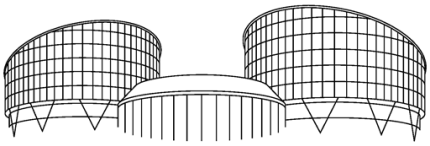

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RADIO BROADCASTING COMPANY B92 AD v. SERBIA

(Application no. 67369/16)

JUDGMENT

Art 10 • Freedom of expression • Disproportionate civil sanctioning of applicant company for TV news broadcast and publication of an online article defaming a public official • Absence of relevant and sufficient reasons • Sanctions (damages, removal of article from internet portal and publication of judgment) capable of having a dissuasive effect on the exercise of the applicant company's right to freedom of expression • Domestic courts' failure to apply standards in conformity with principles embodied in Art 10 or to base decisions on an acceptable assessment of the relevant facts • Narrow margin of appreciation overstepped

STRASBOURG

5 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Radio Broadcasting Company B92 AD v. Serbia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 67369/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Radio Broadcasting Company B92 AD - a company registered in Serbia ("the applicant"), on 9 November 2016;

the decision to give notice to the Serbian Government ("the Government") of the complaint concerning the applicant's freedom of expression and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 May and 4 July 2023,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The present case concerns the applicant company's freedom of expression under Article 10 of the Convention. The applicant company complains in particular that the compensation that it was ordered to pay to a public official in civil proceedings brought by the latter, constituted an interference with its right to impart information which was not necessary in a democratic society.

THE FACTS

2. The applicant is a company registered in Belgrade, Serbia, in 2005. It was represented by Ms K. Savović, a lawyer practising in Belgrade.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

5. The applicant company is the owner of the television channel B92 TV and the Internet portal B92.net. According to its financial report for 2020, the applicant company made a profit of 336,527,000 Serbian dinars (RSD) (approximately 2,854,000 euros (EUR)) in that year.

6. The Anti-Corruption Division (*Odsek za borbu protiv korupcije* – "the ACD") is a division within the Fight Against Organised Financial Crime Department (*Odeljenje za borbu protiv organizovanog finansijskog kriminala*) of the Criminal Police Directorate (*Uprava kriminalističke policije*) in the Ministry of the Interior of the respondent State.

7. During an unspecified period before 27 November 2011, the applicant company's journalists carried out investigative research for a documentary television series, "*Insider* – Buying and Selling Health", relating to the procurement of AH1N1 vaccines in 2009. In the course of its research, the applicant company came into possession of "official note no. 14/11" (*službena beleška br. 14/11*), prepared by the ACD on 13 September 2011. More specifically, on an unspecified date the editor-in-chief of the applicant company's news programme obtained the note in question from two police officers (see paragraph 25 below). There are no further details in this regard in the case file.

8. The note specified that ACD police officers had been conducting an investigation (*postupaju i vrše provere*) in the case in question from March or April 2009 until 13 September 2011. This had included various surveillance measures ordered by an investigating judge, temporary removal of documents, and interviews. The officers' immediate superiors had been informed about their actions, as had the Deputy Special Prosecutor for Organised Crime, M.I. At the end of August and the beginning of September 2011 "the final phase had started" as the ACD police officers, their immediate superiors and the Office of the Special Prosecutor for Organised Crime ("the Special Prosecutor's Office") had concluded that all the necessary checks had been made.

9. The note specified that between 5 and 13 September 2011 five officials of the relevant services in the Ministry of the Interior had had several consultations with the Special Prosecutor and Deputy Special Prosecutor for Organised Crime, M.R. and M.I. During those consultations, the ACD officers had presented their view of the case, which was that there was a reasonable suspicion (*osnovana sumnja*) that six persons had committed the criminal offence of abuse of office, their intention being to favour the J. company, so as to obtain a privileged position for it and to enable it to make financial gain. The note named the six persons and specified their personal details, as well as what each could reasonably be suspected of having done. Among the six had been Z.P., an Assistant Minister of Health at the time. In respect of her it was specified that there was a reasonable suspicion that:

(a) she had concealed the fact that the Ministry of Health – that is, the Minister, T.M. – had already reserved more than three million doses of a certain vaccine, produced by the N. company, through N.'s distributor's representative company – D. company from Valjevo – in July 2009 and she had left that information out of a proposal prepared for the government in November 2009 relating to the necessity of procuring AH1N1 pandemic vaccines;

(b) on behalf of the Ministry of Health, she and the Minister T.M. had led negotiations with another vaccine producer, which in September 2009 had proposed the procurement of another vaccine at a more favourable price without intermediaries and distributors; and

(c) after the Commission for the Implementation of Procurement of Pandemic Vaccines had made a report on all the bids, with a proposal as to which bidders should be selected, she had used her official position and hierarchical status to order one of the expert members of the Commission, who was also an employee in the department of the Ministry of Health run directly by Z.P., to make a new report on the bids, to be registered under the same number and date as the previous report, but in favour of the J. company.

10. The note further specified that the prosecutors had not accepted the ACD's proposal. They had held that they could not take the case to court because of a lack of sufficient evidence to start an investigation in respect of the people mentioned in the ACD report who were employed by the Ministry of Health, and they had said that they would send a draft complaint. In the draft complaint proposed by the Deputy Special Prosecutor M.I. three people were named as suspects (S.V., former Director of the Republic Health Insurance Institute (*Republički zavod za zdravstveno osiguranje*); V.G., the director of the J. company; and Lj.P., the owner and the director of the D. company). Several Ministry officials, including the chief and the deputy chief of the Fight Against Organised Financial Crime Department, had agreed that the complaint as drafted did not correspond to the factual situation but that the prosecutors had insisted that the criminal complaint should be made only in respect of the three people named in their draft. The note stated that subsequently the ACD had made a new report, in which they had tried to show to the prosecutors that it had been "very difficult to leave the people from the Ministry of Health out of the case because the whole story [had been] taken out of context".

11. The note specified that on 9 September 2011 further consultations had been held at the Special Prosecutor's Office attended by the Special Prosecutor, his deputy, two chiefs and two officers from the Ministry of the Interior. During the meeting the Ministry officials had presented their draft criminal complaint, which now included fourteen people. All fourteen people had been named, and the complaint also indicated their personal details and what the ACD had considered them to have done. The list had included Z.P. and the same suspicions about her had been indicated as above (see

paragraph 9 above). During the meeting the ACD had also presented audio recordings obtained in the course of telephone and other communications surveillance.

12. It appears that on an unspecified date before 29 November 2011 a criminal complaint was filed against the three people specified by the Special Prosecutor's Office.

