Bulletin No 5

Latest developments in the case-law of the European Court of Human Rights on freedom of expression

Freedom of Expression and Freedom of the Media

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Latest developments in the case-law of the European Court of Human Rights on Freedom of Expression

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Introduction

The Bulletin is prepared within the framework of the joint initiative of the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey 2019–2022" and its action on "**Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)**".

In order to continue cooperation with the legal professionals and contribute to further improvement of knowledge in the field of freedom of expression and freedom of the media, we have prepared this Bulletin as an additional tool for sharing information on new trends and developments in the case-law of the European Court of Human Rights (the ECtHR; the Court).

While Bulletin No 1 covered the period April 2019–July 2020, Bulletin No 2 the period August 2020–January 2021, Bulletin No 3 covered period February 2021–July 2021, Bulletin No 4 covered period from July 2021 until January 2022, the Bulletin No 5, in front of you presents some of the relevant judgments delivered in period February-July 2022.

During February 2022-July 2022, the European Court of Human Rights (hereinafter referred to as the Court, or the ECtHR) delivered 39 judgments on the merits and 14 decisions on admissibility in cases relevant to the right to freedom of expression.[1] The cases covered a wide variety of issues, ranging from broadcast regulation to the safety of journalists.

The majority of the cases were brought under Article 10 of the European Convention of Human Rights (hereinafter referred to as the Convention, or ECHR) which protects the right to freedom of expression, but in some cases the applicants invoked different provisions, illustrating the overlap or interplay between freedom of expression and other rights. Five cases concerned Article 8, protecting the right to respect for private life (invoked by the applicant to complain of defamation or privacy intrusions by the media); three cases were decided under Article 11, protecting the right to freedom of assembly (these cases primarily concerned the expression rights of protestors); one case was decided under Article 9, protecting the right to freedom of religion (the case concerned the right to religious expression). A case concerning the safety of journalists was decided under Article 2, which protects the right to life, while a hate speech case was decided under Article 3, which protects the right to be free from inhuman or degrading treatment.

The first of the two main judgments selected for in-depth analysis in this Bulletin, *OOO Memo v. Russia*, concerns the question whether or not a public body should be allowed to sue a media outlet that is

1 Under the system of the European Court of Human Rights, cases need to pass an admissibility stage. Sometimes, this results in a separate decision of the court on whether a case has been brought in time, is manifestly ill-founded (meaning there is no basis to the case whatsoever), or whether it is to be excluded on other grounds (for example, hate speech cases can be excluded under as an 'abuse of rights' under Article 17 of the Convention). In addition to the judgments and admissibility decisions, a further 19 cases was 'struck out', because a friendly settlement had been reached or because the applicant had stopped communicating with the court.

critical of it for defamation. In its judgment, the Court engages with the question whether the protection of the reputation of public bodies is a legitimate aim pursuant to which the right to freedom of expression may be restricted, and touches on the issue of so-called SLAPP cases (the acronym stands for Strategic Lawsuits Against Public Participation). In the second case that is analysed in-depth, *NIT v. Moldova*, the Court addresses the important issue of whether the licence of a broadcaster that has repeatedly breached the requirement of political impartiality can be withdrawn and, if so, what kind of procedural safeguards are necessary.

This bulletin also summarises a further six cases on various other issues: access to information; the so-called 'right to be forgotten', an emerging area of jurisprudence for the Court; defamation committed by the President of a country; the protection against hate speech; freedom of expression of judges and their right to comment on issues of public interest; the proportionality of damages in defamation cases; and the safety of journalists.

In 21 of the 29 Article 10 judgments, and in three of the four Article 8 judgments, the Court found a violation of the Convention. The Court also found violations in the Article 2 and Article 3 cases, concerning the right to life and the right to be free from inhuman or degrading treatment. The latter case concerns protection against hate speech and highlights the importance of the duty on States to take effective steps to protect people from hate speech on all grounds, including sexual orientation, whilst also safeguarding the right to freedom of expression. The continuing high rate of violations in cases that are decided on the merits indicates that national practices in many areas of law are still frequently out of step with the requirements of the European Court of Human Rights.

The Grand Chamber of the Court, which may hear cases that raise a serious question concerning the interpretation of the Convention, refused a request for referral in the case of *Vedat Şorli v. Turkey*, discussed in Bulletin No. 4, in which the Second Section of the Court had held that the respondent state should abolish the criminal law provision conferring special protection on the reputation of the head of state. That means the Second Section's judgment in that case is now final. During February-July, the Grand Chamber held hearings in several other freedom of expression cases:

- *Hurbain v. Belgium* (judgment of 22 June 2021, application no. 57292/16; referral accepted on 11 October 2021), concerning the so-called 'right to be forgotten';
- *Sanchez v. France* (judgment of 2 September 2021, application no. 45581/15; referral accepted on 17 January 2022), concerning the extent to which a politician may be held liable for content posted by others on their Facebook page;
- *Macatė v. Lithuania* (application no. 61435/19, relinquished to the Grand Chamber on 31 August 2021), concerning a complaint by an author that her children's book containing LGBTQI fairy tales had been labelled as possibly harmful to children; and
- *Halet v. Luxembourg* (judgment of 11 May 2021, application no. 21884/18, referral accepted on 21 September 2021), concerning the criminal conviction of a whistleblower.

This means that at present, along with climate change and a series of cases concerning the war in Ukraine, the right to freedom of expression is one of the main categories of cases before the Grand Chamber.

Review of the most important freedom of expression cases

Šeks v. Croatia, judgment of 3 February 2022, application no. 39325/20

Facts of the case

The applicant, a retired politician who had held several high political offices including that of deputy prime minister, lodged a request with the Croatian State Archive for access to a collection of documents that formed part of the presidential archive. He stated that he required access to the records in relation to a book that he was writing concerning the founding of the State of Croatia. The documents were classified as "State secret – strictly confidential" and the State Archive requested the Office of the President to decide on the request. The Office of the President in turn requested the opinion of the Office of the National Security Council, which advised that disclosure of some of the documents would cause harm to the independence, integrity and national security of the Republic of Croatia and its foreign relations. Subsequently, the Office of the President declassified thirty-one of the requested documents but declined to declassify the remaining twenty-five documents, including transcripts from certain sessions held by the Defence and National Security Council as well as certain records of meetings between the then President of Croatia and senior foreign officials. The applicant lodged an appeal with the Information Commissioner; the commissioner inspected the documents herself and then dismissed the appeal. Further court appeals, including to the Constitutional Court, were unsuccessful.

