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

SECOND SECTION

CASE OF MILOSAVLJEVIĆ v. SERBIA

(Application no. 57574/14)

JUDGMENT

Art 10 • Freedom of expression • Civil defamation judgment against journalist concerning articles on alleged sexual abuse of underage Romani girl by civil servant • Degree of tolerance to be shown akin to that of private individual as allegations not related to official duties • Journalist's failure to comply with tenets of responsible journalism • Fair balance struck by domestic courts between competing interests at stake • Relevant and sufficient reasons

STRASBOURG

25 May 2021

Request for referral to the Grand Chamber pending

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Milosavljević v. Serbia,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Pauliine Koskelo, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 57574/14) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Ranko Milosavljević ("the applicant"), on 6 August 2014;

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

the parties' observations;

Having deliberated in private on 20 April 2021,

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

INTRODUCTION

1. The application concerns, under Article 10 of the Convention, the freedom of journalistic and editorial expression in the context of an incident involving the alleged sexual abuse of an underaged Romani girl by the head of a municipal branch office (*mesna kancelarija*).

THE FACTS

2. The applicant was born in 1960 and lives in Kragujevac. At the relevant time, he was a journalist and an editor-in-chief of *Svetlost*, a weekly news magazine based in the same town.

3. The applicant was represented by Ms D. Rakićević, a lawyer practising in Kragujevac.

4. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

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

I. THE PUBLISHED ARTICLES

6. On 3 June 2010 *Svetlost* published an article titled "Shame through Silence" (*Ćutanjem do crvenila*). This piece, written by the applicant, in so far as relevant reads as follows:

> "[1.] Kragujevac has reason to be ashamed. Towards the end of April, ... the head of a municipal branch office in [D] firstly, in the city centre and in front of the main post office building, falsely introduced himself to a street vendor as a market inspector ... [and then] ... invited her into ... [his car under the pretext] ... that certain documents had to be copied. [Thereafter he] ... drove the girl away [with him] to Karađorđeva Street ... where he tried to rape her. The girl was under age and of Romani origin. [Her] resistance, screams and crying ... [ultimately] ... thwarted the assailant. The underaged girl was warned not to tell anyone what had happened ... [and had to] ... give her telephone number. The next day, when ... [the head of the municipal branch office] ... called her and arranged to meet her, ... [he] ... was met by the police and arrested. He was [also] detained for a period of forty-eight hours and then brought ... before an investigating judge. The assailant was charged with false impersonation, unlawful deprivation of liberty and attempted rape.
>
> [2.] The proceedings have commenced and they shall, of course, have their conclusion. The local police, otherwise very prompt when it comes to informing [the public] even of much lesser offences, simply kept silent ... [about the incident] ... The press also received no information from the investigating judge ... or the public prosecution service ... which has otherwise [also] been cooperative with respect to providing information concerning its activities. This magazine indirectly found out about the horrific ordeal suffered by our underaged fellow citizen. The police only provided us with information following receipt of our written request asking them to confirm or deny the details which we had learnt from others.
>
> [3.] Non-governmental organisations focused on Romani rights issues also stayed quiet. The case of an underaged street vendor ... was probably not a priority for their rich donors. The city administration likewise did nothing with respect to their own official ... Why did they [all] remain silent ... uncomfortable questions will soon have to be answered by those in power ... Did the police keep quiet about the attempted rape just because it concerned a Romani girl? Did anyone, and if so who, from the city administration intervene in order to cover up the ... [shameful incident] ... [Was the idea to thereby] ... buy time so as to make it possible for the 'head of the municipal branch office to strike a deal with the Gypsies, until they are paid off to withdraw their complaint of attempted rape'? Lastly, but most importantly, whose interest is it in to protect the bully, who is getting his salary paid from the [municipal] budget, while in his free time attempting to rape his underaged fellow citizens? For as long as these questions remain unanswered by those in power, the City of Kragujevac will be unable to remove its shame [regarding this incident] ..."

7. On the same date, that is 3 June 2010, *Svetlost* published another article regarding the alleged incident titled: "The false inspector from ... [D] ... near Kragujevac ... [a]ttempted to rape an underaged girl" (*Lažni inspektor iz ... [D] ... kod Kragujevca ... [p]okušao da siluje maloletnicu*). This piece, written by Ms A, a journalist employed with *Svetlost*, in so far as relevant, reads as follows:

"[1.] ... [Mr B][1] ... (44), the head of the municipal branch office in ... [the village of D] ... near Kragujevac, was brought before an investigating judge of the Kragujevac Court of First Instance on April 30th of this year under suspicion of having committed the criminal offences of unlawful deprivation of liberty and performing illicit sexual acts on an underaged girl, as confirmed to *Svetlost* by ... [the police] ...

