



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

FOURTH SECTION

CASE OF PERUZZI v. ITALY

(Application no. 39294/09)

JUDGMENT

STRASBOURG

30 June 2015

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

In the case of Peruzzi v. Italy,

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

Päivi Hirvelä, *President*,

Guido Raimondi,

George Nicolaou,

Ledi Bianku,

Paul Mahoney,

Krzysztof Wojtyczek,

Yonko Grozev, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 12 May 2015 and on 9 June 2015,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39294/09) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Piero Antonio Peruzzi (“the applicant”), on 25 May 2009.

2. The applicant was given leave to present his own case in the proceedings before the Court (Rule 36 § 2 *in fine* of the Rules of Court). The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora.

3. The applicant alleged that his conviction for defamation had breached his right to freedom of expression, as guaranteed by Article 10 of the Convention.

4. On 21 May 2014 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in Sant’Angelo In Campo (Lucca).

A. The applicant's "circular letter"

6. In 2001 the applicant was practising law. In September 2001 he sent a letter to the Italian National Legal Service Commission (Consiglio Superiore della Magistratura – the “CSM”) in which he complained about the conduct of a judge, X, at the Lucca District Court. He subsequently transmitted the content of that letter by means of a “circular letter” to a number of judges of the same court, but without expressly referring to X by name.

7. The relevant parts of that circular letter read as follows:

“Before you receive any incorrect or untrue information, before the corporatist spirit prevails over a correct interpretation of the reasons that drove me to write to the CSM, to the Ministry of Justice, to the National Council of Notaries and to the National Bar Council, about the conduct of two judges of the Lucca District Court in the context of a judicial partition procedure to which my clients were parties, and before any of my colleagues come to apologise, on my behalf, for my initiative, perhaps making out that I am insane or irresponsible, my intention is to clarify and tell you the reasons which led me to do so.

An appeal on points of law is pending against a judgment of the Lucca District Court in which that court, ruling against the claims by a female partner and deciding on the related issue of the partition of an inheritance, asked the investigating judge to proceed with the sale of a flat, which was the sole item of property to be divided between the heirs, and which was occupied by the partner and her daughter, an heir, born to the cohabiting couple. Since the judgment of the Lucca District Court was not final, it was not possible to proceed with the sale or to initiate the procedure relating thereto, since this was prohibited expressly by Article 791 of the Code of Civil Procedure.

The other heir, however, applied for ... the sale, and the investigating judge, in spite of our repeated requests for suspension of the sale, which were all rejected, brought about, after two auctions without a buyer, the conveyance of the property to a third party at the third auction.

Here are the specific reasons for which all our requests were rejected:

...

In spite of this, I would like to point out at the outset that I do not feel any animosity towards the judiciary and judges in general, and that I consider, by contrast, that the role played by judges is crucial and irreplaceable for civil society.

There are and have been judges who carry out and have carried out their duties with great dignity and decorum [*decoro*], and who deserve my admiration and the admiration of all those who have worked in the field of justice. None of us can forget Y, who died, one can say, on the ‘battlefield’. I still remember that, in the courtroom, he was the one, out of all his colleagues, who, even in his state of extreme and obvious suffering, took the greatest number cases for adjudication, and he carried on doing this until the bitter end. I confess that if I had been able to spare him the effort, in view of his condition, I would willingly have taken over his workload. But there are other equally deserving judges who work, even during their holidays, going to the office, talking to lawyers, and with whom we can have a form of collaboration and dialogue – and to them I also express my esteem and admiration.

I am well aware that justice is done by men and precisely for that reason decisions may be erroneous and incomplete. I still prefer, however, a human justice to one that is automated.

But what I refuse to accept is the idea that, when the rights of the individual and the dignity of those whose task it is to defend him or her are at stake, those rights could be decided upon in a partial manner, perhaps with a display of arrogance, or that a ruling could be given with total indifference and lack of commitment. I personally believe strongly in the autonomy of the judiciary and I feel that without respect for the autonomy of the person whose task it is to decide, it would be impossible to have dispassionate and fair judgments. Autonomy, however, cannot be turned into an absolute discretionary power because that would be bordering on or tantamount to arbitrariness. I have pointed out how I see the meaning of justice and reiterate that I think very highly of the duties exercised by judges, and that my full admiration goes to those who act with dedication, commitment and decorum [*decoro*].

