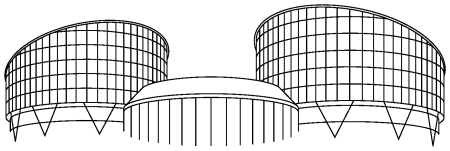

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BROSA v. GERMANY

(Application no. 5709/09)

JUDGMENT

STRASBOURG

17 April 2014

FINAL

17/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Brosa v. Germany,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 5709/09) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Ulrich Brosa ("the applicant"), on 12 January 2009.

2. The applicant was represented by Mr E. Reinecke, a lawyer practising in Cologne. The German Government ("the Government") were represented by their Agent, Mr H.-J. Behrens, *Ministerialrat*, of the Federal Ministry of Justice.

3. The applicant alleged, in particular, that an injunction prohibiting him from distributing a leaflet that he had drawn up on the occasion of mayoral elections had violated his right to freedom of expression enshrined in Article 10 of the Convention.

4. On 5 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Amöneburg.

A. Background to the case

6. In April 2005, the applicant published an article in a local newspaper concerning the political orientation of the *Berger-88-e.V.* association ("the association"). Subsequently, the newspaper published the association's response to that article describing the applicant's statements as "intellectually weak and crude" ("*geistig schwach und primitiv*") and as "pamphlets constituting a public danger" ("*gemeingefährliche Pamphelete*"). The newspaper also published two letters to the editor. One of them was written by F.G., an elected town councillor, who contended that the association had no extreme right-wing tendencies ("*keine rechtsradikale Vereinigung*"). He expressed that it was "unfortunate that [the applicant] again and again manages to publicize his false accusations and to show himself as a pitiful victim" ("[...] *bedauerlich, dass es Herrn Dr. Brosa immer wieder gelingt, seine falschen Anschuldigungen öffentlich zu machen und sich als bedauernswertes 'Opfer' darzustellen* [...]"). He contended that "he [the applicant] had evoked the current situation in particular by his constant spying and false accusations" ("*Die derzeitige Situation hat er insbesondere durch seine ständigen Bespitzelungen und Falschbehauptungen heraufbeschworen* [...].").

7. F.G. was also running for the office of town mayor. In the run-up to the elections the applicant then distributed a leaflet with the headline: "Don't vote for an agitator" ("*Wählen Sie keinen Scharfmacher"*). The text on the leaflet maintained: "Amöneburg is the seat of several neo-Nazi organisations. Particularly dangerous is the Berger-88-e.V., for which F.G. [last name written out] is providing a cover." („*Amöneburg ist Sitz mehrerer Neonazi-Organisationen. Besonders gefährlich sind die Berger-88-e.V., die F.G. deckt."*). The leaflet also showed photos of F.G.'s son, the association's chairman at the time, taken by a security camera on the applicant's property late at night. The applicant explained that he had previously been attacked and that his door had been smashed repeatedly at night.

B. Proceedings before the domestic courts

1. Proceedings before the Kirchhain District Court

8. On 6 July 2005 the Kirchhain District Court, at F.G.'s request, issued a civil injunction prohibiting the applicant from distributing the leaflet and making other assertions of fact (*Tatsachenbehauptungen*) which might depict F.G. as a supporter of neo-Nazi organisations. Any contravention was punishable by a fine of up to 250,000 euros (EUR) or by imprisonment of up to six months. The court reasoned that the assertion that F.G. had covered for a particularly dangerous neo-Nazi organisation had infringed his personality rights. Because of the upcoming elections, the court found that

there was a risk that the applicant might continue to distribute the leaflet or disseminate the allegations in another form.

9. The applicant lodged an objection with the Kirchhain District Court. He submitted, *inter alia*, that the designation "88", standing for the eighth letter of the alphabet [H] as a reference to "Heil Hitler", was displayed by members of the association in runes and thus in a form attributed to neo-Nazism by the German federal domestic intelligence service (*Bundesamt für Verfassungsschutz*). In addition, the association had held a ceremony on the weekend after Hitler's birthday using the colours black, white and red – the national colours of the German empire – for the invitation. In support of his allegations, the applicant referred to the association's statutes and an incident in which members of the association had shouted "Heil Hitler" on the occasion of an Easter bonfire organised by the association. Lastly, he contended that there was no longer any reason for upholding the injunction, as the mayoral elections had taken place in the meantime.

