civil party". The TV channel France 3 was declared civilly liable for the damage caused. The applicants complained of a violation of their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding, after a detailed examination, that the way in which the subject was dealt with did not contravene the standards of responsible journalism. As regards the sanctions, the fine to which the first applicant had been sentenced and the civil liability finding against France 3 were a disproportionate interference with their right to freedom of expression which was not necessary in a democratic society. In this case the Court observed in particular that the facts reported had concerned a subject of general interest. It further noted that Prince Turki Al Faisal held an eminent position in the Kingdom of Saudi Arabia and reiterated that the limits of permissible criticism were wider when it came to civil servants acting in a public capacity in the course of their official duties than in the case of ordinary private persons.

### **Bédat v. Switzerland**

29 March 2016 (Grand Chamber)

This case concerned the fining of a journalist for having published documents in breach of the confidentiality of the judicial investigation in criminal proceedings that had been brought against a driver who had been remanded in custody for crashing into a group of pedestrians, killing three and injuring a further eight, before jumping off a bridge.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the penalty imposed on the applicant had been justified. It considered in particular that the publication of an article slanted in the way it had been at a time when the investigation was still ongoing comprised the inherent risk of influencing the conduct of proceedings which had in itself justified the adoption by the domestic authorities of deterrent measures, such as a ban on disclosing confidential information. While accepting that the accused could have had recourse to civil-law remedies to complain of interference in his private life, the Court nevertheless held that the existence in domestic law of remedies to which the accused could have had recourse did not dispense the State from its positive obligation to protect the private life of all persons charged in criminal proceedings. Finally, the Court found that the penalty imposed on the journalist for violation of secrecy, geared to protecting the proper functioning of justice and the accused's rights to a fair trial and respect for his private life, had not amounted to disproportionate interference in the exercise of his right to freedom of expression.

### **Nadtoka v. Russia**

31 May 2016

This case concerned the criminal conviction, for insult, of a journalist and the editor-in-chief (the applicant) of the newspaper in which the offending article – which included the phrase "some thievish man from Altay who had taken up a comfortably high position" to refer to the mayor of Novocherkassk at the relevant time – had been published.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found in particular that the offending article had sought to complain of corruption on the part of the mayor of Novochoerkassk. A subject of that type was a matter of public concern and discussion of it contributed to political debate. With regard to the proceedings, the Court further noted that the domestic courts had not at any stage weighed the right to respect for his reputation of the mayor of Novochoerkassk, who had been targeted by the article, against the right to freedom of expression of the applicant, the editor-in-chief. In the Court's view, that was a problematical omission. The Court pointed out that the authorities had enjoyed only particularly limited room for manoeuvre, and concluded that the interference complained of by the applicant had not been necessary in a democratic society for the protection of the reputation and rights of others.

#### **Dorota Kania v. Poland**

19 July 2016

This case concerned the applicant's conviction on charges of defamation after publishing an article in a national weekly positing that the communist secret police had created the Polish mafia and protected it throughout the 1980s. The article also claimed that State officials, who became members of the police services under the democratic regime post-1989, had continued to protect their former colleagues still involved in the thriving world of organised crime.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's conviction and sentence were not disproportionate to the legitimate aim pursued, namely the protection of the reputation or rights of others. The Polish authorities could therefore reasonably find that the interference with the exercise by the applicant of her right to freedom of expression was necessary in a democratic society in order to protect the reputation and rights of others.

See also: **Dorota Kania v. Poland (no. 2)**, judgment of 4 October 2016<sup>2</sup>.

See also, recently:

#### **Koutsoliontos and Pantazis v. Greece**

22 September 2015

#### **Ziemiński v. Poland (no. 2)**

5 July 2016

#### **Medipress-Sociedade Jornalística, Lda v. Portugal**

30 August 2016

#### **Kunitsyna v. Russia**

13 December 2016<sup>3</sup>

## Judges

### **Pending application**

#### **Ionitǎ v. Romania (no. 30655/09)**

Application communicated to the Romanian Government on 13 April 2012

The applicant, a former judge, complained about the disciplinary action taken against her for having criticised, on television, the Chamber of Notaries of Bacău and its president, a former intelligence agent under the communist regime.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Articles 10 (freedom of expression) of the Convention.

<sup>2</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

<sup>3</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

## Lawyers

### Reznik v. Russia

4 April 2013

This case concerned defamation proceedings against the president of the Moscow City Bar for critical statements on a live TV show about the conduct of male prison warders who had searched the female lawyer representing the prominent businessman Mikhail Khodorkovskiy. The applicant complained that his right to freedom of expression had been disproportionately restricted.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant had not gone beyond the limits of acceptable criticism, that his statement had rested on a sufficient factual basis, and that the Moscow City Court, which had found him liable for defamation, had not based its decision on an acceptable assessment of the relevant facts. In particular, the City Court had failed to perform any balancing exercise between the need to protect the plaintiffs' reputation and the public interest. Furthermore, although the applicant had had to pay only a negligible amount of money in compensation, the institution of defamation proceedings against him had been capable of having a deterrent effect on his freedom of expression.

### Fuchs v. Germany

27 January 2015 (decision on the admissibility)

This case concerned the complaint by a lawyer of criminal and disciplinary sanctions imposed on him for, among other things, defamatory statements against an expert for the prosecution, which the lawyer had made while representing a client.

The Court declared the applicant's complaint under Article 10 (freedom of expression) of the Convention **inadmissible** as being manifestly ill-founded. It noted in particular that the sanctions imposed on the applicant had interfered with his freedom of expression. At the same time, it observed that the sanctions had been prescribed by law – being based on the German Criminal Code and the Code for the legal profession, respectively; and they had pursued the legitimate aim of, in particular, protecting the reputation and rights of the sworn-in expert. Moreover, the Court came to the conclusion that the sanctions had been necessary in a democratic society within the meaning of Article 10 of the Convention.

