**Summary and outcome**

The European Court of Human Rights (ECtHR) held that suspended prison sentence imposed on a journalist, for the insult of a school headmaster as a response to his publicly expressed views had been contrary to the European Convention of Human Rights (ECHR), art. 10. The application was brought to the ECtHR by the applicant-a journalist and at the time editor-in-chief of the Lesbos daily newspaper Empros, following his criminal conviction for insult through the press and sentence of six‑months suspended prison. The national courts found that by attributing the characteristics of “neo-Nazi” and “theoretician of the entity ‘Golden Dawn’” to the headmaster B.M. of a high school in a journal article in response to a post on the headmaster’s blog under the title “The ultimate lie is one: that of the Polytechnic School of 1973”, the applicant had an intention to tarnish B.M.’s honor and reputation. The ECtHR found that the national authorities failed to assess the case according to the criteria established in the Court’s case-law and that interference with the applicant’s right to freedom of expression was not “necessary in a democratic society”.

**Facts**

On 17 November 2013, the headmaster of the 6th High School of Mytilene, B.M., posted an article on his blog under the title “The ultimate lie is one: that of the Polytechnic School of 1973” referring to the massive student uprising of 1973 in polytechnic School that contributed to the end of the military dictatorship in Greece. 17 November is celebrated as a school holiday.

After two days the applicant wrote an article, featured on pages one and five of the daily newspaper Empros under the title “The headmaster of the 6th High School of Mytilene, B.M., attacks, through his blog, the ‘ultimate lie of the Polytechnic school". It included the following passage:

“The well-known neo-Nazi headmaster of the 6th High School of Mytilene, B.M., is back. Under the pretext of the anniversary of the Polytechnic School uprising, and taking advantage of the tolerance of his superiors, the theoretician of the entity ‘Golden Dawn’ in Lesvos posted on his personal blog ... neo-fascist vomit under the title ‘THE ULTIMATE LIE IS ONE: THAT OF THE POLYTECHNIC SCHOOL OF 1973’” [para.7].

B.M. filed a complaint with the criminal court against the applicant for slanderous defamation through the press. During the criminal procedure at the Mytilene First-Instance Criminal Court, the applicant argued that his statements were true and based on legitimate interest as they mainly focused on B.M.’s capacity as headmaster and spreading his views to students.

The court held that the phrases “well-known neo-Nazi headmaster” and “theoretician of the entity Golden Dawn" constituted value judgments that had the intention to insult B.M.’s honor and reputation. The court held that the need to inform the public could have been satisfied with the use of more decent expressions. The court changed the charges from slanderous defamation to insult, finding the applicant guilty and sentencing him to a six-month suspended prison sentence.

The applicant appealed against that decision before the North Aegean Misdemeanour Court of Appeal while invoking his right under ECHR, atr.10. The applicant argued that the characterizations of B.M. had been based on extensive evidence. He also refereed to B.M. post on his blog, stating:

“... Our contact and substantial relationship with nationalist organizations and clubs (see Golden Dawn) who preserve like an ark the original nationalist Word and Action are highly important ... We, as parents, must strive for racial purity. NATIONAL‑SOCIALISM, loyalty to the race and to the Will of the Racial vital space... is the most superior [thing] of all. IT IS AN HONOUR TO BE CALLED A NATIONAL‑SOCIALIST ...”[para.11].

The applicant stated that since 8 December 2010, B.M. had posted 23 articles on his website concerning the Aryan race, national-socialism and the Zionist Jews, and had saved the editions of Golden Dawn in his favorites. The applicant held that characterizations of B.M. had constituted value judgments with a factual basis and a legitimate interest – the need to inform the public of remarks made by the headmaster and the need to restore the truth, as B.M.’s post had contained false allegations.

The Court of Appeal upheld the first-instance court’s decision while lowering the sentence to a three-month suspended prison sentence. The applicant has unsuccessfully appealed on point’s of law with the Court of Cassation. The decision became final on 25 April 2017.

**Decision overview**

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

The central issue for the Court was whether the interference in the form of a criminal conviction of the applicant was “necessary in a democratic society".

The applicant argued that he had been convicted on account of value judgments, which had a sufficient factual basis that had been true as seen from the evidences he had presented before the courts. The applicant submitted that the domestic courts had failed to take into account that B.M. was a public figure, who had expressed his views on a matter of historical importance on the anniversary of the Polytechnic uprising. On the other hand, the applicant as a journalist had had a legitimate interest in informing the public of those views. The applicant additionally invoked the increased protection afforded by the ECHR to the press and argued that he should not have been sanctioned for his published article.