10. In its judgment of 18 August 2005 the Kirchhain District Court upheld the injunction. It found that to claim that someone was supporting a neo-Nazi organisation amounted to an infringement of that individual's honour and social reputation and thus his or her personality rights (*allgemeines Persönlichkeitsrecht*).

11. The court held that the applicant had failed to provide sufficient evidence to support his allegation that F.G. had covered for a neo-Nazi organisation. His submissions were mere conjectures and subjective interpretations. As a consequence, the court held, the applicant could not rely on the notion of freedom of expression enshrined in Article 5 of the Basic Law (see paragraph 19 below).

12. The court reasoned, *inter alia*, that in accordance with its rules, the association had been founded in 1988, even though it had not been registered until 1992. Hence, the reference to the number 88 in the name of the association could not be interpreted as support for neo-Nazism. As regards the Hitler salute on the occasion of the Easter bonfire, the applicant had failed to show that the individuals concerned were "without doubt" members of the association. The court acknowledged that the use of runes might indeed refer to neo-Nazism, but held that that did not suffice to prove that the association was of such a character. Lastly, the court emphasized that the applicant had "confirmed his determination not to let himself be silenced as a critic of the plaintiff". Hence, the court found that the injunction needed to be maintained despite the fact that the mayoral elections had taken place in the meantime.

2. Proceedings before the Marburg Regional Court

13. On 28 June 2006 the Marburg Regional Court dismissed the applicant's appeal against the District Court's judgment. The court noted,

however, that there was no longer a need to adjudicate on the prohibition of further dissemination of the leaflet, as the elections had taken place in the meantime.

14. The Regional Court explained that the leaflet contained two different allegations of fact: firstly, that the association was a particularly dangerous neo-Nazi organisation; and secondly, that F.G. had been aware of that fact but had nevertheless publicly supported the organisation. The applicant had failed to prove that those allegations were true. The court acknowledged that there were several indicators of the association's neo-Nazi character "which, all in all, may lead to the assumption that this is not a mere coincidence". The association therefore had to put up with critical questions. The aforementioned indicators were, however, not "compelling proof" (*zwingender Beweis*) of the association's political orientation.

15. In any case, the court reasoned, the applicant had failed to provide any evidence for the allegation that F.G. had covered for the association. The court interpreted the applicant's statement as an allegation that F.G. had knowledge of the association's neo-Nazi orientation and endorsed it. Referring to the case-law of the Federal Constitutional Court, the Regional Court acknowledged that allegations of fact may fall, as a matter of principle, under the notion of freedom of expression of Article 5 of the Basic Law to the extent that they were aimed at forming public opinion (*meinungsbezogene Tatsachenbehauptungen*). The protection provided by Article 5 of the Basic Law required, however, that the allegations required substantial justification. The letter to the editor written by F.G. did not suffice in that regard.

16. On 19 July 2006 the applicant complained that his right to be heard before the Regional Court had been breached. He complained, *inter alia*, that the court had failed to examine the criminal files against members of the association in order to establish whether they had committed crimes of an extremist political nature.

17. On 22 January 2007 the Regional Court dismissed the applicant's complaint. It held, *inter alia*, that the applicant had not sufficiently substantiated which files should have been examined and in which regard. Where the applicant had offered evidence by specifying a particular file, F.G. had not denied that members of the association, wearing pullovers with the association's insignia, had been present at an election campaign event organised by him. Nor had F.G. denied that certain members of the association had committed crimes, although they were not necessarily of an extremist political nature. Lastly, the court emphasized that according to an assessment by the State domestic intelligence service (*Landesamt für Verfassungsschutz*), the association was a "fraternity" ("*Kerbeburschenschaft*"), which the service would nonetheless "keep an eye on". The Regional Court thus concluded that the applicant might have

raised a suspicion at the most, but had failed to prove the association's neo-Nazi orientation.

3. Decision of the Federal Constitutional Court

18. On 2 March 2007 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He complained that his freedom of conscience, his freedom of expression and his right to a fair trial had been violated. He claimed in particular that the courts had put the onus of proof on him, whereas in the context of the expression of one's opinion it was impossible to provide evidence.

19. On 1 July 2008 the Federal Constitutional Court, without giving reasons, refused to admit the applicant's constitutional complaint for adjudication (file no. 1 BvR 597/07).

