# European Court of Human Rights: *Mas Gavarró v. Spain*

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In a decision of 18 October 2022, the European Court of Human Rights (ECtHR) saw no reason to consider a violation of the right to privacy and reputation based on Article 8 of the European Convention on Human Rights (ECHR). It declared an application by Artur Mas Gavarró, the former President of the Government of the Autonomous Community of Catalonia, manifestly ill-founded after the Spanish courts had dismissed Mr. Gavarró's complaint against the newspaper El Mundo for alleged criminal defamation. The ECtHR confirmed that, in order to be in accordance with the right to freedom of expression as guaranteed under Article 10 ECHR, criminal law provisions could only be applied in very strict circumstances. The decision of the ECtHR further clarified that a civil libel action or a request for a correction or rectification could have been a less intrusive interference with the right to freedom of expression in order to safeguard Mr. Gavarró's right to protection of his personal reputation.

The case concerned the publication of a number of articles both in the printed and online version of the daily newspaper El Mundo. In particular, one of the articles, published during an election campaign for the presidency in Catalonia, was based on an alleged draft police report sent to journalists revealing unlawful financing of Mr. Gavarró's political party, Convergència i Unió. The newspaper also reported, on the authority of the alleged report by the Central Unit for Economic and Fiscal Crime (UDEF), that Mr. Gavarró, who was then a candidate for re-election, held bank accounts abroad into which bribes had been paid. The existence of the police report or of judicial proceedings were denied however both by the competent investigative judge and by the Criminal Investigation Division of the Catalan police. Two weeks later the chief superintendent of the police confirmed that the report on which El Mundo had based its allegations had not been drawn up by the UDEF or any of its officials.

Mr. Gavarró lodged a criminal complaint for insult and defamation against the journalists who had written the articles and against the newspaper's publisher. A judicial investigation was opened, but a few months later a decision was made to discontinue the case. Mr. Gavarró was unsuccessful in his appeal against that decision. The Constitutional Court also rejected his appeal. Relying on Article 8 ECHR, Mr. Gavarró complained of the inaction of the police, the prosecution service and the domestic courts in failing to investigate the alleged interference with his right to the protection of his personal reputation.

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The ECtHR observed that the main aim of the procedure had been to determine whether the journalists' conduct had been serious enough to constitute the criminal offence of insult or defamation under Spanish law. It reiterated that the State's obligation under Article 8 ECHR to put in place and apply in practice an adequate legal framework affording protection of one's reputation did not always require the adoption of effective criminal-law provisions covering the various acts at issue. The legal framework could also consist of civil remedies providing sufficient protection. A prison sentence imposed in the context of a political debate or a debate of public interest would only be compatible with freedom of expression as guaranteed by Article 10 ECHR in exceptional circumstances, particularly where other fundamental rights had been seriously infringed, such as in the event of hate speech or incitement to violence. Under the Spanish system, the offences of insult and defamation were subject to a special intentional element with a certain threshold, namely they had to involve a purely malicious lie or flagrant contempt for the truth. The legislature had thus chosen to criminalise only certain serious forms of insult and defamation, and not all forms of defamation or damage to a person's reputation.

The ECtHR observed that Mr. Gavarró could have brought a civil action for the publication of a correction in the newspaper within three days, or could have initiated a special procedure for the protection of the right to one's honour in order to obtain redress for the alleged damage to his reputation. Such civil proceedings, if successful, could have ensured that Mr. Gavarró's good reputation was restored and contained remedies that could not be considered as ineffective. However, there was no trace of a civil procedure initiated by Mas Gavarró for that purpose. By choosing to use only the criminal-law avenue, Mr. Gavarró had deprived himself of any redress for the infringement of his rights in the context of the civil procedures which had been available to him. He had thus limited the scope of the examination carried out by the domestic courts, which had only been able to rule only on the lack of gravity of the alleged infringement under the criminal law. Hence, Mr. Gavarró had not demonstrated that the Spanish authorities had provided him with insufficient protection or that his right to respect for his reputation had actually been infringed. Therefore his application was manifestly ill-founded. The ECtHR declared, unanimously, the application inadmissible.

***Décision de la Cour européenne des droits de l'homme, troisième section, rendue le 18 octobre 2022 dans l'affaire Mas Gavarró c. Espagne, requête n° 26111/15***

*Decision by the European Court of Human Rights, Third Section, in the case of Mas Gavarró v. Spain, Application no. 26111/15, 18 October 2022*

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