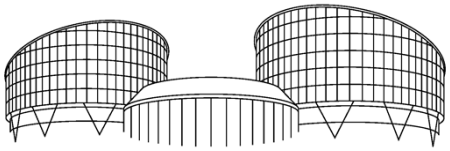

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BALASKAS v. GREECE

(Application no. 73087/17)

JUDGMENT

Art 10 • Freedom of expression • Suspended prison sentence imposed on journalist, in disregard of Convention standards, for calling a school headmaster a "neo-Nazi" in reply to his publicly expressed views

STRASBOURG

5 November 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Balaskas v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President,*
Linos-Alexandre Sicilianos,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to:

the application (no. 73087/17) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Efstratios Balaskas ("the applicant"), on 4 October 2017;

the decision to give notice of the application to the Greek Government ("the Government");

the parties' observations;

Having deliberated in private on 13 October 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the conviction for insult through the press of a journalist who had an article published in a local newspaper attributing the characteristics "neo-Nazi" and "theoretician of the entity 'Golden Dawn'" to the headmaster of a local high school. The article followed a post on the headmaster's personal blog under the title "The ultimate lie is one: that of the Polytechnic School of 1973", referring to the massive student uprising against the military dictatorship in Greece that took place in November 1973. The applicant complained that his conviction had resulted in a violation of Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1962 and lives in Mytilene. He was represented by Mr T. Theodoropoulos, a lawyer practising in Athens.

3. The Government were represented by their Agent's delegate, Mrs S. Papaioannou, legal representative at the State Legal Council.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a journalist. In 2013 he was editor-in-chief of the Lesbos daily newspaper *Empros*.

6. On 17 November 2013 the headmaster of the 6th High School of Mytilene, B.M., posted an article on his personal blog under the title "The ultimate lie is one: that of the Polytechnic School of 1973" («*Το απόλυτο ψεύδος είναι ένα: αυτό του Πολυτεχνείου του 1973*»), referring to the massive student uprising of 1973 in polytechnic School that contributed to the end of the military dictatorship in Greece. The 17th of November, anniversary of the uprising, is celebrated as a school holiday.

7. On 19 November 2013 an article written by the applicant was featured in pages one and five of *Empros* under the title "The headmaster of the 6th High School of Mytilene, B.M., attacks, through his personal blog, the 'ultimate lie of the Polytechnic school'". It included the following passage:

> "The well-known neo-Nazi headmaster of the 6th High School of Mytilene, B.M., is back. Under the pretext of the anniversary of the Polytechnic School uprising, and taking advantage of the tolerance of his superiors, the theoretician of the entity 'Golden Dawn' in Lesvos posted on his personal blog ... neo-fascist vomit under the title 'THE ULTIMATE LIE IS ONE: THAT OF THE POLYTECHNIC SCHOOL OF 1973'".

8. Following publication of the article, B.M. filed a criminal complaint against the applicant for slanderous defamation through the press.

9. On 27 November 2013 the three-member Mytilene First-Instance Criminal Court held a hearing in the case. The applicant, relying on Article 367 § 1 of the Criminal Code, argued that what he had written was true and based on a legitimate interest. In particular, the article mainly focused on B.M.'s capacity as headmaster and the spreading of his views to students on the anniversary of the Polytechnic uprising, which was also a school holiday.

10. The court held that the phrases "well-known neo-Nazi headmaster" and "theoretician of the entity 'Golden Dawn'" constituted judgments and characterisations and not facts. It also held that it was apparent from the way they were expressed that there had been an intention to insult B.M.'s honour and reputation. As regards the applicant's argument that he had had a legitimate interest in informing the readers of the newspaper, this could not be accepted as the need to inform the public could have been satisfied with the use of other, more decent expressions. The court therefore changed the charges from slanderous defamation to insult (*εξύβρισηη*), found the applicant guilty of insult through the press and sentenced him to a six-month suspended prison sentence (decision no. 1264/2013). He appealed against that decision.

11. On 11 July 2016 the three-member North Aegean Misdemeanour Court of Appeal ("the Court of Appeal") held a hearing in the case. The applicant again argued that his act had not been wrongful, as what he had written in the published article had been true and based on a legitimate interest. When responding to the article posted by B.M. on his blog on the anniversary of the Polytechnic uprising, he had been exercising his right to

freedom of expression. He additionally claimed that the characterisations of B.M. had been based on extensive evidence. In particular, on 8 August 2010 B.M. had posted an article on his website stating:

> "... Our contact and substantial relationship with nationalist organisations and clubs (see Golden Dawn) who preserve like an ark the original nationalist Word and Action are highly important ... We, as parents, must strive for racial purity. NATIONAL-SOCIALISM, loyalty to the race and to the Will of the Racial vital space... is the most superior [thing] of all. IT IS AN HONOUR TO BE CALLED A NATIONAL-SOCIALIST ..."