I am even envious of judges, because they probably have more time to study and to dwell on issues, and also to attend to other cultural and social interests, than lawyers who, by the nature and specificity of their work, do not always manage to do things or to do things well. I often take home things to read and to study and I end up, mid-evening, nodding off over a book after a busy day, running from one office to another in the morning, and answering the phone or receiving clients in the afternoon. I also understand that the judiciary is burdened with work and with problems, that the staffing is insufficient and the workload huge – and for that reason it is true that protests [*esposti*] do not help to get the work done more easily, and that more collaboration and dialogue would be better than protests. There are limits, however, that in my view should not be passed and, after thinking about this for quite some time, I decided to submit this particular protest [the letter to the CSM]. I will now quote the last part of my protest in which I dwell on the meaning of the lawyer's profession and ask whether it is legitimate that any decision or conduct should always be accepted:

‘This lawyer would point out as follows:

It is regrettable to direct this letter against individuals who, even [if they have] different duties, are considered by this lawyer to be “colleagues”, as practitioners in law usually call each other. He considers, however, that he is obliged to do so in response to a lack of commitment and total indifference towards the legitimate demands of the citizen in whose name justice is done, with a belief in impunity, as the position is one of “power”, even though it should be seen as the discharge of a “duty”, and “last but not least”, a lack of respect for the dignity and responsibility of this lawyer's profession.

This lawyer has practised law in courts at three levels of jurisdiction, has borne very high costs on behalf of his clients – to the point where, if one were to apply the professional rate, one would exceed the amount of the claim – has sought, in three statements of claim filed in the Florence Court of Appeal, a stay of execution under Article 373 of the Code of Civil Procedure, but his requests were all rejected by reasoning that leaves much to be desired – but that is not the subject of this protest – has accumulated a formidable pile of documents of all descriptions, and has seen the attachment of funds in respect of his own claim go up in smoke.

In the time it has taken to work on these cases, he could probably have dealt with fifteen ordinary cases of average complexity.

If work – any type of work, provided it is lawful – has its own protection and its own dignity, then the judge too (more than any person, as a result of his function and role) cannot but allow himself not to respect for the work of others, including that of the lawyer.

As a legal practitioner, this lawyer has a duty to provide some certainty to his client, who is the citizen in whose name justice is done (judgments are headed “In the name of the Italian People”).

What certainty can the lawyer provide if each judge, instead of applying the law, gives his preferred interpretation and does not even explain his interpretation of the laws in question? It should be noted that the system of appeals and claims is no guarantee for the citizen. Judges are only human and can make mistakes (*errare humanum est*), but they cannot and must not wilfully make mistakes, by malicious intent, serious misconduct or negligence, and the citizen must have his or her claims upheld, provided they are well founded, from the earliest stage. There are a large number of cases; this can be explained by the fact that if many decisions had been taken correctly from the outset, one could have avoided the proliferation of cases, procedures and claims, as can be seen here; and not forgetting the many cases where the citizen, disappointed and bemused to receive abnormal decisions, having lost all confidence in the justice system, decides not to appeal. This entails a justified loss of confidence in the courts and an increase in workload and expense for the State, because of the extra work for other judges, registries and bailiffs.

And what justification and explanation could be given by the lawyer to this client, to whom he had predicted a certain result, with all due caution, only to present a decision by the judge that is diametrically opposed to that which he predicted?? If that is the result of an error, or a lack of knowledge or commitment or analysis on the part of the lawyer, he should take responsibility for it; but when this depends on the judge, it is damaging to the lawyer because the client will necessarily have a negative opinion of the lawyer’s work. Are clients and citizens capable of understanding whether it is the lawyer or the judge who has made a mistake and to what extent?? If the lawyer does not obtain appropriate results with legal argument, what other means are available?? What must the lawyer do to obtain something to which he is professionally entitled?? ... Or should the lawyer not make life difficult for himself and carry on regardless, tending to his garden [*il suo orticello*], while protecting his head from any tiles that might fall off the roof – because on the one hand he is not protected and on the other he is at the mercy of another person’s discretionary power?? ... Without any regard for his own professional dignity?? ...

When this letter reaches you I will be undergoing a medical operation. I am sorry that, for the time being, I cannot provide any further clarification or explanations to those who may wish them. I am however ready, if necessary, to answer for my conduct and to provide any clarification that may be requested of me after my operation, when I am in a better state of health again.”

B. First-instance proceedings

8. Finding that certain expressions used in the circular letter had impugned his reputation, X filed a criminal complaint for defamation against the applicant.

9. As X was a judge in Lucca, the file was transferred, under Article 11 of the Code of Criminal Procedure, to the judicial authorities of Genoa.

10. On 13 February 2003 the Genoa public prosecutor requested that the applicant be committed to stand trial before the court of that city.