[2.] The criminal complaint against ... [Mr B] ... was lodged by an underaged girl who, together with her mother, had been selling, on April 27th of this year and in front of the main post office building in Kragujevac, minor domestic supplies. The police explored the allegations and, after forty-eight hours of detention, ... brought ... [Mr B] ... before an investigating judge. Despite the incident having taken place in late April, the police did not issue their usual press release until they received our request in this regard.

[3.] The criminal complaint lodged by the underaged girl states that on April 27th, at around 2.00 p.m., ... [Mr B] ... introduced himself as a market inspector and told them that they could freely sell their merchandise in front of the post office building because he was in charge of that area. One hour later he returned with his car in front of the post office building and ... invited the girl to approach the vehicle. When the girl came near, ... [Mr B] ... told her to enter the car in order to sign a document and then locked the front passenger door and drove away [with her] from the scene. He explained to the girl that certain documents had to be copied and started touching her leg, according to the criminal complaint.

[4.] The girl then told the false inspector that she could not leave her mother, but ... [Mr B] ... asked her to calm down, while parking his car in Karađorđeva Street ... He started touching her and kissing her on the neck ... [and] ... the girl started screaming but he [then] turned on the music loudly [in his vehicle] ... [Mr B] tore the buttons off of her trousers ... [and the] ... clip off of her bra. The girl punched against the car windows, while ... [Mr B] ... told her to calm down and that he would not touch her [again]. He then drove her away to Nikola Pašić Street, proposed that they have a coffee together, and [told] her not to tell anyone about what had happened. One day later, ... [Mr B] ... called the girl on the phone ... her mother answered and an arrangement was made for the meeting to take place in front of the post office building. There, instead of being met by the girl, ... [Mr B] ... was met by the police and taken to the police station."

8. As noted above, at the time of publication of the two articles the applicant was also the editor-in-chief of *Svetlost*. The first and second articles were published on pages 5 and 26 of the news magazine respectively.

II. THE CRIMINAL PROCEEDINGS

9. Following a preliminary criminal investigation, on 21 July 2010 Mr B was charged by the Kragujevac Public Prosecutor's Office (*Osnovno javno tužilaštvo u Kragujevcu*) in connection with the above-described incident. The charges alleged that he had committed the crimes of unlawful

[1] In the article the head of the municipal branch office was referred to by his name and the initial of his surname, but in this judgment he will instead be referred to as Mr B.

deprivation of liberty (*protivpravno lišenje slobode*) and illicit performance of sexual acts (*nedozvoljene polne radnje*).

10. The Kragujevac Court of First Instance (*Osnovni sud u Kragujevcu*) thereafter heard the defendant and the alleged victim, as well as a number of witnesses. It furthermore took into account the statements given and the documentation obtained in the course of the preliminary proceedings.

11. In the meantime, on 17 September 2010, the alleged victim provided the court with her own, as well her mother's, court-certified statements of 16 September 2010 wherein they both fully recanted their earlier testimony accusing Mr B of the crimes in question.

12. On 25 December 2012 the Kragujevac Court of First Instance acquitted Mr B of all charges.

13. On 17 June 2013, following a remittal on appeal, the same court again acquitted Mr B of all charges.

14. On 30 December 2013 this judgment was upheld by the Kragujevac Appeals Court (*Apelacioni sud u Kragujevcu*) at second instance and it thereby became final.

III. THE CIVIL PROCEEDINGS

15. In July 2010 Mr B lodged a civil defamation claim with the Kragujevac High Court (*Viši sud u Kragujevcu*) against the applicant, Ms A and *Svetlost* regarding the two published articles.