II. INFORMATION PUBLISHED BY THE APPLICANT COMPANY

A. Information broadcast on the applicant company's TV channel

13. On 27 November 2011 B92 TV broadcast the following in its 11 p.m. news slot:

> "The police's list of suspects included, among others, former Minister [T.M.], Assistant Minister [Z.P.], State Secretary of the Ministry of Health [N.K.] and the director of [the J. company, S.M.A.]. The police suspected them of abuse of office enabling [the J. company] to make an illegal financial gain to the detriment of the Serbian budget. According to the findings of *Insider*, twelve names disappeared from the list of suspects after the police consulted with the prosecution. The police had concluded during the pre-trial proceedings that there was a reason to suspect (*osnov sumnje*) that fourteen people were involved in the abuses."

14. On 28 November 2011 the 10 a.m., 6.30 p.m. and 11 p.m. news slots on B92 TV included the same first two sentences that had been broadcast the day before.

15. On 29 November 2011 the 6.30 p.m. and 11 p.m. news slots on B92 TV broadcast the following, with a photograph of Z.P.:

> "Apart from [S.V., V.G. and Lj.P.], against whom a criminal complaint has been filed and who have been arrested, ..., the police's list of suspects also included, among others, [T.M., Z.P. and N.K.] ..."

16. On 13 December 2011 on the 4 p.m., 6.30 p.m. and 11 p.m. news slots on B92 TV, the following was broadcast, with a photograph of Z.P.:

> "... the police's list of suspects included, among others, former Minister [T.M.], his associates [Z.P. and N.K.] ... In the end, a criminal complaint was only filed against the three people who were arrested ..."

17. On 14 December 2011 the 6.30 pm B92 TV news broadcast included the following statement, with a photograph of Z.P.:

> "... the police established (*utvrdila*) that there was a reason to suspect fourteen people of having participated in the abuse, but the criminal complaint was eventually filed against only three people. According to our information, the former Minister [T.M.] and his associates [Z.P. and N.K.] were among the others left out of the criminal complaint ..."

B. Publications on the applicant company's Internet portal

18. As of 27 November 2011 the following information was published under the heading "*Insider*: Selective justice?" on B92.net:

> "In the pre-trial proceedings regarding the vaccines, the police suspected [T.M.] and his associates [Z.P. and N.K., and S.M.A.]. According to the findings of *Insider*, the list of those whom, in the opinion of the police, there was reason to suspect of having participated in the abuses included, among others, former Minister [T.M.], Assistant Minister [Z.P.], State Secretary of the Ministry of Health [N.K. and the director of the J. company, S.M.A.]. The police also suspected them of abuse of office enabling [the J. company] to make an illegal financial gain to the detriment of the Serbian budget. According to the findings of *Insider*, twelve names disappeared from the list of suspects after the police had consulted with the prosecutor's office ... In the case concerning the procurement of vaccines it turns out that the police effectively abandoned a criminal complaint against people whom they themselves had concluded there was reason to suspect of having participated in the abuses."

19. The same article also contained the following:

> "According to the findings of *Insider*, the former Minister of Health, his Assistant Minister and the State Secretary of that Ministry, as well as the former director of [the J. company], were on the list of fourteen persons who had been involved (*obuhvaćeni*) in the pre-trial proceedings relating to the procurement of vaccines against swine flu. Even though it is an open secret that in Serbia there are often arrests for political reasons or that, for the same reasons, many get protected, this is now the first evidence that such a thing happened during the procurement of vaccines. Except for [three persons] against whom a criminal complaint was filed and who were arrested, the police suspected twelve more people of abuse of the vaccine procurement process .... There is even an official note registered in the Ministry of the Interior indicating that there was pressure to exclude many of those who had been suspected, that is, to ensure that no criminal complaint was filed against them. It is not clear why the police would agree to such a request if they themselves had established that there were grounds for suspicion (*osnov sumnje*). ... According to the law, when the police establish that there are grounds for suspicion against someone they have a duty to file a criminal complaint, and it is up to the prosecutor's office to decide whether to reject the complaint, request additional investigation or proceed further by filing an indictment. ... *Insider* sent two letters to the Ministry of the Interior asking why a criminal complaint had only been filed against three persons, that is, why they had left out twelve persons for whom, according to the police, there were grounds for suspicion. We received no reply! We sent the same question to the Office of the Special Prosecutor for Organised Crime. [They] blame it all (*svaljuje sve*) on the Ministry of the Interior and state that the police did not collect sufficient evidence against all the participants in the scheme. They claim that the investigation is not finished yet, but it is not clear from their answer against whom the investigation is being conducted ... The reply from the Office of the Special Prosecutor for Organised Crime: 'The actions of other persons [involved] in the disputed procurement of the vaccines were analysed in pre-trial proceedings, but on the basis of the information and data collected by the police before filing the criminal complaint it could not be concluded that there were grounds for initiating proceedings against them. Therefore, except for the three persons named, nobody else had the status of suspect at this stage of the proceedings, so all other allegations are totally unfounded and arbitrary. However, that does not mean that the number of suspects is final at this moment. The point of the investigation is to collect all the available evidence and if it indicates other people's guilt, the investigation will be extended to them.' The whole case again raises

suspicion that justice in Serbia is selective because the result of the investigation at the moment is a criminal complaint that involves only a part of a bigger story. It was filed against three persons, who, according to the information that *Insider* obtained by analysing documentation obtained through the Access to Information Act, could hardly have done everything that they are accused of without the knowledge of their superiors in the relevant institutions."

20. As of 27 November 2011 the following information was published in an article entitled "The Ministry reacts to *Insider*":

"In its last programme in the series 'Buying and Selling Health', *Insider* revealed that in the pre-trial proceedings concerning vaccine procurement the police had suspected [T.M. and his associates Z.P., N.K. and S.M.A.]".

C. Z.P.'s request to publish a denial

21. On an unspecified date Z.P. asked the applicant company to publish the following denial of the information published on 27 November 2011 (see paragraphs 13 and 18-19 above):

"In its *Insider* series B92 generally tries to shed light on various social phenomena, which is something that in general can be accepted and supported as a contribution to freedom of information, but the way in which [it published] the information on 27 November 2011 ... on the B92 news and its Internet portal under the heading '*Insider*: Selective justice' ... B92 ... amounted to taking over the role of [both] investigative bodies and ... the court, given that in the absence of sufficient facts, it resorted to methods which the free press must strongly stand against (*suprostaviti*), and which are ways of imparting untruths and of improperly influencing judicial bodies. In that way, by publishing unverified facts, that is, facts that are not founded on solid evidence, B92 contributes towards disinformation of the public and conducts public lynchings of individuals, in this case me ... As my name was mentioned in a negative context in the aforementioned information disseminated by B92 for no good reason (*neosnovano*), apart from its being in the official statement of the prosecutor's office, to which B92 pays no attention (*na koje se B92 ne obazire*) when drawing its own conclusions and tailoring the truth, then for the protection of my honour, reputation and the professional dignity with which I have carried out my work solely in accordance with the law, and taking care above all to protect the public interest, I cannot but bring a private action against B92 for the criminal offence of defamation ... and for making unacceptable public comments about court proceedings ..."

22. The applicant company published only the part referring to Z.P.'s intention to institute proceedings against the applicant company.

