EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 52370/14
Irena SPIROVSKA and Igor SPIROVSKI
against North Macedonia

The European Court of Human Rights (First Section), sitting on 15 September 2020 as a Committee composed of:

Pere Pastor Vilanova, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges*,
and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 17 July 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Irena Spirovska ("the first applicant") and Mr Igor Spirovski ("the second applicant", jointly "the applicants"), are Macedonians/citizens of the Republic of North Macedonia who were born in 1960 and live in Skopje. They are a married couple. The first applicant was represented by the second applicant, a lawyer practising in Skopje, who was granted leave to represent himself.

2. The Government of North Macedonia ("the Government") were represented by their Agent, Ms D. Djonova.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal proceedings

4. On 15 February 2012 the second applicant lodged a private criminal action (*приватна кривична тужба*) against N.G. before the Skopje Criminal Court of First Instance, alleging misappropriation of a right, defamation and insult (*самовластие*, *клевета и навреда*) following a verbal confrontation between them regarding an installation of fence around a land.

5. On 10 May 2012 N.G., who was not represented by a lawyer, submitted written observations in response, which read, *inter alia*, as follows:

> "I submit that it is [the second applicant] who has committed two serious crimes ... namely forging records, recording forged data in the records and passing those records off as real, as well as the misappropriation of property [*Јас, Н.Г. сметам и тврдам дека тужителот е тој што има сторено две тешки кривични дела ... поради соучесништво во кривично дело Фалсификување на службена исправа, со внесување на невистинити податоци и употреба на истите како да се вистинити и узурпација на недвижност*].
>
> ... By putting a fence around the property, [the applicants] misappropriated [*узурпирале*] property which belongs to my family.
>
> ... The real crime in the instant case was carried out by [the second applicant] in 2001, when he submitted a request to the Land Registry seeking to insert [data] which was false. ... The aim of the above was to illegally take [a plot of land] from my father ...
>
> ... If [the second applicant] cannot submit evidence to the contrary, then [both applicants] have misappropriated the land, and [the second applicant] has initiated and co-conspired in the falsification of numerical data in the Land Registry."

6. On 6 April 2012 the applicants brought a subsidiary criminal action (*супсидијарен обвинителен предлог*) against N.G. and C.G. (N.G.'s wife) before the Skopje Court of First Instance on charges of using falsified documents in administrative proceedings regarding licencing requirements for the installation of the fence.

7. On 24 October 2012 N.G., who was not represented by a lawyer, submitted written observations in response which read, *inter alia*, as follows:

> "This is a perverted and malicious attempt [by the applicants] to present forged documents dating from 2001 as real and legitimate, with the aim of unlawfully taking [a plot of land]. In my view, only thieves and forgers [referring to the applicants] could claim that our original documents are 'false evidence' [*Во суштина се работи за перверзен и дрзок обид на тужителите ... фалсификувани нумерички податоци да ги претстават како вистински ... Сметам дека само хохштаплери, крадци и фалсификатори можат да кажат дека нашите ... документи се, цитирам, лажни докази*].
>
> [T]he real crime in this case was committed in 2001 in the decisions of the Land Registry nos. ... by Mr Spirovski ...

> As a lawyer and a former judge of the Constitutional Court, Mr Spirovski ... intentionally and knowingly committed a serious crime – initiating and assisting in the creation of fake and forged numerical data [in the Land Registry].
>
> ... As a former judge of the Constitutional Court, instead of protecting human rights, he has initiated and co-conspired in the creation of forgeries ...
>
> Allow me to conclude, in order for Mr and Mrs Spirovski to unlawfully take the land from my father, they have committed *THREE SERIOUS CRIMES* ..."

8. No information has been submitted as to the outcome of either set of criminal proceedings.

2. The defamation proceedings

9. On 11 January 2013 the applicants brought an action for defamation against N.G. for the statements he had made in the above written submissions (see paragraphs 5 and 7 above). They argued that the issues regarding the status of the land in question had been settled in a civil dispute which had ended in 2005 to N.G.'s detriment, submitting as evidence the relevant judgments from those proceedings. They submitted an expert report by a psychiatrist, who had found that they had suffered "emotional stress [*душевни болки*] of medium to light intensity for a protracted period as a consequence of a violation of [their] reputation and honour". As to the second applicant, the report stated that "the position of judge at the Constitutional Court, and [his] position in society in general, necessitated a good reputation and moral standing, both of which were tarnished [by N.G.]".