16. On 23 December 2010 this court ruled partly in favour of Mr B and ordered the applicant and *Svetlost* only, not Ms A, to pay him jointly a total of 100,000 Serbian dinars (RSD), as well as statutory interest as of that date, on account of the mental anguish suffered as a consequence of the breach of his honour and reputation, plus RSD 28,220 in litigation costs. The court furthermore ordered the said two respondents to publish this judgment, without comment or delay, in their own news magazine. The Kragujevac High Court explained, as regards the first article and with specific reference to paragraph 1 thereof, that, *inter alia*, the applicant as its author had stated as fact that Mr B had committed the crimes of unlawful deprivation of liberty, false impersonation and attempted rape despite the fact that the criminal proceedings against the latter had still been pending, thereby breaching his right to be presumed innocent. Furthermore, the applicant had included an untrue statement of fact when he had reported that Mr B had committed the crime of attempted rape even though he had known that the police had not pressed charges for that particular criminal offence (see paragraph 6 above). With respect to the second article, prepared by Ms A and specifically as regards paragraphs 1, 3 and 4 thereof, the court rejected the plaintiff's claim, noting that this piece had been written accurately based on the information provided by the police themselves (see paragraph 7 above). Lastly, the court noted the existence of the statement of

16 September 2010 (see paragraph 11 above), but reiterated that it had no bearing on the present case since it had been given after the publication of the articles in question.

17. On 4 April 2011 the Kragujevac Appeals Court partly amended the judgment delivered at first instance. In so doing, it ordered the applicant, Ms A and *Svetlost* to pay Mr B jointly a total of RSD 50,000 (approximately 485 euros, EUR, at the time) on account of the mental anguish suffered as a consequence of the breach of his honour and reputation, as well as statutory interest from 23 December 2010, plus RSD 14,110 in litigation costs (approximately EUR 137 at the time). The obligation on the part of the respondents to publish the judgment was upheld. In its reasoning, which was essentially along the lines of that offered by the Kragujevac High Court, the Kragujevac Appeals Court nevertheless held, *inter alia*, that: (a) the award of RSD 100,000 had been excessive, given the existing interest of the public to be informed of the incident in question, albeit in a more appropriate manner; (b) Ms A had also incorrectly stated as fact in the title of her piece, despite the more accurate text just below it, that Mr B had "attempted to rape an underaged girl"; and (c) Mr B could not be considered a "public figure" and as such someone who should have had to withstand more criticism, since he had merely been employed as the head of a municipal branch office and had not been a local government official (*službenik u teritorijalnoj jedinici lokalne samouprave*).

18. The above rulings relied on, *inter alia*, some of the relevant provisions of the Obligations Act and the 2003 Public Information Act summarised in paragraphs 30-36 below.

IV. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

19. On 20 May 2011 the applicant lodged a constitutional appeal (*ustavnu žalbu*) against the Kragujevac Appeals Court's judgment of 4 April 2011.

20. On 3 December 2013 the Constitutional Court (*Ustavni sud*) dismissed the appeal. It noted, *inter alia*, that it was unlawful to divulge information concerning an ongoing criminal case, even if this information was accurate, or to breach one's right to be presumed innocent. In any event, an appropriate balance had to be struck between the freedom of expression, on the one hand, and the protection of the reputation of the person concerned on the other, and the civil courts in the case at hand had done so properly.

21. The applicant was served with the Constitutional Court's decision on 6 February 2014.

V. THE ENFORCEMENT PROCEEDINGS

22. On 4 February 2014 Mr B lodged an enforcement request (*predlog za izvršenje*) with the Kragujevac Court of First Instance as regards the civil judgments of 23 December 2010 and 4 April 2011 (see paragraphs 16 and 17 above).

23. On 6 February 2014 the Kragujevac Court of First Instance issued the enforcement order (*rešenje o izvršenju*).

24. On 5 August 2014 the bailiff (*izvršitelj*) ordered the applicant to pay, within three days, the sums in question and noted, *inter alia*, that should he fail to comply his entire property would be subject to enforcement (*izvršenje na celokupnoj imovini*).

25. According to the information provided by the applicant, since 15 May 2013 he had been unemployed and lacking any movable assets of relevance to the enforcement procedure. This was also why the civil judgments in question had not yet been enforced. The applicant, however, stated that he did own a flat in which he had been living with his family and that Mr B could yet seek enforcement on this property.

26. The Government confirmed that as of April 2020 the civil judgments at issue remained unenforced.

VI. OTHER RELEVANT FACTS

27. In his statement given to the Kragujevac High Court on 19 October 2010, as part of the civil defamation proceedings, Mr B recounted that after the publication of the articles in question he had called the applicant and had asked him why such pieces had been published at all. The applicant, in response, had offered him the opportunity to deny the allegations in the newsmagazine's next issue, but Mr B had refused this offer because he had not wanted to debate the matter through the media. Lastly, Mr B had informed the applicant that he would instead be bringing legal proceedings in this regard.