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant parts of section 5 of the Basic Law (*Grundgesetz*) read as follows:

> "[Freedom of expression, arts and sciences]
>
> (1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.
>
> (2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour."

21. The claim underlying the injunction was based on an analogy to section 823(1) and (2), read in conjunction with the second sentence of Article 1004 § 1 of the German Civil Code (*Bürgerliches Gesetzbuch*). It is the well-established case-law of the German courts at the highest judicial level that a person whose personality rights are jeopardised by another individual may – under certain specified conditions – lodge a claim against the latter pursuant to these provisions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicant complained that the injunction had breached his right to freedom of expression, as provided for in Article 10 of the Convention, which 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 and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

23. The Government contested that argument.

A. Admissibility

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

25. The applicant contested the domestic courts' qualification of his impugned statements as "allegations of fact" and submitted that they had failed to give any reasons for their contention. Likewise, they had not said what evidence they thought the applicant should have put forward to prove that the association had neo-Nazi tendencies, particularly given the different connotations of the term "neo-Nazi".

26. The applicant emphasised that he was not suggesting that F.G. was a neo-Nazi, but merely that he had covered for the association. The domestic courts had failed to consider the circumstances under which the impugned statements had been made. The applicant stressed that he had participated in a public debate in the run-up to the elections; F.G. had also participated in the debate and had intentionally provoked reactions with his letter to the editor in defence of the association. In addition, the applicant claimed that F.G. had contributed to the overall debate about neo-Nazism in the region.

27. The applicant further submitted that he had provided the factual basis for his value judgment that the association was a particularly dangerous neo-Nazi organisation. He contended that that would have sufficed as proof, even if the impugned statement had to be qualified as an allegation of fact. The applicant concluded that the onus of proof which the

domestic courts had imposed on him was too demanding and could not be complied with in the context of the expression of one's opinion in a public debate.

28. Lastly, the applicant challenged the view that the interference with his freedom of expression had not been particularly serious. He emphasised that the injunction had had a chilling effect on others. In addition, he had been deprived of the opportunity to participate in the political debate in the run-up to the elections.

(b) The Government

29. The Government took the view that the interference with the applicant's freedom of expression had been justified. The domestic courts had struck a fair balance between the applicant's freedom of expression and F.G.'s personality rights on the basis of criteria which were in compliance with the Convention.

30. The Government stressed that the outcome of that balancing process fell within the margin of appreciation accorded to Member States in resolving such conflicting priorities.

31. The Government contended that the domestic courts had correctly categorised the applicant's statements as allegations of fact because they were susceptible to proof of their validity. The evidence submitted by the applicant had been thoroughly assessed by the domestic courts, which had concluded that his allegations had been insufficiently substantiated.

32. The Government submitted that in striking a balance between freedom of expression and personality rights, the latter had – as a rule – to be given priority in the case of untrue or unproven allegations of fact. Such unproven allegations had to be tolerated by individuals whose personality rights were concerned only under special circumstances, which did not exist in the case at issue.

33. Lastly, the Government pointed out that the interference with the applicant's right to freedom of expression had not been particularly serious as he had simply been prohibited from making the impugned statements as opposed to being fined or punished in another way.

2. The Court's assessment

34. The Court emphasises at the outset that freedom of expression, as guaranteed in Article 10 § 1 of the Convention, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Pursuant to Article 10 § 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, for example, *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports of Judgments and Decisions* 1997-IV). Article 10 protects not only the

substance of the ideas and information expressed but also the form in which they are conveyed. This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly (see, among other authorities, *Jerusalem v. Austria*, no. 26958/95, § 32, ECHR 2001-II).

35. The Court notes that it was not disputed between the parties that the injunction constituted an interference with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. Furthermore, there was no dispute that the interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others, within the meaning of Article 10 § 2. The Court endorses that assessment.

36. The dispute in the case thus relates to the question whether the interference was "necessary in a democratic society". The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (see, for example, *Feldek v. Slovakia*, no. 29032/95, § 73, ECHR 2001-VIII, and *Karman v. Russia*, no. 29372/02, § 32, 14 December 2006).

