

## ACTION REPORT

### RADIO BROADCASTING COMPANY B92 AD V. SERBIA

Application no. 67369/16

Judgment of 5 September 2023, final on 5 December 2023

#### **I CASE DESCRIPTION**

1. This case concerns an unjustified interference, in period between 2013 - 2016, with the applicant company's freedom of expression due to its disproportionate civil sanctioning for TV news broadcast and publication of an online article defaming a public official (violation of Article 10).

2. The Court held that the domestic courts failed to consider: (a) the accuracy of the language used by the applicant company; (b) the online article as a whole, against the background of the apparently ongoing public debate about vaccine procurement in assessing whether one of the allegations had been a statement of fact or a value judgment; or (c) the fact that the applicant company had contacted all the relevant parties to give them an opportunity to give their version of events (§ 100).

#### **II INDIVIDUAL MEASURES**

3. The authorities ensured that individual measures have been taken to bring the violation to an end and provide redress to the applicant for the damage sustained. These measures are set out below.

#### **A. Reopening of the impugned proceeding**

4. At the outset, the authorities indicate that pursuant to the domestic law, the applicant had at his disposal an effective and practical avenue to request reopening of the proceeding within 60 days following the European Court's judgment finding a violation. This timeframe has expired on 6 February 2024. As far as the authorities are aware, the applicant did not request reopening of the impugned proceeding.

#### **B. The applicant's redress**

5. The European Court awarded the applicant the amount of EUR 2,740 in respect of pecuniary damage, EUR 2,500 in respect of non-pecuniary damage and EUR 2,400 in respect of costs and expenses. The payments have been made on 7 and 12 March 2024.

#### **C. Conclusions on the individual measures**

6. In view of the above, the authorities consider that the applicant has been redressed for the damage sustained and that no further individual measures are possible in the present case.

### **III GENERAL MEASURES**

7. The authorities ensured that appropriate measures have been taken to prevent similar violations of the right to a fair trial. These measures are set down below.

#### **A. Development of Convention-compliant case-law**

8. The Government wishes to emphasize that the case in question is an isolated one. It is important to note that domestic courts have developed an adequate case law, particularly after 2014, to prevent any further violations of the Convention.

9. In accordance with Article 4 § 2 of the 2013 [Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office](#), the Higher Court in Belgrade has exclusive competence

for media disputes, and the same applies for the Appellate Court in Belgrade in media disputes in the second instance. One of the objectives of this legal solution was to specialize the court in handling these cases and allow for a more effective application of good judicial practice and development of a relevant case law.

10. In the following paragraphs, we present the relevant national case law concerning this subject.

**i) Higher Court in Belgrade Convention-compliant case-law**

11. In cases of media-related disputes, the Higher Court in Belgrade looks to the best practices of the European Court concerning Article 10 of the Convention. The court consistently shows deference to these practices in its judgments, utilizing them as a valuable reference for ensuring proper level of safeguards concerning freedom of expression.

12. In judgment P3-97/11<sup>1</sup> of 4 June 2014, the Higher Court in Belgrade rejected the claim for compensation for non-pecuniary damages against a media company due to the publication of incorrect information. In their decision, they referred to the cases [Pedersen and Baadsgaard v. Denmark](#) and [Thoma v. Luxembourg](#).

13. In the cited judgment the national court concluded that journalists are not obliged to distance themselves from the statements of other persons, which are capable of harming the reputation or rights of third parties, referring to the ECHR judgement in the *Pedersen and Baadsgaard* case, with a special note that journalists are not obliged to distance themselves from statements made by other persons, when those statements were made in an interview. The court also stated that the general conditions for journalists to systematically and formally distance themselves from the content of quotes that could cause offense to another person or harm the reputation of another person are not in accordance with the role of the press to provide information on current events, opinions and ideas by referring to the judgment of the ECHR in the case of *Thoma v. Luxembourg*.

14. In the same judgment, the court stated that it is important to note that the jurisprudence of the European Court serves as a guide for unifying the jurisprudence of the courts in Serbia. This

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<sup>1</sup> Annex 1 - pages 14 and 15

is based on the principle of applying the same procedure in the same legal situations, which contributes to greater legal certainty.