III. THE ENSUING CIVIL PROCEEDINGS

A. Proceedings before the Belgrade High Court

23. On 27 April 2012 Z.P. instituted civil proceedings against the applicant company in the Belgrade High Court (*Viši sud*) seeking:

(a) compensation for non-pecuniary damage, specifically for mental anguish caused by a violation of her honour and reputation because of

inaccurate information broadcast by B92 TV News between 27 November and 14 December 2011 and published on B92.net in the articles "*Insider*: Selective justice?" and "The Ministry reacts to *Insider*" (see paragraphs 13-18 and 20 above); and

(b) an order for the applicant company to publish the court's judgment and remove the two articles from its Internet portal. She submitted, in particular, that it was not true that she had been suspected of abuse of office, or of anything else, nor had she been removed from the alleged list of suspects because of illicit influence (*nedozvoljeni uticaj*). It appears from the case file that on an unspecified date thereafter Z.P. extended her claim to include the editor-in-chief as well.

24. The applicant company contested the claim and submitted that accepting it would constitute a harsh violation of the right to freedom of opinion and expression. It submitted, in substance, that the public had had a justifiable interest in being informed about the topic and the person in question. The information had originated from an official note of the relevant State body, namely the ACD of the Ministry of the Interior (see paragraphs 7-11 above), which the applicant company had obtained during its investigative research into the procurement of vaccines. Even if that information had not been accurate and complete the applicant company should not be held liable given the provisions of Article 82 of the Public Information Act (see paragraph 43 below), as the information had been accurately cited from a document of a relevant State body.

25. In the course of the proceedings, among other things, the court heard the editor-in-chief of the applicant company's news programme and the journalist who had conducted the research for the documentary series. The editor-in-chief stated that two police officers had given him the official note in question, and he had considered that it was important to publish it. The journalist stated that Z.P. had wanted to make a statement, but when she (the journalist) had contacted her, Z.P. had declined to make any comment (*odustala od davanja iskaza*).

26. On 23 October 2013 the Belgrade High Court ruled partly in favour of Z.P. and ordered the applicant company to:

(a) pay Z.P. RSD 200,000 (approximately EUR 1,750) with statutory interest by way of compensation for non-pecuniary damage, specifically for mental anguish suffered on account of a violation of her honour and reputation, and RSD 113,100 (approximately EUR 990) for costs; and

(b) remove the article "*Insider*: Selective justice?" from its Internet portal.

It also ordered the editor-in-chief to publish the judgment. The court dismissed Z.P.'s claim in respect of the article "The Ministry reacts to *Insider*".

27. The court found that on the dates indicated the applicant company had published information alleging that the claimant had been on the police list of suspects, that in the pre-trial proceedings she had been suspected of abuse

of office, and that she had been left off the list of suspects because of pressure from the Special Prosecutor's Office, as a result of which no criminal complaint had been filed against her. The court also noted the rest of the online article published on 27 November 2011 (see paragraph 19 above). In addition to this, Z.P.'s photograph had been shown on television without her consent. The court further found that no criminal complaint or request for investigation had been filed against Z.P. between 2003 and 30 May 2012. The applicant company had not used due diligence and so had not discovered the falsity (*neistinitost*), that is, the incompleteness of the information in question, in that it had not contacted the claimant before publishing the information in issue or questioned her in that regard. Instead, it had relied on a document which contained operational findings of the police in pre-trial proceedings and as such did not constitute an official document of a relevant State body (*zvanični dokument nadležnog državnog organa*) within the meaning of Article 82 of the Public Information Act. The court also noted that the claimant had denied that she had been a State or a political official (*nosilac državne i političke funkcije*) at the relevant time, and found that the applicant company had not brought any evidence of the fact in issue. The court referred to, among other things, Article 3 § 1, Article 9 § 1, Article 79, Article 80 § 1 and Article 82 of the Public Information Act, and Articles 199 and 200 of the Obligations Act (see paragraphs 34, 36, 41-43, and 46-47 below).

B. Proceedings before the Belgrade Court of Appeal

28. On 17 March 2014 the applicant company appealed. It relied on Article 10 of the Convention and referred to the Court's case-law.

29. On 5 June 2014 the Belgrade Court of Appeal (*Apelacioni sud*) upheld the first-instance judgment and, in substance, endorsed its reasoning. In particular, the court found that before publishing the information in question the applicant company had had a duty to verify its origin, accuracy and completeness, which it had failed to do, relying instead on the official note of the Ministry of the Interior, which could not be considered a document of a relevant State body within the meaning of Article 82 of the Public Information Act. A criminal complaint would have constituted such a document, but none had ever been filed against Z.P. Since the applicant company had failed to act in compliance with Article 3 of the Public Information Act, the court dismissed its submission that the information had been obtained from a reliable source in the Ministry of the Interior and published in view of a prevailing public interest in knowing about it. The court also found that the applicant company's reference to Article 10 of the Convention was of no relevance, given that freedom of expression could be limited for the protection of the rights and reputation of others, which were also protected by Article 8 of the Convention. In view of the untrue and

unverified information that the claimant had been on the police list of suspects, that she had been suspected of abuse of office in pre-trial proceedings, and that she had been removed from the list after pressure from the Special Prosecutor's Office, all of which were statements of fact, the court found a violation of the claimant's honour and reputation.

C. Proceedings before the Constitutional Court

30. On 30 July 2014 the applicant company lodged a constitutional appeal. It referred to its freedom of expression and the relevant case-law of the Court.

31. On 18 May 2016 the Constitutional Court dismissed the applicant company's constitutional appeal. It found that the judgments in question had interfered with the applicant company's freedom of expression, but that the interference had been necessary for the protection of the claimant's rights and reputation. It found that the civil courts, when balancing the rights of the claimant and the applicant company, had assessed all the relevant circumstances and had given clear and constitutionally acceptable reasons for their decision. It also found that the amount of compensation awarded and the order that the judgment be published had been proportionate.

32. In particular, the claimant had been marked out (*označena*) as one of the perpetrators of the criminal offence of abuse of office, but she had not been prosecuted because of pressure on the Ministry of the Interior from the prosecutors. The court found that the information in question had been published so that the public would be informed about the events surrounding the swine flu vaccine procurement controversy. It also held that the claimant had been a public official (*nosilac javne funkcije*) and that the degree of tolerance which she should have shown was supposed to be greater, given that the disputed information related to alleged irregularities in her work and not to her private life. The statements could be considered facts, the accuracy and completeness of which were susceptible to verification, but which the applicant company had failed to check with due diligence, particularly in respect of the "pressure" that the special prosecutors were reported to have exerted on the Ministry of the Interior, supposedly resulting in the "abandonment" of the prosecution of the claimant. The court therefore found that the High Court's and the Court of Appeal's findings – that the applicant company could not be relieved of its liability – had not been arbitrary.

