

## European Court of Human Rights judgments on the right to freedom of expression

### Bulletin XLVI: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: November 2014

8 December 2014

---

The European Court of Human Rights decided the following freedom of expression cases during November 2014 and the last few days of October (one October judgment was omitted from the previous bulletin):

- **Ion Cârstea v. Romania** (application no. 20531/06), 28 October 2014: publication of intimate details of sex life and allegations of criminal activity violated right to respect for reputation
- **Braun v. Poland** (application no. 30162/10), 4 November 2014: applying different legal tests for defamation to commentators and journalists violates the right to freedom of expression
- **Ćapin v. Montenegro** (application no. 38709/10), 4 November 2014: complaint inadmissible because Constitutional Court had already ruled on the matter

These cases concerned the following issues:

- **Ion Cârstea v. Romania** (application no. 20531/06), 28 October 2014: publication of intimate details of sex life and allegations of criminal activity violated right to respect for reputation

This concerned an article in a local newspaper about Mr Cârstea, a university professor, which described in detail an incident in his sex life 19 years earlier and accused him of bribery, blackmail, child sex abuse and sexual deviance. The article included pictures of Mr Cârstea, nude and having sex. Mr Cârstea brought defamation proceedings against the journalist and editor-in-chief of the newspaper, but lost on the grounds that the article had been written to draw attention to the behaviour of a public figure, a university professor, and to expose what was going on behind the scenes in universities. Mr Cârstea complained to the European Court of Human Rights.

The European Court of Human Rights held that the publication violated Mr. Cârstea's right to respect for his reputation. It held that while the publication of photographs can make a

contribution to a debate of general interest involving issues such as politics, crime, sport or arts, there has to be a genuine public interest. In this case, the article described in detail an incident in the applicant's sex life which happened nineteen years before, as well as crimes allegedly committed by him in connection with his job as a university professor nine years before. The article included pictures of the applicant nude and having sex. The domestic courts did not make a serious assessment as to whether all of the material published contributed to a debate of general interest, or whether what was published was true. For example, the public interest at the moment of publishing of matters dating back to nine or even nineteen years ago, was not analysed. Furthermore, the domestic courts did not discuss at all whether the photographs themselves contained information related to an event of contemporary society or contributed to a debate of public interest. The journalist had also failed to make an effort to verify the allegations of bribery and sexual abuse made against the applicant. The Court therefore found that the publication violated Mr. Cârstea's rights.

- ***Braun v. Poland*** (application no. 30162/10), 4 November 2014: applying different legal tests for defamation to commentators and journalists violates the right to freedom of expression

This concerned a film director, historian and well-known commentator on current affairs issues who had, during a radio debate, referred to a well-known professor as an informant for the secret political police during the communist era. The professor sued for defamation and won. The domestic courts held that under national law a journalist who reported on an issue of public interest could not be obliged to prove the truthfulness of every statement. However, Mr Braun could not be considered a journalist, he was merely someone who commented on public affairs, and so he was required to prove that what he said was absolutely true.

The European Court of Human Rights held that this violated Mr. Braun's right to freedom of expression. It noted that Braun had made a serious accusation against the professor which constituted an attack on his reputation. However, in determining the case, the Polish courts had made a distinction between the standards applicable to journalists and those applicable to other participants in a public debate. That could not be justified: what mattered was that Mr Braun had been involved in a public debate on an important issue. Participants in such debates should enjoy protection of their right to freedom of expression. As had been acknowledged by the Polish courts, Mr. Braun was a specialist on the issue and he had been invited to participate in a radio programme about that issue. The Court was therefore unable to accept that he should enjoy a lower level of protection than someone who would be recognised as a 'journalist' under Polish national law.

- ***Ćapin v. Montenegro*** (application no. 38709/10), 4 November 2014: complaint inadmissible because Constitutional Court had already ruled on the matter

This case concerned Mr Đorđe Ćapin, who at the time the application was made was the Director of the Museum and Art Gallery, a public institution, as well as a member of the Executive Committee of the Serb People's Party (Srpska narodna stranka). In 2006, a newspaper reported on defamation proceedings against him, which he had lost. The report quoted him as saying that the defamation complaints against him had been dealt with as a priority "... due to loyalty to the party (po partijskoj dužnosti)". He was sued for defamation for this remark and found guilty. He appealed and in 2013, the Constitutional Court upheld his appeal and ordered a re-trial. In October 2013, the High Court overturned the 2009 conviction and acquitted the applicant.

Mr. Ćapin had already appealed to the European Court of Human Rights in 2010, before the Constitutional Court had ruled on the matter. He argued that the European Court should consider the case because it had taken the Constitutional Court more than three years to rule on his application, and so this could not be considered an 'effective remedy'. The European Court however found that Mr. Ćapin could not be considered to be the victim of a human rights violation, because the Constitutional Court had already quashed his conviction and this was "an appropriate and sufficient redress" for his defamation conviction. Furthermore, the European Court noted that Mr. Ćapin could have sought compensation and other forms of redress under the Obligations Act, but failed to do. His complaint was therefore rejected.

The Court also ruled on an earlier application by Mr Ćapin for his defamation conviction from 2006, and held that this was inadmissible because it was brought more than six months after the domestic court's final ruling (there is a six month deadline for all applications to Strasbourg).

***Prepared by Peter Noorlander, Director of Media Legal Defence Initiative, London in cooperation with HRA***



Bulletins are published within the project "Support for Understanding Journalistic Ethics and Freedom of Expression" funded by the U.S. Embassy Podgorica.

---