The applicant complained to the European Court of Human Rights that his right to freedom of expression had been violated.

Court's reasoning

The Court first considered whether the application fell within the scope of Article 10. It reiterated that Article 10 does not confer on the individual a right of access to information held by a public authority or oblige the Government to provide such information, but that such a right or obligation may arise where access to the information is instrumental for the individual's exercise of their right to freedom of expression (see *Magyar Helsinki Bizottság v. Hungary [GC]*, application no. 18030/11, 8 November 2016, par. 156). The key criteria in this determination are (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the applicant; and (d) whether the information was ready and available. The Court found that all these criteria were met: the applicant sought access to the classified documents in order to use the information obtained for the purposes of writing a book; the nature of the information concerned matters of public interest; the applicant was a researcher and author of literature on a matter of public concern; and the requested records had been ready and available. This meant that the request fell within the scope of Article 10.

The Court also dismissed the Government's preliminary objection under article 35, para. 3(b) of the Convention, that the applicant had not suffered a significant disadvantage, because it had disclosed thirtyone out of fifty-six classified re-

cords and the applicant had been able to write his book. The Court took into account the applicant's assertion that the denial of access had caused delay and had required him to carry out further research; as well as that the applicant considered his published work to be incomplete and was resolved to update it if he were ever to be granted access to the classified documents. Moreover, the Court considered that the case raised important questions of principle and should not be dismissed on the alleged ground that the applicant had not suffered a significant disadvantage.

Turning to the merits of the case, the Court noted that the request concerned classified information relating to a sensitive part of Croatia's recent history. The Court noted that national security was an evolving and context-dependent concept, and that States are to be afforded a wide margin of appreciation in assessing what poses a national security risk in their countries at a particular time. At the same time, the Court emphasised that the concepts of "national security" and "public safety" should be applied with restraint, interpreted restrictively, and brought into play only where it has been shown to be truly necessary. The Court also noted that the concepts of lawfulness and the rule of law in a democratic society are crucial in the determination of issues such as this, and that the fairness of proceedings and the procedural guarantees afforded to the applicant are factors to be taken into account.

The Court observed that nothing in the case-file suggested that the competent authorities had failed to perform a proportionality analysis. The applicant's request had been carefully assessed by five different national authorities; the requested documents were directly inspected by at least two of them. The Court further noted that the President's decision refusing to declassify some of the requested documents was based on an opinion of a specialised body for dealing with national security issues and was ultimately reviewed and upheld by the Information Commissioner, the High Administrative Court and the Constitutional Court. This was in line with the required procedural safeguards. While the Court recognised that the national authorities had not provided detailed reasons for their refusals of access, the Court held that this was understandable since providing detailed reasons could reveal the national security considerations at stake. The Court concluded that the applicant's right to freedom of expression had not been violated.

Note: It is now well-settled in the case law of the Court that the right to freedom of expression includes a right of access to information held by public bodies when this is necessary for the exercise of freedom of expression. A researcher writing a book, a journalist writing an article, or an NGO researching a report, may all rely on Article 10 of the Convention to seek access to information when the issue relates to a matter of public interest and the information concerned is reasonably readily available. What this judgment highlights is that when information can be legitimately withheld, for example because release of the information would cause harm to national security, providing detailed reasons for the refusal can be difficult. When this happens, procedural safeguards assume particular importance. The opinion of specialised bodies was sought, and on appeal the Information Commissioner herself inspected the documents and agreed they could not be released. Whilst in the mind of the applicant there will probably be a lingering doubt that "they are hiding something", ultimately in a democracy governed by the rule of law the public needs to be able to put its faith in such procedural safeguards, provided of course that they are independent and impartial. The Court found no fault with the approach of the domestic authorities.

***Mediengruppe Österreich Gmbh. V. Austria**, judgment of 26 April 2022, application no. 37713/18*

Facts of the case

The applicant, a daily newspaper owner, published a report on a meeting that took place between a candidate in the national presidential elections and the German daily newspaper, Bild. The article report-

ed that during the meeting, the candidate had been confronted with a photograph from 1987 showing the candidate's office manager and his brother at a gathering of the "right wing scene". The article referred to the office manager's brother as a "convicted neo-Nazi". The article reported that the office manager was under 18 at the time of the photograph, that he had not been convicted or reported to the police, and that he was perceived as a "Mitläufer" ('follower') of the right-wing scene of that time. The office manager's brother brought proceedings against the newspaper seeking an injunction against pictures of him being published without his consent, and objecting to being referred to as a convicted neoNazi or terms of a similar meaning. He argued that although he had been convicted in 1995, he had been released on parole in 1999 and had since reintegrated in society, founded a family, and had taken a regular job. His case was dismissed by the lower courts, but the Supreme Court held in his favour, prohibiting the newspaper from "publishing pictures ... without his consent, if at the same time he is called a convicted neo-Nazi in the accompanying report, and/or statements of equivalent meaning are made about him."

The applicants complained to the European Court of Human Rights of a violation of their right to freedom of expression.

Court's reasoning

The Court started by restating the general principles applicable in cases such as this. A fair balance must be struck between the applicant company's right to freedom of expression and the public's freedom of information on the one hand, and, on the other hand, the individual's right to respect for private life and protection of one's image. As set out in the Court's case law, the criteria to be applied in striking this balance include: whether the article contributes to a debate of public interest; the degree of notoriety of the person concerned; the subject of the news report; the prior conduct of the person concerned; the content, form and consequences of the publication; and, where appropriate, the circumstances in which the photographs were taken (see, amongst others, *Von Hannover (No.2) v. Germany*, application nos. 40660/08 60641/08, 7 February 2012, paras. 108–113; and *Axel Springer AG v. Germany*, application no. 39954/08, 7 February 2012, paras. 89–95). For applications lodged under Article 10, the Court also examines the way in which the information was obtained and its veracity, and the gravity of the penalty imposed (see *Couderc and Hachette Filipacchi Associés v. France*, application no. 40454/07, 10 November 2015, par. 93). The Court also emphasized that where the balancing exercise between the competing rights has been undertaken by the national authorities, in conformity with the criteria laid down in the Court's case-law, it would require strong reasons to substitute the Court's view for that of the domestic courts.

