



A radio show's broadcast of purported information on the private and family life of a police officer was not a matter of public interest

In today's **Chamber** judgment¹ in the case of **Marina v. Romania** (application no. 50469/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a radio programme during which a letter was read out containing personal information about Mr Marina and his ex-wife, without their knowledge and on the initiative of the applicant's sister.

After the broadcast the radio station was obliged to publish a retraction, having realised that the information on Mr Marina was false. However, a civil liability suit brought by Mr Marina against the broadcaster was dismissed, as the County Court took the view that where questions of public interest concerning public figures were at stake, those individuals had to show a greater degree of tolerance in view of their position in society. At the time, Mr Marina was a police superintendent not known to the general public.

The Court found that the domestic court had not properly weighed up the competing rights: the right to impart ideas and the right to have one's rights and reputation protected.

The Court found in particular that, in weighing up the interests at stake, the court had not taken account of the actual content of the information, its contribution to a debate on a general interest, or its lack of factual basis. The County Court had not explained how the mere fact of holding the post of police superintendent had reduced his expectation to the protection of his private life.

However, the Court declared Mr Marina's complaint under Article 6 § 1 (right to a fair hearing), questioning the impartiality of two County Court judges, manifestly ill-founded.

Principal facts

The applicant, Viorel Marina, is a Romanian national who was born in 1968. He lives in Ploiești (Romania). At the relevant time he was a superintendent in the Prahova police force.

In June 2011 two radio presenters read out, during a live broadcast, a letter sent to the station by Mr Marina's sister. On the same day he and his ex-wife went to the head office of the radio station and complained about a breach of their right to respect for their private life, stating that defamatory allegations had been made against them without their consent or any verification. After concluding that the sender had not told the truth, the radio broadcast a retraction over a period of four days. It also invited Mr Marina to exercise his right of reply, but he declined.

In August 2011 Mr Marina's ex-wife sued the radio station, seeking compensation for the damage to her reputation. She won her case and the radio station was ordered to pay her damages.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In August 2012 Mr Marina also sued the radio station in tort. The following year the court ordered the broadcaster to pay 4,500 euros in damages, finding that the programme had caused damage to his image and private life, particularly in view of the fact that, as a police superintendent, he had a duty to ensure that his image remained exemplary. The award was paid to him in three instalments.

In the meantime the radio station had appealed against the judgment in the Prahova County Court and its appeal was upheld. Mr Marina's suit was thus dismissed.

The County Court took the view that he had not sustained any loss, noting in particular that the presenters had merely read out a letter from a third party and that the radio had not committed any unlawful act. It added that when public interest questions concerning public figures were at stake, such individuals had to show a greater degree of tolerance on account of their position in society.

The court lastly observed that Mr Marina had not made use of his right to reply. This judgment was delivered by a formation of judges of whom two had sat in the case previously brought by Mr Marina's ex-wife. A request made by those two judges to withdraw from the bench had been denied by the County Court at the start of the proceedings.

In February 2015 the Ploiești Court of First Instance ordered the restitution of the sum paid by the radio station to Mr Marina. An enforcement procedure was initiated against him for that purpose.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to an independent and impartial tribunal), Mr Marina alleged that the Prahova County Court had not been impartial on account of the presence of two judges who had ruled in a civil case brought by his ex-wife against the radio station.

He also complained of damage to his reputation under Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 24 October 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Article 6 § 1 \(right to an independent and impartial tribunal\)](#)

As regards the alleged lack of impartiality of two of the judges of the County Court, the Court noted that Mr Marina and his ex-wife had each alleged before the national courts that there had been breaches of their right to the protection of their reputation and privacy, these being essentially personal aspects which had to be established and assessed by the courts in the light of the personal circumstances of the two individuals and the information about them broadcast on the radio.

The two sets of proceedings had dealt with different aspects: in each of them, the County Court had had to determine whether the elements of civil liability were present, starting from the specific personal situation of each of the claimants. This assessment had been made on the basis of the

evidence produced and discussed at the hearing, account being taken of how the statements by Mr Marina's sister had affected the respective individual positions of Mr Marina and his ex-wife. The two cases were not supported by the same evidence and the County Court had assessed the merits of Mr Marina's action in the light of his allegations concerning the invasion of his privacy and the evidence he had provided. Finally, Mr Marina had not, at any point in the proceedings, requested the removal of the two judges in order to express his own doubts about their impartiality.

Consequently, the Court took the view that Mr Marina's fears were not objectively justified. Furthermore, it found no evidence that the two judges had shown any personal bias.

This complaint was thus manifestly ill-founded (Article 35 §§ 3 (a) and 4 of the Convention) and was rejected.

Article 8 (right to respect for private and family life)

With regard to the content of the letter in question, the Court observed that it purported to give information about the private life of Mr Marina's ex-wife, mentioning that Mr Marina had refused to attend religious ceremonies after the death of his father and that he had addressed a financial demand to the family. It also contained insulting descriptions of Mr Marina.

With regard to the judgment handed down by the County Court, the Court noted that it had characterised the subject dealt with in the programme as a matter of general interest, namely the stigmatising of the negative aspects of social reality. However, the text thus made public had focused on Mr Marina's family life and had purportedly revealed aspects of his private life that could not be considered to have contributed to a "debate of general interest" for the community.

Furthermore, referring to the Court's case law, the County Court had stated in general terms, with reference to Mr Marina's public duties, that where questions of public interest concerning public figures were at stake, those individuals had to show a greater degree of tolerance in view of their position in society. The court should therefore have explained why the mere fact of holding the position of police superintendent reduced Mr Marina's expectation of privacy; he was not known to the public.

The County Court did not comment on Mr Marina's past conduct *vis-à-vis* the media, but there was no evidence that he had previously shown any tolerance or complacency with regard to the publication of aspects concerning his private life; his immediate reaction to the broadcasting of the statements in fact appeared to be an indication to the contrary.

Moreover, although the broadcast in question had been a satirical radio show, the court should have conducted a nuanced examination of the content of the statements in order to determine the extent to which the information about Mr Marina's private life and the language used had actually contributed to a public interest debate. The Court noted that the information thus given was offensive and had potential repercussions for Mr Marina's image and reputation.

Lastly, the programme's presenters had read out the letter without any verification. It turned out, after it had been checked, that the information did not reflect reality.

Consequently, the Court found that the domestic court had not properly weighed up the right to impart ideas, on the one hand, and the right to the protection of reputation and the rights of others on the other.

It also observed that an examination of too general a nature had led the County Court to disregard certain aspects of the case and thus to take the view that a debate of general interest had been at stake and that Mr Marina had belonged to a category of individuals whose expectation of privacy could be restricted. Moreover, the very content of the information, its contribution to a debate on a matter of general interest and its lack of foundation in reality were not taken into account in weighing up the competing interests.

Press Release

The Court thus found that the County Court had failed to fulfil its positive obligations under Article 8 of the Convention and that there had been a violation of this provision.

Just satisfaction (Article 41)

The Court held that Romania was to pay Mr Marina 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 100 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.