12. In addition, since 8 December 2010 he had posted twenty-three articles on his website concerning the Aryan race, national-socialism and the Zionist Jews, and had saved the organisation and editions of Golden Dawn in his favourites. He had additionally posted a message on 25 September 2009 calling for Greeks to vote for Golden Dawn. Lastly, in November 2013 the Primary School Teachers' Union had published an announcement denouncing B.M.'s views as fascist. Similarly, in May 2015 the High School Teachers' Union had published an announcement denouncing any supporter of Nazism "whether or not he was calling himself national-socialist, such as the headmaster of the ... High School B.M., who was spreading fascist and racist ideas". Based on the above, the applicant's characterisations of B.M. had constituted value judgments with a factual basis and had been based on a legitimate interest – on the one hand, the need to inform the public of remarks made by the headmaster of the high school for the anniversary of the Polytechnic uprising and on the other, the need to restore the truth, as B.M.'s post had contained false allegations.

13. The Court of Appeal upheld the first-instance court's decision, providing the same reasoning. It sentenced the applicant to a three-month suspended prison sentence, convertible to five euros daily (decision no. 112/2016).

14. On 16 September 2016 the applicant lodged an appeal on points of law against the Court of Appeal's decision. He argued that it had lacked sufficient reasoning, had lacked legal basis and that the court had erroneously interpreted and applied Article 367 § 2 of the Criminal Code. In particular, the Court of Appeal had failed to refer to the evidence from which his intention to insult had been established and thus to explain why his act had still been considered wrongful, despite what was provided for by Article 367 of the Criminal Code. In addition, the appellate court had not included in the reasoning other expressions that the applicant could have used to express criticism of a public figure – the headmaster of a local high school – and inform the public of the headmaster's views on a sensitive issue such as the Polytechnic uprising.

15. On 4 April 2017 the Court of Cassation dismissed the applicant's appeal on points of law (decision no. 686/2017). The court held that the Court of Appeal's judgment had included sufficient reasoning. In particular,

it had sufficiently justified why the expressions used had been insulting and had not been necessary to inform the public of the article published by B.M., a public figure, without needing to add which expressions could have been used instead. It had also included sufficient reasoning as to why Article 367 § 1 had not been applicable in the circumstances of the present case, given that the applicant's intention to insult B.M. had been clear. The decision became final (*καθαρογραφή*) on 25 April 2017.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

16. The relevant provisions of the Criminal Code read:

Article 361
Insult

"1. Except in cases which amount to defamation (Articles 362 and 363), anyone who by words or by deeds or by any other means injures another's reputation shall be punished by up to one year's imprisonment, or by a pecuniary penalty. The pecuniary penalty may be imposed in addition to imprisonment.

2. If the injury to reputation is not severe, considering the circumstances and the person injured, the offender shall be punished by imprisonment or a fine.

3. The provision of paragraph 3 of Article 308 shall apply in this case."

Article 362
Defamation

"Anyone who by any means disseminates information to a third party concerning another which may harm the latter's honour or reputation shall be punished by up to two years' imprisonment or a pecuniary penalty. The pecuniary penalty may be imposed in addition to imprisonment."

Article 363
Slanderous defamation

"If, in a case under Article 362, the information is false and the offender was aware of the falsity thereof, he shall be punished by at least three months' imprisonment, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be ordered."

Article 366

"1. If the [alleged defamatory information] is true, the act shall not be punished ..."

Article 367

"1. The following cannot be considered wrongful acts: ... (c) [statements or actions] for the purposes of fulfilling lawful duties, the exercise of lawful authority, or preserving (protecting) a right or based on some other legitimate interest or (d) in similar cases.

2. This provision shall not apply: (a) when the above-mentioned criticisms and [statements or actions] have the elements of an offence under Article 363, and (b) when it is apparent from the manner of [the statement or action] or the circumstances in which the act was committed that there was an intention to insult."

II. INTERNATIONAL LAW

17. On 4 October 2007 the Parliamentary Assembly of the Council of Europe adopted Resolution 1577 (2007), entitled "Towards decriminalisation of defamation". Its relevant passages read as follows:

"...

