Written Comments in the Case of *Pauliukienė and Pauliukas v. Lithuania*

A Submission to the European Court of Human Rights from the Open Society Justice Initiative, the Media Legal Defence Initiative, and the Romanian Helsinki Committee

June 2009

Application no. 18310/06

PAULIUKIENĖ AND PAULIUKAS v. LITHUANIA

WRITTEN COMMENTS OF

THE OPEN SOCIETY JUSTICE INITIATIVE

THE MEDIA LEGAL DEFENCE INITIATIVE

THE ROMANIAN HELSINKI COMMITTEE

Pursuant to leave granted on 13 May 2009 by the President of the Chamber, acting under Rule 44 § 2 of the Rules of Court, the Open Society Justice Initiative, the Media Legal Defence Initiative and the Romanian Helsinki Committee hereby submit their written comments on the legal principles that should govern the resolution of the issues presented by this case[1].

Introduction

1. By way of context, this case involves the dismissal by the Lithuanian courts of the applicants' (husband and wife) civil libel and rectification claims against the Vilnius-based *Respublika* newspaper in connection with an article alleging building violations by the couple. Mr. Pauliukas was the head of a municipal agency. He claims that the dismissal of his libel action against a publication that insulted his dignity, damaged his reputation and violated his right to private life was in violation of Article 8 of the Convention. The newspaper article at issue discussed the applicants' disputes with their neighbours over the boundaries of adjacent properties and alleged other building violations by the couple. The domestic courts generally considered the allegations to be of a factual nature, and examined the evidence provided by the parties about the veracity, or falsity, of the alleged facts. Mr. Pauliukas lost in the first instance and won on intermediate appeal.[2]
2. At the end of the domestic proceedings, the Lithuanian Supreme Court ultimately dismissed Mr. Pauliukas' libel claim, noting that he was a public figure and co-owner of the property with his wife. The official findings of the city's building authorities, held the Lithuanian court, provided a sufficient and legitimate basis for allegations contained in the journalistic piece, relieving the newspaper of the obligation to conduct additional verifications.[3]

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[1] The authors are grateful to Orrick, Hölters & Elsing, Frankfurt and Orrick Rambaud Martell, Paris for their *pro bono* assistance in preparing the comparative legal analysis within these written comments.

[2] Statement of Facts, 15 December 2008.

[3] Judgment of 2 November 2005, as summarized in the Statement of Facts.

3. Turning to the issues of principle raised by the case, we note that this Court has produced a rich jurisprudence on the question of defamation of public officials and public figures, and the greater degree of tolerance they should demonstrate in the face of criticism related to matters of public interest. More recently, however, different sections of the Court appear to have reached somewhat divergent, if not contradictory, conclusions as to whether Article 8 of the Convention guarantees one's right to honour and/or reputation, and if so, under what terms. These comments address this central question. A brief second section will discuss the weight that domestic court findings regarding the balancing of free speech and reputational interests deserve in the context of such disputes.

A. Does Article 8 Guarantee a General Right to Honour and Reputation?

1. Strasbourg Jurisprudence

4. Reputational interests have historically come into play in the Court's case law as an element of "the rights of others" that Article 10.2 of the Convention lists among the permissible justifications for limiting freedom of expression. Previously, the Court did not recognize reputation as an element of Article 8 of the Convention.[4] It is only relatively recently that some sections of the Court have concluded that Article 8 should guarantee – at least under the specific circumstances of the relevant cases – a self-standing right to reputation, as an aspect of the right to respect for one's private life. This recognition has given rise to a growing number of applications, such as the current one, whereby losing defamation claimants in domestic proceedings come to Strasbourg to claim violations of their Article 8 right to reputation.

5. The first instance of such recognition in the Court's jurisprudence appears to be in the 2004 case of *Chauvy and Others v. France*, an Article 10 case brought by an author who was found by French courts criminally liable for having defamed two leaders of the French Resistance in a book regarding certain controversial historical events of that period. In assessing the merits of the applicant's claims, the *Chauvy* Court noted – almost in passing and without further elaboration – that it was required to assess whether the domestic courts had properly resolved the conflict between the applicant's Article 10 rights and "the right of the persons attacked by the book to protect their reputation, *a right which is protected by Article 8 of the Convention as part of the right to respect for private life*." [5]

6. Some two years later, in *White v. Sweden*,[6] the Court considered the first case to be brought under Article 8 alleging a violation of the right to reputation under that provision. The case concerned a series of articles by two Swedish daily newspapers containing allegations implicating the applicant in the murder of former Swedish Prime Minister

[4] The reliance on Art.8 to protect a right to reputation was rejected in a string of cases: *S. v. Sweden*, no. 172/56, Yearbook I, p.211; *S. v. FRG*, no. 852/60, Yearbook IV, p. 346; *Asociation de Aviadores de la Republica, Jaime Mata and others v. Spain*, dec. of 11 March 1985, D.R.41, p. 219; *Aslan v. Malta*, no. 42015/98, 5 December 2000.