37. The Court reiterates that in assessing whether such a "need" exists and what measures should be adopted to deal with it, namely whether and to what extent an interference with the freedom of expression is necessary, the Contracting States have a certain margin of appreciation. This margin, however, is not unlimited but goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with Article 10 § 2 of the Convention; that is whether the interference at issue was "proportionate" to the legitimate aim pursued and whether the reasons adduced by them to justify the interference are "relevant and sufficient" (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30 (iv), ECHR 2003-XI).

38. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the plaintiff in the domestic proceedings, the subject matter of the publication and the classification of the contested statement by the domestic courts (compare, for example, *Jerusalem*, cited above, § 35, and *Karman*, cited above, § 33).

39. As to the position of the applicant, the Court notes that he is a private individual. The applicant participated, however, in a public discussion on the political orientation of the association. The Court

considers this to be a relevant factor, since by entering the arena of public debate the applicant laid himself open to scrutiny (compare *Jerusalem*, cited above, § 38).

40. As to the position of the plaintiff in the domestic proceedings, the Court notes that F.G. was an elected town councillor who was running for the office of mayor at the material time. As such, he was a member of the municipal government and a candidate in public elections. Thus his position was that of a politician at the local level.

41. The Court reiterates in this respect that the limits of acceptable criticism are wider as regards a politician than as regards a private individual (see *Scharsach and News Verlagsgesellschaft*, cited above, § 30 (iii)). A politician inevitably and knowingly lays himself open to close scrutiny of his every word and must thus display a greater degree of tolerance, especially when he himself makes public statements that are susceptible to criticism. He is certainly entitled to have his reputation protected, even when he is not acting in a private capacity, but the requirements of that protection have to be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression must be interpreted narrowly (see *Oberschlick (no. 2)*, cited above, § 29).

42. The applicant issued a leaflet asking citizens not to vote for F.G. as mayor, primarily on the basis of F.G.'s attitude vis-à-vis an association which the applicant deemed to have an extremist right-wing orientation. The leaflet, disseminated in the run-up to the mayoral elections, set out the applicant's view of a candidate's suitability for the office of mayor and was therefore of a political nature on a question of public interest at the material time and location. The Court reiterates in this connection that there is little scope, under Article 10 § 2 of the Convention, for restrictions on political speech or on debate of questions of public interest (see *Scharsach and News Verlagsgesellschaft*, cited above, § 30 (iii)).

43. As regards the qualification of the impugned statement by the domestic courts, the Court notes that they considered it to consist of two elements: firstly, the allegation that the association was a neo-Nazi organisation that, moreover, was particularly dangerous; and, secondly, the allegation that F.G. had "covered" for the organisation. The Court further observes that the German courts considered both to be allegations of fact without further discussion. The Court reiterates that while the existence of facts can be demonstrated, the accuracy of value judgments is not susceptible to proof. The requirement to prove the accuracy of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see, among many others, *Jerusalem*, cited above, § 42; *Karman*, cited above, § 41).

44. The Court's position is that the differentiation between an allegation of fact and a value judgment finally lies in the degree of factual proof which

has to be established in order for it to constitute a fair comment under Article 10 (see *Scharsach and News Verlagsgesellschaft*, cited above, § 40, and *Krone Verlag GmbH & Co KG and MEDIAPRINT Zeitungs- und Zeitschriftenverlag GmbH & Co KG v. Austria* (dec.), no. 42429/98, 20 March 2003).

45. As regards the first element of the impugned statement – that the association was a particularly dangerous neo-Nazi organisation – the Court observes that the applicant considered that the facts he had presented showed that the association was a neo-Nazi organisation. The impugned statement was thus an expression of the applicant's position on that dispute following his assessment of facts which might be accurate or not. The Court notes in this connection that the Regional Court emphasised that the domestic intelligence service was continuing to monitor the association on suspicion of extremist tendencies, which the Court interprets as a sign of the ongoing debate on the association's political orientation. The Court reiterates that the use of the term "Nazi", like the derivative term "neo-Nazi", is capable of evoking in those who read it different notions as to its content and significance (compare, for the term "Nazi" and its derivative "neo-fascist", *Karman*, cited above, § 40). It cannot be considered as a mere allegation of facts, as it also carries a clear element of value judgment which is not fully susceptible to proof. This is even more the case for the notion of a "particularly dangerous" neo-Nazi organisation. Thus, the Court cannot accept the view of the German courts that the statement that the association was a particularly dangerous neo-Nazi organisation was a mere allegation of fact.