10. On 19 September 2013 the Skopje Civil Court of First Instance dismissed the applicants' claim, holding that N.G. had made the statements in question in his capacity as a defendant in criminal proceedings. The relevant part of the judgment read as follows:

> "[I]n the instant case, the court considers that the right of the defendant, as an accused in the criminal proceedings, to defend himself in a way that he considers proper, allows him to exaggerate in his personal judgments with regard to the plaintiff. The State should not hold him accountable for the above, or limit his right to express his opinion, which he undoubtedly holds, pursuant to Article 10 of the European Convention on Human Rights.
>
> Upon analysis of the evidence and taking into account the long-lasting antagonism between the parties, the fact that the plaintiffs are currently engaged in several proceedings against the defendant and the fact that he still maintains the above opinion [referring to the statements in question], which he reiterated in these proceedings, his right to hold such an opinion, as guaranteed by the Constitution and the European Convention on Human Rights, cannot be altered, and nor will any sanctions stop him from expressing that opinion."

11. On 24 October 2013 the applicants lodged an appeal. They argued that a defendant could not be allowed to make statements defaming a third party's reputation. Furthermore, in line with the practice of the European

Court of Human Rights, the statements were statements of fact, and as such, their veracity was capable of being established. They had not been convicted of any of the crimes alleged in the statements and no evidence had been offered by N.G. in this connection.

12. On 5 March 2014 the Skopje Court of Appeal (*Апелационен суд Скопје*) dismissed their appeal, upholding the findings of the lower court. The relevant part of the judgment read as follows:

> "In its examination the lower court ... correctly established that the statements in question were not statements of fact which are capable of being proven ... given that they were subjective opinions. Furthermore, the court correctly established that it was irrelevant whether [N.G.'s] opinions had any basis in fact, given that as an accused, the plaintiffs had put him in the position to give those statements. These opinions, as such, are protected under the Constitution and the European Convention on Human Rights."

COMPLAINT

13. The applicants complained under Article 8 of the Convention that N.G. had violated their right to reputation.

THE LAW

14. The applicants complained that the domestic courts had failed to protect their right to reputation, as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

15. The Government submitted that the attack on the applicants' right to reputation had failed to reach the gravity required in order to trigger the application of Article 8 of the Convention. They submitted that the statements in question had been made in written submissions made to a court and had not reached the general public or the media. As a consequence, the damage to the applicants' reputation, if any, had been limited to the parties to the case.

16. They further argued that the wording used by N.G. had been a value judgment, as established by the domestic courts. Furthermore, an intent to

tarnish the applicants' reputation had not been present in N.G.'s actions, which was a requirement under domestic law for the courts to hold against him. His real intent had been to mount an effective defence, in a way that he had deemed appropriate, in the face of accusations that had been brought against him by the applicants.

2. The applicants

17. The applicants submitted that the civil courts had already examined N.G.'s statements in connection with the alleged unlawfulness of the applicants' actions relating to the plot of land and had dismissed his claim over its title (see paragraph 9 above). It followed that any claims made by N.G. regarding crimes allegedly committed by the applicants in relation to the above plot of land had had no basis in fact, which was something that the domestic courts had failed to analyse.

18. They further argued that N.G.'s statements had referred to specific criminal activities allegedly perpetrated by them. As such, they had been statements of fact, the veracity of which could be established. The domestic courts should have attempted to establish the veracity of those statements while taking into account all the relevant factors, instead of merely accepting that N.G. could not be held responsible on the basis of his position as a defendant.

19. The applicants submitted that the fact that the statements had been presented before a court of law instead of to the general public was irrelevant, since the hearing had been open to the public. Moreover, the issue at stake had not been of public interest. Given that the applicants were not known to the public, the requisite level of severity in order to trigger the application of Article 8 had been reached. Moreover, the second applicant had been a judge of the Constitutional Court (*Уставен суд*) when the first written submission had been made and had been working as a lawyer when the second statement was made, a profession which he continued to practise to this day. Accordingly, he was a well-known member of the judicial community and as a lawyer he frequently made appearances before the domestic courts. Therefore, the fact that the comments in question had been made in a court of law had significantly affected his reputation among his colleagues.

B. The Court's assessment

20. The general principles with regard to the right to protection of reputation under Article 8 of the Convention are summarised in *Axel Springer AG v. Germany* ([GC], no. 39954/08, § 83, 7 February 2012), and more recently in *Egill Einarsson v. Iceland* (no. 24703/15, § 33, 7 November 2017).

21. In the present case, the Court considers that it is required to verify whether the domestic authorities struck a fair balance when protecting the two values guaranteed by the Convention, namely, on the one hand, the applicants' right to respect for private life enshrined in Article 8 and, on the other, N.G.'s freedom of expression protected by Article 10. The general principles applicable to the balancing of these rights were first set out in *Von Hannover v. Germany (no. 2)* [GC] (nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012) and *Axel Springer AG* (cited above, §§ 85-88), then restated in more detail in *Couderc and Hachette Filipacchi Associés v. France* [GC] (no. 40454/07, §§ 90-93, ECHR 2015 (extracts)), and more recently summarised in *Perinçek v. Switzerland* [GC] (no. 27510/08, § 198, ECHR 2015 (extracts)).