Applying these criteria to the current case, the Court first found that the general subject matter of the article was of particular public interest at the time of its publication. However, the Court noted that there was no direct link between the presidential candidate and his office manager's brother, other than that the office manager had attended a neo-Nazi event in 1987. The domestic courts had examined this point at some length, and the European Court held that it could accept their conclusion that publishing the photograph with an incomplete accompanying text did not contribute to the debate on the election.

The Court went on to consider that while the office manager's brother was definitely of a certain notoriety at the time of his conviction, twenty years had passed since then and there had been no indication that he had sought the limelight after his release. Although the Court agreed that proceedings against neo-Nazis form an important part of judicial history in Austria, it held that it cannot be automatically concluded that the notoriety of defendants remains unchanged over the years. The Court noted that the office manager's brother had been reintegrated in society after his release and had no further criminal convictions.

Turning to the method of obtaining the information and its veracity, the Court held that when a picture of a convicted person is published after their release from prison, the accompanying text needs to be full and correct. The newspaper had referred to the office manager's brother as a convicted neo-Nazi but without stating that the conviction dated back to 1995, and that the brother had not been convicted of a crime since. This meant that the information was true, but that it was incomplete. The fact that twenty years had passed since the conviction was an important factor, as was the fact that the conviction had since been expunged from his criminal record. The Court emphasized that there is an important societal interest in the reintegration into society of persons who have been released from prison after serving their sentence, and their legitimate interest after a certain period of time in no longer being confronted with their conviction Finally, the Court noted that the severity of the sanction imposed was mild: no compensation had been awarded and no fine had been imposed. For these reasons, and taking into account the margin of appreciation afforded to States in assessing the necessity of interferences with freedom of expression, the Court held – by a majority of four to three votes – that there had been no violation of the right to freedom of expression.

Note: This was a 4–3 judgment and there is a forceful dissent by Judge Guerra Martins, joined by Judges Vehabović and Motoc, arguing that the public has a right to know about the neo-Nazi past of someone who might still be close to a presidential candidate (she writes that "an elector with access to all the relevant information is better-placed and freer to choose between two or more candidates than an elector who lacks that information"). There is a strong moral force behind her argument, but the judgment stands. Jurisprudentially, it is probably better to focus on the distinction between this judgment and the key 'right to be forgotten' case of *M.L. and W.W. v. Germany* (application nos. 60798/10 and 65599/10, 28 June 2018, reported in Bulletin no. 4), which established that when convicted criminals have sought the media limelight they cannot expect their criminal pasts to be quickly 'forgotten'. In this case, by contrast, the individual concerned had re-integrated into society, avoided the limelight, and the conviction had been expunged from his criminal record. It is in the interests of society that those who have committed a crime should be able to be rehabilitated.

***Mesić v. Croatia**, judgment of 5 May 2022, application no. 19362/18*

Facts of the case

The applicant, who was President of the Republic of Croatia from 2000 until 2010, had been ordered to pay 6,600 EUR compensation to a lawyer for defaming him. The lawyer, who was based in France, had lodged a criminal complaint with the French courts against 11 Croatian nationals including the applicant in respect of two counts of the attempted murder of a client of his, and one count of attempted extortion. Among the accused was an individual known in the Croatian media as a mafia boss. Croatian media reported on the criminal complaint, describing the applicant as a "sort of a political patron of the person who ordered the murder". The media contacted the lawyer but he said that under French law, he was unable to go into any detail about the complaint. At a press conference, the President denied being involved in murder and said that the lawyer who had lodged the complaint should visit a psychiatric clinic. This statement was reported on the official website of the President of Croatia as well as in the media. The lawyer sued the President for defamation. The Croatian courts found in favour of the lawyer, holding that his honour and reputation, as well as his professional and moral credibility, had been harmed, and awarded compensation. Appeals failed, and the applicant complained to the European Court of Human Rights of a violation of his right to freedom of expression.

Court's reasoning

The Court held, first, that the applicant's intention had not been to merely insult the lawyer: he had wished to deny serious allegations made against him and he had been trying to impart information or ideas. His statement therefore fell within the scope of protected speech under Article 10. The Court also held that the statement made by the applicant was sufficiently serious to constitute an interference with the lawyer's private life, since it fomented prejudice against him in both his professional and social environments.

The Court went on to consider whether the defamation judgment against him could nevertheless be a legitimate interference with his right to freedom of expression, and in particular whether it was "necessary in a democratic society" and fairly balanced the right to freedom of expression on the one hand, and the right to respect for private life on the other. The Court noted that the domestic courts had not applied the relevant criteria – whether a contribution has been made to a debate of public interest; the notoriety of the person concerned; his or her prior conduct; the content, form and consequences of the statement in question; and the severity of the sanction imposed (as stated in *Axel Springer AG v. Germany*, application no. 39954/08, 7 February 2012, paras. 78–95, *Couderc and Hachette Filipacchi Associés v. France*, application no. 40454/07, 10 November 2015, paras. 82–93) – and so applied these itself. The Court added that the applicant's status as the highest-ranking State official, and the lawyer's status as an advocate, were also of importance.

The Court emphasised that the lawyer had not been a public figure; that he had not made any public statements regarding the applicant; and that he had not knowingly entered the public sphere. He could therefore not be expected to tolerate a higher degree of criticism than an ordinary individual. While the applicant had the right to defend himself against the charges, he had gone beyond this and decided to insult the lawyer. In doing so, he had made no contribution to a debate on a matter of public interest and went beyond the limits of acceptable criticism. The Court emphasized that the applicant was the State President at the time, whose comments were picked up by various media outlets and thus caused greater harm to the reputation of the lawyer. The Court further emphasised the status of the lawyer as an advocate, took into consideration the occurrence of harassment, threats and attacks against lawyers in many countries, and held that statements such as the applicant's can often be effective as a threat in preventing lawyers from exercising their professional duties. The Court finally took into account that, because he was bound by judicial secrecy, the lawyer could not respond to the applicant's allegations. For all these reasons the defamation finding did not constitute a violation of the applicant's right to freedom of expression. The Court found that while the compensation award was relatively high, it was justified in the circumstances.

Separately, the Court did find that the length of the appeal proceedings – four years and seven months at two levels of jurisdiction – had been excessive and violated the requirement under Article 6 of the Convention that proceedings be conducted within a reasonable time.