28. On 9 June 2010 Mr B visited a neuropsychiatrist, allegedly as a consequence of the distress which he had suffered due to the publication of the articles. On the same date, he was also provided with a certificate attesting that he was temporarily incapable of working.

29. In April 2010 the average gross and net monthly salaries in Kragujevac were RSD 51,240 and RSD 36,846, approximately EUR 497 and EUR 357 respectively.

RELEVANT LEGAL FRAMEWORK AND JURISPRUDENCE

I. THE OBLIGATIONS ACT (*ZAKON O OBLIGACIONIM ODNOSIMA*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA NOS. 29/78, 39/85, 45/89 AND 57/89, AS WELL AS IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA NO. 31/93)

30. Under Articles 199 and 200, *inter alia*, anyone who has suffered mental anguish as a consequence of a breach of his or her honour or reputation may, depending on the duration and intensity of the said mental anguish, sue for financial compensation before the civil courts and, in addition, request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

II. THE 2003 PUBLIC INFORMATION ACT (*ZAKON O JAVNOM INFORMISANJU*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS – NOS. 43/03, 61/05 AND 71/09)

31. Article 3 § 1 provided that prior to the publication of information regarding "an event, an occurrence or a certain person", the journalist and the responsible editor were to "verify its origin, veracity and comprehensiveness" with due diligence.

32. Article 9 provided, *inter alia*, that the right to the protection of one's privacy was to be limited for holders of State or political positions if the information in question was of public relevance given their functions. The rights of such persons were to be limited in proportion to the justified interest of the public in each case.

33. Article 30 §§ 2 and 4 provided, *inter alia*, that the editor-in-chief of a media outlet was to have the status of the responsible editor of that outlet. The responsible editor of a specific edition, column, or programme was to be held responsible for the contents which he or she edited.

34. Article 37 provided, *inter alia*, that a media outlet could not pronounce anyone guilty of an offence in the absence of a final judicial or another decision rendered in this connection.

35. Article 79 provided, *inter alia*, that any person who suffered pecuniary and/or non-pecuniary harm as a consequence of incorrect or incomplete information published by a media outlet, or due to the publication of other information in breach of this Act, was entitled to adequate compensation quite apart from any other available redress.

36. Article 80 provided, *inter alia*, that the editor-in-chief and the founder of a media outlet, who would have been able to establish through due diligence the inaccuracy or incompleteness of the information prior to

its publication, were to bear joint liability for any pecuniary and/or non-pecuniary damage caused by the publication of the information in question. The same obligation, for example, also applied when harm was caused by an "inadmissible publication" of accurate information regarding one's private life or concerned accusations involving the commission of a criminal offence.

37. This Act was subsequently amended, through decisions rendered by the Constitutional Court, but was ultimately repealed and replaced by other legislation in 2014.

III. DECISION ADOPTED BY THE CITY OF KRAGUJEVAC ON THE ESTABLISHMENT AND COMPETENCIES OF MUNICIPAL BRANCH OFFICES OF 2 DECEMBER 1998 (*ODLUKA O OBRAZOVANJU I DELOKRUGU RADA MESNIH KANCELARIJA*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE CITY OF KRAGUJEVAC NO. 8/VIII)

38. Article 2 provided, *inter alia*, that municipal branch offices were to be established for the purpose of making it easier for the citizens concerned to benefit from administrative services at the local level.

39. Article 4 provided, *inter alia*, that municipal branch offices were to perform administrative and technical tasks, keep official records and issue official certificates, as well as prepare reports and statistics in this context.

IV. RULES ON INTERNAL ORGANISATION AND JOB CLASSIFICATION ISSUED BY THE KRAGUJEVAC OFFICE FOR LOCAL SELF-GOVERNMENT AND ADMINISTRATIVE AFFAIRS (*PRAVILNIK O UNUTRAŠNJOJ ORGANIZACIJI I SISTEMATIZACIJI RADNIH MESTA U GRADSKOJ UPRAVI ZA MESNU SAMOUPRAVU I OPŠTU UPRAVU*, KRAGUJEVAC, SEPTEMBER, 2008)

40. These Rules provided, *inter alia*, that executive employees working for municipal branch offices could engage in activities such as keeping of official records, issuing of various certificates, preparing reports and statistics, and dealing with civil defence matters. They could also take on other responsibilities at the specific request of municipal officials.