33. The Constitutional Court also found that the official note drawn up in the course of communication between the relevant unit of the Ministry of the Interior and the Special Prosecutor's Office during the pre-trial proceedings had preceded the filing of the criminal complaints. The court considered that the filing of the complaint against three people had been the result of joint work by the Ministry of the Interior and the Special Prosecutor's Office, so it could not reasonably be inferred that the decision not to file a criminal

complaint against certain people had been the result of pressure by the Special Prosecutors on the Ministry. Rather, the Special Prosecutor's Office had considered that there had not been sufficient evidence to open an investigation in respect of the people employed at the Ministry of Health, as specified in the official note; this indicated that the Special Prosecutor's Office had analysed the evidence provided by the Ministry of the Interior and that its opinion that there was no reasonable suspicion in respect of certain people had been the result of an assessment of the available evidence. In addition, in accordance with the Code of Criminal Procedure as in force at the time, the public prosecutor was in charge of directing (*rukovodi*) pre-trial proceedings, and the Ministry of the Interior and other State bodies had to act on every request of the prosecutor.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Constitution (Ustav, published in the Official Gazette of the Republic of Serbia ("OG RS") no. 98/06)

33. Article 46 of the Constitution guarantees freedom of thought and expression, and the freedom to seek, receive and impart information and ideas. It also provides that freedom of expression may be restricted if that is necessary to protect the reputation of others.

B. The 2003 Public Information Act (*Zakon o javnom informisanju*, published in OG RS nos. 43/03, 61/05 and 71/09)

34. At the material time Article 3 § 1 of this Act provided that prior to the publication of information regarding "an event, an occurrence or a certain person", the journalist and the editor-in-chief were to "check its origin, accuracy and completeness" with due diligence. Paragraph 2 provided that journalists and the editors-in-chief of media outlets were to broadcast and publish the information, ideas and opinions of others accurately and comprehensively.

35. Article 4 provided that media outlets could freely publish ideas, information and opinions on "occurrences, events and persons" that the public had a justifiable interest in knowing about, unless legislation provided otherwise. This applied regardless of the manner in which the information had been obtained.

36. Article 9 provided, among other things, that the right to the protection of privacy was to be limited for holders of State or political positions if the information in question was of public relevance given their functions. The

rights of such persons were to be limited in proportion to the justifiable interest of the public in each case.

37. Article 37 provided that a media outlet could not describe anyone as the perpetrator of a punishable offence or pronounce anyone guilty of an offence in the absence of a final judicial or other decision given in that connection.

38. Article 47 § 1 provided that a person whose right or interest could be violated by the publication of information could ask the editor-in-chief to publish a denial, without payment.

39. Article 57 provided that a response and a correction of the disputed information had to be published unchanged, without omissions or additions. Only necessary proofreading changes which did not change the meaning would be allowed.

40. Article 58 provided that the editor-in-chief was not obliged to publish a response, that is, the court would not order the editor-in-chief to publish a response if, among other reasons, the response did not contain a statement of fact but an opinion. Reasons for not publishing the response also applied to not publishing part of the response.

41. Article 79 provided, among other things, that any person who suffered pecuniary and/or non-pecuniary harm as a consequence of incorrect or incomplete information being published by a media outlet or because of the publication of other information in breach of this Act was entitled to adequate compensation, quite apart from any other available redress.

42. Article 80 provided, among other things, that where the editor-in-chief and the founder of a media outlet could have established the inaccuracy or incompleteness of the information by due diligence prior to its publication, they were to bear joint liability for any pecuniary and/or non-pecuniary damage caused by the publication of the information in question. The same obligation also applied, for example, when harm had been caused by the "impermissible publication" of accurate information (for example, regarding a person's private life or accusations involving the commission of a criminal offence).

43. Article 82 provided that the journalist, editor-in-chief and owner of the media outlet were not liable for the damage if the untrue or incomplete information had been accurately reported from a document of a relevant State body (*nadležnog državnog organa*).

44. This Act was subsequently amended following decisions of the Constitutional Court, and was ultimately repealed and replaced by other legislation in 2014.

C. Obligations Act (*Zakon o obligacionim odnosima*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89 and 57/89, the Official Gazette of the Federal Republic of Yugoslavia ("OG FRY") no. 31/1993, and OG RS no. 18/2020)

45. Article 154 of this Act defines the different grounds for claiming civil compensation.

46. Article 199 provides that in the case of a violation of personal rights the court may order publication of a judgment or rectification of a publication, or may order the person who caused the damage to retract the statements which caused the violation.

47. Article 200 provides, among other things, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of his or her right to reputation, personal integrity, liberty or other personal rights (*prava ličnosti*) is entitled to seek financial compensation in the civil courts and, in addition, to request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

D. Code of Criminal Procedure (*Zakonik o krivičnom postupku*; published in OG FRY nos. 70/2001 and 68/2002, and in OG RS nos. 58/2004, 85/2005, 115/2005, 85/2005, 49/2007, 20/2009, 72/2009 and 76/2010)

48. Articles 504a-504ć of the Code of Criminal Procedure as in force at the material time set out provisions governing the procedure as regards organised crime, corruption and other exceptionally serious criminal offences. Criminal offences relating to corruption included, among other things, the criminal offence of abuse of office, even when it was not committed by an organised criminal group. Article 504v provided, in particular, that information about the pre-trial proceedings and investigation in respect of such criminal offences was an official secret (*službena tajna*). This information could not be revealed by the officials (*službena lica*) or other persons involved in the proceedings who had come into possession of it. The information could be published only with the written consent of the public prosecutor in charge or an investigating judge.

E. Anti-Corruption Agency Act (*Zakon o Agenciji za borbu protiv korupcije*; published in the OG RS nos. 97/08, 53/10, 66/11, 67/13, 112/13, 8/15 and 88/19)

49. Article 2 of this Act provided, among other things, that "an official" was any person elected, appointed or nominated to public bodies of the Republic of Serbia, and that a "public office" (*javna funkcija*) was a position

in a public body of the Republic of Serbia or a position occupied by a person elected by Parliament involving management, decision-making or adoption of general or individual decisions.

F. Free Access to Information of Public Interest Act 2004 (*Zakon o slobodnom pristupu informacijama od javnog značaja*, published in the OG RS nos. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021)

50. This Act provides for a right of free access to information of public interest which is in the possession of public authorities, in order to realise and protect the public interest in transparency.

51. Article 2 provides that information of public interest, within the meaning of this Act, is information in the possession of a public body, created in the course of its work or in relation thereto, in documentary form and pertaining to anything that the public has a justifiable interest in knowing about. In order for information to be considered of public interest it is irrelevant whether the source of it was the public body or another person, how the information was transmitted, the date of its creation, the way it was learnt of, or any other similar characteristics.

52. Article 9 provides, among other things, that the authorities can refuse access to information of public interest if such access would jeopardise, obstruct or hamper the prevention or detection of criminal offences or the conduct of pre-trial proceedings.