15. The judgment, P3-314/17<sup>2</sup>, delivered on 10 July 2019, pertained to the rejection of a claim for compensation for non-pecuniary damage regarding media publication. The court highlighted that the use of strong language in the titles and subtitles of published texts could be deemed offensive if not viewed in the appropriate context. However, the court deemed that in this particular case, the use of such language was acceptable as it fell within the permitted level of freedom of expression outlined in Article 10 of the Convention. This was because the language used represented a value judgment, which is an acceptable form of expression. The court also considered that the defendants cannot be required to establish the truth of the facts in court proceedings, their correspondence with reality and the elimination of any reasonable doubt, and that for the free expression and publication of factual statements, it is not necessary to have evidence of their absolute accuracy, but it is sufficient to freely express and publish information after first verifying that it is true, in accordance with the principle of ethical journalism, which the defendants did according to the court's assessment. The judgement reiterates the importance of context when evaluating the use of strong language in published texts and underscores the significance of the right to freedom of expression in accordance with Article 10 of the Convention.

16. In judgment P3-446/19<sup>3</sup>, dated 5 May 2022, the court also addressed the issue of criticizing politicians and rejected the claim for damages against the media company. In this particular case, the court determined that the public's interest in publishing information outweighed the interest in protecting the plaintiff's dignity. The court considered that media publication is part of the broader social context concerning a form of violence against a vulnerable group of people, aiming to highlight the issues they face. The court also emphasized that in this case, the public's interest is especially strong due to ongoing criminal proceedings involving politician. In conclusion, the court stated that when publishing articles on topics of particular public interest, especially those concerning politicians, freedom of expression should be given broader scope, allowing for a certain degree of exaggeration and accepting offensive language as a form of legitimate criticism.

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<sup>2</sup> Annex 2 - pages 12 and 13

<sup>3</sup> Annex 3 - pages 9 and 10

17. The authorities note that the Appellate Court in Belgrade confirmed all three cited judgments of the Higher Court in Belgrade, making them final.

**ii) Appellate Court in Belgrade Convention-compliant case-law**

18. The authorities highlight that the Appellate Court in Belgrade has implemented appropriate measures to address any potential shortcomings in first-instance judgments, with the aim of mitigating any future violations of the Convention regarding freedom of expression.

19. This is illustrated in the judgment Gž3-208/20<sup>4</sup> of 1 October 2020, in which the Appellate Court in Belgrade reversed the first-instance judgment and rejected the claim for compensation for damages due to the publication of information. The court's judgment in this case raised an important question of proportionality between the limitation of the right to privacy and the legitimate goal that led to the limitation of this right. Specifically, the court considered whether publishing a photograph of a person without his consent was a proportional response to the media's desire to more closely illustrate how socially unacceptable his work is (the photograph was taken with the members of prohibited neo-Nazi organisation), given his employment and the categories of people he is responsible for. The court applied the standards of the European Court to resolve the conflict between the right from Articles 8 and 10 of the Convention.

20. In its judgment Gž3-225/19<sup>5</sup> of 14 May 2020, the Appellate Court in Belgrade has once again upheld the standards of the European Court and reaffirmed its commitment to safeguarding the media's freedom of expression. The court determined that while the first instance court's interference in the media's freedom may have been legal, it was not legitimate in this particular case. The court found that there was no justifiable reason to restrict freedom of expression, and thus the interference was unwarranted.

21. The court stated that in the specific case, the meaning of the disputed information in accordance with the provisions of the national legislation, international law, international treaties and in accordance with the ECHR case law, can be correctly interpreted only by considering the title, subtitle and content of the text as a whole, that is, taking into account the content of the

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<sup>4</sup> Annex 4 - pages 6 and 7

<sup>5</sup> Annex 5 - pages 9,10 and 11

article and its general tone and context (quoting the opinion of the ECHR from the cases [Bodrožić and Vujin v. Serbia](#) and [Lepojić v. Serbia](#)).

