

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

Bulletin XXII: ROUND-UP OF JUDGEMENTS: NOVEMBER 2013

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In November 2013, the European Court adopted judgments and decisions in the following freedom of expression cases:

- ***Pauliukienė and Pauliukas v. Lithuania*** (application no. 18310/06), 5 November 2013 (unsuccessful defamation proceedings did not violate the right to private life)
- ***Jokšas v. Lithuania*** (application no. 25330/07), 12 November 2013 (no violation of freedom of expression for soldier retired from the army following critical remarks in newspaper article)
- ***Putistin v. Ukraine*** (application no. 16882/03), 21 November 2013 (complaint regarding defamation of deceased relative was inadmissible)
- ***Błaja News Sp. z o. o. v. Poland*** (application no. 59545/10), 26 November 2013 (defamation conviction for allegations of criminal conduct of a public prosecutor did not violate the right to freedom of expression)
- ***Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*** (application no. 39534/07), 28 November 2013 (refusal to provide access to decisions of government commission violated right of access to information)

These judgments concerned the following issues:

- ***Pauliukienė and Pauliukas v. Lithuania*** (application no. 18310/06), 5 November 2013
unsuccessful defamation proceedings did not violate the right to private life

This concerned a public official and his wife who had been involved in a dispute with their neighbours over a plot of land. A newspaper had written an article about the dispute in which it was reported that the public official and his wife were illegally building on land that did not belong to them. The public official brought defamation proceedings which were unsuccessful. He then complained to the European Court of Human Rights that his right to private life had been violated.

The European Court held that there had not been a violation of the right to private life. It first observed that only serious attacks on reputation fell within Article 8 of the European Convention on Human Rights, noting that “the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life.” It held that in this case, that condition had been met – the allegation made by the newspaper was sufficiently serious. However, the Court noted that the newspaper article concerned a matter of public interest – namely, the abuse of powers by public officials – and observed furthermore that the applicant was a public official who should tolerate greater criticism of his functioning than an ordinary person. Finally, the Court observed that the journalism in question had been professional and ethical, and that the reporter had based his allegations on multiple sources of information.

- *Jokšas v. Lithuania* (application no. 25330/07), 12 November 2013 **no violation of freedom of expression for soldier retired from the army following critical remarks in newspaper article**

This concerned a soldier who had criticised, in a newspaper article, new legislation which he thought did not sufficiently protect the rights of soldiers in disciplinary proceedings. Three months later, he was forced to retire from the army although many of his colleagues continued to serve beyond retirement age. He challenged his forced retirement before the courts but was unsuccessful. He then complained to the European Court of Human Rights on the grounds that he had been retired for what he had said in the article.

The European Court of Human Rights held that there had not been a violation of the right to freedom of expression. It noted that while the right to freedom of expression does apply to army personnel, it is legitimate for restrictions to be imposed when there is a real threat to military discipline. The Court also noted that the applicant had not been subjected to disciplinary proceedings, and there was no clear evidence to connect his forced retirement to the statements he had made. It therefore found that there had not been any interference with his right to freedom of expression.

- *Putistin v. Ukraine* (application no. 16882/03), 21 November 2013 **non violation of the right to privacy**

This concerned a newspaper article about a football match between Dynamo Kyiv and a team from the German Luftwaffe, “Flakelf”, in 1942. The Ukrainian team won and the team allegedly suffered reprisals: some of the players were arrested and taken to a local concentration camp where four of the players were later executed. The newspaper article suggested that some of the Dynamo Kyiv footballers had collaborated with the Gestapo or the police. One of the player’s children complained that the article was defamatory of his father, but was unsuccessful: the national courts ruled that his father was not mentioned in the text by name, and it was not possible to read his name on the photograph of the match poster published along with the article. He then complained to the European Court of Human Rights that his right to private life had been violated.

The European Court held that there had not been a violation of the right to respect for private life. The Court accepted that in certain circumstances, the reputation of a deceased family member might affect that person’s private life and identity. However, in this case the applicant’s father had

not been directly named in the article. The applicant was therefore only marginally affected which meant that his right to respect for private life had not been violated.

- ***Błaja News Sp. z o. o. v. Poland*** (application no. 59545/10), 26 November 2013 **defamation conviction for allegations of criminal conduct of a public prosecutor did not violate the right to freedom of expression**

This concerned a magazine that had been convicted for defamation for an article reporting on investigations into crime. It had reported that “prosecutor Anna” had links to criminal circles, had been present at the scene of a drug-trafficking incident, and was the subject of criminal proceedings. A public prosecutor who claimed that she was easily identified by the article sued for defamation and won a judgment awarding her 30,000 Polish zlotys (€8,000) in compensation. The newspaper complained to the European Court of Human Rights, claiming that its right to freedom of expression had been violated.

The European Court of Human Rights held that there had not been a violation of the right to freedom of expression. While it acknowledged the importance of a free press in a democratic society, the Court recalled that the media must act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. The Court noted the seriousness of the allegations made. It stated that while reporting on the personal integrity of public prosecutors is of obvious public interest, prosecutors should be protected from offensive, abusive and defamatory attacks which are likely to affect them in the performance of their duties and to damage public confidence in them and the office they hold. The Court considered that the applicant had not had any evidence for the allegations made, and that the journalists had not made any efforts to obtain comments from the prosecutor before publication. Finally, the Court considered that only civil proceedings had been instituted against the applicant, not criminal, and that the amount of damages did not threaten the survival of the publisher and could not be considered excessive.

- ***Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*** (application no. 39534/07), 28 November 2013 **refusal to provide access to decisions of government commission violated right of access to information**

This concerned an NGO which had requested that a regional commission provide access to documents concerning decisions on agricultural and forest land transactions. The NGO requested access to all decision from 2000-2005, in anonymised form, and indicated that it was willing to pay for the costs of this. The request was refused and the refusal was upheld by the courts. The NGO then complained to the European Court of Human Rights that the refusal of access to information violated its right to freedom of expression and to receive information.

The Court noted that the right of access to information was recognised as a right under the European Convention on Human Rights, particularly when the information being requested related to matters of public interest. The Court considered that the refusal had been unconditional, although the NGO had proposed to reimburse the costs arising from the production and mailing of the requested copies. Moreover, the Court found it striking that none of the authority’s decisions were being published, for example in an electronic database. Consequently, much of the difficulty anticipated by the Commission, which would result from providing the association with copies of

numerous decisions, had been caused by its own choice not to publish any of its decisions. The Court further noted that the applicant association received anonymised copies of the equivalent decisions from other Austrian regions without any difficulty. Therefore, the Court found a violation of the right to freedom of expression.

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