[5] Judgment of 29 June 2004, para. 70 (emphasis added). The Court found that the author had not complied with the tenets of objective historical research and Article 10 was therefore not violated.

[6] Judgment of 19 September 2006.

Olof Palme, among other offences, *as well as photographs* of the applicant. Again, with no extensive discussion, the Court simply noted that "the publication of the impugned statements and pictures relating to the applicant falls within the scope of his private life, within the meaning of Article 8 § 1 of the Convention."[7] Having so concluded, the Court proceeded, as in *Chauvy*, to review the merits of the case by reference to principles developed primarily under the framework of its Article 10 jurisprudence.[8]

7. In the past eighteen months or so, two separate sections of the Court have issued the first two judgments – *Pfeifer v. Austria*[9] and *Petrina v. Romania*[10] – finding that domestic courts had violated the applicants' Article 8 right to reputation in dismissing their claims against defamatory media reports. In both cases, the applicants were public figures: Mr. Pfeifer was a magazine editor involved in a spirited ideological debate; Mr. Petrina was an active politician nominated to a senior government position. In both cases, the Court found that the domestic courts had erred in characterizing certain defamatory statements as value judgments not susceptible to proof.[11]

8. The *Pfeifer* Court reviewed the applicability of Article 8 by reference to the *Von Hannover v. Germany* line of cases, noting that

> the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is therefore a zone of interaction of a person with others, *even in a public context*, which may fall within the scope of "private life" ….[12]

9. As recently as late April 2009, this same Section of the Court considered a similar set of issues in *Karakó v. Hungary*,[13] when it delivered a judgment creating a more elaborate framework for resolving conflicts between Article 8 and Article 10 interests, and charting what appears to be new ground in this area of the case law.

10. In *Karakó*, a case brought under Article 8 of the Convention, the Court considered whether the domestic authorities had violated the reputational rights of the applicant, a politician, by dismissing his request for the criminal prosecution of a critic in relation to remarks made in the course of an election campaign. Before turning to the merits of the case, the judgment laid down in some detail the relevant principles applicable to such cases.

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[7] Para. 19.

[8] On the specific facts, the Court found that the newspapers had engaged in responsible journalism and that the domestic courts were justified in finding that the public interest in the publications at stake outweighed the applicant's right to the protection of his reputation; hence, no violation of Article 8 had occurred. Paras. 21-30.

[9] Judgment of 15 November 2007. Judge Loucaides and ad hoc Judge Schäffer partially dissented from the majority opinion.

[10] Judgment of 14 October 2008. Romania's petition for the referral of the case to the Grand Chamber was rejected.

[11] See *Pfeifer*, paras 47-48, and *Petrina*, paras 47-50.

[12] Para. 33 (emphasis added).

[13] Judgment of 28 April 2009.

11. First, the Court noted that, in matters of reputation, there is no real conflict between Article 8 and Article 10 insofar as the second paragraph of Article 10 allows for protection of "the rights of others."[14] Secondly, to the extent that a right to reputation may reside in Article 8, any positive measures put in place by the state to protect such a right should at the same time be consistent with its obligations under Article 10, which is the provision "specifically designed by the drafters of the Convention to provide guidance concerning freedom of speech …."[15] Thirdly, the *Karakó* Court emphasized that European legal systems have traditionally treated reputational interests as being, primarily, a function of a person's social esteem or "external evaluation" – interests that are generally distinct from the notion of "personal integrity" identified by the Court as one of the core elements of the right to respect for private life. This being so,

> [i]n the Court's case law, reputation has only been deemed to be an independent right sporadically … and mostly *when the factual allegations were of such a seriously offensive nature* that the publication had an inevitable direct effect on the applicant's private life.[16]

12. The Court recognizes, in other words, that whatever overlap there may be between the protected spheres of private life and reputation exists at the conceptual level. One can imagine, for example, that publication of embarrassing facts (true or false) about a person's sexual or family life can violate both that person's privacy and their sense of honour or social standing. That notwithstanding, reputational interests are not automatically entitled to Article 8 protection, under the *Karakó* principles; such a determination requires a careful analysis of the facts of each case and a finding that the defamatory expression was so "seriously offensive" that the applicant's right to psychological integrity was *directly* affected. The Court found, on review of the merits, that that was not the case in *Karakó*, which involved a value judgment uttered in the heat of an electoral campaign. Had Hungary gone ahead with the prosecution of the applicant's critic, it would have violated the latter's rights under Article 10 of the Convention.