11. X joined the criminal proceedings against the applicant as a civil party.

12. According to the charge, in the circular letter the applicant had expressed admissible (*lecite*) criticism in so far as he spoke about interpreting and performing the work of a judge, but had then overstepped the limits to his freedom of expression by writing the following sentences in particular:

(a) “Autonomy ... cannot be turned into an absolute discretionary power because that would be bordering on or tantamount to arbitrariness”.

(b) “... in a partial manner, perhaps with a display of arrogance, or ... a ruling ... given with total indifference and lack of commitment”.

(c) “... the judge ... cannot allow himself not to respect the work of others, including that of the lawyer”.

(d) “Judges are only human and can make mistakes ... but they cannot and must not wilfully make mistakes, by malicious intent, serious misconduct or negligence”.

13. At the hearing of 4 March 2004 the representative of the public prosecutor’s office stated that the applicant also had to be charged with proffering insults, given that it transpired from X’s statement that he had been one of the recipients of the circular letter.

14. In a judgment of 3 February 2005, deposited in the court’s registry on 11 February 2005, the Genoa District Court convicted the applicant of defamation and proffering insults and sentenced him to four months’ imprisonment and to the reimbursement of X’s court costs (amounting to 2,000 euros (EUR)) with reparation for the damage sustained by X. The amount of that damage was to be fixed in separate civil proceedings; the court nevertheless awarded X an advance payment (*provisionale*) of EUR 15,000.

15. The District Court observed that it was not in dispute that the applicant had written the circular letter and had asked his secretary to send copies to the judges in the civil divisions of the Lucca District Court. During the proceedings, the applicant had filed pleadings and had made spontaneous statements. His arguments in defence had not, however, made it possible to disregard the offensive nature of the expressions used in the circular letter, exacerbated by the fact that he was a lawyer. In his letter, the applicant had stated that he had the greatest respect for the judiciary and for judges who carried out their duties with “dedication, commitment and decorum”. But he was clearly not talking here about X, who had been accused by the applicant of being arrogant and indifferent, of believing that he was immune because he held a position of power, and of having committed wilful mistakes, by malicious intent, serious misconduct or negligence. Those accusations could be explained not by X’s inaction in the

handling of a case, but by the decisions taken by X in a case where the applicant's requests had been rejected. Instead of reiterating his legal arguments, the applicant had overstepped the limits of his right to criticism, alleging that X had erred "wilfully", thus seriously impugning the honour of the judge in question.

16. According to the District Court, the subject of the accusations contained in the circular letter could only have been X, as shown by similar letters, which expressly referred to that judge, addressed by the applicant and his clients to the CSM, the Ministry of Justice, the National Council of Notaries and the National Bar Council.

17. The applicant's defence (*esimente*) of provocation (Article 599 of the Criminal Code) was not accepted. Even supposing that the decisions of X could be regarded as "unfair acts", the circular letter, sent about four months after those decisions, did not constitute an immediate reaction to them.

C. Court of Appeal proceedings

18. The applicant lodged an appeal.

19. He alleged, among other things, that the offences he was said to have committed were punishable merely by a fine, that the sentence imposed on him had been disproportionate and that the advance he had to pay was excessive. Moreover, in his complaint X had not mentioned that he himself had been a recipient of the circular letter, thus ruling out the charge of proffering insults. The applicant also argued that it could not be seen from the text of the letter that the criticism was directed at X and that this document, when assessed as a whole, was merely a manifestation of his frustrations about the shortcomings of the justice system in general.

20. Lastly, in the alternative, he took the view that his defence of provocation was valid. He argued that, in the proceedings for the partition of an inheritance, X had on a number of occasions rejected his requests for the suspension of a sale by auction of the flat in question, and that X's decisions had subsequently been overturned by another judge.

21. At the hearing of 12 March 2007, the applicant stated that it had not been his intention to offend X personally and he produced documents as evidence of his ill-health.

22. In a judgment of the same day, deposited in the court's registry on 2 April 2007, the Genoa Court of Appeal ruled that no prosecution could be brought on a charge of proffering insults, as there had been no criminal complaint on that ground, and reduced the sentence for the offence of defamation to a fine of EUR 400. It stated that this sentence was fully remitted (*condonata*), and ordered the applicant to make reparation for the damage sustained by X, which it assessed at EUR 15,000, and to reimburse X's court costs in the appeal proceedings (EUR 2,000).