V. LEGAL ENCYCLOPAEDIA, *PRAVNA ENCIKLOPEDIJA*, VOLUME I, PP. 814-815, *SAVREMENA ADMINISTRACIJA*, BELGRADE, 1985)

41. As needed and if necessary, municipalities may set up their local branch offices in order to carry out some of their various administrative functions more effectively. Such branch offices may be established on the bases of municipal regulations (*statutima opština*) while their remit may be

defined through decisions adopted by the municipal assemblies (*odlukama opštinskih skupština*). Heads of local branch offices shall be municipal employees appointed either by the municipal assemblies themselves or by other bodies authorised to do so by the municipal assemblies.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicant complained, under Article 10 of the Convention, that he had suffered a breach of his freedom of expression. In particular, he maintained: (i) that the printed articles in question had raised serious issues to do with the alleged sexual abuse of an underaged Romani girl; and (ii) that he had ultimately ended up being punished for the articles' publication by losing a civil defamation case and being ordered to pay compensation plus costs to Mr B.

43. Article 10 of the Convention, in so far as relevant, reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to ... impart information and ideas without interference by public authority ...
>
> 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

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

B. Merits

1. The parties' submissions

(a) The applicant

45. The applicant reaffirmed his complaints. He added that the situation as regards the protection of minority groups in Serbia had been poor, particularly with respect to the Roma who had been among the most vulnerable groups in the country. Moreover, even though Mr B had not been formally charged with false impersonation or attempted rape, given what had in fact happened during the incident and the similarities between and

interconnectedness of the offences in question, it had not been wrong, generally speaking, to describe his actions as such. In any event, while *Svetlost* had been fully entitled to present "negative value judgments" regarding an incident which had clearly been of great public interest, there had never been any intent to gratuitously harm Mr B as illustrated by the latter's own statement given in court on 19 October 2010 (see paragraph 27 above). The applicant furthermore submitted that in the present case everything had been done in order to cover up the incident and secure impunity for the perpetrator simply because the victim herself had been of Romani origin. The criminal proceedings against Mr B had thus ultimately collapsed due to the pressure which had been brought to bear on the victim and her mother which in turn had had the consequence of them recanting their allegations in respect of Mr B (see paragraph 11 above). Lastly, the applicant argued that in the Serbian legal system the position of a head of a municipal branch office was a very important public function (see paragraph 41 above) and maintained that the compensation and costs which had been awarded against him had never been enforced only because he had neither had the property nor the income to cover those amounts (see paragraph 25 above).

(b) The Government

46. The Government endorsed the reasoning of the civil courts (see paragraphs 16 and 17 above), as well as the reasons which had been offered by the Constitutional Court (see paragraph 20 above), and maintained that there had been no violation of Article 10 in the present case. In particular, the interference with the applicant's freedom of expression had been in accordance with the law and necessary in a democratic society for the protection of the reputation of others (see paragraph 30 above). Furthermore, the civil courts had not awarded compensation to Mr B for any negative value judgments expressed in the articles but for the publication of untrue statements of fact which had ended up seriously harming his well-being and affecting his reputation (see paragraph 28 above). According to the Government, the media in general had to show a greater degree of respect for the presumption of innocence, as well as "attention and seriousness" when reporting on cases involving sexual violence given the severity of the "social condemnation" of such offences locally. The second article, moreover, had repeatedly mentioned Mr B by his name and the initial of his surname which had made his identification easy for anyone interested. Also, Mr B could not be considered as a "public official" and hence someone who would have had "to endure stronger and more provocative criticism" since he had merely been an employee of the City of Kragujevac and the head of a municipal branch office at the material time (see paragraphs 38-40 above). In any event, the two articles had had nothing to do with the official performance of his duties. Finally, the Government

argued that the amount of compensation which had been awarded to Mr B had not been disproportionate given that it had amounted to less than one average gross monthly salary in Kragujevac at the relevant time (see paragraph 29 above).

2. The Court's assessment

(a) Existence of an interference

47. It is not disputed between the parties that the final civil judgment rendered against the applicant, as a journalist and an editor-in-chief, by the Kragujevac Appeals Court on 4 April 2011 amounted to an "interference by [a] public authority" with his right to freedom of expression (see paragraph 17 above; see also, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, §§ 9 and 66, ECHR 2007-IV, *Orban and Others v. France*, no. 20985/05, § 47, 15 January 2009, with further references, and *Gutiérrez Suárez v. Spain*, no. 16023/07, §§ 28 and 29, 1 June 2010, as regards the situation of authors as well as publishers, publication directors and editors responsible for their publications). Such an interference will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" in order to achieve those aims.

