

## Romania, High Court of Cassation and Justice, decision no. 359/2014 of 28 January 2014

### Deciding bodies and decisions

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### Area of law

Freedom of expression - Defamation and libel

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### Subject matter

Which is the balance between freedom of expression and reputation in case of press articles?

What is the standard applicable in case of politicians?

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### Summary Facts Of The Case

The company O.T. S.R.L., the owner of a television channel (O.T.V.), was subject to an administrative fine and to the obligation to make public such sanction, applied by the National Council for Audio-visual (CNA), the Romanian regulatory authority in the field of audio-visual programs.

The company was sanctioned for having presented, during a television show images of the former Romanian prime-minister, E.B., who was filmed naked in the changing room of a fitness gym. The images had been taken from another television, A.1, which had displayed them as well. Apart from presenting the images, the moderator of the show and his guest made various ironical and offensive comments regarding the appearance of the former prime-minister

The CNA concluded that the television had committed a violation of the rules regarding the protection of fundamental rights such as the right to dignity, to private life, honour, reputation and personal image. The television had disregarded the fact that the images presented did not serve the public interest in any way, but referred exclusively to the private life of Mr. E.B.

The High Court of Cassation and Justice, deciding upon the special appeal of the plaintiff O.T.V., denied the appeal and maintained the first-instance decision of the Bucharest Court of Appeal, ruling that the sanctions imposed by the CNA had been lawfully applied.

The Court analysed the right to dignity, private and family life and the right to image and reputation, in balance with the freedom of expression of journalists. In invoking the freedom of expression, the plaintiff relied on both the provisions of article 10 ECHR, as well as those of article 11 CFREU.

Firstly, the Court held that the argument invoked by the plaintiff concerning the fact that the images had already been broadcast by other television channels and that O.T.V. had only re-run them, could not justify the latter's actions, since the liability of each television was to be engaged for the type of images that it presented.

Secondly, the Court rejected the argument of the plaintiff regarding the public interest which would

justify the airing of the images. It concluded that “the nude images of E.B. and the offensive comments regarding his physical aptitudes have nothing to do with any public interest and that exchange of ideas did not include opinions indispensable in a democratic society.” The Court indicated the even though the person pictured was a public person, their political activity is not to be confused with their private life and a reasonable balance should be maintained between the freedom of expression protected by article 10 of the ECHR and article 8 of the same Convention relating to the protection of the right to private life. The Court went on to show that the freedom of expression is not absolute and that its exercise may be limited in the situations indicated at paragraph 2 of article 10 ECHR, even for journalists (who are expected to engage in exaggerations or provocations in relation to the value judgments that they issue in the performance of their activity). It further referred to the ECtHR’s case-law in *Lingens v. Austria*, stating that the “press may not go beyond the limits necessary for the protection of other persons’ reputation; it is incumbent upon it to impart information and ideas on the problems debated in the political arena and in other sectors of public interest”.

Thirdly, with respect to the argument of the plaintiff that the affirmations of the show moderator were value judgments issued in the exercise of his freedom of expression, the Court dismissed this defence. It stated that such a value judgment, as a declaration of a journalist made without any factual basis, is excessive and is not justified by the purpose of article 10 ECHR. Even though the accepted limits of criticism are higher in the case of a politician who acts in such capacity, such person is nonetheless to be protected within the framework of their private life and when their dignity is affected. The Court made reference to the ECtHR’s judgment in the case of *Oberschlick v. Austria* and concluded that in the circumstances of the case, the actions of the television and the commentaries of the show moderator were in violation of the right to private and family life of E.B. and therefore, the CNA sanctions had been lawfully applied.

In light of these arguments, the High Court of Cassation and Justice denied the special appeal and maintained the decision in first instance of the Bucharest Court of Appeal, ruling that the sanctions imposed on O.T.V had been lawful.

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### Relation to the scope of the Charter

The CFREU was invoked by the plaintiff when referring to the application of the freedom of expression, alongside the provisions of article 10 ECHR. In its ruling, the Court did not make a separate analysis of the provisions of the Charter but dealt with the freedom of expression exclusively in reference to the ECHR framework and to the relevant case-law of the ECtHR.

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### Sources - ECHR

ECHR, *Lingens v. Austria* ECHR, *Lingens v. Austria*

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