### Morice v. France

23 April 2015 (Grand Chamber)

This case concerned the conviction of a lawyer, on account of remarks reported in the press, for complicity in defamation of the investigating judges who had been removed from the judicial investigation into the death of Judge Bernard Borrel. The applicant alleged in particular that his conviction for complicity in defamation had breached his right to freedom of expression under Article 10 of the Convention.

It was not in dispute in this case that the applicant's conviction had constituted an interference with the exercise of his right to freedom of expression, as prescribed by law, and with the aim of protecting the reputation or rights of others. The Court however held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the judgment against the applicant for complicity in defamation could be regarded as a disproportionate interference with his right to freedom of expression, and was not therefore necessary in a democratic society "within the meaning of Article 10.

### Peruzzi v. Italy

30 June 2015

This case concerned the criminal conviction of the applicant, a lawyer, for having defamed an investigating judge (Judge X) in the context of proceedings regarding the division of an estate in which he had been acting for two clients. The applicant sent a circular letter to Judge X and other judges of the Lucca District Court containing the text

of a previous letter he had written to the Supreme Council of the Judiciary complaining of Judge X's conduct.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. It found in particular that one of the two criticisms levelled against Judge X by the applicant had implied that the former had disregarded his ethical obligations as a judge or had even committed a criminal offence. However, the applicant had not sought to establish the truth of his allegations of wrongful conduct. The Court considered that his conviction could reasonably be considered necessary in a democratic society in order to protect the reputation of others and maintain the authority and impartiality of the judiciary.

### **Bono v. France**

15 December 2015

This case concerned a disciplinary sanction imposed on the applicant, as lawyer acting for a suspected terrorist, for remarks made in his pleadings before the Court of Appeal. He claimed that the French investigating judges had been complicit in the torture of his client by the Syrian secret services and thus sought the exclusion of statements obtained through the use of torture. The applicant complained about the disciplinary sanction imposed on him

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the remarks in question, as they were so harsh, clearly showed some contempt for the investigating judges. However, they did not refer to the judges personally but concerned the manner in which they had carried out the investigation. The written submissions, which had a factual basis, contributed directly to the defence of the applicant's client and did not leave the courtroom. As the applicant had already been summoned to show moderation, during the hearing in the Paris Court of Appeal, the Court found that the disciplinary sanction was not proportionate. In this case the Court also recalled that, while it was for judicial and disciplinary authorities, in the interest of the proper functioning of the justice system, to penalise certain conduct by lawyers, those authorities had to ensure that such scrutiny did not have a chilling effect that would hinder them in defending their clients' interests.

### **Rodriguez Ravelo v. Spain**

12 January 2016

This case concerned expressions used by a lawyer in a written application containing value judgments regarding a judge and attributing blameworthy conduct to her. The applicant complained about his conviction and sentence on the grounds that these were a disproportionate interference in the exercise of his right to express himself freely in the context of his professional duties.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. Admittedly, the applicant's conviction and sentence had been prescribed by law and the interference in the exercise of his right to freedom of expression had pursued the legitimate aim of protecting the reputation and rights of the district judge and maintaining the authority and impartiality of the judiciary. However, the Court found that the applicant's criminal conviction was capable of having a chilling effect on lawyers called upon to defend their clients. The Spanish criminal courts had therefore failed to strike a fair balance between the need to maintain the authority of the judiciary and the need to protect freedom of expression. The sentence imposed on the lawyer had therefore not been proportionate to the legitimate aim pursued and accordingly had not been necessary in a democratic society.

## Political figures

### **Keller v. Hungary**

4 April 2006 (decision on the admissibility)

This case concerned the conviction of the applicant, a Member of Parliament, for accusing a minister of neglecting his duties out of loyalty towards his father. At a

parliamentary session, while questioning the Prime Minister, the applicant had alleged that failure to investigate a matter of national security, namely the practices of extreme right-wing groups, might have been due to the fact that the responsible Minister's father was a member of an extreme right-wing movement related to Nazis.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the interference with the applicant's exercise of his right to freedom of expression could reasonably be regarded by the Hungarian authorities as necessary in a democratic society for the protection of the reputation and rights of others. It recalled in particular that the protection of the reputation of others provided for by Article 10 § 2 of the Convention extended to politicians too, a fortiori to a situation where a politician was criticised by another one, especially if that criticism was voiced in the privileged arena of Parliament. However, the applicant had not limited himself to attacking his opponent in Parliament. The identity of the applicant's target had only become clear afterwards, with his further explanation in a television broadcast. Such public insinuations no longer benefited from the privilege afforded to parliamentary debate. Moreover, the applicant had been sued before the civil courts (rather than the criminal courts) and had been ordered to arrange for a rectification in the press and to pay damages in an amount which was less than twice the gross monthly salary to which he had been entitled at the time. The Court did not find those sanctions excessive in the circumstances of the case.

See also, recently:

**Kurski v. Poland**

5 July 2016

## Private persons

**Kanellopoulou v. Greece**

11 October 2007

The applicant in this case complained, inter alia, of her criminal conviction for defamation of a plastic surgeon after statements she had made to the press about the "horrible disfigurement of her body" following surgical operations, including mammoplasty and mastectomy, which had left her with serious after-effects.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the restriction of the applicant's right to freedom of expression had not been reasonably proportionate to the legitimate aim pursued. Publication of the articles in question might admittedly have had an adverse effect on the doctor's professional image, but the interest in protecting his reputation had not been sufficient to justify a custodial sentence while an action for damages was still pending. Furthermore, the applicant's statements contained nothing to suggest bad faith on her part. In this regard it was important not to confuse the intentions of the applicant with those of the sensationalist press, which had taken an interest in the case in particular because the doctor was well known. Yet this seemed to be what had happened before the Greek courts, which had failed to place the applicant's remarks in the particular context of the case, or to take proper account of the distress felt by the applicant when she had made the statements.