(b) Whether the interference was prescribed by law

48. The Court notes that the legal bases for the adoption of the final civil judgement in question were, *inter alia*, the relevant provisions of the Public Information Act and the Obligations Act (see paragraphs 18 and 30-36 above). The Court holds that these provisions were both adequately accessible and foreseeable, that is to say that they were formulated with sufficient precision to enable an individual – if need be with appropriate advice – to regulate his or her conduct (see, for example and among many other authorities, *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 123-125, 17 May 2016; see also, in the Serbian context, *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 64, 11 February 2014). The Court, therefore, concludes that the interference at issue was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(c) Whether the interference pursued a legitimate aim

49. In agreement with the position of the domestic courts, the Government argued that the interference in question had pursued the legitimate aim of "the protection of the reputation or rights of others". The

Court finds no reason to hold otherwise and accepts therefore that the interference with the applicant's freedom of expression pursued one of the legitimate aims envisaged under Article 10 § 2 of the Convention.

(d) Necessary in a democratic society

(i) General principles

50. The Court refers to the general principles for assessing the necessity of an interference with the exercise of freedom of expression as set out in *Morice v. France* [GC], no. 29369/10, § 124, ECHR 2015; *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016; and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 75, 27 June 2017.

51. The Court has also held in numerous cases that a lack of relevant and sufficient reasoning on the part of the national courts or a failure to consider the applicable standards in assessing the interference in question will entail a violation of Article 10 (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 46, ECHR 2003-XI; *Uj v. Hungary*, no. 23954/10, §§ 25 and 26, 19 July 2011; and *Mariya Alekhina and Others v. Russia*, no. 38004/12, § 264, 17 July 2018).

52. It should furthermore be reiterated that the right to protection of reputation is a right which is guaranteed under Article 8 of the Convention as part of the right to respect for private life (see, for instance, *Denisov v. Ukraine* [GC], no. 76639/11, § 97, 25 September 2018). In order for Article 8 to come into play an attack on a person's reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to the personal enjoyment of one's right to respect for his or her private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 76; and *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020).

53. In instances where, in accordance with the criteria set out above, the interests of the "protection of the reputation or rights of others" bring Article 8 into play, the Court may be required to verify whether the domestic authorities struck a fair balance when protecting the two values guaranteed by the Convention, 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 *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 77). The general principles applicable to the balancing of these rights were first set out in *Von Hannover v. Germany* (no. 2) [GC] (nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012) and *Axel Springer AG* (cited above, §§ 85-88), then restated in more detail in *Couderc and Hachette Filipacchi Associés v. France* [GC] (no. 40454/07, §§ 90-93, ECHR 2015 (extracts)) and more recently summarised in *Medžlis Islamske Zajednice Brčko and Others* (cited above, § 77).

54. Lastly, the Court has held that the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by Article 10 of the Convention. Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see *Bédat*, cited above, § 54, with further references). The relevant criteria, when it comes to the balancing exercise between the rights protected under Article 8 and Article 10 of the Convention, include: (a) the contribution made by the article in question to a debate of public interest; (b) how well known is the person concerned and what is the subject of the report; (c) the conduct of the person concerned prior to the publication of the article; (d) the method of obtaining the information and its veracity; (e) the content, form and consequences of the publication; and (f) the severity of the sanction imposed (see, for example, *Axel Springer AG*, cited above, §§ 89-95, and *Milisavljević v. Serbia*, no. 50123/06, § 33, 4 April 2017). Of course, some of the above criteria may have more or less relevance given the particular circumstances of a given case (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 166, 27 June 2017) and other relevant criteria may also be taken into account depending on the situation (see *Axel Springer SE and RTL Television GmbH v. Germany*, no. 51405/12, § 42, 21 September 2017).

(ii) Application of these principles to the present case

55. In assessing the relevant statements contained in the two published articles and the reasons given in the domestic civil courts' judgments to justify the interference with the applicant's freedom of expression, the Court finds the following issues of particular relevance, having regard to the criteria identified in paragraphs 53-54 above: whether the statements in question made a contribution to a debate of public interest; whether Mr B can be considered a "public figure"; the method of obtaining information on the part of the applicant and his publication, as well as the content, form and veracity of the information contained in the articles; and, lastly, the consequences of the publication of the articles in respect of Mr B and the severity of the sanction imposed on the applicant himself.