II. RELEVANT DOMESTIC PRACTICE

53. The Government submitted relevant domestic case-law. Between 18 June 2007 and 3 March 2016 various first-instance courts in Serbia delivered fourteen judgments awarding compensation for non-pecuniary damage on account of a violation of a person's right to his or her reputation and honour. All the judgments were upheld by various second-instance courts between 5 February 2008 and 18 August 2016. The amounts awarded ranged between RSD 50,000 and RSD 550,000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

54. The applicant company complained that the State had violated its right to freedom of expression as guaranteed under Article 10 of the Convention, in particular its right to impart information, by ordering it to pay compensation and costs to Z.P. in civil proceedings.

55. Article 10 of the Convention reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others..."

A. Admissibility

56. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

57. The applicant company reaffirmed its complaint and submitted that the interference with its freedom of expression had not been necessary in a democratic society. The information in question had not been a privately motivated attack on Z.P. but a faithful transmission of information contained in the document of a State body. The applicant company's intention had not been to violate her honour and reputation or her right to be presumed innocent but to impart information that would contribute to a debate of public interest, that is, irregularities in the public procurement of AH1N1 vaccines in 2009 and pressure on the investigative bodies in that connection, where documents such as official notes were crucial and among the few documents from which information could be obtained. The claimant had been a public official and therefore had to be more tolerant of criticism.

58. The subject of Z.P.'s court claim had been the specific information broadcast in the regular news programme and published in the news article "*Insider*: Selective justice?" (see paragraph 23 above). The domestic judgments had not concerned the information contained in the investigative television series, or in the article "The Ministry reacts to *Insider*".

59. The applicant company submitted that it had never stated that Z.P. had been suspected of abuse of office by the Special Prosecutor's Office, that charges had been brought against her or that there had been improper influence on the law-enforcement agencies. All the information it had published had clearly stated that the police, and not the Special Prosecutor's Office, had made a list of people whom they had reason to suspect of having committed the criminal offence of abuse of office in connection with the procurement of AH1N1 vaccines in 2009, and that there had been a disagreement between the police and the prosecutors as regards the scope

of the criminal complaint. The information in question had originated from an official note of a relevant State body, that is, the Anti-Corruption Department of the Ministry of the Interior, the contents of which had not been disputed either in the domestic proceedings or by the Government, and which the applicant company had obtained during its investigative research into the procurement of AH1N1 vaccines. As it had accurately transmitted the information from the document of a State body, it had not been required to verify it further. By publishing it, the applicant company had fulfilled its duty to impart information of significant public interest. Even if the information had not been true, the applicant company should not have been found liable, in accordance with Article 82 of the Public Information Act (see paragraph 43 above).

60. The applicant company contended that journalists should be allowed some degree of exaggeration or even provocation and the fact that it had written that "many [got] protected" was consistent with its freedom of expression, especially as it had been made clear that those statements had been based on the above-mentioned disagreement between the two bodies in respect of the criminal complaint.

61. The fact that the applicant company had not been subject to criminal proceedings did not change the fact that its freedom of expression had been violated as it should not have been subjected to any proceedings at all. Its financial report for 2020 (see paragraph 5 above) was irrelevant as it did not refer to the year when the compensation had been awarded. It had indeed refused to publish part of Z.P.'s denial, but only because it had not contained a statement of fact but rather her opinion of the applicant company, and thus had not been in line with Article 58 of the Public Information Act (see paragraph 40 above).

62. The applicant company referred to the Court's case-law, in particular to Bladet Tromsø *and Stensaas v. Norway* [GC] (no. 21980/93, ECHR 1999-III), *Colombani and Others v. France* (no. 51279/99, ECHR 2002-V), and *Yordanova and Toshev v. Bulgaria* (no. 5126/05, 2 October 2012).

(b) The Government

63. The Government submitted that there had been no violation of Article 10 of the Convention as the interference with the applicant company's freedom of expression had been necessary in a democratic society, as to which the domestic courts had given sufficient reasons. The applicant company had not been subject to criminal proceedings nor had a duty been imposed on it to prove the accuracy of a value judgment. The amount awarded corresponded to the common practice of the national courts (see paragraph 53 above); it had been neither excessive nor restrictive, nor had it diminished the applicant company's capacity to conduct business, given its net profit (see paragraph 5 above).

64. The Government contested the applicant company's submission that the domestic courts' decisions had not pertained to the television series or to the information contained in the article "The Ministry reacts to *Insider*" (see paragraph 58 above). Almost all the domestic decisions had cited the article and the television series so the allegations therein had been relevant. In any event, the information had provided part of the context and had to be taken into account.

65. The Government argued that the applicant company had published inaccurate information, namely that Z.P. had concealed the fact that vaccines had been already ordered, that there had been direct negotiations with another vaccine producer who had made a much more favourable offer, and that she had ordered her subordinate to adjust the conditions of the public procurement procedure so as to favour one particular company. This could have easily created an impression of her guilt, thus violating her right to the presumption of innocence, in breach of Article 37 of the Public Information Act (see paragraph 37 above). The applicant company had also alleged that the Ministry of the Interior and the Special Prosecutor's Office had considered Z.P. a suspect in an ongoing investigation, and that she had been neither charged nor prosecuted as a result of the improper influence of the Special Prosecutor's Office on the police. Exaggeration and provocative language were permissible only in the expression of value judgments, but these were all statements of fact which had not been verified by the applicant company. Verifying such claims fell within the duties and responsibilities inherent in the practice of journalism, especially those claims that had not been contained in the note, such as that there had been improper influence on the law-enforcement agencies. This had affected both Z.P.'s private and professional life and could constitute a breach of Article 8.

66. The Ministry's note, the single document on which the applicant company had relied, in no way supported the claims of improper influence. In any event, it should not be treated as relevant, since the Special Prosecutor's Office was the relevant authority to decide whether Z.P. was a suspect. The note contained only a summary of operational information collected at the pre-trial stage, which might change substantially as more information was gathered. That was also why the courts had found that it was not a document of a relevant State body. In any event, the national courts were in a better position than an international judge to determine whether a document was an official document or not.

67. The Government submitted that the present case differed from the cases referred to by the applicant company (see paragraph 62 above), as in those cases the applicants had used what had been indisputably official reports, or the relevant informal statement had been made by a prosecutor in the case.

2. The Court's assessment

(a) Existence of an interference

68. It was not disputed between the parties that the final civil judgment given against the applicant company amounted to an "interference by [a] public authority" with its right to freedom of expression (see paragraphs 63 and 57 above; see also *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 64, 11 February 2014).

(b) Whether the interference was prescribed by law

69. The Court considers that the interference at issue was "prescribed by law" within the meaning of Article 10 § 2 of the Convention as it was based on the Public Information Act and the Obligations Act (see paragraphs 41 and 46-47 above). The relevant provisions were both adequately accessible and foreseeable in their application, that is to say, they were formulated with sufficient precision to enable an individual – if need be with appropriate advice – to regulate his or her conduct (see, for example and among many other authorities, The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 123-25, 17 May 2016; see also, in the Serbian context, *Tešić*, cited above, § 64).