**Tešić v. Serbia**

11 February 2014

In 2006 the applicant, a pensioner suffering from various illnesses, was found guilty of defaming her lawyer. In July 2009 the Municipal Court issued an enforcement order requiring two thirds of the applicant's pension to be transferred to the lawyer's bank account each month, until the sums awarded had been paid in full. The applicant complained of the defamation judgment in the civil proceedings, and of the way the compensation payment had been enforced. She stated in particular that the enforcement had caused her extreme financial hardship.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that, while the impugned measures had been prescribed by law and had been adopted in pursuit of a legitimate aim, namely for the protection of the reputation of another, this interference with the applicant's right to freedom of expression had not been necessary in a democratic society. The Court noted in particular that it could not be said that the applicant's statement in respect of her former counsel was merely a gratuitous personal attack. After all, the police had clearly seen some merit in the allegations. Moreover, the Serbian Government's assertion that a discussion of a practising lawyer's professional conduct was clearly of no public interest was in itself dubious, particularly bearing in mind the role of lawyers in the proper administration of justice.

## Public servants

### Poyraz v. Turkey

7 December 2010

This case concerned the civil judgment against the applicant for defamation on the basis of a report which he had compiled as chief inspector of the Ministry of Justice and which had been leaked to the press, concerning allegations of professional misconduct on the part of a senior judge. The applicant complained in particular that the judgment against him had constituted unjustified and disproportionate interference with his right to freedom of expression.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the authorities' interference with the applicant's freedom of expression had been necessary in a democratic society and that the means employed had been proportionate to the aim pursued, namely the protection of the reputation or rights of others. The Court stated in particular that people vested with public responsibilities, who were in a privileged position in terms of media access, had to exercise restraint in order not to create situations of inequality when they made public statements concerning ordinary citizens, whose access to the media was more limited. Furthermore, increased vigilance was required of civil servants in charge of investigations involving information covered by an official secrecy clause designed to ensure the proper administration of justice.

## Teachers and university lecturers

### Boldea v. Romania

15 February 2007

The applicant was a university lecturer. At a meeting of the teaching staff in his department during which it emerged that there was general dissatisfaction with regard to the publications produced within the department, the Dean of the faculty raised the subject of alleged plagiarism in scientific publications. The applicant was the only participant who considered unreservedly that the publications of two authors amounted to plagiarism. The authors of the theses brought proceedings for defamation and the applicant was sentenced to pay an administrative fine. He maintained in particular that his penalty for defamation had infringed his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the national authorities had not given relevant and sufficient reasons to justify ordering the applicant to pay an administrative fine and pay the complainants' costs, and that the fine imposed on him had therefore not met a pressing social need. The Court noted in particular that the applicant's allegations had been serious in that he had accused two colleagues of plagiarism, but had had a factual basis. Moreover, the statements in question had not concerned aspects of his colleagues' private life but conduct relating to their capacity as academics.

### **Sorguç v. Turkey**

23 June 2009

This case concerned the award of damages against the applicant, a university professor, for allegedly denigrating a colleague in one of his academic papers in which he criticised procedures for recruiting and promoting assistant lecturers. The latter had brought civil proceedings for compensation against the applicant claiming that certain comments used in that paper represented an attack on his reputation. The applicant complained of the domestic courts' decisions which found him guilty of defamation.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the Turkish authorities had failed to strike a fair balance between the relevant interests. In particular, without addressing the applicant's arguments, the domestic courts had concluded that the impugned statements had constituted an attack on the plaintiff's reputation. Further, they had not explained why the reputation of the plaintiff, whose name had not even been mentioned in the paper, had outweighed the applicant's freedom of expression. In this judgment the Court also underlined the importance of academic freedom, and in particular the freedom of academics to express freely their opinion about the institution or system in which they worked and their freedom to disseminate knowledge and truth without restriction.

### **Mustafa Erdoğan and Others v. Turkey**

27 May 2014

This case concerned the complaint by a law professor, editor and publisher that they were ordered by the Turkish courts to pay damages to three judges of the Constitutional Court for insulting them in a journal article which reported on a decision dissolving a political party. The article was published in a quarterly law journal in 2001. The applicants complained that the national courts' decisions against them were in violation of their right to the freedom of expression, in particular because their criticisms of the judges had a basis in fact, were in conformity with the law, and fell within the bounds of acceptable criticism of judges in a democratic society.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It stated in particular that members of the judiciary acting in an official capacity should expect to be subject to wider limits of acceptable criticism than ordinary citizens. Both the context (a virulent public debate on the Constitutional Court's rulings) in which the article had been written and the form (a quasi-academic journal, not a popular newspaper) used had not been given sufficient consideration by the national courts in the defamation proceedings against the applicants. The Court underlined the importance of academic freedom and, in particular, academics' ability to freely express their views, even if controversial or unpopular, in the areas of their research, professional expertise and competence. As to the content of the article, whilst some of the remarks made were harsh they were largely value judgments, set out in general terms, with sufficient factual basis. They could not be considered gratuitous personal attacks on the three judges. Accordingly, the Court determined that the reasons given, namely the judges' right to be protected against personal insult, to justify interfering in the applicants' right to voice criticism on a topic of general interest were not sufficient to show that that interference had been necessary in a democratic society.

