European Court of Human Rights: Mesić v. Croatia (no. 2)

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The European Court of Human Rights (ECtHR) in a judgment of 30 May 2023 has dismissed a complaint introduced by the former president of Croatia, Mr Stjepan Mesić. Mesić's complaint was about the dismissal by the domestic courts of his civil action for compensation because of alleged defamatory statements in an article published on an Internet news portal suggesting his involvement in criminal activities. In line with the domestic courts, the ECtHR found no violation of Mesić's right to reputation under Article 8 of the European Convention on Human Rights (ECHR). The ECtHR considered that the article at issue concerned a matter of public interest and was based on reliable sources. It emphasised the importance of investigative journalism as a guarantee that authorities could be held to account for their conduct. The ECtHR found that the domestic courts had struck a fair balance between the competing rights of Article 8 (privacy/reputation) and Article10 (freedom of expression) ECHR, valuing the role of the media as a public watchdog.

The application concerned an article published in February 2015 by the Internet news portal Dnevno.hr suggesting that Mesić, during his term of office, had been involved in criminal activities in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria. The article was based on a press release from 2013 by the Finnish Prosecutor General, mentioning that three Finnish employees of Patria were suspected of having participated in making promises or giving bribes through intermediaries in exchange for actions by the President of the Republic of Croatia and a general manager of a Croatian state-owned company. In 2014 the journalist of Dvevno.hr had a telephone call with the Finnish Public Prosecutor who was in possession of a document issued by the Finnish authorities which showed that Mesić had received a bribe of EUR 630 000. In 2016, however, the Turku Court of Appeal acquitted the accused Finnish employees of Patria, as it had found no proof of the bribery accusation. Shortly after the publication of the article in March 2015 Mesić had requested that the news portal Dnevno.hr publish a correction in relation to the impugned article which he considered to be false and injurious to his honour and reputation. The news portal Dnevno.hr replied that it would not publish a correction and explained why it stood by the impugned statements. In May 2015 Mesić brought a civil action against the news portal arguing that the allegations about his involvement in the Patria case were false and had breached his honour and reputation because

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he had been portrayed as a corrupt politician and a criminal. First the Zagreb Municipal Civil Court and later on appeal the Zagreb County Court dismissed Mesić's claim. The Zagreb County Court in essence found that the news portal had based its article on relevant sources, such as the telephone interview with the Finnish Prosecutor General and the Finnish indictment. The article reported information of justified public interest, while the plaintiff was a public figure and the author of the article had acted in good faith on the basis of previously verified information. By a decision in December 2016, the Constitutional Court dismissed Mesić's constitutional complaint. It found that the domestic courts had given sufficient reasons for their decisions, which were not arbitrary, and that the case did not reveal a breach of Mesić's constitutional right to be presumed innocent. Relying on Article 8 ECHR Mesić lodged an application with the ECtHR arguing that by dismissing his civil action for compensation, the Croatian courts had failed to protect his reputation as part of his right to respect for his private life.

The ECtHR confirmed once again that in this type of case the main issue is whether the state, in the context of its positive obligations under Article 8 ECHR, has achieved a fair balance between an individual's right to protection of reputation and the other party's right to freedom of expression as guaranteed by Article 10 ECHR. It also reiterated that where judicial cases or criminal investigations are concerned, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or among the public at large. Not only do the media have the task of imparting such information and ideas but the public also has a right to receive them. The ECtHR observed that reporters and other members of the media must be free to report on events based on information gathered from official sources without having to verify them. However, distorting the truth, in bad faith, can sometimes overstep the boundaries of acceptable criticism: a correct statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind. Thus, the task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously. That is especially so where a media report attributes very serious actions to named persons, as such "allegations" run the risk of exposing the latter to public contempt. The ECtHR also referred to the various relevant criteria for balancing the right to respect for private life against the right to freedom of expression and found it appropriate to consider the following applicable criteria: the contribution to a debate of general interest, how well known the applicant was, and the method of obtaining the information and its veracity.

The ECtHR agreed with Mesić that portraying him as a criminal was capable of seriously tarnishing his reputation and discrediting him in the eyes of the public. The impugned article was published on a news web portal and was thus available to a wide public readership. Therefore the statements in question attained the

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requisite level of seriousness so as to cause prejudice to Mesić's rights under Article 8 ECHR. Next the ECtHR found, as the domestic courts did, that the impugned article undoubtedly concerned a matter of public interest, while the "watchdog" role of the media assumed particular importance in such a context. Investigative journalism is a guarantee that the authorities can be held to account for their conduct. Over and above his role as a politician, and in particular as head of state, Mesić must display a great degree of tolerance and accept close scrutiny in relation to the exercise of his official duties. Turning to the content of the impugned article, the ECtHR considered that the impugned article as a whole had a sufficient factual basis, referring to the contacts with and the documents from the Finnish judicial authorities. The journalist had also made clear that he was only reporting what was stated in those official documents. That the prosecuted employees of Patria were finally acquitted in Finland is of no relevance because this occurred after the publication of the impugned article. With regard to Mesić's right to be presumed innocent the ECtHR emphasised that the degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by journalists when expressing opinions on matters of public concern. On the basis of the foregoing considerations the ECtHR concluded that there were no strong reasons to substitute its view for that of the domestic courts, which struck the requisite fair balance between Mesić's right to respect for his private life and the right of the news portal to freedom of expression. Therefore, it could not be said that the domestic courts had failed to discharge their positive obligation under Article 8 ECHR to ensure effective respect for Mesić's private life, in particular, his right to respect for his reputation.

By five votes to two the ECtHR found that there had been no violation of Article 8 ECHR. The two dissenting judges argued that the finding by the majority set "a very low standard" for the protection of personality rights, while the impugned article did not meet the standards of "responsible journalism".

Judgment by the European Court of Human Rights, Second Section, in the case of Mesić v. Croatia (no. 2), Application no. 45066/17, 30 May 2023

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