23. The Court of Appeal observed that, in the first part of his circular letter, the applicant had recounted the tribulations of the partition proceedings in which X had taken the impugned decisions. He had added that he regretted having to make complaints about certain individuals (X and another judge) whom, even though they had different duties from his own, he regarded as “colleagues”. In addition, the judges of the Lucca District Court, giving testimony in the first-instance proceedings, had had no difficulty in identifying X as the addressee of the criticisms in the circular letter. In those circumstances, the applicant’s argument that the letter was merely a manifestation of his discontent about the justice system in general could not be accepted.

24. In the Court of Appeal’s view, the decisions taken by X in the context of the inheritance partition proceedings could, at most, be regarded as “erroneous” but not as “unfair”. The court also pointed out that one of the questions at the heart of the dispute (the existence of inheritance rights in favour of the partner) had been settled by the Court of Cassation differently from the applicant’s proposed solution. The National Bar Council had in fact noted that the applicant’s letters could have been seen as a means of pressure against the judges concerned.

25. According to the Court of Appeal, the applicant had not expressly challenged the part of the first-instance judgment considering that the expressions contained in the circular letter had overstepped the limits of the right to criticise.

26. The applicant, who had no criminal record, had to be allowed the benefit of mitigating circumstances, and under Article 52 of Legislative Decree no. 274 of 2000 (see paragraph 32 below), the penalty for defamation was now a mere fine (and not a custodial sentence).

27. The Court of Appeal observed that the distribution of a letter such as that sent by the applicant, within a small court, could not but impugn the dignity of the judge against whom it was directed and his image as an independent judge. The expressions used by the applicant, outside any procedural act, sought to call into question the professional conduct of X, who was portrayed, within a restricted community, as a partial and soft judge. In the light of those considerations, the Court of Appeal, ruling on an equitable basis, awarded the civil party EUR 15,000 in non-pecuniary damage.

D. Appeal on points of law

28. The applicant appealed on points of law.

29. He reiterated his grievances and, referring to a particular passage in his grounds of appeal, stated that the Court of Appeal had made a mistake in asserting that the defendant had failed to challenge the finding about the offensive nature of the expressions contained in the circular letter. In any

event, the judge had been required, at all stages of the proceedings, to verify of his own motion whether or not the criminal charge in question was made out.

30. In a judgment of 12 November 2008, deposited in the court's registry on 17 December 2008, the Court of Cassation, finding that the Court of Appeal had given logical and correct reasoning in respect of all the contentious points, dismissed the applicant's appeal on points of law.

II. RELEVANT DOMESTIC LAW

31. Article 595 of the Criminal Code provides for the offence of defamation. The relevant parts of that Article read as follows:

“Anyone who ..., in communication with more than one person, offends against the reputation of another, shall be punished by one year's imprisonment or by a fine of up to EUR 1,032.

Defamation which consists in imputing a particular fact shall be punished by up to two years' imprisonment or by a fine of up to EUR 2,065.

Defamation which is disseminated by the press or any other form of publicity, or in a public document, shall be punished by imprisonment of between six months and three years or by a fine of at least EUR 516.

In the event of defamation against a member of a political, administrative or judicial authority, or one of its representations ..., the sentences shall be increased.”

32. Legislative Decree no. 274 of 28 August 2000 (Article 4 § 1 (a)) gave jurisdiction to the Justice of the Peace in matters of defamation, among others. Article 52 § 2 (a) reads as follows:

“In respect of ... offences within the jurisdiction of the Justice of the Peace, the sentences shall be converted as follows:

(a) where the offence is punished by a sentence [of imprisonment] as an alternative to that of [a fine], a pecuniary sanction ... of between 500,000 and 5,000,000 lira shall be applied; if the custodial sentence is higher than a maximum of six months, the applicable sanction shall be the above-mentioned fine, or home detention of between six and thirty days, or a period of community service of between ten days and three months;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicant argued that his conviction for defamation had breached 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.”

34. The Government challenged that argument.

A. Admissibility

35. The Court finds 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

36. The applicant submitted that he had been convicted on account of a letter in which he had set out his thoughts on the different ways of interpreting and exercising the duties of a judge. His assessments had not been interpreted in line with their real meaning and had been connected to a subject, X, who was not the actual target. According to the applicant, there was no evidence that he intended to impugn the reputation and integrity of X. Moreover, the anomaly in the Italian justice system whereby judges were not *de facto* accountable for their conduct had been underlined by many European decisions, by books and by websites. It was the court system as a whole, and not X, which had been the target of the applicant's criticism.

