



Violation of the right to freedom of expression of two journalists ordered to pay damages for describing an actress as “completely unknown”

In today's **Chamber** judgment¹ in the case of [Kapsis and Danikas v. Greece](#) (application no. 52137/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned an award of damages of 30,000 euros (EUR) against the director of a daily newspaper (Mr Kapsis) and a journalist (Mr Danikas), jointly with the newspaper's proprietor, for a press article describing as “completely unknown” an actress who had been appointed to an advisory board on subsidies awarded by the authority for theatres.

The Court found in particular that the national authorities had not given relevant and sufficient grounds to justify the award against the journalists, taking the view that the sanction was not proportionate to the legitimate aim pursued (protection of the reputation or rights of others) and that the judgment did not meet a “pressing social need”.

The Court found that the domestic courts had not placed the offending comments in the general context of the case in order to assess the intention of the two journalists, who had actually been quite favourable towards the actress's appointment; she had been appointed to an essentially political position and should have expected her appointment to be subjected to close scrutiny by the press, even to harsh criticism; Mr Kapsis and Mr Danikas had been ordered to pay damages without any analysis of their financial situation, and such sanctions would inevitably discourage journalists from contributing to a public discussion on questions of interest to the wider community.

Principal facts

The applicants, Pantelis Kapsis and Dimitrios Danikas, are Greek nationals who were born in 1955 and 1947 respectively and live in Athens.

In December 2004 Mr Danikas published an article in the newspaper *Ta Nea* concerning the appointment of the actress P.M. to the subsidies advisory board of the Ministry of Culture's Theatre Department. In April 2005 P.M. brought an action for damages in the Athens Court of First Instance against Mr Kapsis, as the director of the newspaper at the relevant time, Mr Danikas, as the author of the article, and the newspaper's proprietor, claiming to have been the victim of insults and of a violation of her personality rights.

In June 2006 the three defendants were ordered jointly to pay the sum of 30,000 euros to P.M. together with costs and expenses. The court noted, among other considerations, that the article in question had been written at the time of P.M.'s appointment to the subsidies advisory board of the Ministry of Culture's Theatre Department; that the use of the words “completely unknown” had overstepped the limits of legitimate criticism and had not been objectively necessary in order for the journalist to express his views on the appointment; that, by using those words, the journalist had sought to damage P.M.'s honour and had voiced suspicions as to her moral and social status,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

demonstrating contempt for her personally. The judgment was upheld on appeal, and an appeal on points of law by Mr Kapsis and Mr Danikas was dismissed. The company that published *Ta Nea* eventually paid the EUR 30,000 to P.M., together with part of the costs and expenses incurred in the proceedings before the Court of Appeal, and the costs and expenses connected with the Court of Cassation proceedings.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Kapsis and Mr Danikas complained of the order for them to pay damages to the actress P.M., jointly with the newspaper's proprietor.

The application was lodged with the European Court of Human Rights on 7 August 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"), *President*,
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Robert **Spano** (Iceland),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

The Court noted that the award of damages against the two journalists constituted interference with their right to freedom of expression. That interference was in accordance with the law and pursued a legitimate aim: the protection of the reputation or rights of others, namely the reputation of the actress P.M.

The Court found, however, that the national authorities had not given relevant and sufficient grounds to justify the award against the journalists, taking the view that the sanction was not proportionate to the legitimate aim pursued and that the judgment did not meet a "pressing social need" and was thus not necessary in a democratic society.

Firstly, the Court observed that the expression "completely unknown", read in context, was a value judgment not requiring proof, rather than a fact that could be objectively established. In the Court's view, that expression was not devoid of any factual basis, since P.M., who was an actress, had not occupied any public position in the past, and the article had not sought to convey information in the strict sense of the word but was part of a column which looked behind the political scene and which was thus known for the sarcastic tone in which it portrayed certain figures and political situations.

Secondly, the Court found that the domestic courts had not considered the offending comments in the general context of the case in order to assess the intention of the two journalists. The expression "completely unknown" had actually been followed by quite favourable comments on the appointment of P.M.: for example, it mentioned that the contribution of the new members, including P.M., was "better than that of an elitist bunch of half-wit mates". The domestic courts should thus have considered the expression in context, showing that it might have had a different connotation, but they took it out of context and concluded that the words "she was not known to a wide circle" would have sufficed for Mr Danikas to express his views. However, the role of the domestic courts in such proceedings did not consist in telling an author what style to use when

exercising his right to criticise, however harsh the criticism might be. Rather they had to examine whether the context of the case, the public interest and the author's intention justified the possible use of a degree of provocation or exaggeration.

Thirdly, P.M. had been appointed as a member of the advisory board on subsidies granted by the government authority for theatres; she thus had an essentially political role, with public duties, and could not therefore be regarded as a "mere private individual". Those involved in the case had therefore been acting in a public context and the article in question contributed to a debate in the general interest; it was directed at P.M. only as a member of the advisory board. In that capacity she should have expected her appointment to be subjected to close scrutiny by the press, even to harsh criticism. The Court reiterated that political invective often encroached on the personal sphere, and that this was an inevitable hazard of political interplay and the free debate of ideas, without which there would be no democratic society. It thus found that Mr Danikas' use of words had not been gratuitously offensive.

The defendants, including Mr Kapsis and Mr Danikas, had been ordered jointly to pay EUR 30,000 in damages to P.M., without there being any analysis of the applicants' financial situation. The fact that the sum awarded had been paid by the company which published the daily newspaper *TA NEA* did not alter the situation, as such sanctions would inevitably discourage journalists from contributing to a public discussion on questions of interest to the wider community. They were thus capable of preventing the press from playing its role in terms of information and scrutiny.

The Court therefore found a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicants 2,000 euros (EUR) each in respect of non-pecuniary damage and to pay Mr Kapsis EUR 1,500 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.