13. It can be argued that the *Karakó* holding seeks to refine and clarify, rather than depart from, the principles announced in the *Chauvy/Pfeifer* line of cases. There remains, however, a degree of uncertainty in the Court's jurisprudence on this important issue. One factor contributing to such uncertainty is the omission of any reference in the case law to the legislative history of Article 8 or its possible re-interpretation in the light of evolving standards. The *travaux preparatoires* of Article 8 of the Convention indicate that the drafters deliberately decided not to include any reference to "attacks on [one's] honour and reputation"[17], a clause that had been included in Art.12 of the Universal Declaration of Human Rights which became Art.17 of the International Covenant on Civil and Political Rights (ICCPR).

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[14] Paras 17, 25.

[15] Para. 20.

[16] Para. 23 (emphasis added).

[17] European Commission of Human Rights, *Preparatory Work on Article 8 of the European Convention on Human Rights*, DH(56)12 (9 August 1956), page 3, note 2.

2. Article 17 ICCPR and UN Human Rights Committee Jurisprudence

14. Unlike Article 8 of the European Convention, Article 17, paragraph 1 of the 1966 Covenant includes a specific reference to honour and reputation:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, *nor to unlawful attacks on his honour and reputation*.

15. A superficial reading of the provision may suggest that honour and reputation are considered to be either part of the right to privacy, or strongly related to it. A more careful analysis shows, however, that the protection granted to honour and reputation under Article 17 is significantly weaker than – and indeed conceptually different in important ways from – that granted to privacy and its more familiar elements (family, home and correspondence). First, honour and reputation are only protected against "unlawful attacks," not arbitrary encroachments that may, in theory, be permissible in a given legal system. Secondly, such encroachments must rise to the level of an "attack," which is "to be understood to mean only interference of a certain intensity. … Moreover, the word 'attacks' refers only to the intentional impairment of the honour or the reputation of another."[18]

16. The legislative history of Article 17 clearly shows that such differential treatment of (traditional or core) rights to privacy, on the one hand, and honour and reputation, on the other, was not accidental: it reflects the drafters' well-articulated concern that protection of honour and reputation should be carefully reconciled with the compelling need not to encroach upon protected expression. It is therefore argued that the drafters only meant to sanction those attacks on reputation that "were committed *unlawfully* and *intentionally* and [were] based on *untrue allegations*."[19] By the same token, fair comments and truthful statements of fact should not, in principle, raise any issues under Article 17, even though they may affect a person's reputation.

17. This interpretation of the legislative history is validated by the jurisprudence of the Human Rights Committee. To date, the Committee has found, in its individual communications procedure, only one instance of violation of the "honour and reputation" clause of Article 17: interestingly, this case involved attacks by *government* supporters on the name and prestige of a Zairean opposition leader, who was unfairly and publicly portrayed as mentally unstable, arrested and asked to undergo a psychiatric examination.[20] Conversely, the Committee found no unlawful or intentional attack on reputation and consequently *no violation* of Article 17 (or manifestly unfounded claims) in other cases involving: a police commander who had been dismissed and forced to appear in a press conference on botched drug operations; a person who claimed that following a criminal conviction based on false evidence his reputation had been tarnished; a lawyer who argued that a judge had improperly cast doubt on his professional

[18] Manfred Nowak, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS COMMENTARY, 2nd revised ed., (N.P. Engel Publisher, 2005), at 403.

[19] Id., at 404 (emphasis in original).