### **Kharlamov v. Russia**

8 October 2015

This case concerned a civil action in defamation brought against the applicant, a university professor, by his employer, Orel State Technical University, after he expressed the view that the University's governing body could not be considered legitimate due to shortcomings in the election procedure. The applicant complained that the defamation proceedings brought against him had breached his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that the Russian courts, in their decisions against the applicant, had notably failed to take into account the specific features of academic

relations. In particular, the protection of a university's authority or reputation under the Convention could not be equated to that of an individual's. Focusing their attention entirely on the applicant's description of the elected senate as illegitimate, the Russian courts had therefore failed to strike a fair balance between the need to protect the University's reputation and the applicant's freedom to express his opinion on the organisation of academic life.

See *also*, recently:

**Aurelian Oprea v. Romania**

19 January 2016

**Do Carmo de Portugal e Castro Câmara v. Portugal**

4 October 2016

## Trade unionists

**Palomo Sánchez and Others v. Spain**

12 September 2011 (Grand Chamber)

This case concerned the dismissal of a group of trade unionists after the union's newsletter had published a cartoon and articles considered to be insulting to two other employees and a manager.

The Court held that there had been **no violation of Article 10** (freedom of expression) read in the light of Article 11 (freedom of assembly and association). of the Convention, finding that the applicants' dismissal had not been a manifestly disproportionate or excessive sanction requiring the State to afford redress by annulling it or replacing it with a more lenient measure. The Court saw in particular no reason to call into question the Spanish courts' findings that the content of the newsletter had been offensive and capable of harming the reputation of others. It stressed that a clear distinction had to be made between criticism and insult and that the latter might, in principle, justify sanctions. Accordingly, the grounds given by the domestic courts had been consistent with the legitimate aim of protecting the reputation of the individuals targeted by the cartoon and articles in question, and the conclusion that the applicants had overstepped the limits of admissible criticism in labour relations could not be regarded as unfounded or devoid of a reasonable basis in fact.

**Vellutini and Michel v. France**

6 October 2011

This case concerned the conviction for public defamation of trade-union leaders for strident criticism of their mayor employer.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference with the applicants' right to freedom of expression, in their capacity as trade union officials, had not been necessary in a democratic society. Observing in particular that, in their capacity as representatives of a trade union, the applicants had nevertheless been obliged to ensure that their remarks fell within the limits of the right to freedom of expression, namely by giving consideration to the interest of the protection of the reputation and rights of others, the Court noted that the mayor, who had been identifiable from the leaflet at issue, had not however been mentioned by name. He had simply been criticised in connection with his duties, and no allegations of a private nature had been made against him. The Court reiterated in this regard that the limits of acceptable criticism were wider as regards a politician than as regards a private individual. Politicians inevitably and knowingly laid themselves open to close scrutiny of their every word and deed by both journalists and the public at large, and they consequently had to display a greater degree of tolerance towards criticism.

## Right to protection of reputation as an aspect of the right to respect for private life

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### Historical figures

#### Dzhugashvili v. Russia

9 December 2014 (decision on the admissibility)

This case concerned articles published by the *Novaya Gazeta* newspaper about the shooting of Polish prisoners of war in Katyń in 1940 and the role which the former Soviet leaders had allegedly played in the tragedy. The applicant, the grandson of the former Soviet leader, Joseph Stalin, sued the newspaper for defamation of his grandfather, without success. Before the Court, he complained in particular that the District Court of Moscow had failed to protect his well-known ancestor from attacks on his reputation.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the national courts had struck a fair balance between the applicant's privacy rights and journalistic freedom of expression. Reaffirming the principle that publications concerning the reputation of a deceased member of a person's family might, in certain circumstances, affect that person's private life and identity and thus come within the scope of Article 8 (right to respect for private life) of the Convention, the Court however distinguished between defamation of a private individual, whose reputation as part and parcel of their families' reputation remains within the scope of Article 8, and legitimate criticism of public figures who expose themselves to outside scrutiny. In the present case, it found, in particular, that the *Novaya Gazeta* articles concerned an event of significant historical importance and that both the event and historical figures involved, such as the applicant's grandfather, inevitably remain open to public scrutiny and criticism. It also found that the Russian courts, taking into account the European Court's case law, had carefully balanced the competing interests of journalistic expression and the applicant's right to respect for his private life and that of his grandfather.

### Persons arrested or under criminal prosecution

#### White v. Sweden

19 September 2006

The applicant – a well-known figure whose alleged illegal activities had already been the focus of media attention – complained that the Swedish courts had failed to provide due protection for his name and reputation following the publication, by two main evening newspapers in Sweden, of a series of articles in which the applicant was accused of various criminal offences, including the murder of the Swedish Prime Minister ten years before.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It noted in particular that, in the series of articles, the newspapers had endeavoured to present an account of the various allegations made which was as balanced as possible and that the journalists had acted in good faith. It also considered that the Swedish courts had made a thorough examination of the case and balanced the opposing interests involved. In the present case, the Court found that the domestic courts had been justified in finding that the public interest in publishing the information in question outweighed the applicant's right to the protection of his reputation. Consequently, there had been no failure on the part of the Swedish State to afford adequate protection of the applicant's rights.

#### A. v. Norway (no. 28070/06)

9 April 2009

This case concerned the applicant's complaint about the unfavourable outcome of a defamation suit he had brought against a newspaper, following their publication of news coverage about the preliminary investigations into the rape and murder of two young

girls (the so-called *Baneheia* case) in 2000 and which implicated him. The applicant was questioned about the murders but released after 10 hours; two other men were subsequently convicted of the crimes.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Norwegian courts had failed to strike a fair balance between the newspaper's freedom of expression and the applicant's right to respect for his private life. The Court considered in particular that the news report had wrongly conveyed the idea that there had been facts pointing to the applicant as a suspect. While it had been undisputed that the press had the right to deliver information to the public, and the public had the right to receive such information, these considerations did not justify the defamatory allegations against the applicant and the consequent harm done to him. Indeed, the applicant had been persecuted by journalists in order to obtain his pictures and interviews, and in particular during a period in his life when he had been undergoing rehabilitation and reintegration into society. As a result of the journalistic reports, he had found himself unable to continue his work, had to leave his home and had been driven into social exclusion. The publications in question had therefore gravely damaged the applicant's reputation and honour and had been especially harmful to his moral and psychological integrity and to his private life.

