# European Court of Human Rights: new judgment shows “the spirit of Lingens” lives on

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The European Court of Human Rights’ judgment in *Pešić v. Serbia*, rendered on 13 January 2026, deals with the limits of permissible criticism of politicians under Article 10 of the European Convention on Human Rights (ECHR). The Court held unanimously that the applicant’s right to freedom of expression had been violated after damages were awarded against her in civil proceedings arising out of her online criticism of a government minister.

The applicant was a former politician and a long-time political activist. In 2016, several buildings were demolished in the centre of Belgrade as part of a construction project. During the demolition operation, some unidentified individuals detained other individuals who were in the area and only released them afterwards. The detained individuals subsequently contacted the police, who failed to respond or to attend the scene. The Minister of the Interior defended the inaction of the police, citing their safety as an excuse. The applicant subsequently published an article on the website of a citizens’ association in which she was highly critical of the minister’s stance and – as she put it – his “stupidity”. The minister initiated civil proceedings against the applicant, based on the alleged mental distress caused by an attack on his honour and reputation. The Belgrade High Court delivered a judgment in favour of the minister and awarded damages against the applicant. The High Court found that the applicant’s remarks concerning the minister’s “stupidity” exceeded the bounds of acceptable criticism and constituted a personal insult. The applicants’ appeals were unsuccessful.

It has long been a matter of settled case-law that freedom of expression extends to criticism of politicians. In its seminal judgment, *Lingens v. Austria* (1986), the Court developed two important principles, the first being that:

“*[f]reedom of the press […] affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. […] The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.*” (paragraph 42)

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The second important principle in *Lingens* is that: “a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.” (paragraph 46)

Surprisingly, *Lingens* is not cited by the Court in the present judgment, but these two principles are centrally present in its reasoning, for instance in paragraphs 49, 51 and 54. The Court also notes related principles from its early case law on these matters, again without referencing the older judgments. With regard to its finding that calling the minister “stupid” was an opinion or value judgement rather than a statement of fact, *Oberschlick v. Austria (No. 2)* (1997) (IRIS 1997-7:1/4), could be noted. In that case, the Court reached the same conclusion in a case where the applicant had called Jörg Haider, the then leader of the Austrian Freedom Party ( *Freiheitliche Partei Österreichs* – FPÖ) party, an “idiot” (“*Trottel*”). Again, this judgment was not cited directly, but the precedent was followed. The Court does, however, reference some more recent judgments in which the time-honoured principles were applied.

One judgment that the Court did explicitly reference was *Axel Springer AG v. Germany* (IRIS 2012-3:1/1), as it noted and applied the criteria developed in that judgment for balancing the rights to private life and freedom of expression under Articles 8 and 10 ECHR, respectively:

(a) the contribution to a debate of general interest;

(b) how well known the person concerned is and what the subject of the report is;

(c) the conduct of the person concerned prior to publication of the article;

(d) how the information was obtained and how accurate it was;

(e) the content, form and consequences of the publication; and

(f) the severity of the sanction imposed.

This is a run-of-the-mill judgment regarding the scope of expressions that are critical of individual politicians; the Registry of the Court has designated it as a Level 3 judgment, indicating that it is of “low importance”. Nevertheless, the judgment does show that 40 years on, “the spirit of Lingens” would appear to be very much alive today, notwithstanding some doubts about its endurance over the years (see: Gavin Millar, "Whither the spirit of Lingens?", 3 European Human Rights Law Review (2009), 277-288).

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***Pešić v. Serbia, No. 4545/21, 13 January 2026***

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