[20] *Tshisekedi v. Zaire*, Comm. No. 242/1987, para. 13(b).

ethics; and a businessman complaining about the disclosure to two other companies of his tax payment records by state tax inspectors who were following a legal procedure.[21]

18. The U.N. Committee's careful approach to reviewing alleged violations of honour or reputation under Article 17 echoes the position of this Court in *Karakó* that not every case of impairment of one's honour or reputation triggers the protections of Article 8 ECHR. While the harm to reputation may not necessarily need to rise to the level of the vicious, orchestrated and government-driven campaign in *Tshisekedi,* the high degree of harm caused to the victim's reputation, the unfairness of the attack and the maliciousness of the intent to insult must be comparable. These factors are key thresholds of admissibility for the Committee, in the same way that *Karako* suggests they should be for Article 8 of the Convention. These threshold criteria should be considered in light of the established case law of the Court that those who enter the public arena must demonstrate a higher degree of tolerance to criticism.

3. European State Practice

19. The laws and practices of most European jurisdictions also tend to distinguish violations of core privacy rights affecting one's personal identity, integrity or intimacy from attacks on reputational interests, and apply different legal regimes and remedies to the two categories.

20. In France, Article 9 of the Civil Code defines privacy rights in terms practically identical to those of Article 8 of the Convention: "Everyone has the right to respect for his private life." This right has been interpreted by French courts to include the following main components:

- Elements of one's personal image;[22] personal identification (former name, social security number, banking account numbers); the intimacy of one's body; or elements pertaining to one's family, love and sexual life;[23] and
- Certain aspects of privacy in public and social life, such as at the workplace, recognizing that privacy protections may also extend, under certain circumstances, to private activities that occur in public places.[24]

21. Despite this latter recognition, French jurisprudence has not construed a general right to reputation out of Article 9 of the Civil Code. Reputation is protected in criminal law by article 29 of the 1881 law on the media and in civil law by article 1382 of the Civil Code; these provide defamation victims with various causes of action and remedies. On occasion, French courts have accepted the possibility that the same set of allegations or offensive speech may violate the plaintiffs' privacy rights and at the same time injure

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[21] See, respectively, *Vargas-Machuca v. Peru,* Comm. No. 906/2000; *Omar Simons v. Panama*, Comm. No. 460/1991; *R.L.M v. Trinidad and Tobago*, Comm. No. 380/1989; and *I.P. v. Finland*, Comm. No. 450/1991.

[22] Paris Court of Appeal, Judgment of 25 October 1982.

[23] See inter alia Paris Court of Appeal, Judgment of 15 May 1970 (*Jean Ferrat)*; Judgment of 5 June 1979 (*Romy Schneider*).

[24] Court of Cassation (civil chamber), Judgment of 2 October 2001 (employer cannot go through employee's personal e-mails, even if sent from a workplace computer).

their reputation.[25] In general, however, privacy claims are treated as distinct from defamatory allegations, subject to different procedural and substantive standards.[26] When a claimant alleges both kinds of violations, the privacy action must be constructed on a set of facts or elements that are different from those invoked in support of the defamation claims.[27]

22. In Germany there is no general statutory definition of the right to privacy.[28] Instead, privacy protections have been developed by the Federal Constitutional Court as an aspect of the so-called "general right of personality," which the Court has construed out of Article 1 (human dignity) and Article 2 (personal freedoms) of the Basic Law to cover personal rights not explicitly guaranteed by the constitutional text.[29] The general right of personality is subject to "the rights of others," including the freedom of expression and of the press that is specifically protected by Article 5 of the Constitution. It is under this article that the "right to inviolability of personal honour" is explicitly guaranteed as one of the constitutionally permissible limits on free expression rights.

23. There is, however, overlap between the two constitutional provisions (Article 2 and Article 5) that have a bearing on personal honour and reputation. Thus, the general right of personality is deemed to protect, among other entitlements,

> ... the narrower area of privacy and the maintenance of its basic conditions .... The recognized content [of the right] includes the right of disposal of the depiction of one's own person, social recognition, as well as personal honour .... A major guarantee is constituted by protection against statements which are suited to impair the reputation of the person, in particular the person's public standing. The general right of personality protects the person in particular against falsifying or distorting depictions which are of *not entirely inconsiderable significance* for the development of personality.[30]

24. Thus, even though privacy and reputation share a common conceptual and value basis under the Basic Law, namely the "inviolable" human dignity and the general right of personality, they are treated by German courts, in important respects, as distinct interests subject to differing constitutional and statutory standards.

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[25] See Paris Court of Appeal, Judgment of 28 May 1999 (*Société Conception de Presse v. Naomi Campbell*), p. 170.