22. By such observation of the title, subtitle and text in the specific case, the court clearly came to the conclusion that the mentioned information represents the critical opinion of the journalist, i.e. the value judgment, which the plaintiff is obliged to tolerate as a holder of public office in accordance with the case law of the ECHR (cases [Thorgeir Thorgeirson v. Island](#), [Castells v. Spain](#), [Tusalp v. Turkey](#)).

23. In the case of GŽ3-171/19<sup>6</sup> of 24 October 2019, the court addressed the matter of distinguishing between private life and the performance of office in the context of media reporting on environmental pollution. The journalist who published information about the plaintiff was found to have acted with a legitimate goal, given the public interest in being informed about events related to environmental pollution. The court determined that the text in question did not touch on any private issues of the plaintiff but rather publicly called attention to doubts about the manner in which the plaintiff performed his duties. As a result, the plaintiff must be subject to greater limits of acceptable criticism, in accordance with the [Šabanović v. Montenegro and Serbia](#) judgment.

### iii) Constitutional Court Convention-compliant case-law

24. The authorities recall that the measures aimed at preventing similar violations regarding Constitutional Court case law have been taken within the context of the [Tešić case](#) (see [Final Resolution CM/ResDH\(2018\)70](#)). The authorities furthermore note that the impugned facts in the present case took place before the measures have been taken within the framework of *Tešić* case.

25. The Constitutional Court subsequently delivered several decisions<sup>7</sup> confirming its position on this specific case law, finding a violation of freedom of expression. As a result, the contested decisions of the national courts were quashed, and the cases were remitted for retrial.

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<sup>6</sup> Annex 6 - pages 3 and 4

<sup>7</sup> Decisions: [Už-4162/2014](#) of 6 October 2016; [Už-6600/2015](#) of 1 December 2016; [Už-7387/2015](#) of 8 February 2018

26. The authorities conclude that the measures taken to harmonize national case law with the European Court case law are sufficient to prevent future violations of the Convention in similar cases.

## **B. Trainings and awareness-raising measures**

27. The Judicial Academy, in cooperation with the Council of Europe, has conducted a series of 16 training sessions on the topic of Article 10 of the Convention since 2014. These trainings were organized in various locations across Serbia, and due to the challenges posed by the Covid-19 pandemic, they were continued online in 2020. The trainings were attended by judges from basic, higher and appellate courts, as well as court assistants and participants of the initial Judicial Academy training. Going forward, the Judicial Academy plans to continue conducting these training sessions regularly.

28. Furthermore, the Judicial Academy in collaboration with the Council of Europe and the EU has developed two manuals on the topic of Freedom of Expression and Freedom of the Media as part of the JUFREX project. Judicial Academy created the first manual in November 2017, specifically for lecturers on this subject, and the [second manual](#) in January 2021, intended for training participants.

29. The Council of Europe translated the manual "[Freedom of Expression and Defamation](#)" into Serbian in 2016. The translated version was made available to the public, so that anyone interested could access the content and enhance their knowledge on the subject matter.

30. The authorities are confident that these manuals will prove to be valuable resources for all those interested in the promotion and protection of these important rights and freedoms.

## **C. Publication and dissemination measures**

31. The authorities ensured that publication and dissemination of the present judgment were taken to draw the attention of the relevant domestic authorities on the European Court's findings in this case. To this end, the European Court's judgment was translated into Serbian and published in the Official Gazette and on the Government Agent's official web page. The European

Court's findings have therefore been made easily accessible to judges and the legal community nationwide.

#### **IV JUST SATISFACTION**

32. The authorities ensured that just satisfaction awarded by the European Court has been disbursed to the applicant on 7 and 12 March 2024.

#### **V CONCLUSIONS**

33. The authorities consider the individual measures taken ensured that the applicant was redressed for the damage sustained and that no further individual measures are currently possible.

34. The authorities furthermore consider the general measures taken are capable of preventing similar violations.

35. The authorities therefore consider that the Republic of Serbia has complied with its obligations under Article 46 § 1 of the Convention and respectfully propose to the Committee of Ministers to close its examination of the case *RADIO BROADCASTING COMPANY B92 AD*.