Note: Some politicians seem to think that the use of coarse language helps them to connect with the electorate. But there is a cost to this: it sets the tone for a harshening of attitudes and, as the Court points out, legitimises attacks against lawyers and others who take on unpopular causes, such as human rights defenders and independent journalists. The Court sees no merit in protecting such language. One approach – employed in *Rujak v. Croatia*, no. 57942/10, decision of 2 October 2012, which the government had urged the Court to use here – is to hold that the language used by the President falls outside the zone of Article 10 altogether (in *Rujak*, the Court had held that "[c]ertain classes of speech, such as lewd and obscene speech have no essential role in the expression of ideas" and declared the application of a soldier convicted for insulting a superior inadmissible *ratione materiae*). The Court did not go that

far here, but nevertheless held that the personal insult aimed at the lawyer went beyond the limits of acceptable criticism and made no contribution to a debate on a matter of public interest. The Court does not appreciate the pointless use of harsh language; 'offensive' and 'shocking' statements are protected – as per *Handyside v. United Kingdom* – only when they serve to communicate a wider point on an issue of public interest and the statement in question does not cross the line and becomes gratuitously insulting.

Oganezova v. Armenia, judgment of 17 May 2021, Application no. 71367/12

Facts of the case

The applicant is a well-known activist for the rights of lesbian, gay, bisexual and transgender (LGBT) people. She frequently appeared in the media and following the broadcast of an interview in which she spoke of her participation in a Pride march, she became the subject of an online hate campaign, intimidation and threats. Shortly thereafter, there were several incidents of far right-wing people entering a bar that she co-owned and managed to harass people, as well as harassing people outside the bar. Then, there was an arson attack on the bar which resulted in a police investigation and charges brought against two far-right individuals. Following the arson attack there were several other incidents at the bar, including homophobic graffiti being sprayed, the inside of the bar being vandalised with swastikas and other right-wing symbols, and more intimidating gatherings of right-wing people. A Facebook group was created called "No to homosexuality" in which pictures of the applicant and other activists were posted as well as several hateful comments, including that the applicant "should die", "should be burnt", and "[should be] put in an electric chair". A YouTube video of the arson attack also attracted homophobic comments and death threats. The applicant requested police protection which was provided, but only for a period of five days. Some parliamentarians and high-ranking politicians endorsed the attacks. Then, the applicant left the country and was granted asylum in Sweden on the basis that she had been persecuted for her sexual orientation. Two individuals were found guilty of the attacks but were given only a conditional sentence, and were later granted an amnesty. The applicant appealed to the European Court of Human Rights, claiming violations of Articles 3, 8, and 14 of the Convention, concerning the right to be free from inhuman or degrading treatment; the right to respect for private life; and the right to enjoy Convention rights free from discrimination.

Court's reasoning

This summary focuses on the hate speech aspects of the case.

The Court first discussed whether the treatment suffered by the applicant met the threshold of Article 3, which provides the right to be free from inhuman or degrading treatment. The Court reiterated that treatment which humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or treatment that arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterised as degrading. The sustained and aggressive homophobic campaign against the applicant, including the hate speech, met this threshold, particularly bearing in mind the overall negative sentiment towards the LGBT community in Armenia. This was exacerbated by the response of the police, which had put in place protection measures more than a week after she had requested them and discontinued protection after only five days. While the response of the authorities to the arson attack had been prompt and reasonably expeditious, the police ignored the clear homophobic intent of the arson and charges were brought only of "intentional property damage". Thus, the hate motive of the arson attack was ignored, rendering this fundamental aspect of the crime invisible and of

no criminal significance. The Court held that such indifference to the motive was tantamount to official acquiescence in, or even connivance with, hate crimes.

The Court was particularly critical of the authorities' response to the campaign of homophobic hate speech and intimidation that the applicant had suffered following the arson attack. The abuse directed against the applicant on social media included numerous direct calls for violence as well as generally homophobic comments. She submitted this to the police who did not do anything to follow-up on this. The Court stated that while not each and every utterance of hate speech must attract criminal prosecution and criminal sanctions, the State is nevertheless under a positive duty to take certain measures. The Court reiterated that attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating hate speech. When hate speech rises to a level that it threatens a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent. The Court found that the hateful comments in the present case contained undisguised calls for violence against the applicant which required protection by criminal law. Having regard to the actual acts of violence, including the arson attack on the club and the subsequent homophobic attacks against the applicant, the authorities should have taken the hateful comments posted on social-media platforms all the more seriously. Instead, parliamentarians and high-ranking politicians publicly made intolerant statements endorsing the arson attack. Through all this, the authorities failed to respond adequately to the homophobic hate speech against the applicant. For all these reasons, the Court unanimously found that there had been a violation of Article 3 taken in conjunction with Article 14.

Note: This is one of a small number of cases where hate speech was of such a severity as to fall under Article 3 of the Convention, which prohibits inhuman or degrading treatment. As the Court held, "where treatment humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3" – even when there is no physical injury. It is striking that the other cases where the Court has found hate speech to be so severe as to engage Article 3 (for example, *Identoba and Others v. Georgia*, application no. 73235/12, 12 May 2015, and *M.C. and A.C. v. Romania*, application no. 12060/12, 12 April 2016) also concerned anti-LGBT hate speech. As the Council of Europe's Parliamentary Assembly has reported, there has been a marked increase in anti-LGBT hate speech and other hate crimes in many countries, including – shockingly – from political figures and leaders, including government representatives (Combating rising hate against LGBTI people in Europe, Resolution 2417 (2022)). By holding that such hate speech violates Article 3 of the Convention – a serious violation of the Convention – the Court sends a strong signal to States that they need to do more to prosecute it, and generally ensure that all people under their jurisdiction are able to enjoy their rights free from discrimination.