## Private persons

### Sanchez Cardenas v. Norway

4 October 2007

In 1995 the applicant separated from the mother of his two sons. In June 1997 a dispute arose concerning access to his children following allegations made by the mother to the police which accused the applicant of having sexually abused one of the children. The investigation into those allegations was discontinued in 1998. The applicant complained about the unfairness of a High Court judgment in 2002 to refuse his right of access to his children, alleging in particular that a passage from the judgment amounted to an affirmation of suspicion that he had abused his son. He further claimed that, having been labelled a sexual abuser, he was suffering from anxiety and depression, as corroborated by medical reports.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that that the impugned passage from the High Court judgment had not been sufficiently justified in the circumstances and had been disproportionate to the aims pursued. It was in particular not apparent why the High Court had mentioned that abuse might have occurred, thus confirming a suspicion of its own that the applicant had committed a serious crime, but had decided not to go any further into the matter. In the Court's opinion, that court should either have dealt with the issue of sexual abuse fully (i.e. by examining evidence and coming to a reasoned conclusion) or left it to one side. Such an authoritative judicial decision concerning his conduct had stigmatised the applicant, had had a major impact on his honour and reputation and prejudiced his private and family life.

### Polanco Torres and Movilla Polanco v. Spain

21 September 2010

The applicants were respectively the wife and daughter of a senior judge who died in 1998. The case concerned an article published in the national daily newspaper *El Mundo* in 1994 accusing the first applicant, on basis of remarks by a former accountant, of involvement in improper dealings with a company. The applicants alleged that in finding in favour of *El Mundo* the Spanish courts had infringed their honour and good reputation. The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the Spanish Constitutional Court had put forward sufficient grounds in finding that the national newspaper's right to impart information had to be given more weight than the applicants' right to the protection of their reputation and that, accordingly, there was no reason to conclude, in the balancing

of the competing interests, that the Constitutional Court had overstepped its margin of appreciation. The Court observed in particular that impugned article had the characteristics of a neutral report, containing on the one hand the statements of the former accountant and on the other a denial by the judge's wife. In addition, the publication of an article could not be prevented simply because the persons concerned denied the allegations therein. Furthermore, it had been reasonable for the journalist to rely on the sources at his disposal and he had taken sufficient measures to verify the allegations contained in his article.

### **Mikolajová v. Slovakia**

18 January 2011

In 2000 the applicant's husband filed a complaint with the police alleging that she had beaten and wounded him. The case was, however, later dropped as he did not agree to criminal proceedings being brought against her. The applicant complained about the ensuing decision issued by the police stating that, although the investigation showed that she had committed a criminal offence, criminal prosecution was barred since the victim did not consent to it. She discovered that decision a year and a half later, when a health insurance company referred to it in its request for her to reimburse the costs of her husband's medical treatment following the injuries she had inflicted on him.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Slovakian authorities had failed to strike a fair balance between the applicant's Article 8 rights and any interests relied on by the Government to justify the terms of the police decision and its disclosure to a third party. The Court observed in particular that the police decision had been formulated as a statement of fact thus indicating that the police considered the applicant guilty of the alleged offence. Even though she had never been charged with a criminal offence, the applicant was nonetheless placed on record as a criminal offender possibly for an indefinite period, which must have caused damage to her reputation. Moreover, the Court could not but note the lack of any procedural safeguards in that the applicant had no available recourse to obtain a subsequent retraction or clarification of the impugned police decision.

### **Ageyevy v. Russia**

18 April 2013

In 2008 the applicants, a married couple, adopted two small children (a boy and a girl). Following an incident in March 2009 in which the boy was badly burnt at home and had to go to hospital for treatment, the authorities took the children into care as they suspected abuse. The mother complained in particular that the Russian courts had failed to protect her reputation in defamation proceedings she had instituted in respect of media reports describing her alleged ill-treatment of her son.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention on account of the Russian courts' failure to protect the mother's right to reputation in the defamation proceedings against the media company concerned, as it was not convinced that the reasons advanced by the courts regarding the protection of the freedom of expression of the media company had outweighed the mother's rights to have her reputation and right to the presumption of innocence safeguarded. It was in particular not evident that the domestic courts in the defamation proceedings had attached any importance to the right to the presumption of innocence. Nor had they examined closely whether the journalists had acted in good faith and had provided reliable and precise information in accordance with the ethics of journalism. Moreover, even though nothing in the case-file suggested that the journalists had not been acting in good faith, they had obviously failed to take the necessary steps to report the incident in an objective and rigorous manner, trying instead either to exaggerate or oversimplify the underlying reality.

### **Popovski v. “The former Yugoslav Republic of Macedonia”**

31 October 2013

This case concerned an article about the applicant published in a daily newspaper, suggesting that he had stolen a tractor, and the subsequent proceedings for defamation. The applicant complained in particular that by not ensuring the attendance at trial of the individuals that he claimed had defamed him the national courts had failed to protect his reputation, which had been considerably damaged by the article in question.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the manner in which the criminal-law mechanism had been implemented in the applicant’s case had been defective to the point of constituting a breach of the respondent State’s positive obligations arising under Article 8 to ensure effective respect for the applicant’s private life, in particular his right to respect for his reputation.