[26] See e.g. Court of Cassation (first civil chamber), Judgment of 5 July 2005 (case no. 03-13913) (holding that a privacy action under art. 9 CC could proceed only after the Court had dismissed any allegations of defamation; had the Court considered the defamation claims viable, it would have had to apply the provisions of the 1881 law.)

[27] Paris Court of Appeal, note 25 above. One rationale offered for such a distinction is that a media defendant must be given the opportunity to construct her defense according to the different legal standards applicable to privacy and defamation. For example, publication of a true fact may violate the plaintiff's privacy, even though truth may be a full defense to defamation under the circumstances. See Nanterre Tribunal de Grande Instance, Judgment of 8 June 1999 (*Pontarby v. Société Conception de Presse*).

[28] Certain specific aspects of the right to privacy are defined/protected by law, such as the privacy of private communications (sec. 201 of the Penal Code) or the intimate privacy of a dwelling protected from public view (sec. 201a of the Penal Code).

[29] 54 BVerfGE 148, at 153 (Federal Constitutional Court).

[30] 1 BvR 1696/98 (2005) (*Stasi Dispute Case,* Federal Constitutional Court) (emphasis added). English translation available on the Court's own website at: http://www.bverfg.de/entscheidungen/rs20051025_1bvr169698en.html.

25. Thus, the "core" of one's privacy, which includes the most intimate aspects of private life such as one's sexuality, enjoys the highest level of constitutional protection and will normally prevail over expression interests.[31] A broader "private sphere," which includes activities and venues in relation to which one has a reasonable expectation of privacy, enjoys medium-level though still significant protection: encroachments on such a sphere must be justified by substantial public interest in the disclosed information.[32] Another important consideration employed by German courts in this context is the notoriety of the person concerned, as well as whether the disclosure contributes to a debate on matters of genuine public interest or merely satisfies curiosity in the private matters of certain individuals.[33]

26. In contrast, the "social sphere" of an individual, which includes public and professional activities, enjoys significantly weaker protection. In this context, privacy considerations can prevail over free expression interests only under circumstances of clear abuse of freedom of speech, such as when the privacy plaintiff has become the target of an intentionally discrediting campaign based on fabrications of fact (as opposed, for example, to honest opinions that happen to be extremely critical).[34]

27. The German courts' approach[35] is therefore similar to that taken by the UN Human Rights Committee in finding that attacks on one's public standing must be sufficiently egregious to trigger the protection of Article 17 ICCPR. It is also largely consistent with the position of this Section in *Karakó*, in spite of the differences in the respective textual bases – the language of Article 8 ECHR being narrower and more specific than the broadly abstract terms of the German constitutional provisions – and the peculiar development, historically and philosophically, of privacy protections in Germany.

28. In the United Kingdom, the common law protections for privacy interests have been, and to some extent continue to be, more limited than in continental jurisdictions – especially vis-à-vis private persons. There is still no general tort of breach of privacy, but the favoured action of breach of confidence has been relaxed and expanded significantly since the introduction of the Human Rights Act 1998. And even though UK courts have had a relatively short period of time to consider the various aspects of the right to privacy under the "new light" of the ECHR, a number of important judgments have been handed down in recent years.

29. Thus, in the leading 2004 case of *Campbell v. MGN Limited*, Lord Nicholls and Baroness Hale sought to define the sphere protected by the right to privacy – including by reference to Australian and United States authorities – as information or matters whose "disclosure or observation would be highly offensive to a reasonable person of ordinary

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[31] See 6 BVerfGE 32, at 41; 109 BVerfGE 279, at 313; BVerfG, 2008 NJW 39.

[32] See, for example, BVerfG, 2008 NJW 39, at 42.

[33] BVerfG, 2008 NJW 1793, at 1796.

[34] See 35 BVerfGE 202, at 220; 97 BVerfGE 391, at 406; and BverfG, 2000 NJW 2413, at 2414.