6. Anti-defamation laws pursue the legitimate aim of protecting the reputation and rights of others. The Assembly nonetheless urges member states to apply these laws with the utmost restraint since they can seriously infringe freedom of expression. For this reason, the Assembly insists that there be procedural safeguards enabling anyone charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility.

7. In addition, statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.

8. The Assembly deplores the fact that in a number of member states prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse – leading to a genuine media self-censorship and causing progressive shrinkage of democratic debate and of the circulation of general information – has been denounced by civil society, notably in Albania, Azerbaijan and the Russian Federation.

...

12. Every case of imprisonment of a media professional is an unacceptable hindrance to freedom of expression and entails that, despite the fact that their work is in the public interest, journalists have a sword of Damocles hanging over them. The whole of society suffers the consequences when journalists are gagged by pressure of this kind.

13. The Assembly consequently takes the view that prison sentences for defamation should be abolished without further delay. In particular it exhorts states whose laws still provide for prison sentences – although prison sentences are not actually imposed – to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms.

14. The Assembly likewise condemns abusive recourse to unreasonably large awards for damages and interest in defamation cases and points out that a compensation award of a disproportionate amount may also contravene Article 10 of the European Convention on Human Rights.

...

17. The Assembly accordingly calls on the member states to:

17.1. abolish prison sentences for defamation without delay;

17.2. guarantee that there is no misuse of criminal prosecutions for defamation and safeguard the independence of prosecutors in these cases;

17.3. define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection of the dignity of persons affected by defamation;

...

17.5. make only incitement to violence, hate speech and promotion of negationism punishable by imprisonment;

17.6. remove from their defamation legislation any increased protection for public figures, in accordance with the Court's case law, and in particular calls on:

...

17.7. ensure that under their legislation persons pursued for defamation have appropriate means of defending themselves, in particular means based on establishing the truth of their assertions and on the general interest, and calls in particular on France to amend or repeal Article 35 of its law of 29 July 1881 which provides for unjustified exceptions preventing the defendant from establishing the truth of the alleged defamation;

17.8. set reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media organ is not placed at risk;

17.9. provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury;"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained that his criminal conviction on account of his published article had violated his right to freedom of expression. He relied on Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, 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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The parties' arguments

19. The Government argued that the applicant had not exhausted domestic remedies. In particular, in his appeal on points of law before the Court of Cassation, he had put forward arguments relating to the reasoning of judgment no. 112/2016 of the Court of Appeal and the wrongfulness of his actions under Article 367 of the Criminal Code. He had additionally complained that the appellate court had erroneously interpreted and applied the relevant provisions, namely Articles 361 and 367 § 2 of the Criminal Code. He had therefore failed to invoke his rights under Article 10 of the Convention or complain of being given a disproportionate sentence and thus had not given the Court of Cassation the opportunity to examine a possible violation of the Convention.

20. The applicant contested the argument that he had not exhausted domestic remedies. He argued that even though he had not explicitly referred to Article 10 of the Convention, he had raised such a complaint in substance before the Court of Cassation. In particular, he had included in his appeal on points of law that what he had written had been based on his legitimate interest in expressing criticism of a public figure. He had invoked Article 367 of the Criminal Code to that effect, which provided that his actions should remain unpunished as the article had concerned a matter of legitimate interest. He had additionally mentioned the special role of the press in society and had argued that his characterisations of B.M. had constituted strong and harsh criticism of his views and had not been written with an intention to insult. He had thus put forward arguments related to Article 10 of the Convention at least in substance and had given the domestic courts the opportunity to provide redress for the alleged violation.

2. The Court's assessment

21. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II).

22. The rule on exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time, it requires, in principle, that the complaints intended to be made subsequently at international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC],

nos. 17153/11 and 29 others, § 72, 25 March 2014, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 84-87, 9 July 2015).

23. It is not necessary for the Convention right to be explicitly raised in domestic proceedings provided that the complaint is raised "at least in substance" (see *Fressoz and Roire v. Franc*e [GC], no. 29183/95, § 39, ECHR 1999-I, and *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III). If the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (see *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010, and *Karapanagiotou and Others v. Greece*, no. 1571/08, § 29, 28 October 2010).

24. In the present case, the Court notes that the applicant did provide the Court of Cassation with a complete account of the proceedings before the Court of Appeal and presented arguments that were in substance relevant to Article 10 of the Convention. In particular, he argued that what he had written in his article had been value judgments and had been said without an intention to insult, but based on his legitimate interest, as a journalist, in expressing criticism of B.M. a public figure and thus informing society of B.M.'s views (see paragraph 14 above). The Court of Cassation, for its part, examined within its powers the applicant's arguments and dismissed them (see paragraph 15 above).