(c) Whether the interference pursued a legitimate aim

70. The Court accepts that the interference with the applicant company's freedom of expression pursued one of the legitimate aims envisaged under Article 10 § 2 of the Convention, namely "the protection of the reputation or rights of others".

What is in dispute between the parties and remains to be examined, is whether the interference was "necessary in a democratic society".

(d) Necessary in a democratic society

(i) The relevant principles

71. The general principles for assessing the necessity of an interference with the exercise of freedom of expression are set out in, for example, *Morice v. France* ([GC] no. 29369/10, § 124, ECHR 2015); *Bédat v. Switzerland* ([GC] no. 56925/08, §§ 48-54, 29 March 2016); *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* ([GC] no. 17224/11, § 75, 27 June 2017); and *SIC - Sociedade Independente de Comunicação v. Portugal* (no. 29856/13, §§ 54-62, 27 July 2021).

72. In order to fulfil its positive obligation to safeguard one person's rights under Article 8, the State may have to restrict to some extent the rights secured under Article 10 for another person. When examining the necessity of that restriction in a democratic society in the interests of the "protection of

the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression as protected by Article 10 and, on the other, the right to respect for private life as enshrined in Article 8 (see *Bédat*, § 74, and *Medžlis Islamske Zajednice Brčko and Others*, § 77, both cited above, and the authorities cited therein).

73. The Court has held that the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by Article 10 of the Convention. A high level of protection of freedom of expression, with the national authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the disputed comments concern a matter of public interest (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 46, ECHR 1999-VIII; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV; and *Morice*, cited above, § 125). Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see, among other authorities, *Bédat*, cited above, § 54, with further references). The relevant criteria when it comes to the balancing exercise between the rights protected under Article 8 and Article 10 of the Convention 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 (see, for example, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012; *Milisavljević v. Serbia*, no. 50123/06, § 33, 4 April 2017; and *Milosavljević v. Serbia*, no. 57574/14, § 54, 25 May 2021).

Of course, some of the above criteria may have more or less relevance given the particular circumstances of a given case (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 166, 27 June 2017) and other relevant criteria may also be taken into account depending on the situation (see *Axel Springer SE and RTL Television GmbH v. Germany*, no. 51405/12, § 42, 21 September 2017).

(ii) Application of these principles to the present case

74. The Court notes that the present case concerns a conflict of concurring rights – on the one hand, respect for the applicant company's right to freedom of expression, and on the other, Z.P.'s right to respect for her private life – requiring an assessment in conformity with the principles laid down in the Court's relevant case-law. In particular, the information broadcast and the article published by the applicant company (see paragraphs 13-19 above) referred to: (a) Z.P. being among those the police had had reason to suspect of abuse of office in relation to the procurement of AH1N1 vaccines, (b) the disappearance of twelve names, including hers, from the police's list of suspects after the police had consulted the Special Prosecutor's Office; and (c) a suggestion that the names disappeared from the list because of pressure from the Special Prosecutor on the Ministry of the Interior.

75. The Court, examining the TV broadcast and the relevant article's content, considers 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 seriousness which could cause prejudice to the personal enjoyment, by Z.P., of her rights under Article 8 of the Convention (see *Axel Springer AG*, cited above, § 83, and *Stancu v. Romania*, no. 30390/02, §§ 120-121, 29 April 2008).

(α) Whether the information in question contributed to a debate of general interest

76. As noted in paragraph 73 above, a high level of protection of freedom of expression, with the national authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest. The Court has recognised the existence of such an interest, for example, when the publication in question concerned information about criminal proceedings in general (see *Dupuis and Others v. France*, no. 1914/02, § 42, 7 June 2007, and *July and SARL Libération v. France*, no. 20893/03, § 66, ECHR 2008 (extracts)), information regarding a specific criminal case (see *White v. Sweden*, no. 42435/02, § 29, 19 September 2006, and *Egeland and Hanseid v. Norway*, no. 34438/04, § 58, 16 April 2009) or information about the authorities' efforts to combat crime (see *Yordanova and Toshev*, cited above, § 53).

77. The Court observes that the Constitutional Court noted that the information in question had been published in order to inform the public about the events surrounding the swine flu vaccine procurement controversy, thus accepting, albeit somewhat implicitly, that the published information had contributed to a public debate. The Court also notes that the disputed information in the present case related to the authorities' investigation into alleged irregularities in the procurement of AH1N1 vaccines in 2009. The information therefore clearly concerned an issue of public interest and its publication formed an integral part of the task of the media in a democratic

society (see, *mutatis mutandis*, *Kasabova v. Bulgaria*, no. 22385/03, § 56, 19 April 2011).

(β) How well known the person concerned is and what the subject of the report is

78. The Court reiterates that a distinction has to be made between private individuals and persons acting in a public context as political or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures, in respect of whom the limits of critical comment are wider, as they inevitably and knowingly expose themselves to public scrutiny and must therefore display a particularly high degree of tolerance (see *Milosavljević*, cited above, § 59, and the authorities cited therein). As regards State bodies and civil servants, the Court has held that, when acting in an official capacity, they too are in some circumstances subject to wider limits of acceptable criticism than private individuals (see, for example, *Medžlis Islamske Zajednice Brčko and Others*, § 98, and *Morice*, § 131, both cited above; see also *Lombardo and Others v. Malta*, no. 7333/06, § 54, 24 April 2007, and *Romanenko and Others v. Russia*, no. 11751/03, § 47, 8 October 2009).

79. The Court notes that the Constitutional Court of Serbia found that the claimant, an Assistant Minister of Health at the time, had been a public official and thus should have shown a greater degree of tolerance given that the information in question related to alleged irregularities in her work and not to her private life (see paragraph 32 above). The Court sees no reason to disagree.

(γ) Conduct of the person concerned prior to the publication of the article

80. The Court considers this criterion to be of no relevance in the circumstances of the present case (see paragraph 73 *in fine* above).

(δ) Method of obtaining the information and its veracity

– *Method of obtaining the information*

81. The gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom (see *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 128). A restriction on a journalist's research and investigative activities always calls for the closest scrutiny by the Court because of the great danger presented by attempts to restrict the preparatory steps a journalist can take (see *Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006). The concept of responsible journalism, as a professional activity which enjoys the protection of Article 10 of the Convention, is not confined to the content of information which is collected and/or disseminated by journalistic means. That concept

also embraces, among other things, the lawfulness of a journalist's conduct, including his or her public interaction with the authorities when exercising journalistic functions (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015).

