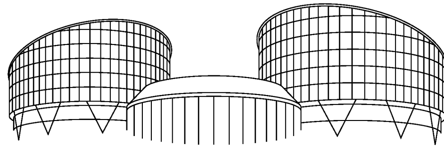

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 33776/20
Bojan PAJTIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 28 March 2023 as a Committee composed of:
Faris Vehabović, *President*,
Branko Lubarda,
Ana Maria Guerra Martins, *judges*,
and Branimir Pleše, *Acting Deputy Section Registrar*,
Having regard to:
the application (no. 33776/20) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 July 2020 by a Serbian national, Mr Bojan Pajtić, who was born in 1970 and lives in Novi Sad ("the applicant") and who was represented by Mr V. Todorić, a lawyer practising in Belgrade;
the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;
the parties' observations;
Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is a Serbian politician who served as the President of the Provincial Government of the Autonomous Province of Vojvodina in the Republic of Serbia[1] from 2004 to 2016. From 2014 until 2016 he was also the leader of the Democratic Party[2]. In 2015 he started civil defamation

[1] Vojvodina is an autonomous province that occupies the northernmost part of Serbia. About two million people live in the province. The administrative centre, Novi Sad, is the second-largest city in Serbia.
[2] A political party which was in government at the State level from 2000 until 2003 and again from 2007 until 2012. It was in government at the level of Vojvodina from 2000 until 2016.

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proceedings against A.M., a high-ranking member of the Serbian Progressive Party[3] and a member of parliament at the material time, because of statements given by A.M. at a press conference and in press interviews critical of the applicant and his administration. Notably, A.M. asserted that the applicant's regime was corrupt and that the applicant had "kidnapped" all members of a municipal council from his party and had been "holding them captive" in a hotel. In one of those press interviews, A.M. called the applicant a "thug". In his response to the applicant's claim, A.M. maintained that the statements in question had been given in the context of fierce political rivalry. He furthermore submitted numerous press reports in order to show that his statements were not baseless. Ultimately, the domestic civil courts dismissed the applicant's claim. The final decision was rendered by the Constitutional Court on 13 February 2020. Relying on Article 8 of the Convention, the applicant complains about the outcome of the civil proceedings.

THE COURT'S ASSESSMENT

2. The Court at the outset reiterates that reputation is protected by Article 8 of the Convention as part of the right to respect for private life. However, in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of that right (see, for example, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia-Herzegovina* [GC], no. 17224/11, § 76, ECHR 2017). It has not been contested that Article 8 is applicable in the present case.

3. Furthermore, in instances where, as in the present case, 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 Court has summarised the relevant criteria for this balancing exercise as follows: contribution to a public-interest debate, how well known is the person concerned, the subject of the allegations, the prior conduct of the person concerned, the content, form and consequences of the allegations, and the very specific circumstances of a given case (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 109-13, ECHR 2012). If the two rights in question have been balanced in a manner consistent with the criteria established by the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (ibid., § 107).

[3] A political party which has been in government at the State level since 2012 and at the level of Vojvodina since 2016.

4. In the present case, the Court notes that the domestic courts established that the issues raised in the statements of A.M. were a matter of public interest and that they rested on what A.M. had believed to be sound grounds (such as, press reports). The impugned statements did not touch upon the applicant's private life. The domestic courts further held that the applicant, as a politician, inevitably and knowingly laid himself open to scrutiny of his every word and deed and had to display a greater degree of tolerance. Moreover, the applicant had been part of the Serbian political scene long enough to get used to this style of communication and had himself given statements comparing A.M. to a rat or a monkey. Relying on the case-law of the European Court of Human Rights, the domestic courts held that any award of damages would violate A.M.'s freedom of expression and therefore dismissed the applicant's claim.

5. In this regard, the Court has consistently emphasised the importance of freedom of expression for members of parliament, like A.M. at the material time, this being political speech *par excellence* (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 137, 17 May 2016, and the authorities cited therein). In the present case, A.M. did not express his opinion from the parliament floor, as he might have done without fear of sanctions, but chose to do so at a press conference or in press interviews. That does not mean, however, that he lost his right to criticise the Provincial Government and the ruling party in the Autonomous Province of Vojvodina (see, *mutatis mutandis*, *Castells v. Spain*, 23 April 1992, § 43, Series A no. 236).

6. The Court also disagrees with the applicant that the fact that the domestic courts had not applied the "presumption of falsity" (sometimes referred to as the "defence of truth") was sufficient in itself to find a violation of Article 8. While a requirement for defendants in defamation proceedings to prove to a reasonable standard that the allegations made by them were substantially true does not, as such, contravene the Convention (see *McVicar v. the United Kingdom*, no. 46311/99, § 87, ECHR 2002-III, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 93, ECHR 2005-II), the Court has also held that if someone is clearly involved in a public debate on an important issue he or she should not be required to fulfil a more demanding standard than that of "due diligence". In such circumstances, the obligation to prove the factual statements may deprive the person concerned of the protection afforded by Article 10 (see *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 75, 19 July 2018, and, *mutatis mutandis*, *Brosa v. Germany*, no. 5709/09, § 48, 17 April 2014). It is further relevant, in this regard, that A.M. was a private individual and not a journalist, media or non-governmental organisation with a public watchdog function (contrast *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 66, ECHR 1999-III, and *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 109). As such, A.M. was not bound by the Article 10 "duties and responsibilities" – for example, the obligation to provide accurate and reliable information or to verify factual statements if

such statements were being made – to the same extent as would have been required by the ethics of journalism (see *Wojczuk v. Poland*, no. 52969/13, § 102, 9 December 2021).

7. Lastly, the applicant's allegations concerning the freedom of media and the security of journalists in Serbia are irrelevant in the present case because neither the applicant nor A.M. is a journalist or an owner of a media outlet. The applicant likewise does not argue, let alone substantiate, that he was denied the right to reply guaranteed by section 83 of the Public Information and Media Act 2014 (see *Gaši and Others v. Serbia*, no. 24738/19, § 38, 6 September 2022).

8. Having regard to the foregoing, the Court considers that the domestic courts put forward sufficient grounds in finding that freedom of expression of A.M. had to be given more weight than the applicant's right to respect for his private life in the particular circumstances of the present case. Accordingly, there is no reason to conclude that the domestic courts overstepped their margin of appreciation.

9. It follows that the application is manifestly ill-founded and must as such be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 April 2023.

Branimir Pleše Acting Deputy Registrar	Faris Vehabović President