25. In those circumstances, the Court is satisfied that through the arguments he raised before the Court of Cassation, the applicant did complain, albeit implicitly, about his right to freedom of expression, including arguments relating to his capacity as a journalist. In doing so, he raised, at least in substance, a complaint under Article 10 of the Convention before the Court of Cassation, and the court examined that complaint. It follows that he provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely of putting right the violations alleged against them (see *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016). The Government's objection concerning a failure to exhaust domestic remedies must therefore be dismissed.

26. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

27. The applicant argued that his criminal conviction had violated his right to freedom of expression. It was clear from the impugned passages that he had been convicted on account of his value judgments, which, however,

had had a sufficient factual basis that had been true. In addition, the domestic courts had failed to take into account the general political and historic context of his published article. He had presented before the domestic courts all the evidence from which the factual basis of his article had been proven, such as articles written by B.M. concerning national-socialism stating that it was an honour to be called a "national-socialist".

28. The applicant also submitted that the domestic courts had failed to take into account that the limits of criticism in respect of B.M. should have been construed more widely, given that he was a public figure, namely the headmaster of a local high school, who had additionally expressed his views on a matter of historical importance on the anniversary of the Polytechnic uprising. The applicant as a journalist had had a legitimate interest in informing the public of those views.

29. The applicant additionally invoked the increased protection afforded by the Convention to the press and argued that he should not have been sanctioned for his published article, especially not under criminal law. Relying on the Court's case-law under Article 10 of the Convention, he claimed that his criminal conviction had been a disproportionate interference with his right to freedom of expression and had not struck a fair balance between his right to freedom of expression and B.M.'s right to protection of his reputation.

30. The Government argued that the applicant's expressions fell outside the scope of protection of Article 10 of the Convention. In particular, it had been established in the domestic proceedings, after a thorough evidentiary procedure, that the applicant had intended to insult B.M., who was a teacher known in the local community, through the use of defamatory expressions which had not been necessary to inform the readers of the newspaper.

31. Even assuming that there had been an interference with the applicant's right to freedom of expression, it had been prescribed by law, namely Articles 362 and 363 of the Criminal Code, which were well known and defined in great clarity their scope, and had served a legitimate aim, that is to say the protection of B.M.'s reputation. B.M. was not a public figure and therefore, the wider limits of criticism did not apply to him. In addition, the applicant's statements had not contributed to a debate of greater public interest that would justify a degree of provocation or exaggeration.

32. Lastly, the interference had been necessary in a democratic society. The domestic courts had struck a fair balance between the contrasting interests, after taking into account all the elements of the dispute. All procedural safeguards had been afforded to the applicant and the judgments published had included full and sufficient reasoning. The sentence imposed on him had been a three-month suspended prison sentence and in the circumstances of the case had been proportionate and could not be

considered excessive. Even the applicant had not argued that the sentence had been severe.

2. The Court's assessment

33. The Court considers that the applicant's conviction amounted to "interference by public authority" with his right to freedom of expression and that the Government's arguments should be examined in relation to the restrictions on freedom of expression provided for in paragraph 2 of Article 10. Such interference will infringe the Convention if it does not meet the requirements of that paragraph. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 and was "necessary in a democratic society" to achieve them.

(a) Prescribed by law and legitimate aim

34. The Court finds that the interference in question was prescribed by law, namely Articles 361 and 367 of the Criminal Code, and that it pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

(b) Necessary in a democratic society

35. In the present case, what is in issue is whether the interference was "necessary in a democratic society".

(i) General principles

36. The general principles for assessing the necessity of an interference with the exercise of freedom of expression, which have been frequently reaffirmed by the Court since the judgment in *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), were summarised in *Stoll v. Switzerland* ([GC], no. 69698/01, § 101, ECHR 2007-V) and were restated more recently in *Pentikäinen v. Finland* ([GC], no. 11882/10, § 87, ECHR 2015) and *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of

appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

37. When called upon to examine 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 ascertain 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 (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011). 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 be carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Bédat*, cited above, § 72; *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; and *A. v. Norway*, no. 28070/06, § 64, 9 April 2009). On the other hand, 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 (see *Axel Springer AG*, cited above, § 83, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII).