The Government argued that the applicant’s expressions fell outside the scope of ECHR protection as the use of defamatory expressions had not been necessary to inform the readers of the newspaper. Even assuming that there had been an interference, it had been prescribed by law, namely Articles 362 and 363 of the Criminal Code, and had served a legitimate aim, the protection of B.M.’s reputation. According the Government, B.M. was not a public figure and the wider limits of criticism did not apply to him. In addition, the applicant’s post had not contributed to a debate of greater public interest that would justify a degree of provocation or exaggeration. Lastly, according the Government, the interference had been necessary in a democratic society and the courts had struck a fair balance between the contrasting interests.

Turning to the merits of the case, the ECtHR found that the interference in question was prescribed by Articles 361 and 367 of the Greek Criminal Code, and that it pursued the legitimate aim of protecting the reputation or rights of others.

The ECtHR went on to outline the general principles as a background to examine whether the interference was “necessary in a democratic society” referring to [Stoll v. Switzerland](https://globalfreedomofexpression.columbia.edu/cases/stoll-v-switzerland/) [GC] [2007]  69698/01, § 101,  [Pentikäinen v. Finland](https://globalfreedomofexpression.columbia.edu/cases/pentikainen-v-finland/) ([GC] [2015] 11882/10, § 87, and [Bédat v. Switzerland](https://globalfreedomofexpression.columbia.edu/cases/bedat-v-switzerland/) [GC] [2016] 56925/08, § 48.

The ECtHR repeated that it should ascertain whether the domestic authorities struck a fair balance when protecting the ECHR, art. 10 and art.8 (see [MGN Limited v. the United Kingdom](https://globalfreedomofexpression.columbia.edu/cases/mgn-limited-v-united-kingdom/) [2011] 39401/04, § 142).

By referring to its rich jurisprudence ([Axel Springer AG v. Germany](https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/) [GC] [2012] 39954/08, § 83; [Bédat](https://globalfreedomofexpression.columbia.edu/cases/bedat-v-switzerland/), § 72; and A. v. Norway [2009] 28070/06, § 64), the ECtHR stressed that attack on a person’s reputation “must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life” [para. 37].

The ECtHR outlined the criteria as developed by the Court’s case law that will guide the examination of the case “(a) contribution to a debate of public interest, (b) how well known the person concerned is, (c) the subject of the news report, (d) the prior conduct of the person concerned, and (e) the content, form and consequences of the publication… (f) the way in which the information was obtained and its veracity, and (g) the severity of the penalty imposed on the journalists or publishers” (as in [Couderc and Hachette Filipacchi Associés v. France](https://globalfreedomofexpression.columbia.edu/cases/couderc-v-france-2/) [GC] [2015] 40454/07, § 93; [*Von Hannover v. Germany*](https://globalfreedomofexpression.columbia.edu/cases/von-hannover-v-germany-no-2/) (no. 2) [GC] [2012] 40660/08 and 60641/08, §§ 108-13; [Axel Springer AG](https://globalfreedomofexpression.columbia.edu/cases/axel-springer-ag-v-germany/), §§ 89-95; [Ungváry and Irodalom Kft v. Hungary](https://globalfreedomofexpression.columbia.edu/cases/ungvary-v-hungary/) [2013] 64520/10, § 45; and [Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland](https://globalfreedomofexpression.columbia.edu/?s=Satakunnan+Markkinap%C3%B6rssi+Oy+and+Satamedia+Oy+v.%C2%A0Finland) [GC] [2017] 931/13, §§ 165-166 [para.38].

Lastly, the ECtHR reiterated that where the national courts have weighed up the relevant interests according to the criteria laid down in the Court’s case-law, strong reasons are required for the ECtHR to substitute its view for that of the domestic courts ([MGN Limited](https://globalfreedomofexpression.columbia.edu/cases/mgn-limited-v-united-kingdom/), §§ 150 and 155; [Palomo Sánchez and Others](https://globalfreedomofexpression.columbia.edu/cases/palomo-sanchez-and-others-v-spain/)  [2011] 28955/06, 28957/06, 28959/06, and 28964/06, §57; and, [Haldimann and Others v. Switzerland](https://globalfreedomofexpression.columbia.edu/cases/haldimann-v-switzerland/) [2015] 21830/09, §§ 54-55).