(α) Whether the articles made a contribution to a debate of public interest

56. The public interest ordinarily 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 (see, among others, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 171).

57. The Court has furthermore recognised the existence of such an interest, for example, when the publication in question concerned information on criminal proceedings in general (see *Dupuis and Others v. France*, no. 1914/02, § 42, 7 June 2007, and *July and SARL Libération v. France*, no. 20893/03, § 66, ECHR 2008 (extracts)) or information regarding a specific criminal case (see *White v. Sweden*, no. 42435/02, § 29, 19 September 2006, and *Egeland and Hanseid v. Norway*, no. 34438/04, § 58, 16 April 2009).

58. With this in mind, the Court considers that the two published articles in the present case clearly concerned an incident of public interest, referring as they did to an alleged sexual assault on an underaged Romani girl and the very serious charges subsequently brought against Mr B in this connection.

(β) Whether Mr B can be considered a "public figure"

59. 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; *Petrenco v. Moldova*, no. 20928/05, § 55, 30 March 2010; and *Milisavljević*, cited above, § 34) in respect of whom 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 *Kuliś v. Poland*, no. 15601/02, § 47, 18 March 2008; *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 25, 13 January 2009; and *Milisavljević*, cited above, § 34).

60. As regards State bodies and civil servants, the Court has held that, when acting in an official capacity, they too are, in some circumstances, subject to wider limits of acceptable criticism than private individuals (see, for example, *Lombardo and Others v. Malta*, no. 7333/06, § 54, 24 April 2007, and *Romanenko and Others v. Russia*, no. 11751/03, § 47, 8 October 2009). 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, *mutatis mutandis*, *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I; see also *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II, and *Mariapori v. Finland*, no. 37751/07, § 56, 6 July 2010).

61. In view of the above and quite apart from the parties' different views on whether Mr B should be deemed a "public figure" within the meaning of the Court's case law under Article 10 of the Convention, the Court notes that the published articles in question concerned an incident in which Mr B had been alleged to have committed a sexual assault and not claims to the effect that he had somehow inappropriately or unlawfully carried out any of

his official duties in his capacity as a civil servant, i.e. as head of a municipal branch office. In these specific circumstances, it cannot be said that in the context of seeking redress for the violation of his reputation Mr B should have shown a greater degree of tolerance than a private individual in a similar situation.

(γ) The method of obtaining information, and the content, form and veracity of the information contained in the articles

62. The Court would stress that in the context of freedom of expression, it draws a distinction between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement: if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment, it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see, for instance, *Morice*, cited above, § 126, with further references).

63. Regard must also be had, in the Court's view, to the special role of the judiciary in society. In particular, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. However, consideration must be given to everyone's right to a fair hearing as secured under Article 6 § 1 of the Convention, which, in criminal matters, includes the right to an impartial tribunal and the right to the presumption of innocence. As the Court has repeatedly emphasised, this must be borne in mind by journalists when commenting on pending criminal proceedings, since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice (see *Bédat*, cited above, § 51, with further references).

64. Being mindful of the above and as regards the present case, the Court notes that the applicant and the news magazine were ultimately informed of the alleged incident and the related procedural developments by the police themselves (see paragraphs 6 and 7 above). Furthermore, the civil courts properly established that the first article had stated as fact that Mr B