22. In the Court's opinion, it is appropriate that it examine the domestic courts' approach with regard to the following elements: how well known the applicants were, the content of the statements, the contribution to a debate of general interest, and the form and consequences of the statements in question (see *Jishkariani v. Georgia*, no. 18925/09, § 46, 20 September 2018; and, *mutatis mutandis*, from the perspective of Article 10 of the Convention, *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 64, 19 July 2018).

23. The Court observes, firstly, that the applicants did not claim, either before the domestic courts or before the Court, that they were public figures. The fact that the second applicant had been a judge of the Constitutional Court and subsequently a lawyer (see paragraph 18 above) cannot lead to a different conclusion. The Court is therefore satisfied that both applicants were private persons. The applicants agreed with this (see paragraph 19 above).

24. The statements in question did not concern the applicants' professional activities or work, but referred rather to actions that they had allegedly carried out in their capacity as private persons, namely that they had allegedly fabricated evidence in order to obtain certain property rights in proceedings before the Land Registry. Therefore, it cannot be said that the statements in question contributed to a debate in the public interest.

25. As to the classification of the statements in question as either statements of fact or value judgments, the Court observes that the domestic courts classified them as N.G.'s opinions and therefore value judgments. The Court is not persuaded by that finding, given that the statements in question concerned allegations about specific crimes allegedly committed by the applicants.

26. However, the Court considers that the context and form in which the statements in question were made should be prevalent in its assessment, as explained below.

27. The Court notes that the statements in question were made in written submissions before a criminal court by N.G., who was not represented by a

lawyer, in his capacity as a defendant. The applicants acted in their capacity as private prosecutors in the proceedings (see paragraphs 6 and 7 above). From the material available there is no indication that the statements were read out at the hearing. Even assuming that that had been the case, there is no indication that any members of the public were present at any point during the proceedings. In addition to this point, the Court notes that it has not been alleged by the applicants that the statements in question had made their way into the domestic courts' judgments. Accordingly, they were confined to the case file (compare *Łopuch v. Poland*, no. 43587/09, § 60, 24 July 2012).

28. Furthermore, in the Court's opinion N.G.'s status as a defendant carries particular weight in its assessment, since sanctions imposed in relation to statements made by the accused in a criminal case or his counsel can also affect the right to a fair trial, by dissuading them from mounting a vigorous defence. While the right to freedom of expression of an accused or his counsel in relation to such statements is not unlimited, equality of arms and fairness more generally militate in favour of a free and even forceful exchange of argument between the parties (see *Zdravko Stanev v. Bulgaria (no. 2)*, no. 18312/08, § 40, 12 July 2016).

29. In this connection the Court notes that N.G. made the impugned statements in the context of two related sets of criminal proceedings that the applicants had brought against him. Both proceedings had a common background, namely the property-related dispute between the applicants and N.G. It is to be noted that in part N.G.'s allegations of forgery against the applicants were voiced in reply to similar charges that the applicants had brought against him in the second criminal proceedings (see paragraph 6 above). Accordingly, the impugned statements, which N.G., as an accused, made against the applicants, were not extraneous to the criminal cases against him and may be regarded to have worked in favour of his defence.

30. Further to this point, the Court observes that N.G., who represented himself throughout the criminal proceedings, was nonetheless subject to supervision and direction by the trial court. There is no indication that the applicants requested the presiding judge to react to the applicant's statements in any way (see *Nikula v. Finland*, no. 31611/96, § 53, ECHR 2002-II).

31. Lastly, the Court reiterates that in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018, and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017).

32. As to the consequences allegedly suffered by the applicants, the Court observes that there is no indication that N.G.'s allegations led to any

proceedings against them. Moreover, besides the "emotional stress of medium to light intensity ... as a consequence of a violation of [their] reputation and honour" indicated in the expert report submitted in support of the applicants' defamation claim (see paragraph 9 above), there is no conclusive evidence that the second applicant (a judge of the Constitutional Court and subsequently, a lawyer) suffered any profound or long-lasting consequences as a result of N.G.'s statements, which as noted in paragraph 27 above, were accessed only by the trial-court judge. The same considerations apply *a fortiori* to the first applicant.

33. Accordingly, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 8 October 2020.

Renata Degener
Deputy Registrar

Pere Pastor Vilanova
President