38. Where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria laid down in the Court's case-law include: (a) contribution to a debate of public interest, (b) how well known the person concerned is, (c) the subject of the news report, (d) the prior conduct of the person concerned, and (e) the content, form and consequences of the publication. Where it examines an application lodged under Article 10, the Court will also examine (f) the way in which the information was obtained and its veracity, and (g) the severity of the penalty imposed on the journalists or publishers (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 93, ECHR 2015

(extracts); see also *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 108-13, ECHR 2012; *Axel Springer AG*, cited above, §§ 89-95; *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, § 45, 3 December 2013; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 165-166, ECHR 2017 (extracts)).

39. Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, weighty reasons are required if it is to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155; *Palomo Sánchez and Others*, cited above, § 57; and, more recently, *Haldimann and Others v. Switzerland*, no. 21830/09, §§ 54-55, ECHR 2015). In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made (see *Radobuljac v. Croatia*, no. 51000/11, § 57, 28 June 2016).

(ii) Application of these principles to the present case

40. The Court notes that the present case concerns a conflict of concurring rights – on the one hand, respect for the applicant's right to freedom of expression and on the other, B.M.'s right to respect for his private life. In particular, the applicant's article referred to B.M. and presented him as being a theoretician of the far-right political party Golden Dawn and called him a "neo-Nazi". The Court, examining the two references as a whole, considers that these characterisations were not only capable of tarnishing B.M.'s reputation, but also of causing him prejudice in both his professional and social environment. Accordingly, the accusations attained the requisite level of seriousness as could harm B.M.'s rights under Article 8 of the Convention.

41. Where national jurisdictions have carried out a balancing exercise in relation to those rights, the Court has to examine whether, during their assessment, they applied the criteria established in its case-law on the subject (see *Axel Springer AG*, cited above, § 88) and whether the reasons that led them to take the impugned decisions were sufficient and relevant to justify the interference with the right to freedom of expression (see *Cicad v. Switzerland*, no. 17676/09, § 52, 7 June 2016). It will do so by examining the criteria established in it case-law which are of relevance to the present case.

(1) Contribution to a debate of public interest

42. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two fields, namely political speech and matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV; *Lindon,*

Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV; *Axel Springer AG*, cited above, § 90; and *Morice v. France* [GC], no. 29369/10, § 125, ECHR 2015). Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest (see *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*, no. 1529/08, § 47, 29 March 2011; and *Morice*, cited above, § 125). A degree of hostility (see *E.K. v. Turkey*, no. 28496/95, §§ 79-80, 7 February 2002, and *Morice*, cited above, § 125) and the potential seriousness of certain remarks (see *Thoma v. Luxembourg*, no. 38432/97, § 57, ECHR 2001-III, and *Morice*, cited above, § 125) do not obviate the right to a high level of protection, given the existence of a matter of public interest (see *Paturel v. France*, no. 54968/00, § 42, 22 December 2005, and *Morice*, cited above, § 125).

43. The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, as well as the need to prevent the disclosure of information received in confidence, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports* 1997-I; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III; *Thoma*, cited above, §§ 43-45; and *Tourancheau and July v. France*, no. 53886/00, § 5, 24 November 2005).

44. The Court has already held that the public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (see *Couderc and Hachette Filipacchi Associés*, cited above, § 103, with further references).

45. Turning to the circumstances of the present case, the Court considers that, in order to determine whether the content of the article could be understood as constituting information on a matter of public interest, it is necessary to assess the article as a whole, as well as the substance of the information disclosed in it. In this connection, the Court observes that the applicant in his article sought to share information on an article recently posted by B.M. on the Polytechnic uprising. It should be noted that the Polytechnic uprising of 1973 was a student demonstration which contributed to the end of the military dictatorship in Greece, and that the date in question is celebrated as a school holiday. Therefore, the views of

B.M. on the matter, who referred to it as "the ultimate lie" at a time when he was the headmaster of a local high school, were capable of giving rise to considerable controversy. In view of the above, the Court accepts that the applicant's article reporting B.M.'s views as expressed on his blog concerned a matter of public interest and that the applicant, as a journalist, had a right to impart information on the matter.

46. The Court notes that the domestic courts did not examine the article taken as a whole, but rather focused on the characterisations used by the applicant, detached from the context, and therefore failed to include any considerations in their assessment as regards the contribution of the applicant's article to a matter of public interest. Even though they acknowledged that he had had a legitimate interest in informing the public, they failed to draw any conclusions from that (see paragraphs 10, 13 and 15 above). They thus failed to assess whether or not the applicant's article contributed to a debate of public interest.