37. The applicant further observed that Genoa District Court had given him a custodial sentence not prescribed by law, and that although he had no criminal record he had not been granted general mitigating circumstances (*attenuanti generiche*). The applicant alleged that he had sent his circular letter to a number of judges at Lucca District Court solely to avoid undermining the reciprocal relationships of friendship and esteem between him and those judges, and to protect himself against any distortion of the content of his letter to the CSM. He also stated that the conduct of X, who

had refused any attempt to reach a friendly settlement to the dispute, had been driven by feelings of animosity towards him.

(b) The Government

38. The Government took the view that the interference with the applicant's right to freedom of expression pursued the legitimate aims of the protection of the "reputation or rights of others" and of the "authority and impartiality of the judiciary". They argued that it was also necessary in a democratic society, because the expressions used by the applicant in his circular letter had been offensive and had sought to denigrate X, who had been accused, in substance, of deliberately and knowingly taking an unfair decision, and of being arrogant, lacking in commitment and indifferent. X had thus been portrayed negatively and as a judge who showed total disregard for the fundamental ethical principles of his profession.

39. In the Government's opinion, the applicant's attitude could not be justified in the light of the judicial disagreement which lay behind his animosity towards X. In addition, the Court of Appeal had acknowledged the existence of mitigating circumstances in the applicant's favour and reduced the amount of the sanction imposed on him at first instance.

40. In the light of the foregoing, the Government took the view that in sentencing the applicant, the domestic courts, which were better placed than the international court to assess the facts and the necessity of the interference, had not overstepped their margin of appreciation in such matters. If there had been a violation of the Convention, it had been committed by the applicant, who had unduly impugned the reputation of X, protected as it was by Article 8.

2. The Court's assessment

(a) Whether there has been an interference

41. It is not in dispute between the parties that the applicant's conviction constituted an interference with his right to freedom of expression under Article 10 § 1 of the Convention (see, *mutatis mutandis*, *Belpietro v. Italy*, no. 43612/10, § 43, 24 September 2013).

(b) Whether the interference was justified: "prescribed by law" and "legitimate aim"

42. An interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve the relevant aim or aims (see

Pedersen and Baadsgaard v. Denmark, no. 49017/99, § 67, ECHR 2004-XI, and *Ricci v. Italy*, no. 30210/06, § 43, 8 October 2013).

43. It is not in dispute that the interference was prescribed by law, namely by Article 595 of the Criminal Code (see paragraph 31 above) and Article 52 § 2 (a) of Legislative Decree no. 274 of 2000 (see paragraph 32 above). The applicant's conviction pursued the legitimate aim of protecting the reputation and rights of another, in this case those of X (see, *mutatis mutandis*, *Nikula v. Finland*, no. 31611/96, § 38, ECHR 2002-II; *Perna v. Italy* [GC], no. 48898/99, § 42, ECHR 2003-V; *Ormanni v. Italy*, no. 30278/04, § 57, 17 July 2007; and *Belpietro*, cited above, § 45). It also had the aim of "maintaining the authority and impartiality of the judiciary", of which X, a judge, was a member (see, for example and *mutatis mutandis*, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 168, ECHR 2005-XIII; *Foglia v. Switzerland*, no. 35865/04, § 83, 13 December 2007; *July and SARL Libération v. France*, no. 20893/03, § 59, ECHR 2008; and *Di Giovanni v. Italy*, no. 51160/06, § 74, 9 July 2013).

44. It remains to be ascertained whether the interference was "necessary in a democratic society".

(c) "Necessary in a democratic society"

(i) General principles

45. In order to determine whether the interference was "necessary in a democratic society", the Court must ascertain whether it met a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I; *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII; and *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-V).

46. The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they have delivered pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State has exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the remarks held against the applicant and the context in which they were written (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

47. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference are “relevant and sufficient” and whether the interference was “proportionate to the legitimate aims pursued” (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In so doing, the Court has to satisfy itself that the national authorities, basing their decisions on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII; *De Diego Nafria v. Spain*, no. 46833/99, § 34, 14 March 2002; and *Pedersen and Baadsgaard*, cited above, § 70).

48. In order to assess the justification for a given statement, it is necessary to distinguish 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 (see *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 33, *Reports* 1997-IV) and in such cases a requirement to provide proof is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Morice v. France [GC]*, no. 29369/10, § 155, ECHR 2015). The characterisation of remarks as statements of fact and value judgments falls primarily within the ambit of the margin of appreciation afforded to national authorities, in particular the domestic courts (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 36, Series A no. 313). However, even where a statement amounts to a value judgment, it must have a sufficient factual basis to support it, otherwise it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II, and *Ormanni*, cited above, § 64).