Żurek v. Poland, judgment of 16 June 2022, application no. 39650/18

Facts of the case

The applicant is a judge and former spokesperson of the Cracow Regional Court and a member of the National Council of the Judiciary (NCJ). The NCJ is a constitutional body tasked with safeguarding the independence of courts and judges; one of its principal functions is to evaluate and nominate candidates for appointment to judicial office for every level and type of court. The applicant was re-elected in 2014 for a four year term, and appointed as its spokesperson. As such, he frequently appeared in the media and he also participated in meetings of parliamentary committees. Starting in 2015,

far-reaching changes were introduced to the Polish judiciary, allegedly to increase the efficiency of the administration of justice and make the election of NCJ members more democratic. There was a fierce public debate around this as part of which the government financed a billboard campaign highlighting alleged unethical or illegal activities of several judges. The applicant took part in public debates, strongly voicing his – and the NJC's, of which he was the spokesperson – criticism of the proposed reforms. In 2017, legislation was passed to provide that judicial members of the NCJ would be elected by parliament and that the term of office of the sitting judicial members would be terminated. The legislation was met with national and international condemnation. The legislation came into force and the applicant's term on the NJC was terminated. As public debate around the legislation was ongoing and the applicant frequently appeared in the media, he was subjected to a range of other measures, including a 17 month-long anti-corruption audit; an inspection of his work at the Cracow Regional Court; the declassification of his financial 2018 declaration; and several disciplinary proceedings which remained ongoing at the time of his application to the Court. He was also removed as from his position as Cracow Regional Court's Spokesperson. The applicant complained to the European Court of Human Rights of a violation of his right to freedom of expression as well as of his right to a fair trial. This summary focuses on his complaint concerning his right to freedom of expression.

Court's reasoning

In assessing whether there had been an interference with the applicant's right to freedom of expression, the Court noted the totality of all the steps that had been taken against him rather than each one individually: his dismissal as a spokesperson, the audit, the inspection of his work, and the declassification of his financial declaration. With regard to the termination of his office, the Court noted that this had affected all members of the NJC and not just the applicant. The Court furthermore took into account the wider context of the weakening of judicial independence in the country, as the Court had found in previous judgments. Taking all this into account, the Court found that there was a clear causal link between the applicant's exercise of his right to freedom of expression and the measures taken against him by the authorities.

The Court then considered whether the interference with the applicant's freedom of expression had been justified. The Court noted that the interferences had been prescribed by law, but expressed doubt whether they had pursued a legitimate aim. The Court focused its analysis on whether the interference had been necessary in a democratic society. The Court recalled that the general principles concerning the right to freedom of expression of judges, as stated in *Baka v. Hungary* (application no. 20261/12, 23 June 2016), require judges to exercise maximum discretion in order to preserve their image as impartial judges as concerns specific cases, but that any restrictions on statements that they make with regard to the functioning of the justice system are to be closely scrutinised. The Court also recalled the 'chilling effect' that the fear of sanction has on the exercise of freedom of expression, in particular on other judges wishing to participate in public debate on issues related to the administration of justice and the judiciary.

Applying these principles to the applicant's case, the Court noted that he had expressed his views on the legislative reforms in his professional capacity as a judicial member of the NCJ and as its spokesperson. He therefore had not just a right but a duty to speak out. When a judge makes statements on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened. The Court recalled furthermore that Council of Europe instruments recognise that each judge is responsible for promoting and protecting judicial independence, and that the judiciary should be consulted and involved in the preparation of legislation concerning the functioning of the judicial system. The Court not-

ed that the applicant had at no point criticised other members of the judiciary, but that his comments had been purely limited to the functioning of the judicial system. His statements did not go beyond mere criticism from a strictly professional perspective.

The Court noted that each of the measures taken against the applicant appeared to have come in response to statements that he had made, and constituted harassment: the audit, which lasted seventeen months and was procedurally questionable, yielded no concrete results; the inspection of the applicant's work came one day after receipt of an anonymous letter which had complained about the applicant's critical comments on the reform of the judiciary; his dismissal as the Regional Court's spokesperson came without the required consultation and only days after a new President of the Cracow Regional Court had been appointed by the Minister of Justice; and the applicant's financial declaration was de-classified without giving any reasons. The Court held that taken together, these measures could be seen as a strategy aimed at intimidating or even silencing the applicant. The Court held that the measures undoubtedly had a "chilling effect" and must have discouraged not only him but also other judges from participating in public debate on legislative reforms. None of this was "necessary in a democratic society"; the Court therefore found a violation of the right to freedom of expression.

Note: The Court explicitly refers to the Magna Carta of European Judges, a set of fundamental principles on the independence, impartiality and competence of judges drawn up by the Consultative Council of European Judges, which states that "each judge [is] responsible for promoting and protecting judicial independence." The Court also quotes the European Network of Councils for the Judiciary's Sofia Declaration on Independence and Accountability of the Justice System, which stipulates the "collective duty on the European judiciary to state clearly and cogently its opposition to proposals from government which tend to undermine the independence of individual judges or Councils for the Judiciary". As the Court points out, the applicant was under a virtual duty to protest at threats to the independence of the judiciary, as a judge and particularly by virtue of his position as regional court spokesperson and spokesperson of the National Council of the Judiciary. It therefore found, unanimously, that the campaign of retaliation and smears that he faced violated his right to freedom of expression. The domestic authorities have continued their campaign against him: on 30 May, it was reported that the applicant is facing 64 new disciplinary charges. Food for thought for the Committee of Ministers in supervising the execution of the judgments.

***Drousiotis v. Cyprus**, judgment of 5 July 2022, Application no. 42315/15*

Facts of the case

The applicant is a journalist at a national newspaper who publishes a regular column commenting on current political affairs. The newspaper had published articles commenting on the extension of the employment contract of a high-ranking lawyer in the government's Law Office beyond retirement age. It was noted that while such appointments had in the past been considered an "unacceptable form of political favour", the government now defended it as being a matter of "public interest". In his column, the applicant commented harshly on the issue, remarking that the lawyer was "kissing up to" the President of the House of Representatives in order to be appointed Attorney General and quoting from a book that the lawyer had written to suggest that the lawyer was paranoid. The lawyer then sued for defamation, arguing that the article had been written in bad faith to damage his image and the public's opinion of him. The domestic court ruled in his favour and awarded the lawyer €25,000 compensation as well as legal costs of €3,472.59. The journalist's appeal was dismissed. The applicant complained to the European Court of Human Rights of a violation of his right to freedom of expression.

Court's reasoning

The Court noted that the case concerned a conflict of the applicant's right to freedom of expression, protected under Article 10 of the Convention, and the lawyer's right to the protection of his reputation, under Article 8. The Court accepted that the applicant's article, by presenting the lawyer as a sycophant and commenting negatively on the extension of his term of service, was capable of tarnishing his reputation and had caused him prejudice in his professional and social environment. This rose to the requisite level of seriousness to engage the lawyer's rights under Article 8.