At the outset the ECtHR found that the applicant’s accusations directed to B.M presenting him as a theoretician of the far-right political party Golden Dawn and a “neo-Nazi” were capable of tarnishing his reputation, and causing him prejudice in his professional and social environment. Therefore, the ECtHR went on to examine whether the national courts applied the criteria established in its case-law on the subject.

Firstly, the Court reiterated that there is little scope under ECHR, art. 10 § 2 for restrictions of  political speech and matters of public interest (as in [Sürek v. Turkey](https://globalfreedomofexpression.columbia.edu/cases/surek-ozdemir-v-turkey/) (no. 1) [GC] [1999] 26682/95, § 61; [Lindon, Otchakovsky‑Laurens and July v. France](https://globalfreedomofexpression.columbia.edu/cases/lindon-and-others-v-france/) [GC] [2007] 21279/02 and 36448/02, § 46; and [Morice v. France](https://globalfreedomofexpression.columbia.edu/?s=Morice+v.+France) [GC] [2015] 29369/10, § 125) and authorities would be accorded normally a narrow margin of appreciation (Gouveia Gomes Fernandes and Freitas e Costa v. Portugal [2011] 1529/08, § 47, § 29). The press has a pivotal role to impart information and ideas on all matters of public interest (see [Bladet Tromsø and Stensaas v. Norway](https://globalfreedomofexpression.columbia.edu/?s=Bladet+Troms%C3%B8+and+Stensaas+v.%C2%A0Norway) [GC] [1999] 21980/93, § 62; and Tourancheau and July v. France [2005]  53886/00, § 5).

The ECtHR noted that the views of B.M. on Polytechnic uprising of 1973, who referred to it as “the ultimate lie” “were capable of giving rise to considerable controversy” [para.45]and therefore, contrary to the views of the national courts and the Government, the ECtHR found that the statements of the applicant concerned a matter of public interest and he as a journalist, had the right to impart information.

Secondly, by referring to Minelli v. Switzerland (dec.) [2005] 14991/02, and Petrenco v. Moldova [2010] 20928/05, § 55, the Court reiterated that public figures do not have the same level of protection as private individuals unknown to the public. Public figures are subject to higher criticism and must display a higher degree of tolerance (see Ayhan Erdoğan v. Turkey [2009]  39656/03, § 25, and [Kuliś v. Poland](https://globalfreedomofexpression.columbia.edu/?s=Kuli%C5%9B+v.%C2%A0Poland)  15601/02, § 47).  “[A] person’s right to privacy will differ depending on whether or not he or she is vested with official functions” (see, mutatis mutandis, [Couderc and Hachette Filipacchi Associés](https://globalfreedomofexpression.columbia.edu/cases/couderc-v-france-2/), § 119) [para. 47].

The Court stated that civil servants must enjoy public confidence free of undue perturbation to be successful in executing their tasks and shall be protected from offensive and abusive verbal attacks when on duty (see, [Janowski v. Poland](https://globalfreedomofexpression.columbia.edu/?s=Janowski+v.+Poland) [GC] [1999] 25716/94, § 33; and Busuioc v. Moldova [2004] 61513/00, § 64). However, “the limits of acceptable criticism in respect of civil servants exercising their powers may admittedly in some circumstances be wider than in relation to private individuals” [para. 48]. The Court noted that even though B.M. was a civil servant, his duties and responsibilities also apply to a certain extent to his activities outside of school (as in Gollnisch v. France (dec.) [2011] 48135/08). As B.M. had regularly posted his views on political matters on personal blogs, he exposed himself to journalistic criticism by the publicity he chose to give to some of his ideas or beliefs, (see Brunet‑Lecomte and Lyon Mag’ v. France [2010] 17265/05) and should show a higher degree of tolerance towards potential criticism of his statements by persons who did not share his views (see [GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland](https://globalfreedomofexpression.columbia.edu/cases/stiftung-gegen-rassismus-und-antisemitismus-v-switzerland/) [2018] 18597/13).

The Court noted that the national authorities failed to consider the “extent to which B.M.’s capacity as a civil servant and his prior conduct were capable of influencing the protection which could be afforded to him” [para.51]. They had additionally failed to take into account that the applicant’s report was about views that B.M. had publicly shared through his blog on a political matter.