49. In addition, the existence of procedural safeguards for the benefit of a defendant in defamation proceedings is among the factors to be taken into account in assessing the proportionality of an interference under Article 10. In particular, it is important for the defendant to be afforded a realistic chance to prove that there was a sufficient factual basis for his allegations (see, *inter alia*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II; *Hasan Yazıcı v. Turkey*, no. 40877/07, § 54, 15 April 2014; and *Morice*, cited above, § 155).

50. A particular aspect of the present case is that, at the material time, the applicant was a lawyer and his dispute with X had arisen in the context of his professional activity. In its *Nikula* judgment (cited above, § 45; see also *Steur v. the Netherlands*, no. 39657/98, § 36, ECHR 2003-XI, and *Fuchs v. Germany* (dec.), nos. 29222/11 and 64345/11, § 39, 27 January 2015), the Court summarised as follows the specific principles applicable to the legal professions:

“The Court reiterates that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar.

Moreover, the courts – the guarantors of justice, whose role is fundamental in a State based on the rule of law – must enjoy public confidence. Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein (see *Schöpfer v. Switzerland*, judgment of 20 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1052-53, §§ 29-30, with further references).”

51. In addition, in the case of *Morice* (cited above, §§ 134 and 139), the Court observed that: (a) lawyers are entitled to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds in order to protect the judiciary from gratuitous and unfounded attacks, which may be driven solely by a wish or strategy to ensure that the judicial debate is pursued in the media or to settle a score with the judges handling a particular case; (b) lawyers cannot make remarks that are so serious that they overstep the permissible expression of comments without a sound factual basis; and (c) remarks by lawyers must be assessed in their general context, in particular to ascertain whether they can be regarded as misleading or as a gratuitous personal attack, and to ensure that the expressions used had a sufficiently close connection with the facts of the case.

52. It is also necessary to take into account that the defamed party, X, was a serving member of the judiciary. According to the Court’s case-law, the limits of acceptable criticism may in some circumstances be wider with regard to judges acting in their official capacity than to ordinary citizens (see *Morice*, cited above, § 131). However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions. Civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks. It may therefore prove necessary to protect them from offensive and abusive verbal attacks in the course of their duties (see *Janowski*, cited above, § 33, and *Nikula*, cited above, § 48).

53. It should lastly be reiterated that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference (see, for example, *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; and *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 113-115, ECHR 2004-XI).

(ii) *Application of those principles to the present case*

54. The Court notes at the outset that the applicant argued, both before it (see paragraph 36 above) and before the domestic courts (see paragraph 19 above), that the criticisms in his circular letter were not directed at X but at the Italian judicial system as a whole. The Court cannot agree with this

argument. It observes in this connection that the letter in question (see paragraph 7 above) contained express references to the letter that the applicant had sent to the CSM to complain about the conduct of X, and that passages from that letter had been quoted *in extenso*. In addition, the applicant summed up the main aspects of the judicial dispute in the context of which, according to him, X had taken unfair decisions, of which the reasons were briefly set out.

55. The applicant's circular letter was divided into two parts: the first part contained an account of the decisions taken in the partition procedure; the second contained considerations on behaviour from which judges should refrain and its consequences. In the Court's view, even though the second part of the letter was drafted in the form of "general considerations", it can be interpreted only as a criticism of the conduct of the judge, X, who, without being expressly mentioned is the protagonist in the account which constituted the "premise" of the applicant's observations and assessments.

56. In those circumstances, the Court shares the findings of the District Court and the Genoa Court of Appeal (see paragraphs 16 and 23 above) according to which X was certainly the subject of the grievances set out in the circular letter. It remains to be determined whether the remarks in question overstepped the bounds of admissible criticism in a democratic society.

57. It can be seen from the text of the circular letter (see paragraph 7 above), that in substance the applicant reproached X on two accounts: (a) for taking unfair and arbitrary decisions, and (b) for being a "biased" judge and for having "wilfully made mistakes, by malicious intent, serious misconduct or negligence".

58. In the Court's view, the first criticism amounts to a value judgment as to the nature and legal basis of the decisions taken by X. As indicated in paragraph 48 above, according to the Court's case-law the truth of such opinions is not susceptible of proof. Moreover, they had a certain factual basis. In particular, the applicant had been the representative of one of the parties to judicial proceedings for the partition of an inheritance. In the context of those proceedings, the applicant had on a number of occasions sought to have the sale of a flat suspended, and his requests had been dismissed by X on the basis of reasoning which, according to the applicant's subjective opinion, was erroneous and contrary to the law.