[35] See also the quote from the *Stasi Dispute* case, note 30 above, which suggests that, to receive constitutional protection, attacks on one's public standing must be of such severity as to have a somewhat significant adverse impact on the development of one's personality.

sensibilities."[36] The right to privacy was characterized as being "at the heart of liberty in a modern state," wherein a "proper degree of privacy is essential for the well-being and development of an individual."[37] Lord Hoffman found that the new approach to privacy protection taken by the British courts, upon passage of the Human Rights Act,

> focuses upon the protection of human autonomy and dignity – the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people.[38]

30. Despite Lord Hoffman's passing reference to the "right to the esteem and respect of other people" – which he seems to have borrowed from a lower court without further elaboration – there is no question that privacy and reputational interests have traditionally been, and continue to be, treated as distinct in British law, subject to separate legal regimes. Disputes about defamatory statements are governed by the law of libel, whereas breaches of privacy continue to be remedied, primarily, through breach of confidence actions, which are now considered to have transformed, under the influence of the ECHR, into actions for "misuse of private information" or "unjustified publication of personal information." [39] There is no indication that British courts have ever considered a reputational injury, in the strict sense, to constitute a breach of the right to privacy under UK or ECHR law.

B. Margin of Appreciation and Guidance Granted to Domestic Courts

31. A separate issue that has arisen in the Court's Article 8 case law on reputation is the weight that ought to be granted to the domestic courts' assessment of the relevant facts, and in particular the characterization of the allegedly offending statements. As noted, in both *Pfeifer* and *Petrina*, the Court "overruled" the domestic courts' respective findings that the statements at issue constituted value judgments entitled to the traditionally higher degree of protection rather than purely factual assertions.

32. Both rulings have come under some criticism on that count. Thus, in *Pfeifer*, the dissenting ad hoc Judge Schäffer pointed out, inter alia, that the key phrase "Jagdegesellschaft" ("hunting society") could carry different connotations in local German parlance, depending on the context. According to the dissent, the Court had erred in relying exclusively on the one meaning of the phrase that was least favorable to the author of the statement (who, in addition, was not a party to the Strasbourg proceedings). Similarly, in relation to the *Petrina* judgment, it can be argued that the term "Securist" has additional meanings in Romanian usage, that can be much more nuanced and subjective than the literal, factual designation of someone as a member/collaborator of the much-hated former secret service.

33. There are obviously very good reasons why the margin of appreciation enjoyed by domestic authorities in assessing the facts and issues of a case must go, as this Court

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[36] [2004] UKHL 22 (House of Lords), at paras 22, 135, citing *Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd* (2001) 185 ALR 1, para. 42 (Australian High Court).

[37] Id., para. 12 (Lord Nicholls).

[38] Id., para. 51.

[39] International Libel and Privacy Handbook, ed. by Charles J. Glasser (Bloomberg Press, New York, 2006), p. 215. See also *Campbell* judgment, para. 14 (Lord Hoffman).

routinely points out, "hand in hand" with European supervision. At the same time, however, cases involving apparent conflicts between two Convention rights can be particularly challenging for the local courts and call for the greatest possible degree of clarity and guidance from this Court's case law. By the same token, we would argue that, in cases involving Article 8-based challenges to expression *on matters of clear public interest*, the findings of local courts in favour of free expression should be "set aside" only if they are shown to be clearly arbitrary or summarily dismissive of the privacy/reputational interests at stake. A different approach risks both to unravel the hard-won victories in domestic implementation of the Court's Article 10 case law and open the Strasbourg floodgates to ill-founded claims of infringed reputation.

Conclusion

34. We submit, in conclusion, that to the extent that the Court recognizes that a right to reputation resides in Article 8 of the Convention, it should define and circumscribe such a right carefully. The intervenors endorse what we understand to be the *Karakó* holding that an alleged defamation victim is not automatically entitled to Article 8 protection, insofar as not every injury to one's public standing constitutes an encroachment of that person's right to respect for his or her private life. The threshold for Article 8 protection should be a clear and convincing showing that the defamatory allegations were *(a) factual in nature, (b) primarily intended to insult the applicant (rather than to honestly contribute to public debate), and (c) "of such a seriously offensive nature" that the publication had (d) "an inevitable direct effect on the applicant's private life."* In judging whether the criteria have been met the Court should take into account the extent to which the claimant has entered the public arena and should demonstrate a higher degree of tolerance to criticism. We submit that such a standard is not only required by the established tenets of this Court's Article 10 case law, but is also consistent with the interpretation of Article 17 ICCPR and the prevailing practices of the Council of Europe community of states. Such a standard would provide publishers clear direction in making their decisions to publish important information on matters of public concern; uncertainty will encourage caution and thereby deprive the public of information that should be published. Finally, in reviewing the findings of domestic courts in cases involving conflicts between Article 8 and Article 10 interests, the Court should take care to provide proper balancing guidance as well as not to undermine the proper implementation of its crucial Article 10 jurisprudence at the domestic level.

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