(2) How well known is the person concerned, his prior conduct and the subject of the article

47. The Court reiterates that a distinction has to be made between private individuals and persons acting in a public context, as political or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005, and *Petrenco v. Moldova*, no. 20928/05, § 55, 30 March 2010). For them, the limits of critical comment are wider as they are inevitably and knowingly exposed to public scrutiny and must therefore display a particularly high degree of tolerance (see *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 25, 13 January 2009, and *Kuliś v. Poland*, no. 15601/02, § 47, 18 March 2008). Thus, a person's right to privacy will differ depending on whether or not he or she is vested with official functions (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 119).

48. The Court has also in several cases observed that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty (see, in particular *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I; *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II and *Busuioc v. Moldova*, no. 61513/00, § 64, 21 December 2004). Moreover, it has been accepted that the limits of acceptable criticism in respect of civil servants exercising their powers may admittedly in some circumstances be wider than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be

treated on an equal footing with the latter when it comes to the criticism of their actions (see *Lešník v. Slovakia*, no. 35640/97, § 53, ECHR 2003-IV).

49. Turning to the circumstances of the present case, the Court notes that, according to the Government, B.M. was entitled to greater protection of his private life as he was not a public figure.

50. In this connection, the Court observes that B.M. was a civil servant, namely the headmaster of a local high school and as such, enjoyed certain protection (see paragraph 48 above). However, B.M. had regularly posted his views on political matters on personal blogs, as evidenced by numerous documents adduced before both the domestic courts and the Court. In fact, the article for which the applicant was convicted followed an article posted by B.M. and criticised the views expressed in that. It follows that even if B.M. could not be compared to a public figure having regard to his activity of headmaster, he still exposed himself to journalistic criticism by the publicity he chose to give to some of his ideas or beliefs, some of which were likely to give rise to considerable controversy (see *Brunet-Lecomte and Lyon Mag' v. France*, no. 17265/05, § 46, 6 May). The Court additionally notes that as regards teachers, who are a symbol of authority for their students in the field of education, it has previously held that the special duties and responsibilities incumbent on them also apply to a certain extent to their activities outside of school (see *Gollnisch v. France* (dec.), no. 48135/08, 7 June 2011 and the cases cited therein). Consequently, B.M. willingly exposed himself to public scrutiny by stating his political views and therefore had to expect careful scrutiny of his words and show a higher degree of tolerance towards potential criticism of his statements by persons who did not share his views (see *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, no. 18597/13, § 65, 9 January 2018).

51. The Court notes that the domestic courts did not explicitly address the above-mentioned points. In particular, the Court of Appeal acknowledged that the facts contained in the applicant's article and accompanying value judgments were related to B.M. in his capacity as headmaster of a local high school who was known to the local community. However, it failed to consider the extent to which B.M.'s capacity as a civil servant and his prior conduct were capable of influencing the protection which could be afforded to him. It additionally failed to take into account that the applicant's report was about views B.M. had publicly shared through his blog on a political matter (see paragraphs 11-13 above) and, as such, they were expected to attract greater attention and give rise to considerable controversy.

(3) The way in which the information was obtained and its veracity

52. The Court emphasises at the outset the importance that it attaches to journalists' assumption of their duties and responsibilities, and to the ethical principles governing their profession. In this connection, it reiterates that

Article 10 protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999‑I).

53. The Court also reiterates that in order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI; and for cases specifically against Greece, see *Mika v. Greece*, no. 10347/10, § 31, 19 December 2013; *Koutsoliontos and Pantazis v. Greece*, nos. 54608/09 and 54590/09, § 40, 22 September 2015; *Kapsis and Danikas v. Greece*, no. 52137/12, § 34, 19 January 2017; *Athanasios Makris v. Greece*, no. 55135/10, § 26, 9 March 2017; and *Paraskevopoulos v. Greece*, no. 64184/11, § 32, 28 June 2018).

54. The Court also recalls that it has previously found that terms such as "neo-fascist", and "Nazi" do not automatically justify a conviction for defamation on the ground of the special stigma attached to them (see *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 43, ECHR 2003-XI**).** In *Bodrožić v. Serbia* (no. 32550/05, § 51, 23 June 2007), the Court repeated its view that the generally offensive expressions "idiot" and "fascist" may be considered to be acceptable criticism in certain circumstances (see *Bodrožić*, cited above; *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV; *Feldek v. Slovakia*, no. 29032/95, ECHR 2001-VIII). It further observed in the *Bodrožić* case that calling someone a fascist, a Nazi or a communist cannot in itself be identified with a factual statement of that person's party affiliation (see, *mutatis mutandis*, *Feldek v. Slovakia*, cited above, § 86). In addition, in case *Gavrilovici v. Moldova* (no. 25464/05, 15 December 2009), the Court found a violation for Article 10 following conviction of the applicant for having allegedly used the word "fascist" against a public official.