82. The Court notes that the editor-in-chief in the present case submitted in the domestic proceedings that he had obtained "the official note no. 14/11" (see paragraphs 7-11 above) from two police officers (see paragraph 25 above), which submission was not contested by anyone. While the Court sees no reason to disagree with the finding of the domestic courts that the note in question was not an official document, the domestic courts did not find that by publishing the information in question the applicant company had acted in breach of the law on confidentiality (see Bladet Tromsø *and Stensaas*, cited above, § 71), or that publishing the information in question had had any effect on the proper administration of justice, including in respect of the secrecy of judicial investigations. The Court therefore considers that the means used by the applicant company to obtain a copy of the document in question fall within the scope of the freedom of investigation inherent in the practice by journalists of their profession (see, *mutatis mutandis*, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 96, ECHR 2004-XI).

– *Veracity of the information*

83. In the context of freedom of expression, the Court draws a distinction between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. A requirement to prove the truth of a value judgment would be impossible to fulfil and would itself infringe freedom of opinion. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the disputed statement; if there is not, that value judgment may prove excessive (see *Jerusalem v. Austria*, no. 26958/95, §§ 42-43, ECHR 2001-II).

84. The Court observes that the classification of a statement as one of fact or as a value judgment is a matter which falls primarily within the margin of appreciation of the national authorities, in particular the domestic courts (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). It also reiterates that in order to distinguish between a factual allegation and a value judgment, it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see, for instance, *Morice*, cited above, § 126, with further references).

85. In the present case, the Serbian courts considered the disputed information (see paragraph 74 above) to be statements of fact and as such susceptible of proof (see paragraphs 29 *in fine* and 32 above). The Court

agrees that the first two allegations (notably, that Z.P. was among those the police had had reason to suspect of abuse of office in relation to the procurement of AH1N1 vaccines, and that twelve names, including hers, had disappeared from the police's list of suspects after the police had consulted the Special Prosecutor's Office) were statements of fact. However, it considers that the domestic courts took a rather limited view when characterising the third allegation (the suggestion that the names disappeared from the list because of pressure from the Special Prosecutor on the Ministry of the Interior, including the chief and the deputy chief of the Fight Against Organised Financial Crime Department) as a statement of fact as well. They did not consider the online article of 27 November 2011 as a whole, against the background of the apparently ongoing public debate about vaccine procurement. Given that the reply of the Special Public Prosecutor to the allegations raised reflected the latter's position that the reasons for not indicting Z.P. or other public officials and for only bringing a criminal complaint against three other persons were related to a lack of evidence, the domestic courts could be reproached for not having treated the disputed statement as a value judgment and not having examined whether the official internal note would have provided at least some factual basis.

86. In order to prove the veracity of the published information the applicant company referred to the ACD's official note, which clearly confirmed both statements of fact. With regard to the third allegation, the applicant company spoke of "a reason to suspect" and "the police's list of suspects" and indicated that the criminal complaint had not been filed against all the people whom the police had reason to suspect, all of which was accurate and without exaggeration (see paragraphs 13-19 above). In that context the applicant company referred correctly to the contents of the police document (see paragraphs 9-11 above). The Court notes that the domestic courts failed to examine the accuracy of the language which the applicant company had used in this regard. Neither the Ministry, nor the domestic courts nor the Government expressed any doubts about the credibility of the note (compare Bladet Tromsø *and Stensaas*, cited above, § 71). However, the domestic courts considered that the applicant company had not been released from the duty to further verify the accuracy of the information (see paragraphs 27, 29 and 32 above) as they found that the official note of the ACD could not be considered an official document of an appropriate State body and that only a criminal complaint could be considered as such.

87. The note on which the applicant company relied in the present case was apparently an internal official note (see paragraph 7 above) which was not publicly available (contrast, *mutatis mutandis*, *Godlevskiy v. Russia*, no. 14888/03, § 47 *in fine*, 23 October 2008). The Court reiterates 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 (see *Verlagsgruppe Droemer Knaur GmbH & Co. KG v. Germany*, no. 35030/13, § 48, 19 October 2017).

88. The Court observes in this connection that in the course of its investigative research the applicant company also contacted Z.P. herself, the Ministry of the Interior and the Special Prosecutor's Office (see paragraphs 25 *in fine* and 19 above, respectively). Z.P. declined to give any statement, the Ministry of the Interior did not reply at all, and the Special Prosecutor's Office's response was duly published by the applicant company (ibid.). The Court considers 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, the applicant company must be considered to have sought to achieve a balance in its reporting (compare *Erla Hlynsdóttir v. Iceland*, no. 43380/10, § 70 *in limine*, 10 July 2012). In the circumstances of the present case, it is relevant that the applicant company complied with its duty of diligence in verifying the authenticity and content of the police note. The domestic courts also appear to have failed to take those aspects into account in assessing whether the applicant company had fulfilled the requirements of "responsible journalism".

89. Having regard to all of the above considerations, the Court finds in the specific circumstances of the present case that the applicant company cannot be criticised for having failed to take further steps to ascertain the truth of the disputed allegations. It is satisfied that the applicant company acted in good faith and with the diligence expected of a responsible journalist reporting on a matter of public interest. An additional factor of particular importance in the present case is the vital role of "public watchdog" which the press performs in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on political issues and on other matters of general interest (see *Cumpănă and Mazăre*, cited above, § 93, with further references). The Court must apply the most careful scrutiny when, as here, the sanctions imposed by a national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see, among other authorities, *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 88, 1 March 2007). The Court would also emphasise that if the national courts apply an overly rigorous approach to the assessment of journalists' professional conduct, journalists could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings not only on the individual cases before them but also on the media in general. Their margin of appreciation is thus circumscribed by the interest of a democratic society in enabling the press to play its vital role in imparting information of serious public concern (see *Yordanova and Toshev*, § 55, and the authorities cited therein, and *Kasabova*, § 55, both cited above).

(ε) Content and form and consequences of the information

90. The Court notes that the domestic courts ruled against the applicant company in relation to the particular information broadcast in its news programmes and published in an online article (see paragraphs 26, 29, 31 and 74 above).

91. It also observes that the applicant company never reported: (a) that a request for an investigation or a criminal complaint had been filed against Z.P.; (b) that she had been the perpetrator of any criminal offence; or (c) that the Special Prosecutor's Office had considered her a suspect, contrary to the findings of the first-instance court and the Constitutional Court and contrary to the Government's submissions (see paragraphs 27, 32 and 65 above respectively).

92. It is not clear from the case file whether other allegations made in the note and referred to by the Government (that Z.P. had concealed the fact that some vaccines had already been ordered; that there had been direct negotiations with another vaccine producer who had made a more favourable offer; and/or that she had ordered her subordinate to adjust the conditions of the procurement procedure so as to favour one particular company – see paragraph 65 above) were published by the applicant company at all, and if so, when and where. It suffices, however, to note that the civil claim brought by Z.P. did not relate to those particular allegations (see paragraph 23 above), nor did the compensation awarded or the order for the removal of the information.

