



Chief prosecutor's rights breached when dismissed for making statements to the press about an ongoing criminal investigation

In today's **Chamber** judgment¹ in the case of **Brisic v. Romania** (application no. 26238/10) the European Court of Human Rights held, by five votes to two, that there had been:

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

The case concerned a chief prosecutor's dismissal for breaching the secrecy of a criminal investigation when he made statements to the press. He was sanctioned following a judge's complaint that his press release and interview with a television channel had allowed the media to identify her as being implicated in a money scam.

The Court found in particular that the sole purpose of the applicant's press release and interview had been to inform the press about an ongoing criminal investigation of evident interest to the public and not at all to accuse magistrates of an offence.

Moreover, it was one of the applicant's assigned duties to provide information to the press and he had not revealed any information in either his press release or television interview which could have led to the identification of the individuals involved.

Indeed, the domestic authorities had limited their analysis of the case to the damage to the judge's reputation, without taking into account the fact that the defamatory statements about the judge had not come from the applicant but from a third party, namely the newscaster of his television interview.

Principal facts

The applicant, Ioan-Vasile Brisc, is a Romanian national who was born in 1963 and lives in Baia Mare (Romania).

Mr Brisc was chief prosecutor attached to Maramureş County Court in 2008 when the prosecutor's office carried out an operation to catch an individual accepting money in exchange for the conditional release of a detainee in Baia-Mare Prison.

Mr Brisc, the member of staff designated to provide information to the press, later confirmed in a press release that the suspect had "told the detainee that part of the money was to go to the magistrates, judges and prosecutors responsible for the conditional release of detainees." He also gave a short interview to a local television channel.

Disciplinary proceedings were brought against Mr Brisc at the instigation of the judge delegated at the time to Baia-Mare Prison, who chaired the commission for detainees' conditional release. She complained that the press release and interview suggested that she might be the recipient of the money.

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.

In 2009 the disciplinary authorities found that Mr Brisc's press release and television interview had revealed information about a pending investigation and had been disrespectful towards the judge as they had made it possible for the press to identify her with the money scam. As a result of this decision, Mr Brisc was removed from his position as chief prosecutor.

Two of the prosecutors on the disciplinary commission opposed reprimanding Mr Brisc, as did one of the judges on the panel of the High Court of Cassation and Justice when dismissing his subsequent appeal on points of law. They considered that it was not Mr Brisc who had made defamatory statements about the judge, but the newscaster of his television interview. The newscaster had in particular referred to the judge's assignment to the prison ending on the day of the prosecutor's operation, questioning whether this could have been "purely coincidence".

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Brisc complained about his removal as chief prosecutor for imparting information to the press.

The application was lodged with the European Court of Human Rights on 26 April 2010.

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

Ganna Yudkivska (Ukraine), *President*,
Paulo Pinto de Albuquerque (Portugal),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),
Georges Ravarani (Luxembourg),
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

It was not in dispute that the disciplinary proceedings against Mr Brisc had interfered with his right to freedom of expression.

Furthermore, the two disciplinary offences of which he had been found guilty, namely "failure to observe the confidentiality of the investigation" and "disrespectful behaviour in respect of his colleagues" had been provided for under the relevant domestic law and had been worded clearly enough for Mr Brisc, a prosecutor and therefore well-versed in the law, to understand.

The interference with his rights had moreover pursued the legitimate aim of protecting the reputation of others and maintaining the authority and impartiality of the judiciary.

However, the Court considered that, in taking the disciplinary measures against Mr Brisc, the domestic authorities had not taken into account the fact that the point of Mr Brisc's press release and interview had been to inform the public about an ongoing inquiry, a matter of public interest.

The Court found nothing in his statements that would justify the accusation of breaching the secrecy of a criminal investigation or of infringing his magistrate colleagues' right to protect their public image. He had simply provided a summary description of the prosecution at its initial stage, refraining from identifying any of the individuals involved pending completion of the investigation.

Indeed, as pointed out by two prosecutors and a judge who had been opposed to reprimanding the applicant, the reference to the judge in question had been made by the television channel's newscaster.

Lastly, the authorities had also failed to weigh up the need to protect the reputation of a judge against Mr Brisc's right to impart information on issues of general interest, namely an ongoing criminal investigation.

The domestic courts had not therefore provided "relevant and sufficient" reasons to show that the interference with Mr Brisc's rights had been necessary in a democratic society for the protection of the authority of the judiciary and the protection of the reputation or rights of others, in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Romania was to pay Mr Brisc 1,825 euros (EUR) in respect of pecuniary damage, EUR 4,500 in respect of non-pecuniary damage and EUR 140 in respect of costs and expenses.

Separate opinion

Judges Yudkivska and Kūris expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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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.