55. Turning to the circumstances of the present case, the Court notes that the article referred to B.M.'s views as posted on his blog and that as such, the method used to obtain the information reported was not questioned. As regards the veracity of the statements included in the report, the Court notes that the domestic courts classified the characterisations used by the applicant, "well-known neo-Nazi headmaster" and "theoretician of the

entity 'Golden Dawn'", as value judgments and sees no reason to hold otherwise. However, the Court considers that the domestic courts failed to assess whether these value judgments were supported by factual background on the basis of the articles previously posted by B.M. and brought to their attention by the applicant. The Court, therefore, observes that even though the domestic courts correctly classified the terms used by the applicant as value judgments, they failed to review whether they were sufficiently supported by a factual basis.

(4) The content, form and consequences of the publication

56. The way in which a photograph or report are published and the manner in which the person concerned is represented in the photograph or report may also be factors to be taken into consideration (see *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. v. Austria (no. 3),* nos. 66298/01 and 15653/02, § 47, 13 December 2005; *Reklos and Davourlis v. Greece*, no. 1234/05, § 42, 15 January 2009; and *Jokitaipale and Others v. Finland*, no. 43349/05, § 68, 6 April 2010). The extent to which the report and photograph have been disseminated may also be an important factor, depending on whether the newspaper is national or local, and has a large or limited circulation (see *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 47, ECHR 2004-X, and *Gurgenidze v. Georgia*, no. 71678/01, § 55, 17 October 2006). The fairness of the means used to obtain information and reproduce it for the public and the respect shown for the person who is the subject matter of the news report are also essential criteria to be taken into account (see *Egeland and Hanseid v. Norway*, no. 34438/04, § 61, 16 April 2009).

57. As regards the content and the form of the article written by the applicant, the Court notes the domestic court made a distinction between facts and value judgments and considered that the applicant had used critical value judgments such as "well-known neo-Nazi headmaster" and "theoretician of the entity 'Golden Dawn'". From these expressions, the domestic courts concluded that the applicant had intended to insult B.M.

58. The Court notes that in order to assess the applicant's intention, the domestic courts did not transpose the impugned remarks to the general context of the case. On the contrary, the Court of Appeal and the Court of Cassation examined the disputed expressions detached from the context of the article to conclude that the expressions used had not been necessary to pursue the legitimate interest upon which the applicant relied, and that he could have used other phrases. However, domestic courts in such proceedings are asked to consider whether the context of the case, the public interest and the intention of the author of the impugned article justified the possible use of a dose of provocation or exaggeration (see *Kapsis and Danikas*, cited above, § 38; *Koutsoliontos and Pantazis*, cited above,

§ 43; and *I Avgi Publishing and Press Agency S.A. and Karis v. Greece*, no. 15909/06, § 33, 5 June 2008).

59. In this connection, the Court accepts that the language used by the applicant could have been considered provocative and that the article was caustic, containing rather serious criticism; however, contrary to the Government's allegations and the domestic courts' conclusions, it sees no manifestly insulting language in the remarks. The Court reiterates that the presentation of a press article and the style used in it are a matter of editorial decision, on which it is not in principle for it, or for the domestic courts, to pass judgment (see *Couderc and Hachette Filipacchi Associés*, cited above, § 144). Nonetheless, it also reiterates that journalistic freedom is not unlimited and that the press must not overstep certain bounds in this connection, in particular "the protection ... of the rights of others" (see, *inter alia*, *MGN Limited*, cited above, § 141). In the present case, the Court considers that neither the impugned statements nor the article seen as a whole can be understood to be a gratuitous personal attack on, or insult to B.M.

60. As regards the consequences of the article, the Court has not been apprised of any specific information. It therefore considers that, short of speculating, the material in the case file is not in itself sufficient to enable it to take cognisance of or examine the article's consequences.