46. Nonetheless, the Court further reiterates that, 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 impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *Jerusalem*, cited above, § 43; *Feldek*, cited above, § 76; and *Karman*, cited above, § 41).

47. The Court notes that the Regional Court acknowledged the existence of several indicators of the association's possible neo-Nazi character which, in the Regional Court's view, "all in all may lead to the assumption that this is not a mere coincidence". Thus, the court admitted, in substance, that the opinion expressed by the applicant was not devoid of a factual basis. The remaining question is whether that factual basis was sufficient.

48. The Court observes that the German courts required "compelling proof" and thereby applied a degree of precision that comes close to the one usually required for establishing the well-foundedness of a criminal charge by a judicial court. The Court reiterates in this context that the degree of precision for establishing the well-foundedness of a criminal charge can hardly be compared to that which ought to be observed when expressing someone's opinion on a matter of public concern. The standards applied

when assessing someone's political activities in terms of morality are different from those required for establishing an offence under criminal law (see, *mutatis mutandis*, *Scharsach and News Verlagsgesellschaft*, cited above, § 43). The Court therefore finds that the German courts required a disproportionately high degree of factual proof to be established.

49. The Court notes that the statement that the association was a neo-Nazi organisation has no relevance on its own, as it was not the association that sought an injunction. Its relevance for the case at hand lies in the interpretation of the term "covered" by the German courts as meaning that F.G. had knowledge of and approved of the association's neo-Nazi orientation. The defamatory character attributed by the German courts to the term "covered" results from the allegation that the association was a neo-Nazi organisation. The Court notes in this connection that the applicant did not insinuate that F.G. was a neo-Nazi.

50. As regards the second element of the impugned statement, the Court observes that the term "covered" refers to the views expressed by F.G. in his letter to the editor. As such, the statement formed part of an ongoing debate. This context was also discernible to the public. The Court notes that the term "covered" was interpreted by the German courts in a restrictive manner contending that F.G. had knowledge of the association's neo-Nazism and endorsed it. It was thus seen as a mere allegation of fact for which no sufficient factual basis existed. The Court, however, cannot endorse that view as, again, it does not take due account of the context in which the statement was made. It rather finds that a sufficient factual basis for the applicant's statement lay in F.G.'s contribution to the debate by way of his letter to the editor emphasizing that the association had no extreme right wing tendencies and calling the applicant's statements "false allegations".

51. Considering that F.G. was a politician at the local level at the material time and that the ongoing debate was being conducted in public and with relatively harsh words from all sides, and given the political context of the upcoming local elections, the Court finds that the applicant's statement did not exceed the acceptable limits of criticism.

52. In conclusion, the Court finds that by considering the impugned statement to be mere allegations of fact requiring a disproportionately high degree of proof to be established, the German courts failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of the personality rights of F.G. above the applicant's right to freedom of expression, even in the context of a civil injunction rather than criminal charges or monetary compensation claims.

53. Under these circumstances, the Court considers that the domestic courts overstepped the margin of appreciation afforded to them and that the interference was disproportionate to the aim pursued and not "necessary in a democratic society".

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Relying on Article 6 § 1 of the Convention, the applicant further complained of a violation of his right to a fair trial, as the domestic courts had refused to hear witnesses and to consult the criminal files of members of the association. Moreover, he complained, under Article 5 of the Convention, that the decisions taken by the domestic courts had encouraged right-wing extremists to commit crimes against him. He also complained, under Article 13 of the Convention, that the Federal Constitutional Court had refused to admit his complaint for adjudication.

56. The Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage. He argued that he lived in a small town of 5,000 inhabitants and that is was particularly problematic for him that he had not received support from the domestic courts.

59. The Government did not comment on the non-pecuniary damage claim.

60. Having regard to the specific circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

61. Submitting documentary evidence, the applicant also claimed EUR 2,683.02 for the costs and expenses incurred before the domestic courts. These comprised court fees as well as lawyer's fees for his counsel and for F.G.'s counsel, as established by the Kirchhain District Court by order of 23 October 2007.

62. The Government did not comment on the costs claimed.

63. 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 have been 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 sum of EUR 2,683.02 for costs and expenses in the domestic proceedings.

C. Default interest

64. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention concerning the injunction admissible and the remainder of the application inadmissible;

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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,683.02 (two thousand six hundred and eighty-three euros and two cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) 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's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President