The Court then considered whether the article contributed to a debate of general interest. Noting that it had been published shortly after the publication of the decision by the Council of Ministers to extend the lawyer's service, a decision which had given rise to considerable controversy and political debate and which had been commented on in other media, the Court held that it did. The Court also held that the lawyer could be compared to a public figure. He was a senior civil servant who had himself entered the public domain by frequently commenting on the media on various issues, and he was being considered for the position of Attorney General, a post he aspired to. He had therefore opened himself to close scrutiny of his acts and ought to show a greater degree of tolerance of criticism than ordinary individuals.

As to the nature of the offending remarks and their factual basis, the Court noted that they did not concern the lawyer's private life but his professional work, and were made in the context of a heated political debate. The applicant's newspaper column was designated to comment on such issues. Others had expressed similar concerns, though in a less exaggerated manner, and the admittedly strong and coarse expressions of the applicant should be read within this broader context. The domestic courts had not truly incorporated these factors in their assessment. The applicant had chosen to convey his strong criticism in a caustic and ironic style, which according to him was aimed at stirring controversy, provoking the public and attracting its attention. It had not been published in bad faith. The Court reiterated that journalists may exaggerate and even provoke, that certain attention-grabbing expressions do not by themselves raise an issue under the Court's case-law, and that style forms part of communication and is protected together with the content of the expression.

The Court furthermore emphasised that the statements made by the applicant were value judgments and not allegations of fact. They did have a factual basis, in that past publications had shown that the decision to extend the lawyer's service was contrary to the government's prior stance in similar instances. Although he had not had a firm basis for alleging that the Attorney General had not been informed of the decision, the Court reiterated that factual inaccuracies should be tolerated if published in good faith and if the expression at issue concerns controversial topics. Finally, the Court held that the amount awarded had been disproportionate to any potential damage caused to the lawyer's reputation. This was so especially considering that while the first instance court proceedings were still pending, he had been appointed Deputy Attorney General. For all these reasons, the Court found a violation of the right to freedom of expression.

Note: There are two things worth picking up in this case. First, the domestic courts had focused their analysis on the harsh words used by the applicant and the tone of his column, without taking into the wider public debate around the issue, the status of the journalist, and the polemical nature of the column. The words used by the journalist in this case (an accusation of "kissing up" to the President of the House of Representatives; and that the 'regime' "spits on logic, insults common sense and promotes paranoia") are not quite as harsh and coarse as the suggestion made by the President of Croatia in the case of *Mesić* (also summarised in this bulletin) that the lawyer involved in that case should check into a psychiatric clinic. Importantly, in this case the power dynamic in this case is inverted – the lawyer who is criticised is in a position of power, the journalist

is not – and there is no broader link to the issue of the safety of lawyers. The second point worth focusing on is the characterisation by the court of the damage award, holding that €25,000 is "unusually high in absolute terms". This sets a clear benchmark.

Tagiyeva v. Azerbaijan, judgment of 7 July 2022, Application no. 72611/14

Facts of the case

The case concerns the applicant's husband, a well-known writer and columnist, who was stabbed to death by an unknown attacker. He wrote articles, essays and columns relating to various social issues, including the place of religion in society and its dissemination as a political ideology. He was particularly critical of the influence of Iran in Azerbaijan and in the world. Following the publication of a November 2006 article, an Iranian religious leader issued a fatwa calling for the applicant's death. The applicant and his family were placed under police protection, but the applicant was also prosecuted and found guilty of incitement to racial hatred (in December 2019: the Court later found that conviction to be in violation of Article 10). He was pardoned in December 2007 and continued his writing. He was no longer under police protection. In November 2011, he published an article that criticised the religious and totalitarian nature of the Iranian State and its policy vis-à-vis the world. Nine days later, he was stabbed; he died in hospital four days later. Before his death police questioned the applicant. He stated that he had not received any death threats; his wife and family had similarly not been aware of any threats against him, other than the 2006 fatwa. Police investigations were unsuccessful in identifying the assailant. The applicant was refused access to the investigative file until after the completion of the investigation. The applicant complained without success to the domestic authorities about their failure to conduct an effective investigation and then appealed to the European Court of Human Rights.

Court's reasoning

The Court considered the application under Article 2 of the Convention, under which the State has a positive obligation to protect the right to life and, when someone has been attacked and has died, conduct a prompt, independent, and effective investigation.

With regard to the duty to protect, the critical point in this case was whether the domestic authorities knew or ought to have known of the existence of a real and immediate risk to the life of the applicant's husband and, if so, whether they failed to take measures to avoid that risk. The Court considered that neither the applicant nor her husband had received any threat following the publication of his last article, and that the authorities had not been aware of a current threat to the applicant's life. Considering the information before it, the Court was not convinced that the fatwa from November 2006 led to a real and immediate risk to the applicant's husband's life in 2011; it held that bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct, and the operational choices which must be made in terms of priorities and resources, the scope of the State's obligation to protect must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. The Court reiterated that the applicant's husband had never applied to the domestic authorities or informed them of any danger or threat to his life before his stabbing.

Turning to the authorities' alleged failure to carry out an effective investigation, the Court observed that criminal proceedings were instituted immediately after the stabbing of the applicant's husband. The Court reiterated that the obligation under Article 2 of the Convention to investigate is not an obligation of result, but of means. In the present case, a number of relevant and timely investigative actions were carried out and the investigating authorities explored various possible motives behind the killing of the applicant's husband. The Court saw no shortcomings in this regard.

However, the Court saw no reason why the applicant had been denied access to the relevant case materials during the investigation. This deprived the applicant of the opportunity to safeguard her legitimate interests and prevented sufficient scrutiny of the investigation by the public. The Court emphasised the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information, as well as enabling them to present other evidence. In this regard, the Court therefore found a violation of Article 2 of the Convention.

Note: Over the last decade, there has been a marked deterioration in the safety of journalists across Europe. The Council of Europe's Platform for the Protection of Journalism and Safety of Journalists, established in 2015, shows 26 cases of impunity for the murder of a journalist (meaning cases in which those responsible have not been brought to justice), and a sharp rise in attacks against journalists since 2020. The European Court of Human Rights has decided a number of cases concerning violence against journalists, and has built up a jurisprudence setting out a set of core principles and duties on States. Prime among these are the duty to protect, which includes a duty to take preventive action when States become aware of a credible threat. In this case, the Court points out that difficulties in policing modern societies, the unpredictability of human conduct, and the operational choices which police must make, mean that it can be hard for States to fulfil their duty to prevent. The Court points out that the death threat against Tagiyev dated from five years before his murder, and had not been reiterated when he was suddenly attacked. But given the rise in violence against journalists and the continuing climate of impunity for such crimes, perhaps domestic authorities do need to be more vigilant. A month after this judgment was published, Salman Rushdie was stabbed by a religious extremist acting on a decades-old fatwa to kill Rushdie.

