# European Court of Human Rights: Radio Broadcasting Company B92 AD v. Serbia

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According to the European Court of Human Rights (ECtHR), Serbia has violated the right to freedom of expression and information as protected under Article 10 of the European Convention on Human Rights (ECHR) by interfering with the broadcast of a TV news item and an online article published by the Radio Broadcasting Company B92 AD (B92). The ECtHR unanimously found that the disproportionate civil sanctioning of B92 for defaming a public official allegedly involved in corruptive practices could not be justified for relevant and sufficient reasons. The ECtHR in particular considered the measures imposed on B92 (damages, removal of article from internet portal and publication of judgment) capable of having a dissuasive effect on the exercise of B92's right to freedom of expression. It also emphasised that the TV news item and online article concerned a public person in relation to a matter of public interest, while the allegations were based on an official document. The reporting by B92 based on that document could be considered as a form of responsible journalism.

After being ordered in civil proceedings to pay compensation for defamation of a public official (Z.P.), B92 lodged an application with the ECtHR complaining that the interference with its right to impart information was not necessary in a democratic society, and hence in breach of Article 10 ECHR. The Serbian courts found that the allegations of corruption against the assistant minister for health Z.P. were not sufficiently substantiated. In essence the domestic courts found that before publishing the information in question, B92 had had a duty to verify the origin, accuracy and completeness of such serious allegations, which it had failed to do, relying only on an official note of the Ministry of the Interior, which was not considered a document of a relevant state body. Furthermore, Z.P. was not convicted, nor prosecuted for the alleged corruption.

The ECtHR confirmed once more that in this type of cases 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. Examining the TV broadcast and the content of the relevant article, the ECtHR considered that they were capable of tarnishing Z.P.'s reputation and of causing her prejudice in both her professional and social environment. Accordingly, the allegations attained the requisite level of

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seriousness which could cause prejudice to the personal enjoyment by Z.P. of her rights under Article 8 ECHR. The relevant criteria when it comes to the balancing exercise between the rights protected under Article 8 and Article 10 ECHR include:

(a) the contribution made by the article or broadcast in question to a debate of public 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 the publication of the article; (d) the method of obtaining the information and its veracity; (e) the content, form and consequences of the information; and (f) the severity of the sanction imposed. While there was no discussion that the TV broadcast and the article reported on an issue of public interest and that it concerned Z.P. acting in her function of assistant minister for health, the ECtHR disagreed with the findings of the domestic courts on the method of reporting by B92: the ECtHR found that the reporting by B92 did not go beyond the limits of responsible journalism. It reiterated that even though internal official reports can be an important source for journalists, they cannot release them completely from their obligation to base their publications on sufficient research. But it found that by attempting to obtain Z.P.'s and the Ministry's version of events and by publishing the response of the Special Prosecutor's Office, B92 had sought to achieve a balance in its reporting, in compliance with its duty of diligence in verifying the authenticity and content of the police note. The ECtHR observed that the domestic courts appeared to have failed to take those aspects into account in assessing whether B92 had fulfilled the requirements of "responsible journalism". The ECtHR found that B92 had acted in good faith and with the diligence expected of a responsible journalist reporting on a matter of public interest, also emphasising the vital role of "public watchdog" which the press performs in a democratic society.

Finally the ECtHR referred to the set of measures taken against B92: the company was ordered to pay EUR 1 750 in respect of non-pecuniary damage, and EUR 990 for costs, and it was also ordered to remove the article from its Internet portal and to publish the domestic judgment in question. The ECtHR reiterated its view on the chilling effect that a fear of sanction may have on the exercise of freedom of expression and it found that the sanction and measures imposed were capable of having a dissuasive effect on the exercise of B92's right to freedom of expression. Where fines are concerned, the relatively moderate nature of a sanction does not suffice to negate the risk of a chilling effect on the exercise of the right to freedom of expression. Furthermore, given the high level of protection enjoyed by the press, there need to be exceptional circumstances for a newspaper to be legitimately required to publish, for example, a retraction, an apology or a judgment in a defamation case.

The ECtHR therefore came to the conclusion that the domestic courts had overstepped the narrow margin of appreciation afforded to them in restricting discussion on matters of public interest, by imposing a disproportionate

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interference that was not necessary in a democratic society within the meaning of Article 10 § 2 ECHR. There has accordingly been a violation of Article 10 ECHR.

***European Court of Human Rights, Fourth Section, in the case of Radio Broadcasting Company B92 AD v. Serbia, Application No. 67369/16, 5 September 2023***

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