**Summary and outcome**

In its judgment dated 5 April 2022, the European Court of Human Rights (ECtHR) found that North Macedonia violated the applicant’s freedom of expression by adopting court decisions contrary to Article 10 of the European Convention on Human Rights (ECHR).

The case concerns a civil defamation suit brought by a Mr. S., a former head of the security and Counter-Intelligence Agency against the applicants- an editor-in chief of a weekly magazine and a journalist. In two articles, the applicants relying on the statements of Mr.I a former ambassador of North Macedonia to the Czech Republic alleged that Mr.S abused his power by pressurising the President of the respondent state and the minister of foreign affairs to not interfere with the resolution of Mr I’s interest in a personal matter.

The ECtHR found that the articles were of public interest capable of contributing to public debate. It decided that the factual allegations made in the article were accounts reported by Mr. I and did not emanate from the applicants. Further, the Government did not prove that Mr. S’s right to reputation had been seriously affected. The ECtHR found that the applicants cannot be criticized for failing to ascertain the truth of the disputed allegations and the large amount of the awards of damages could have an inevitable chilling effect on the media in the performance of their task of encouraging open discussion of matters of public concern.**Facts**

On 3 and 4 January 2013, the applicants published two articles in a weekly magazine about Mr. S under the headlines “ I am running away because of pressure from [Mr. S.]” and “The Embassy in the Czech Republic under bomb threats-[the Ministry of Foreign Affairs] does not lift a finger”. The articles quoted Mr. I. or used reported speech to showcase that Mr. S. had exerted substantial verbal pressure on the former President and the former Minister of Foreign Affairs of the respondent state to refrain from interfering with the resolution of Mr. I.’s personal matter concerning the alleged abduction of his minor child by his former wife.

The second article, among others, quoted that Mr. S. “unofficially” owned a “business empire in the Czech Republic”. The second applicant unsuccessfully tried to obtain a reply from Mr S. before the publications of the articles in question. Mr. S. commenced civil defamation proceedings against the applicants and Mr I. The Skopje Court of First Instance and the Court of Appeal found that the applicants violated the reputation of Mr. S. in publishing false facts, describing them as “rumours” without having previously tried to verify the veracity of the facts. According to the courts the information in the articles was not of public interest. The Constitutional Court upheld the findings of the lower courts.

The first applicant was ordered to pay EUR 5,000, the second applicant EUR 1,000 and Mr. I. to pay EUR 10,570 to Mr. S. in damages for harming his reputation. The Association of Journalists gave the applicants from its solidarity fund EUR 9.300 to cover the awards and reimburse the plaintiff for his costs and expenses. Before the ECtHR, the applicants complained that the national decisions amounted to an unjust interference with their rights under ECHR, art. 10.

**Decision overview**

The ECtHR delivered a unanimous judgement finding a violation of ECHR, art. 10.

The central issue for the ECtHR’s determination was whether the impugned decisions were interfering with the applicants' right to freedom of expression as guaranteed by ECHR, art.10.

The applicants complained that the domestic court’s decisions restricted their right to freely publicize information of general interest. They argued that they based their statements on interviews with different sources, primarily from Mr. I. who has approached them and gave written account based on his personal experience. They claimed EUR 8,932 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damages.

The Government agreed that the impugned decisions constituted interference with the applicant’s rights under the ECHR, art.10. However, they argued that the applicants have not previously verified the veracity of their statements.

The ECtHR noted that there was an interference with the applicants right to freedom of speech and expression by the domestic courts which was prescribed by the Civil Liability for Insult and Defamation Act, which aimed to protect the reputation of Mr. S. Protection of the rights and reputation of Mr. S was a “legitimate aim” within the meaning of ECHR, art 10.2. Referring to the general principles under Article 10 developed in its case law ([Axel Springer AG v. Germany](https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/) and Björk Eiðsdóttir v. Iceland  [2012] 46443/09), the ECtHR identified several issues crucial for finding a violation of ECHR, art.10.

While noting that the articles “primarily discussed issued relating to Mr.I's personal life” [para.8] they also elaborated on issues of public interest as “the information about the alleged abuse of power by a senior State official to settle issues of a personal nature of Mr. I. was capable of contributing to public debate” [para.8].

The ECtHR agreed with the Government that the articles contained statements of fact susceptible of proof and that the factual allegations consisted of references to "stories" or "rumours". However, referring to Godlevsky v. Russia [2008] 14888/03 the ECtHR reiterated that the national courts failed to acknowledge that the facts “did not emanate from the applicants” [para.9] as, in part, the applicants reported what was being recounted by Mr. I. while quoting him or using reported speech.

Then, the ECtHR found that the national courts did not establish that the published content “was altogether untrue or merely invented” [para.9]. With reference to Björk Eiðsdóttir v. Iceland, the ECtHR found that the legitimate interest of Mr. S. against the defamatory statements made by Mr. I. was preserved by bringing a defamatory proceedings against the author of the statements. Regarding the statement about Mr. S' "business empire in the Czech Republic", the ECtHR disagreed with the Government that this statement "was capable of misleading the readers regarding the veracity of the author's statement" [para.9]. That statement aimed to shed light on Mr. S’ business ties to the Czech Republic. The ECtHR noted that the national organs failed to consider that the second applicant tried, though unsuccessfully, to verify the story with Mr. S. The ECtHR also noted that the Government did not show how the reputation or honor of Mr. S. has been seriously affected.

The ECtHR next referred to the amount of the awards of damages. The Government did not dispute that in respect of the first applicant, the award amounted to 15 times the minimum monthly salary, wheras for the second applicant, the award of damages amounted to three times the minimum salary. Regardless that the applicants did not pay the awards themselves, such amounts “could be seen as having a chilling effect "of discouraging open discussion of matters of public concern" (as in Timpul Info-Magazin and Anghel v. Moldova [2007] 42864/05) [para.10].

The ECtHR added that the applicants acted with due diligence while reporting on a matter of public interest and “cannot be criticized for having failed to ascertain the veracity of the allegations” (as in Björk Eiðsdóttir v. Iceland ) [para.11]. Accordingly, the ECtHR found a violation of Article 10 ECHR.

Under ECHR, art.41, the ECtHR awarded the applicants jointly EUR 3,000 in respect of non-pecuniary damage plus any tax that may be chargeable (as in Makraduli v. the former Yugoslav Republic of Macedonia [2018] 64659/11 and 24133/13) and jointly EUR 1,1250 for costs and expenses in the proceedings before it.

**Decision direction**

The judgment expends expression. The case confirmed the essential role played by the press in a democratic society. In this case, it was relevant for the ECtHR that the disputed articles were based on a first-hand account given by another person (Mr. I.) to the applicants and the applicants acted in good faith and consistently with the diligence expected of a responsible journalist reporting on a matter of public interest.

Regarding the contents of the articles at issue, as in other occasions (see Pedersen and Baadsgaard*v.  Denmark* [GC] ,§ 77, Thorgeir Thorgeirson v. Iceland, § 65, *Jersild v. Denmark*, § 35) the ECtHR stressed that a distinction needs to be made according to whether the statements emanate from the journalist or are a quotation of others because a punishment of a journalist for assisting in the dissemination of statements made by another person would have a chilling effect on the press to discuss matters of public interest.

In reaching the decision, the ECtHR was also guided by the requirement that 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 the right to respect for private life. The Government, on the other hand, failed to demonstrate this level of seriousness to the reputation and honour of Mr. I.