(5) The severity of the penalty imposed

61. Lastly, the nature and severity of the penalty imposed are factors to be taken into account when assessing the proportionality of the interference (see *Katrami v. Greece*, no. 19331/05, § 38, 6 December 2007; *Mika*, cited above, § 32; and *Athanasios Makris*, cited above, § 38). In the instant case, the Court takes into account that the applicant was sentenced to a three-month suspended prison sentence. In that regard, the Court reiterates that while the use of criminal-law sanctions in defamation cases is not in itself disproportionate (see *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II; *Lindon, Otchakovsky-Laurens and July*, cited above, § 47; and *Ziembiński v. Poland (no. 2)*, no. 1799/07, § 46, 5 July 2016), a criminal conviction is a serious sanction, having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies (see *Frisk and Jensen v. Denmark*, no. 19657/12, § 77, 5 December 2017). The Court has emphasised on many occasions that the imposition of a prison sentence in defamation cases will be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI, and *Paraskevopoulos*, cited above, § 42). It considers that the circumstances of the instant case – a classic

example of criticism of a person known in the local community in the context of a debate on a matter of public interest – presented no justification for the imposition of a prison sentence. Such a sanction, by its very nature, will inevitably have a chilling effect on public discussion, and the notion that the applicant's sentence was in fact suspended does not alter that conclusion particularly as the conviction itself was not expunged (see *Marchenko v. Ukraine*, no. 4063/04, § 52, 19 February 2009, and *Malisiewicz-Gąsior v. Poland*, no. 43797/98, § 67, 6 April 2006).

(iii) Conclusion

62. Having regard to the foregoing, the Court considers that the domestic courts limited themselves to finding that the impugned statements had been value judgments and had tarnished B.M.'s reputation. They failed however to make an assessment in accordance with the criteria established in the Court's case-law. In particular, they did not take into account in their assessment: the applicant's duty as a journalist to impart information on a matter of public interest and the contribution of his article to such a debate; the position of B.M. as a public official vested with public functions who had previously expressed his views on political matters; the presence or absence of good faith on the applicant's part and whether his value judgments were supported by a clear factual basis; and the content and form of the article. By omitting any analysis of those elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society (see *Margulev v. Russia*, no. 15449/09, § 51, 8 October 2019).

63. In this connection, the Court notes that it has already found a violation of Article 10 of the Convention in a number of cases against Greece owing to the domestic courts' failure to apply standards in conformity with the standards of its case-law concerning freedom of expression when weighed up against one's protection of his or her reputation (see, among other authorities, *Katrami v. Greece*, no. 19331/05, § 42, 6 December 2007; *Vasilakis v. Greece*, no. 25145/05, § 56, 17 January 2008; *I Avgi Publishing and Press Agency S.A. and Karis*, cited above, § 35; *Kydonis v. Greece*, no. 24444/07, § 38, 2 April 2009; *Alfantakis v. Greece*, no. 49330/07, § 34, 11 February 2010; *Mika*, cited above, § 41; *Koutsoliontos and Pantazis*, cited above, § 48; *Kapsis and Danikas*, cited above, § 42; *Athanasios Makris*, cited above § 39; and *Paraskevopoulos*, cited above, § 44).

64. The Court is mindful of the fundamentally subsidiary role of the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). Indeed, if the balancing exercise had been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek v. Switzerland*

[GC], no. 27510/08, § 198, ECHR 2015 (extracts)). However, in the absence of such a balancing exercise at national level, it is not incumbent on the Court to perform a full proportionality analysis. Faced with the domestic courts' failure to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have applied standards which were in conformity with the principles embodied in Article 10 of the Convention. The Court concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

65. There has, accordingly, been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

67. The applicant claimed 1,603.58 euros (EUR) in respect of pecuniary damage, amounting to the sum he paid to "buy" his sentence, which, following decision no. 112/2016 of the Court of Appeal, was converted to five euros daily. He additionally requested EUR 15,000 in respect of non-pecuniary damage.

68. The Government argued that the finding of a violation should be sufficient compensation for the non-pecuniary damage of the applicant and that the sum requested was in any event disproportionate and excessive in view of the Court's awards in similar cases.

69. The Court, having regard to the documents before it, awards the applicant EUR 1,603.58 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicant also claimed EUR 1,258.60 for the costs and expenses incurred before the domestic courts, corresponding to his lawyer's fees before the Court of Cassation. He additionally requested EUR 5,000 for the costs and expenses incurred before the Court.

71. The Government contested the above amounts, arguing that they were excessive and that the applicant had not submitted any documentation regarding his alleged costs for the proceedings before the Court.

72. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses for the proceedings before the Court and awards the sum of EUR 1,258.60 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant.

C. Default interest

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,603.58 (one thousand six hundred and three euros and fifty-eight cents), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,258.60 (one thousand two hundred and fifty-eight euros and sixty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Ksenija Turković
Registrar	President