59. The Court, therefore, cannot consider the first criticism to be excessive (see, *mutatis mutandis*, *Morice*, cited above, §§ 156-61, where the Court found that criticisms made by the lawyer acting for the civil party about the conduct of the investigating judges during the judicial investigation were value judgments with a sufficient factual basis).

60. The same cannot be said, however, when it comes to the second criticism, namely that X was a "biased" judge who had "wilfully made mistakes, by malicious intent, serious misconduct or negligence". This

criticism implied that X had disregarded the ethical obligations inherent in the duty of a judge, or even that she had committed a criminal offence. The adoption by a judge of a deliberately erroneous decision could constitute an abuse of authority. In any event, the circular letter alleged that X did not have the qualities of impartiality, independence or objectivity – qualities which characterise the exercise of judicial activity. However, the applicant never sought to prove the veracity of the conduct attributed to X and adduced no evidence to show any malicious intent in the decisions that he contested. In the Court's view, his allegations of misconduct on the part of X were based only on the fact that the judge had dismissed the claims he had submitted in the interest of his clients (contrast *Morice*, cited above, §§ 156-61). It is also noteworthy that the applicant, who had referred a complaint against judge X (see paragraph 6 above), sent out his circular letter without waiting for the outcome of the CSM proceedings.

61. In defending himself before the domestic courts, the applicant merely argued that his criticisms had not been directed at X in person (see, *mutatis mutandis*, *Perna*, cited above, §§ 44-47, and *Fuchs*, decision cited above, § 41; see also, by contrast, *Nikula*, cited above, § 51, where the Court observed that the applicant's criticisms had only concerned the manner in which a public prosecutor had discharged his duties in a given court case, and not any professional or other qualities of the prosecutor in question). The Court, however, has already dismissed that argument (see paragraphs 54-56 above).

62. The Court also takes account of the context in which the circular letter was written and distributed. In this connection it would first note that the applicant's criticisms were not made at the hearing or in the course of the judicial proceedings for the partition of an inheritance. In that sense the present case can be distinguished from *Nikula*, cited above (see, in particular, paragraph 52), where the Court found a violation of Article 10 of the Convention.

63. The Court further observes that, outside the judicial procedure, the applicant sent his circular letter to X in person (see paragraph 13 above) and to many other judges at the Lucca District Court (see paragraph 6 above). As the Genoa Court of Appeal rightly observed (see paragraph 27 above), the distribution of the letter within a small community, such as that of a local court, would inevitably harm the reputation and professional image of the judge concerned.

64. Lastly, the Court notes that, while it is true that at first instance the applicant was given a custodial sentence, without the benefit of mitigating circumstances in view of his clean criminal record, that sanction was replaced on appeal by a small fine of EUR 400, which, moreover, was declared fully discharged (see paragraph 22 above). In addition, that mitigation was applied by the judges at second instance (see paragraph 26

above) and the amount of the compensation awarded to X (EUR 15,000) cannot be regarded as excessive.

65. The Court would further observe that, in cases such as the present one, which call for a fair balance to be struck between the right to respect for private life and the right to freedom of expression, it takes the view that the adjudication of the application should not in principle vary depending on whether it has been lodged under Article 8 by the person criticised or under Article 10 by the author of the criticism. The two rights merit, in principle, equal respect (see *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 41, 23 July 2009; *Timciuc v. Romania* (dec.), no. 28999/03, § 144, 12 October 2010; and *Mosley v. the United Kingdom*, no. 48009/08, § 111, 10 May 2011). Accordingly, the margin of appreciation should, in principle, be the same in both cases. If the striking of a balance by the domestic courts is consistent with the criteria established by the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, ECHR 2011, and *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 8 January 2011). In the Court's view, there are no such reasons in the present case (see, *mutatis mutandis*, *Di Giovanni*, cited above, § 82).

66. Having regard to the foregoing, the Court finds that the applicant's conviction for the defamatory remarks contained in the circular letter and the sanction imposed on him were not disproportionate to the legitimate aims pursued and that the grounds given by the national courts were relevant and sufficient for the purposes of justifying those measures. The interference with the applicant's right to freedom of expression was "necessary in a democratic society" in order to protect the reputation of others and to maintain the authority and impartiality of the judiciary within the meaning of Article 10 § 2.

67. It follows that there has been no violation of Article 10.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention.

Done in French, and notified in writing on 30 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Wojtyczek and Grozev is annexed to this judgment.

P.H.*.
F.E.P.*.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK AND GROZEV

(Translation)

1. We cannot agree with the view expressed by the majority that there has been no violation of Article 10 of the Convention in the present case.