### **Putistin v. Ukraine**

21 November 2013

This case concerned an article written about the legendary “Death Match” between Ukrainian footballers and members of the German Luftwaffe in 1942 in Kyiv. The applicant alleged that the article discredited his father, who had played in the game, as it suggested that he had been a collaborator. He claimed that, by rejecting his requests for the article to be rectified, the Ukrainian courts had failed to protect his and his family’s reputation.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the Ukrainian courts had struck a fair balance between the applicant’s right to respect for his private life, and the right of the newspaper and journalist to freedom of expression. The Court observed in particular that courts might sometimes be required to protect the reputation of the deceased. It further accepted that the reputation of a deceased member of a person’s family might affect that person’s private life and identity, and thus came within the scope of Article 8. However, in this case the applicant was only remotely affected by the publication, because it did not mention his father’s name at all and did not directly make the allegation that his father had been a collaborator.

### **Jelševar and Others v. Slovenia**

11 March 2014 (decision on the admissibility)

The case concerned the four applicants’ complaint that their reputation had been affected owing to the publication of a book depicting the life of a fictional character whose story had been inspired by their late mother. They complained in particular that the Constitutional Court had failed to strike a fair balance between their own right to respect for their private and family life and the author of the novel’s right to freedom of expression.

The Court declared the application **inadmissible** under Article 8 (right to respect for private life) of the Convention, as being manifestly ill-founded, finding that the applicants’ reputation had not been seriously affected in the present case. It considered in particular that the Slovenian courts’ approach – consisting in assessing whether the story would have been perceived as either real or offensive by an average reader – had been reasonable and consistent with its own case-law. Therefore, it concluded that a fair balance had been struck between the competing interests at stake, namely the applicants’ right to respect for private and family life and the author’s right to freedom of expression.

### **Sõro v. Estonia**

3 September 2015

This case concerned the applicant’s complaint about the fact that information about his employment during the Soviet era as a driver for the Committee for State Security of the USSR (the KGB) had been published in the Estonian State Gazette in 2004.

The Court held that there had been **violation of Article 8** (right to respect of private life) of the Convention. It observed in particular that the publication of information about the applicant's employment as a driver of the KGB had affected his reputation and therefore constituted an interference with his right to respect for his private life. The interference – which had been based on the Disclosure Act – was admittedly lawful and had pursued a legitimate aim for the purpose of Article 8, namely the protection of national security and public safety, the prevention of disorder and the protection of the rights and freedoms of others. The Court however found that in the applicant's case the measure had been disproportionate to the aims sought. In this regard, it noted in particular that, under the relevant national legislation, information about all employees of the former security services – including drivers, as in the applicant's case – was published, regardless of the specific function they had performed. In the present case, although the Disclosure Act itself did not impose any restrictions on the applicant's employment, according to his submissions he had been derided by his colleagues and had been forced to quit his job. Even if such a result was not sought by the Act it nevertheless testified to how serious the interference with the applicant's right to respect for his private life had been.

## Professionals

### **Businessmen**

#### **Pipi v. Turkey**

12 May 2009 (decision on admissibility)

The applicant in this case, a businessman, complained about a press article and a television programme which impugned his reputation. He alleged in particular that the imparting of the information in question had unjustifiably interfered with his right to respect for his private life, especially as the comments did not reflect reality and did not present any interest for public opinion.

The Court declared the application **inadmissible** as being manifestly ill-founded. As regards the impugned article and programme, it observed in particular that they had imparted a series of speculations based on a judicial event, presented in the manner of a rumour, which was typical of the media in question, but that the information did not concern purely personal details of the applicant's life and was not the result of an intolerable and continuous intrusion therein. Such information could not therefore have constituted, for the applicant's private life, an interference of such seriousness that his personal integrity was undermined, and only his reputation could have been affected. Examining the position taken by the Turkish courts on that point, the Court found that there was nothing to suggest that they had exceeded their margin of appreciation when they nuanced the weight of the applicant's right to the protection of his private life, within the meaning of Article 8 (right to respect for private and family life) of the Convention, when placed in the balance against the competing interests of the media in question, in the light of Article 10 (freedom of expression) of the Convention.

### **Journalists**

#### **Pfeifer v. Austria**

15 November 2007

Chief editor of the official magazine of the Vienna Jewish community, the applicant published a commentary criticising in harsh terms a professor who had written an article alleging that the Jews had declared war on Germany in 1933 and which trivialised the crimes of the Nazi regime. Proceedings were brought against the professor, who committed suicide shortly before the date scheduled for his trial. The applicant alleged that the Austrian courts had failed to protect his reputation against defamatory statements made by the chief editor of another magazine, who had stated, in particular, that the applicant and others had hunted the professor to his death.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, as it was not convinced that the reasons advanced by the

Austrian courts for protecting freedom of expression outweighed the applicant's right to protection of his reputation. It observed in particular that, even in the context of a public debate, a person's reputation formed part of his or her personal identity and psychological integrity and so fell within the scope of his or her "private life". The domestic courts had considered the impugned statement to be a value judgement with a sufficient factual basis to avoid being defamatory. The Court was not convinced by that assessment, as the statement clearly established a causal link between the applicant's actions and the professor's suicide. Such a link was not a matter of speculation, but a fact susceptible of proof and no evidence of its existence had been offered. Further, while it was true that even statements that shocked or offended were protected by the right to freedom of expression, the statement here had overstepped acceptable limits by accusing the applicant of acts tantamount to criminal behaviour in that it was alleged that he had ultimately driven the professor to suicide.

### **Sipoș v. Romania**

3 May 2011

This case concerned a press release published by the management of the Romanian State TV channel, after removing the applicant from a programme that she produced and presented. She claimed that the press release had infringed her right to her reputation and should have been condemned by the Romanian courts.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the assertions complained of by the applicant had overstepped the acceptable limit and that the Romanian courts had not struck a fair balance between the protection of her right to her reputation and the freedom of expression protected by Article 10 of the Convention.