93. The Court reiterates that it is legitimate for special protection to be afforded to the secrecy of a judicial investigation in view of what is at stake in criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent (see *Dupuis and Others*, cited above, § 44). The Court emphasises that the secrecy of investigations is geared to protecting, on the one hand, the interests of criminal proceedings by anticipating the risks of collusion and the danger of evidence being tampered with or destroyed and, on the other, the interests of the accused, notably from the angle of the presumption of innocence and, more generally, the accused's personal relations and interests. Such secrecy is also justified by the need to protect the opinion-forming and decision-making processes within the judiciary (see *Bédat*, cited above, § 68, and *Brisc v. Romania*, no. 26238/10, § 109, 11 December 2018). The Court also reiterates, however, that it would be inconceivable to consider that there can be no prior or contemporaneous discussion of the subject matter of judicial proceedings elsewhere, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (see *Dupuis and Others*, cited above, § 35 *in limine*).

94. The Court notes in this connection that by the time of the publication of the information in issue in the present case the police investigation, which

had commenced about two years and eight months earlier, had reached "its final phase", and all the necessary checks had been made (see paragraph 8 *in fine* above). It also observes that not even the domestic courts considered that publication of the information at issue had entailed an inherent risk of influencing the course of the proceedings in any way, or had interfered with Z.P.'s right to the presumption of innocence (compare *Bédat*, cited above, § 69 *in fine*; see paragraphs 26-27, 29, and 31- 33 above).

95. As regards the way in which the articles presented the allegations against Z.P., the Court reiterates that the question is not how it, or a national court, would have worded those statements but whether they went beyond the limits of responsible journalism (see *Yordanova and Toshev*, cited above, § 53). Having regard to the allegations in question (see paragraphs 13-19 above), the Court considers that the applicant company did not go beyond the limits of responsible journalism.

(στ) The severity of the sanction imposed

96. Lastly, the Court must assure itself that the penalty to which the applicant company was subjected did not upset the balance between its freedom of expression and the need to protect Z.P.'s reputation (see *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 69, 14 February 2008).

97. The Court observes that in the present case the applicant company was ordered to pay EUR 1,750 in respect of non-pecuniary damage, and EUR 990 for costs. Furthermore, it was ordered to remove the article from its Internet portal and to publish the domestic judgment in question (see paragraph 26 above).

98. The Court reiterates that where fines are concerned, the relatively moderate nature of this type of sanction would not suffice to negate the risk of a chilling effect on the exercise of the right to freedom of expression (see *Anatoliy Yeremenko v. Ukraine*, no. 22287/08, §§ 107, 15 September 2022). It has also stressed that 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 (see *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX, and *Eker v. Turkey*, no. 24016/05, § 45, 24 October 2017).

99. Reiterating its view on the chilling effect that a fear of sanction may have on the exercise of freedom of expression (see, *mutatis mutandis*, *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII, and *Nikula v. Finland*, no. 31611/96, § 54, ECHR 2002-II), and even though the applicant company has not shown whether or not it struggled to pay the amounts required in order to comply with the courts' judgments, the Court is of the view that, under the circumstances, the sanction imposed was capable of having a dissuasive effect on the exercise of the applicant company's right to freedom of expression (see, for instance and *mutatis mutandis*, *Monica Macovei v. Romania*, no. 53028/14, § 96, 28 July 2020, and *Stancu and*

Others v. Romania, no. 22953/16, § 148, 18 October 2022, and the authorities cited therein).

(ζ) Conclusion

100. The Court notes that the domestic courts recognised that the present case involved a conflict between the applicant company's right to impart information and ideas and Z.P.'s right to protection of her reputation and dignity (see paragraph 31 above). They also acknowledged, albeit somewhat implicitly, that the published information had contributed to a public debate, and, more explicitly, that Z.P. had been a public official and as such should have shown a greater degree of tolerance (see paragraph 32 above). However, in examining the case, the domestic courts failed to consider: (a) the accuracy of the language used by the applicant company; (b) the online article of 27 November 2011 as a whole, against the background of the apparently ongoing public debate about vaccine procurement in assessing whether one of the allegations had been a statement of fact or a value judgment; or (c) the fact that the applicant company had contacted Z.P., the Ministry of the Interior and the Special Prosecutor's Office, to give them an opportunity to give their version of events (see paragraphs 86 and 88 above). Lastly, they explicitly held that the applicant company's reference to its rights under Article 10 had been irrelevant in view of Z.P.'s rights under Article 8 (see paragraph 29 above), and in doing so failed to balance Z.P.'s right to the protection of her reputation against the applicant company's right to freedom of expression.

101. The Court finds in the specific circumstances of the present case that the applicant company cannot be criticised for not having taken further steps to ascertain the truth of the disputed allegations and is satisfied that it acted in good faith (see paragraph 94 above) and with the diligence expected of a responsible journalist reporting on a matter of public interest (see paragraphs 82 and 85 above).

102. The Court is also of the view that by failing to examine the elements of the case that were necessary for the assessment of the applicant company's compliance with its "duties and responsibilities" under Article 10 of the Convention, and failing to give relevant and sufficient reasons to justify the interference, the domestic courts cannot be said to have adequately "applied standards which were in conformity with the principles embodied in [that provision]" or to have "based themselves on an acceptable assessment of the relevant facts" (see, *mutatis mutandis*, *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 54, 7 January 2014, and *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017, and the authorities cited therein). In these circumstances the fact that the proceedings were civil rather than criminal in nature does not diminish the importance of that failure by the domestic courts.

103. The Court considers that the domestic courts overstepped the narrow margin of appreciation afforded to them in restricting discussion on matters of public interest (see the case-law quoted in paragraphs 73 and 76 above, as well as the conclusion reached by the Court in paragraph 77 above). It must therefore be concluded that the interference was disproportionate to the aim pursued and not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention (see, *mutatis mutandis*, *Lombardo and Others*, § 62, and *Anatoliy Yeremenko*, §§ 106-07, both cited above).

104. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

106. The applicant company claimed 313,100 Serbian dinars (RSD) (approximately 2,740 euros (EUR) – see paragraph 26 above) plus default interest in respect of pecuniary damage, corresponding to the compensation and costs it had been ordered to pay to Z.P. in the domestic proceedings. It also claimed EUR 2,500 in respect of non-pecuniary damage.

107. The Government submitted that the applicant company's claim in respect of pecuniary damage was unsupported by adequate evidence and therefore unfounded, and that the claim in respect of non-pecuniary damage was ill-founded, excessive and unreasonable.

108. The Court awards the applicant company EUR 2,740 in respect of pecuniary damage and EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant company also claimed RSD 340,050 (approximately EUR 2,800) for costs and expenses (RSD 205,050 for those incurred before the domestic courts and RSD 135,000 for those incurred before the Court).

110. The Government contested the applicant company's claim as partly unsubstantiated and partly unnecessarily incurred. In any event, the amount sought was unreasonable.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to

quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant company the sum of EUR 2,400 covering costs under all heads, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 2,740 (two thousand seven hundred and forty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
   (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (iii) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (iv) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 5 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President