Thirdly, the Court emphasized that ECHR, art.10 protects journalists’ right to divulge information on issues of general interest if they act in good faith, on an accurate factual basis and “provide “reliable and precise” information in accordance with the ethics of journalism” (*[Fressoz and Roire v. France](https://globalfreedomofexpression.columbia.edu/cases/fressoz-roire-v-france/)* [GC] [1999] 29183/95, § 54) [para.52].

The ECtHR mentioned the distinction between statements of fact and value judgments with sufficient factual basis to support them (as in [*Pedersen and Baadsgaard v. Denmark*](https://globalfreedomofexpression.columbia.edu/cases/pedersen-v-denmark/) [GC] [2004] 49017/99;  Mika v. Greece [2013] 10347/10, § 31; Koutsoliontos and Pantazis v. Greece [2015] 54608/09 and 54590/09, § 40). The Court recalled that it has found that terms such as “neo-fascist” and “Nazi” (as in Scharsach and News Verlagsgesellschaft v. Austria [2003] 39394/98, § 43) or "idiot” and “fascist” (as in [Bodrožić v. Serbia](https://globalfreedomofexpression.columbia.edu/cases/bodrozic-v-serbia-2/) [2007] 32550/05, § 51 and Gavrilovici v. Moldova [2009] 25464/05), that do not automatically justify a conviction for defamation on the ground of the special stigma attached to them. The ECtHR observed that even though the domestic courts correctly classified the terms used by the applicant, “well-known neo-Nazi headmaster” and “theoretician of the entity ‘Golden Dawn", as value judgments, they failed to review whether they were sufficiently supported by a factual basis.

Fourthly, the ECtHR stated that the way in which a report is published and how the person concerned is presented may also be factors to be considered (see Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. v. Austria (no. 3) [2005] 66298/01 and 15653/02, § 47 and Jokitaipale and Others v. Finland [2010] 43349/05, § 68).

The Court noted that to assess the applicant’s intention, the domestic courts did not transpose the impugned remarks to the general context of the case. The national courts did not examine whether the context of the case, the public interest and the intention of the author of the article justified the possible use of a dose of provocation or exaggeration (Karis v. Greece [2008] 15909/06, § 33). In this line, the Court accepted that although the language used by the applicant could have been considered provocative in expressing serious criticism, it was not insulting nor aimed to make a personal attack on B.M.

Lastly, the Court reiterated that while the use of criminal‑law sanctions in defamation cases is not in itself disproportionate (see Radio France and Others v. France [2004] 53984/00, § 40; [Lindon, Otchakovsky‑Laurens and July](https://globalfreedomofexpression.columbia.edu/cases/lindon-and-others-v-france/) § 47; and [*Ziembiński v. Poland (*](https://globalfreedomofexpression.columbia.edu/?s=Ziembi%C5%84ski+v.+Poland)no. 2) [2016] 1799/07, § 46), a criminal conviction is a serious sanction, having regard to the existence of other means of intervention such as through civil remedies (as in [*Frisk and Jensen v. Denmark*](https://globalfreedomofexpression.columbia.edu/?s=Frisk+and+Jensen+v.+Denmark%2C) [2017] 19657/12, §77). The Court considered that the circumstances of the instant case presented no justification for the imposition of a three-months suspended prison sentence which will inevitably have a chilling effect on public discussion (see Marchenko v. Ukraine [2009] 4063/04, § 52).

In its conclusion, the ECtHR highlighted that the domestic courts as in a number other cases (among others Katrami v. Greece [2007] 19331/05, § 42,; Vasilakis v. Greece [2008] 25145/05, § 56;  Alfantakis v. Greece [2010] 49330/07, § 34; Mika, § 41; [Koutsoliontos and Pantazis](https://globalfreedomofexpression.columbia.edu/cases/koutsoliontos-v-greece/) [2015] 54608/09 and 54590/09, § 48) had failed to make an assessment in line with the criteria established in the Court’s case-law.

As the domestic courts have not applied the criteria laid down by the ECtHR, it held that the interference with the applicant’s right to freedom of expression was not “necessary in a democratic society”. The Court awarded the applicant EUR 1,603.58 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

**Decision direction**

The decision expanded the right to freedom of expression by reaffirming that limited restrictions can be applied in matters of public interest. The court emphasized the need to protect journalists when they present accurate information of general interest in good faith. Information presented must be considered under the factual context of the case. Value judgments published should be assessed in light of the public interest and contribution of the statement to public debate, the higher level of scrutiny allowed to public officials, and the content and form of the article.