### **Judges**

### **Özpınar v. Turkey**

19 October 2010

The applicant was removed from office as a judge by a decision of the Supreme Council of the Judiciary following a disciplinary investigation concerning, among other subjects, her alleged close relationships with several men, her appearance and her repeated lateness for work. The applicant alleged in particular that she had been dismissed on the basis of rumours and accusations impugning her honour and reputation.

The Court observed that the decision to remove the applicant from office was directly related to her conduct, both professionally and in private. Moreover, her reputation had been impugned. There had therefore been an interference with her right to respect for her private life and it could be said to have had a legitimate aim, in relation to the duty of judges to exercise restraint in order to preserve their independence and the authority of their decisions. Finding that in the present case the interference with the applicant's private life had not been proportionate to the legitimate aim pursued, the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. Admittedly, the Court noted, the ethical obligations of judges might encroach upon their private life when their conduct tarnished the image or reputation of the judiciary. However, the applicant nevertheless remained a private person entitled to Article 8 protection and, even if certain aspects of the conduct attributed to her might have warranted her removal, the investigation had not substantiated those accusations and had taken into account numerous actions that were unrelated to her professional activity.

### **Oleksandr Volkov v. Ukraine**

9 January 2013

This case concerned the dismissal of a Supreme Court Judge. The applicant complained in particular that his dismissal from the post of judge had been an interference with his private and professional life.

The Court observed in particular that the dismissal of the applicant from the post of judge had affected a wide range of his relationships with other persons, including relationships of a professional nature. Likewise, it had an impact on his “inner circle” as the loss of his job must have had tangible consequences for the material well-being of the applicant and his family. Moreover, the reason for the applicant’s dismissal, namely breach of the judicial oath, suggested that his professional reputation was affected. It followed that the applicant’s dismissal had constituted an interference with his right to respect for private life within the meaning of Article 8 (right to respect for private life) of the Convention. In the applicant’s case, the Court held that there had been a **violation of Article 8**, finding that the interference with his right to respect for his private life had not been lawful: the interference had not been compatible with domestic law and, moreover, the applicable domestic law had failed to satisfy the requirements of foreseeability and provision of appropriate protection against arbitrariness.

### **Lawyers**

#### **Wegrzynowski and Smolczewski v. Poland**

16 July 2013

This case concerned the complaint by two lawyers that a newspaper article damaging to their reputation – which the Polish courts, in previous libel proceedings, had found to be based on insufficient information and in breach of their rights – remained accessible to the public on the newspaper’s website.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention as regards the second applicant, finding that the Polish courts had struck a fair balance between the public’s right to access to information on the one hand and the applicant’s right to have his reputation protected on the other. It considered in particular that completely removing the contested article from the newspaper’s archive would have been disproportionate; at the same time, the applicant had not requested for a reference to the judgments in his favour to be added to the article online.

The Court further declared the first applicant’s complaint **inadmissible**, as he had failed to lodge his complaint within the required time-limit, six months after the last decision of the Polish courts.

### **Police officers**

#### **Kyriakides v. Cyprus and Taliadorou and Stylianou v. Cyprus**

16 October 2008

The applicants were pensioners of the Cyprus police, within which they had the rank of superior officer. The cases concerned the annulment by the Cypriot Supreme Court of compensation for damage caused to their integrity and reputation by allegations of torture. The applicants, who had been dismissed from the police force by a decision which had been widely reported in the press, were subsequently reinstated in their former posts.

In both cases the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. While it was not the Court’s role to interpret the Constitutional provision under which the applicants had sought compensation for the injury to their integrity and reputation, the Court found that the Cypriot Supreme Court had failed to provide an adequate explanation for the reversal of the award of moral damages and noted that the absence of a comprehensive assessment as regards a matter affecting the applicants’ Article 8 rights was not consonant with an acceptable margin of appreciation. There had therefore been a breach of the State’s procedural obligations in the present case.

### **Teachers and university lecturers**

#### **Ion Cârstea v. Romania**

28 October 2014

This case concerned the publication in a local newspaper of an article about the applicant, a university professor, which described in detail an incident in his sex life 19 years before and accusing him of bribery, blackmail, child sex abuse and sexual deviance. The applicant alleged that the domestic courts had failed to protect his reputation following the publication of the article and accompanying pictures. He notably submitted that the courts had failed, when assessing his complaint, to verify the truthfulness of the facts contained in the article.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Romanian courts had not carefully balanced the journalist's right to freedom of expression against the applicant's right to respect for his private life. In particular there could be little doubt that the disputed article and accompanying photographs had seriously prejudiced the applicant's honour and reputation and had been harmful to his psychological integrity and private life. The Court was further not convinced that the national courts had attached the required importance to the questions whether the article had contributed to a debate of general interest and whether the applicant should have been regarded as a public figure.

### Public or political figures

#### **Petrina v. Romania**

14 October 2008

The applicant, a politician, was alleged to have been a Securitate agent in a television programme on a bill relating to access to information stored in the archives of the former State security services ("the Securitate") and two subsequent articles in a humorous magazine. He lodged two criminal complaints against the journalists concerned for insulting remarks and defamation. Following the journalists' acquittal by the domestic courts, the applicant complained that his right to respect for his honour and his good name had been violated.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, as it was not satisfied that the reasons given by the Romanian courts for protecting freedom of expression were sufficient to take precedence over the applicant's reputation. They had accordingly failed to strike a fair balance between the competing interests at stake. The Court noted in particular that, despite the satirical character of the magazine, the articles in question had been liable to offend the applicant, as there was no evidence that he had ever belonged to the Securitate. Moreover, the impugned remarks made accusations that directly concerned the applicant in his personal, not professional, capacity. Accordingly, this was not a case of journalists indulging in the measure of exaggeration or provocation they were allowed in the context of press freedom. Furthermore, in the Court's view, the journalists' allegations had overstepped the bounds of the acceptable, accusing the applicant of having belonged to a group that used repression and terror to serve the old regime as a political police instrument. In addition, there had been no legislative framework at the relevant time allowing the public access to Securitate files, a state of affairs for which the applicant could not be held responsible.