had committed a number of crimes despite it having been known that the criminal proceedings against him were still pending, thereby ignoring his right to be presumed innocent until proved guilty (see, for example, *Axel Springer SE and RTL Television GmbH*, cited above, § 40; *Bédat*, cited above, § 55; and *Ruokanen and Others v. Finland*, no. 45130/06, §§ 48 and 51, 6 April 2010). Also, it contained an incorrect statement of fact in so far as it reported that Mr B had committed the crime of attempted rape even though the news magazine itself was in possession of information that the police had not even pressed charges against him for this particular offence (see paragraphs 16 and 17 above). Concerning both articles, the Kragujevac Appeals Court, also quite rightly in the Court's view, added that while there had been an interest on the part of the public to be informed of the alleged incident, this had to be done in an appropriate manner and, moreover, as regards the second article only, that despite the more accurate text just below it the article's title had stated that Mr B had in fact "attempted to rape an underaged girl" (see paragraph 17 above; also, compare to and contrast with, for example, *Tešić*, cited above, §§ 66, 8-12, 14-17, 52 and 53, in that order, where the applicant did not explicitly disregard the right to be presumed innocent until proved guilty but stated merely that her former lawyer had deliberately failed to represent her properly in a pending civil suit, as confirmed by a subsequent police investigation; furthermore, the applicant's allegations in the present case, involving sexual abuse as they did, were of a much more serious and sensitive nature). It follows therefore that, as suggested by the Government in their observations, the domestic civil courts had not ruled against the applicant based on any negative value judgments expressed in the articles but because of the publication of inaccurate statements of fact (see, *mutatis mutandis*, *Egill Einarsson v. Iceland*, no. 24703/15, § 52, *ab initio*, 7 November 2017, where the Court held, *inter alia*, that the objective and factual nature of the term "rapist", when viewed on its face, did not justify the conclusion that the statement in question constituted a value judgment rather than a statement of fact, despite then going into an analysis even assuming that the opposite were the case). Moreover, while restricting an applicant's right to criticise the actions of public powers by imposing an obligation to accurately respect the legal definition of a given crime might, generally speaking, disproportionally undermine his or her right to freedom of expression, in the specific circumstances of the present case the applicant, as indeed any average citizen too, should have been able to make a common sense distinction between such sensitive yet very different phrases as "attempted to rape" stated as fact, on the one hand, and, for example, "suspected of having attempted to rape" on the other (compare and contrast to *Toranzo Gomez v. Spain*, no. 26922/14, § 65, 20 November 2018). Lastly, the second article mentioned Mr B by his name and the initial of his surname which made his identification easy for persons locally, it being common knowledge that

Mr B was the head of a specific municipal branch office near Kragujevac at the material time (see paragraph 7 above).

(δ) The consequences of the publication of the two articles in respect of Mr B and the severity of the sanction imposed on the applicant

65. As already noted above, the right to protection of reputation is a right which is guaranteed under Article 8 of the Convention as part of the right to respect for private life (see paragraphs 52 and 53 above).

66. Furthermore, the nature and severity of the sanction imposed is a matter of particular importance in assessing the proportionality of the interference under Article 10 § 2 (see paragraph 54 above). The amount of any compensation awarded must likewise "bear a reasonable relationship of proportionality to the ... [moral] ... injury ... suffered" by the plaintiff in question (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B; see also *Tešić*, cited above, § 63).

67. In view of the foregoing and given the nature of the criminal charges brought against Mr B, as well as its own conclusions set out in paragraph 58 above, the Court considers that the consequences of the publication of the articles in question were clearly sufficiently serious so as to attract the protection of Article 8 in respect of Mr B's reputation (see paragraphs 52 and 53 above). At the same time, however, the final civil court judgment rendered against the applicant, ordering him, *inter alia*, to pay an RSD equivalent of approximately EUR 622 for the mental anguish suffered and the costs incurred, plus statutory interest, cannot be deemed as severe in itself, particularly given that the amounts awarded to Mr B were never enforced against the applicant (see paragraphs 25 and 27 above; also, compare and contrast to *Tešić*, cited above, §§ 67 and 68).

(ε) Conclusion

68. In the light of the above considerations, the Court is of the opinion that the civil courts struck a fair balance between the applicant's freedom of expression, on the one hand, and Mr B's interest in the protection of his reputation on the other, and that the reasons given in their judgments in this context were both relevant and sufficient. Furthermore, the civil proceedings against the applicant were themselves concluded before the conclusion of the criminal case brought against Mr B, which was why the latter could not have been of any relevance for the outcome of former (see paragraphs 14 and 17 above; see also paragraphs 11 and 16, *in fine*, above).

69. The alleged incident giving rise to the impugned articles involved allegations of a particularly serious and sensitive nature. In spite of the essential role of the press in a democratic society, however, paragraph 2 of Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern (see, for example, *Bladet Tromsø and Stensaas v. Norway* [GC],

no. 21980/93, § 65, ECHR 1999-III, and *Monnat v. Switzerland*, no. 73604/01, § 66, ECHR 2006-X). Indeed, the protection afforded by Article 10 of the Convention to journalists, as well as to editors by implication, is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see, for example, *Bédat*, cited above, § 50).

70. In view of the foregoing, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 25 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Jon Fridrik Kjølbro President