In-depth analysis of selected cases

***OOO Memo v. Russia**, judgment of 15 March 2022, application no. 2840/10*

Facts of the case

The applicant is the company that publishes the online media outlet *Kavkazskiy Uzel* (Caucasian Knot), which reports on the political and human rights situation in the Caucasus region. In 2008, it published an article reporting that the payment of a subsidy from Volgograd Region to Volgograd City had been suspended. The report quoted an expert of the Fund for the Development of Information Policy who said that one of the reasons why the subsidy had been suspended was because Volgograd City had not awarded a tender for new buses to a local company that was favoured by the regional administration. The expert was quoted as saying that "officials of the Administration came down on the Mayor's Office, saying, 'How come you did not support the local producer!' It appears to me that the Mayor's Office's refusal to do business with the Volzhanin factory was one of the main reasons of the regional officials' anger ... the suspension of allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tender."

The Regional Administration of Volgograd brought civil defamation proceedings against the applicant, demanding a retraction on the grounds that the statements were false and had tarnished the Administration's "business reputation". The applicant company argued that the impugned statements were value judgments by the local expert and that they had concerned a matter of public interest. The District Court ruled for the administration, holding that despite using the expression "it appears to me", the accusation made by the expert was one of fact. The District Court considered that an allegation of lobbying for a specific company's interests was damaging to the Regional Administration's business reputation and ordered a retraction and the publication of its judgment on the applicant's website. The applicant's court appeals were dismissed, and the applicant lodged a complaint with the European Court of Human Rights.

Court's reasoning

The European Court of Human Rights focused its analysis on whether the defamation conviction pursued a "legitimate aim" (one of the three parts of the 'test' required under Article 10 to determine whether an interference is justified). It observed that the claimant in the defamation proceedings was a public body, and that the government had argued that the defamation conviction had been necessary to protect "the reputation and rights of others". The Court recognised that this could extend to legal entities, and recalled that entities such as companies have a legitimate interest in protecting their commercial success and viability, for the benefit of shareholders and employees as well as for the wider economic good. However, the Court emphasised that these considerations do not apply to an executive body of the government that does not engage in direct economic activities.

As regards public bodies that seek legal protection of their reputation, the Court noted that it

had previously held that an elected body could only in truly exceptional circumstances argue that protecting its reputation was necessary under Article 10(2) – this was in the context of defamation proceedings brought by the local council of a town with a population of under 12,000 (*Lombardo and Others v. Malta*, application no. 7333/06, 24 April 2007), where councillors were readily identifiable.

In the present case, the Court considered that executive bodies vested with State powers are essentially different from legal entities, including public or State-owned corporations, that engage in competitive economic activities. The Court also observed that, to prevent abuse of power and corruption of public office in a democratic system, the activities of executive bodies should be subject to close scrutiny of public opinion. Noting the frequent use of defamation cases to silence criticism, the Court went on to observe that in some Council of Europe member states local authorities and other public bodies cannot sue in defamation, because this would inhibit scrutiny of their functioning and public criticism.

The Court concluded that the interests of an executive body vested with State powers in maintaining a good reputation are different from the reputational interests of legal entities that compete in the marketplace, as well as from the right to reputation of natural persons. Therefore the Court held that civil defamation proceedings brought by an executive body may not, as a general rule, be regarded to pursue the legitimate aim of "the protection of the reputation ... of others". The Court added that this does not exclude individual members of such bodies from bringing defamation lawsuits in their own name, if they feel that their personal reputation has been tarnished.

Turning to the present case, the Court held that it was "hardly conceivable" that the claimant – the highest body of the executive of the Volgograd Region – had an interest in protecting its commercial success and viability, and nor could it be said that its members were as "easily identifiable" as those of a local authority in a small town. The Court therefore found the proceedings did not pursue any of the legitimate aims listed in Article 10 of the Convention, and the applicant's right to freedom of expression had been violated.

General comments

Following a number of cases in which the Court did not answer the question whether State bodies ought to be able to sue in defamation (see primarily *Romanenko and Others v. Russia*, application no. 11751/03, 8 October 2009, and *Frisk and Jensen v. Denmark*, application no. 19657/12, 5 December 2017), the Court has now stated that they cannot: "the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differ from both the right to reputation of natural persons and the reputational interests of legal entities, private or public, that compete in the marketplace ... It follows that civil defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded to be in pursuance of the legitimate aim of "the protection of the reputation ... of others" under Article 10 § 2 of the Convention" (paras 46, 47). By using the phrase, "as a general rule", the Court leaves itself something of a margin of appreciation for future cases but nevertheless sets a clear standard.

It is also interesting to note that the Court refers to the Council of Europe Human Rights Commissioner's Comment on SLAPP cases (Time to take action against SLAPPs, 27 October 2020), highlighting growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy, particularly in cases where there is a clear power imbalance between the claimant and the defendant. The Commissioner warns that journalists, activists, and advocacy groups are the preferred targets of so-called SLAPPs. These SLAPP cases often come in the form of defamation lawsuits and are a highly effective way for those in positions of power to silence their critics: for a powerful claimant, launching a defamation lawsuit is a trivial expense, whereas for a journalist or activist

receiving a SLAPP is often expensive and forces them to invest significant time and resources. Given the rising awareness of SLAPPs and the predominance of defamation cases on its docket, the Court can be expected to return to this theme over the coming months and years.

***NIT S.R.L. v. Moldova**, judgment of 5 April 2022, application no. 28470/12*

Facts of the case

The applicant company is the owner of television channel, Noile Idei Televizate (New Ideas Teleivised, NIT), which held a national broadcasting licence in Moldova from 2004 until 2012. As of 2009, it was the main broadcaster to give airtime to the views and opinions of the main opposition party. Between 2009 and 2011, it received multiple sanctions for breaching its licence requirements of neutrality and impartiality in news bulletins, favouring the opposition party and broadcasting news items that were regarded as distorted. The sanctions increased in severity from a public warning to a fine, to a prohibition on broadcasting advertisements for a short period of time, and finally, a five day licence suspension.