#### **Karakó v. Hungary**

28 April 2009

A Member of Parliament, the applicant complained of the Hungarian authorities' failure to protect his right to private life by refusing to act upon his criminal complaint against another politician who, during the 2002 parliamentary elections, had distributed a flyer containing criticism of the applicant's conduct as regards major decisions in his county.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the negative remarks at issue, made against

the applicant by another politician, were compatible with domestic law and the Convention. The applicant had failed to establish that the publication which had allegedly tarnished his reputation had caused such serious damage to his private life that his personal integrity had been undermined. His reputation alone was at stake. If the domestic courts had imposed a sanction on the politician in question for the remarks made in his leaflet they would have unduly restricted his freedom of expression, thus leading to a breach of his rights under Article 10 (freedom of expression) of the Convention.

### **Petrenco v. the Republic of Moldova**

30 March 2010

At the time of the events, the applicant was the Chairman of the Association of Historians of the Republic of Moldova and a university professor. He complained that his reputation was damaged as a result of the publication, in April 2002, of statements in the official newspaper of the Moldovan Government, implying that he had collaborated with the KGB.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the reasons advanced by the Moldovan tribunals to protect the right to freedom of expression of the newspaper and the author of the impugned article were insufficient to outweigh the applicant's right to respect for his reputation. The Court observed in particular that the article had been published in the context of a lively debate of significant public interest and that the applicant, who was a public figure, had had to tolerate higher public scrutiny and criticism than had he been a private citizen. Therefore the general tone of the article and the insulting language had not in themselves breached the applicant's right to respect for his reputation. However, by implying that the applicant had collaborated with the KGB as though it had been an established fact when it had been a mere speculation on the part of the author, the article had overstepped the limits of acceptable comments in the context of a debate of a general interest.

### **Hoon v. the United Kingdom**

13 November 2014 (decision on the admissibility)

This case concerned the investigation by parliamentary authorities into the applicant, a former government minister, after he had been involved in an undercover "sting" operation by a journalist posing as a prospective business associate. During the sting operation the applicant was recorded as stating that he was willing to use knowledge and contacts gained during his period as a minister and as a special advisor to the Secretary General of NATO for financial reward. Details were subsequently published by a newspaper and broadcast in a television documentary. Following a formal complaint by an opposition member of parliament, the Parliamentary Commissioner for Standards issued a report in which he found that the applicant had breached the Code of Conduct for Members of Parliament and brought Parliament into disrepute. The applicant complained in particular about the widely publicised decisions of the Commissioner against him as approved by the Standards and Privileges Committee and the House of Commons.

The Court declared the application **inadmissible**. As regards the applicant's complaint under Article 8 (right to respect for private life) of the Convention, it was satisfied that the interference with the applicant's private life, that is the damage caused to his reputation by the investigation and report, had been proportionate to the interests of the public in being aware of such proceedings and their outcome. In particular the Court noted in this case that the reduced level of legal protection of the right to reputation resulting from the rule of parliamentary immunity under British law was consistent with and reflected generally recognised rules within Contracting States, the Council of Europe and the European Union and could not in principle be regarded as a disproportionate restriction on the right to respect for private life. In any event, the facts relative to the interference were already in the public domain as a result of the newspaper article and

the television programme and the applicant could have challenged the factual allegation by bringing proceedings against the newspaper or the broadcaster. The Court also rejected the applicant's complaint under Article 6 (right to a fair trial) of the Convention, finding that the parliamentary proceedings in question did not attract the application of the right to a fair hearing because they did not determine or give rise to a dispute as to the applicant's civil rights.

### **Rubio Dosamantes v. Spain**

21 February 2017<sup>4</sup>

The applicant, a Mexican pop singer who is very well known in Spain under the name of Paulina Rubio, complained of remarks made during various television programmes on her private life. She submitted that her reputation and private life had been harmed by these remarks.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that, having regard to the margin of appreciation afforded to the authorities when it came to weighing up the various interests, they had failed in their positive obligations to ensure the protection of the applicant's privacy. The Court noted in particular that the applicant's fame as a singer did not mean that her activities or conduct in her private life should be regarded as necessarily falling within the public interest. The fact that she could have benefitted from media attention did not authorise TV channels to broadcast unchecked comments about her private life. In this judgment the Court also reiterated that certain events of private and family life were given particularly careful protection under Article 8 of the Convention, meaning that journalists had to show prudence and precaution when talking about them. Thus the spreading of unverified rumours or the limitless broadcasting of random comments on any possible aspect of a person's daily life could not be seen as harmless. Lastly, the Court found that the national authorities should have assessed the TV programmes in question, to distinguish between and to weigh in the balance those matters which were intimately part of the applicant's private life and those which might have had a legitimate public interest.

### **Pending application**

#### **Mas Gavarró v. Spain (no. 26111/15)**

Application communicated to the Spanish Government on 14 December 2015

This case concerns the publication of a number of articles in *El Mundo* which, according to the applicant, who was President of the Government of the Autonomous Community of Catalunya (*Generalitat de Catalunya*) at the time, infringed his right to reputation.

The Court gave notice of the application and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

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<sup>4</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).