2. The applicant submitted his complaint alleging a violation of his freedom of expression in the context of a conflict between the rights of two individuals, namely between his own freedom of expression and the right of another person to the protection of his reputation. Moreover, the majority have emphasised the fact that the interference with the applicant's freedom of expression sought to "maintain the authority and impartiality of the judiciary", of which X was a member.

There is no doubt that the need to protect the reputation of others justifies certain restrictions on freedom of expression. A person's reputation must be protected effectively and any damage caused to it must entail a sanction. In situations of conflict between rights, the national authorities must carefully weigh up the rights in question and seek solutions whereby the rights are upheld to the highest degree possible. In any event, as the majority have observed, any interference with a right must always be justified by relevant and serious reasons, and remain proportionate to the aim pursued.

3. In its case-law the Court has identified a certain number of factors which must be analysed in order to determine whether a restriction on freedom of expression is justified (see, in particular, *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 109-113, ECHR 2012, and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012). Among these factors can be mentioned in particular: the question whether the remarks in question contribute to a public debate; the content, form and consequences of the remarks; the conduct of the person affected; and the severity of the sanction imposed.

In the present case, the reasoning of the judicial decisions delivered in Italy appears not to have taken those various factors into account. The Italian courts confined themselves to establishing that the applicant had actually made the offending remarks, that those remarks had been disseminated among the judges of the court in question, and that they were directed at a particular judge in that court. They further took the view that the remarks had overstepped the permissible limits. But no analysis of the relevant circumstances, as identified in the Court's case-law, was carried out. The methodology applied by the domestic courts does not meet the requirements of Article 10 of the Convention, as interpreted by the Court. In particular, the reasons given by the national courts cannot be regarded as satisfactory in terms of the requirement to give relevant and serious reasons in order to justify any interference with the right to freedom of expression.

4. In assessing restrictions on freedom of expression, it is necessary to pay particular attention to the content of the impugned remarks and especially to consider whether the person concerned was mentioned by name and whether any conduct likely to damage his or her reputation was clearly attributed to that person. While a false insinuation may have extremely serious consequences for the reputation of the individual concerned, the fact that he or she is not expressly named may nevertheless, in certain situations, limit the effects of the remarks.

In examining the compatibility of an interference with the requirements of Article 10 § 2 of the Convention, it is also necessary to determine the actual consequences of the remarks. To that end one must take account of the type of readership or audience for which the remarks are intended, and in particular the number and profession of the addressees. We observe that the domestic courts did not take these factors into consideration, even though they were crucial for the examination of the case. We also regret that the majority paid no heed to these questions.

5. We would observe that, in the present case, the applicant decided not to mention the judge expressly by name, leaving a certain ambiguity about the identity of the person concerned. Moreover, the conduct imputed to judge X was presented as follows: “wilfully mak[ing] mistakes, by malicious intent, serious misconduct or negligence”. The remarks combined observation of certain facts and subjective assessment of those facts. The way in which the applicant expressed his remarks somewhat lessened their forcefulness.

We would also note that the impugned remarks were addressed to a restricted and specific readership, consisting only of judges. The general public were not informed of the content of the allegations disseminated to those judges. In that context, there are three major points to be highlighted. Firstly, the various professional groups are often bound together by a corporatist spirit and solidarity, thus affecting the way they perceive criticisms against their members. Secondly, judges are naturally very wary about remarks that are not supported by convincing evidence. Thirdly, judges are used to receiving complaints – sometimes very aggressive ones – from individuals who are unhappy with judicial decisions, or indeed from their lawyers. In most cases such complaints have no concrete impact on the image of the judge thus criticised. These various factors related to the specificity of the readership considerably lessen the consequences of the applicant’s remarks. It is questionable whether his letter had a real impact on the image of the judge concerned among that judge’s colleagues.

6. Criminal proceedings were brought against the applicant and he was sentenced to a fine of 400 euros for committing a criminal offence. In addition, the domestic courts awarded the complainant judge 15,000 euros in damages, which is a significant sum. In our view, having regard to the nature of the remarks made and the specificity of the very limited

readership, the sanction applied, seen in the whole context, is manifestly disproportionate in the circumstances of the case.

7. The majority justify the interference with the applicant's freedom of expression not only by the need to protect a person's reputation but also by the need to maintain the authority of the judiciary. In this perspective, the interference in question was supposed to contribute to protecting the authority of the justice system in Italy. In our opinion, on this point, given the specific aspects of the case mentioned above, the interference with the applicant's freedom of expression is likely to have quite the opposite effect.