In 2012, the national broadcasting regulatory body, the Audiovisual Coordinating Council (ACC) carried out a thematic monitoring process for the news bulletins of all national television channels, assessing in particular compliance with the requirement of impartiality. The monitoring was carried out over a period of five days and the methodology had been devised by the ACC in collaboration with experts from the European Union and the Council of Europe. The monitoring report contained an overview per channel of data concerning screen time spent on issues relating to specific political parties or specific political figures, including the number of seconds during which those issues were presented in a positive, negative or neutral manner. For each channel this overview was accompanied by a number of comments. The report found that NIT's reporting on the ruling party had been disproportionately negative, while its reporting on the opposition parties had been predominantly positive or neutral. The report concluded had broken the law. NIT was invited to a meeting to discuss the report, following which the ACC voted to revoke NIT's licence. The ACC took NIT's previous violations into account, pointing out that sanctions had gradually become more severe.

Court's reasoning

The Court first discussed the basic principles on media pluralism and broadcast regulation. It pointed out that its previous cases on pluralism and broadcast regulation had concerned external pluralism – the existence of several media outlets expressing different points of view, resulting in a media landscape that is pluralistic from an overall perspective – but that the present case concerns internal pluralism: the requirement that the reporting of an individual media outlet should be balanced and impartial. To achieve true pluralism, both aspects of media pluralism need to be considered together; what is required is overall diversity of programme content across the spectrum.

Drawing on a comparative overview of broadcast regulation across Europe, the Court found that there are different approaches to achieving media pluralism. Article 10 does not prescribe a particular model. States therefore have a margin of appreciation in deciding which model to impose, so long as the chosen approach respects editorial freedom. This meant that the issue at stake in the present case concerned, on the one hand, the competing interests of society in safeguarding political pluralism in the media, and on the other, the principle of respect for editorial freedom. In order to protect the latter, it is important that there are effective safeguards against arbitrariness and abuse of power in media regulation; this means that there must be strong procedural guarantees, particularly when the ultimate sanction of licence withdrawal is at stake.

Assessing the overall legislative framework, the Court observed that this offered all the necessary guarantees. Broadcasters were free in deciding

how to implement the requirements of balance and impartiality (for example, the legislation did not require equal airtime for all political parties); and the legislation had been drawn up following earlier Court jurisprudence (*Manole and others v. Moldova*, application no. 13936/02, 17 September 2009) that had required the state to implement a framework to realise pluralism in practice. The legislative framework was in line with that of other Council of Europe member states and had been commented on by independent Council of Europe experts. The rules applied not just to NIT, but to all broadcasters. The ACC was a specialist independent body which was required to provide reasons for any decision to impose a sanction, which could be challenged before the courts.

With regard to the decision to withdraw the licence, the Court noted that this had been the result of a five day monitoring process, which had followed a sound methodology and which had been upheld by the domestic courts. The ACC's findings had been unequivocal and the Court noted the very strong language used by NIT to describe the government (comparing one leader to "Hitler", and referring to all of them in terms such as "criminals, "bandits", "crooks", "swindlers", and "group of criminals".). Reviewing the ACC findings, the Court found that, by conducting news reporting in the way it had done, the NIT had not contributed to political pluralism in any meaningful way. The impugned broadcasts – in particular, its news bulletins – had been capable of having a considerable impact nationwide.

NIT's licence was revoked only after a series of other sanctions had been imposed for similar breaches, leading the ACC to consider applying the most serious of sanctions. The Court found no evidence of anti-NIT bias among the members of the ACC, whose independence was guaranteed and whose members had been appointed when the opposition party had been in government. The domestic courts had reviewed the ACC's decision. For these reasons, by a 14–3 vote, the Court found that NIT's licence revocation did not violate its right to freedom of expression.

General comments

This is an important case (indicated as a "key case" in the Court's database) that raises fundamental issues of broadcast regulation and media pluralism. At the time of NIT's licence revocation, there were only five television broadcasters with national coverage, and the market was dominated by three of these. In such a concentrated broadcasting environment, ensuring pluralism is essential and Moldovan law required that every channel should be impartial and neutral in its news and current affairs broadcasting. This is what the Court in its judgment refers to as 'internal pluralism', an issue with which it had not dealt before. However, to enforce internal pluralism, restrictions on editorial freedom are inevitable. There need to be, therefore, safeguards to prevent arbitrariness and abuse. It is at this point in the judgment that the rubber hits the road: the question that the Court must answer is not whether the ultimate sanction of the revocation of NIT's licence is justified by the aim of safeguarding media pluralism (it is), but whether there were sufficient procedural safeguards to ensure that NIT's licence was not revoked arbitrarily. The Court held that there were: the national legislative framework was in line with that of other European countries; the ACC was an independent and expert regulatory body; the ACC had provided relevant and sufficient reasons for the licence revocation; NIT's licence was revoked after lesser sanctions had been applied but NIT had 're-offended', and its breach of its licence conditions was a very serious one; and NIT had been able to challenge the ACC's decision before the national courts. This was sufficient in terms of procedural fairness.

The three dissenting judges do not disagree with the principles that the Court establishes, but disagree with how the court applies them. At the level of principles, this judgment by the Court's Grand Chamber therefore sets an important precedent. It has already been relied on by the Court of Justice of the European Union to dismiss Russia Today France's challenge against the withdrawal of its licence (*RT France v. Council*, Case T-125/22, 27 July 2022).

Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)

The action is part of the "Horizontal Facility for the Western Balkans and Turkey 2019–2022" and it builds upon the results achieved during a previous regional European Union and Council of Europe Joint programme "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)". The regional action is strongly interconnected with the six Beneficiary-specific JUFREX actions in: Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia.

JUFREX activities are implemented with the aim to:

- promote freedom of expression and freedom of the media in line with European standards;
- improve the application of those standards by engaging a range of actors responsible to apply such standards in their daily work, namely: judges, prosecutors, lawyers, police officers, representatives of media regulatory authorities, media actors and students;
- consolidate a platform for regional cooperation, discussion and exchange of good practices.

Where an enabling environment for freedom of expression and freedom of the media exists and the right to seek, impart and receive information is well protected, citizens can genuinely participate in the democratic processes. National training institutions for legal professionals (Judicial Academies and Bar Associations) play a vital role to make this become a reality.

All JUFREX activities are based on innovative and modern learning tools on freedom of expression and freedom of the media and adopt a dynamic methodology for adult learning and a peer-to-peer model.

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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