



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

## FIRST SECTION

### CASE OF MESIĆ v. CROATIA

*(Application no. 19362/18)*

## JUDGMENT

Art 10 • Freedom of expression • Justified civil defamation award, after former State President's statement that an advocate needed psychiatric treatment for implicating him in a criminal complaint • Balancing exercise between Arts 8 and 10 rights carried out by Court given failure of domestic courts to do so • Words spoken by high-ranking State officials carrying more weight and capable of greater harm to reputation of others • Statement widely distributed, when advocate was not in a position to reply, and capable of having "chilling" effect on the exercise of his professional duties  
Art 6 § 1 (civil) • Reasonable time • Excessive length of appeal proceedings

STRASBOURG

5 May 2022

**FINAL**

**05/09/2022**

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



**In the case of Mesić v. Croatia,**

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

Péter Paczolay, *President*,

Ksenija Turković,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 19362/18) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Stjepan Mesić (“the applicant”), on 19 April 2018;

the decisions to give notice to the Croatian Government (“the Government”) of the complaints concerning the freedom of expression and the excessive length of proceedings and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Mr Ivan Jurašinović, the National Bar Council (*Conseil National de Barreaux*) and the Paris Bar Association (*Ordre des avocats du barreau de Paris*) who were granted leave to intervene by the Vice-President of the Section;

Having deliberated in private on 9 November 2021 and 5 April 2022,

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

## INTRODUCTION

1. The case concerns civil proceedings for defamation in which the applicant – a former President of Croatia – was ordered to pay 50,000 Croatian kunas (HRK; approximately 6,660 euros (EUR) at the material time) to a French advocate of Croatian origin, for tarnishing his reputation.

## THE FACTS

2. The applicant was born in 1934 and lives in Pušća. He was represented by Mr Č. Prodanović, an advocate practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was the President of the Republic of Croatia in the period between 19 February 2000 and 18 February 2010.

## I. EVENTS GIVING RISE TO THE DISPUTE

6. On 15 September 2006 Mr Ivan Jurašinović, an advocate of Croatian origin who was at the time practicing in Angers (France), as the legal representative of a certain Mr M.T., lodged a criminal complaint with the investigating court in Nanterre against a certain Mr M.N. and ten other Croatian nationals, including the applicant, in respect of two counts of the attempted murder of his client and one count of attempted extortion by a criminal organisation. Among the accused was also a certain Mr H.P., who was at the time in the Croatian media portrayed as a well-known mafia boss, and was thus perceived as such by the general public. According to the Croatian media, M.T. was a former member of Croatian secret services and arms dealer.

7. In his third-party comments before the Court (see paragraphs 64-73 below), Mr Jurašinović stated that in the criminal complaint in question his client had maintained that H.P. had financed the applicant's election campaign in 2000 and had mentioned the name of the agent of the French security service who had provided him with information to that effect. Mr Jurašinović in his comments before the Court reproduced the relevant part of the said complaint concerning the applicant, who had been accused as being an accomplice in the attempted murder and in the extortion of his client. The relevant part of the criminal complaint read as follows:

“There is therefore sufficient evidence to suspect H.P. and V.Z. of being the sponsors of the assassination attempt against my client, M.N. being the executioner.

In so far as the meetings of this mafia organisation are regularly organised [at the address] Pantovčak 28, the headquarters of the company O. – meetings in which Stipe Mesić participates – it follows that Stipe Mesić is the head of this mafia organisation.

My client has become convinced, and intends to demonstrate this in the course of the upcoming investigation, that Stipe Mesić is leading this mafia organisation ...”

8. On 10 November 2006, the daily newspapers *Novi List* and *Glas Istre* each published an article on their websites in which they reported that Mr Jurašinović had lodged the above-mentioned criminal complaint in relation to attempts to murder his client, M.T. in respect of which the applicant had been mentioned as a “sort of a political patron of the person who ordered the murder, who according to the complaint is [H.P.]” The article posted on the *Novi List* website was entitled “The President [named] in the [criminal] complaint, together with [H.P.] and [M.N.]” and the article posted on the *Glas Istre* website was entitled “Mesić reported for attempted murder”.

There is no evidence to suggest that the exact content of the criminal complaint, as stated above (see paragraph 7), was known to the media.

9. In both articles it was stated, *inter alia*, that journalists had contacted Mr Jurašinović by phone and that he had confirmed that the criminal complaint had indeed been lodged, but that he did “not want to go into details, explaining that he is anyway not allowed to do so under French law”. Both articles also reported that Mr Jurašinović had specified that he had lodged the criminal complaint in the name of his client.

10. In his comments before the Court (see paragraphs 64-73 below), Mr Jurašinović gave further context as to why the media had paid such attention to the criminal complaint that he had lodged on behalf of his client. In his view the media scrutiny had been due to the fact that in early November 2006 another political figure, a certain Mr I.P., had accused the applicant in the media of being responsible for an attempt on his life, after an unknown individual had thrown two hand grenades at his house.

11. On the same day the above articles (see paragraph 8 above) were published; during a televised press conference organised in the course of a visit paid by the applicant to Našice, journalists asked him to comment on the content of those articles. The applicant stated that he had met H.P. only twice in his life “by chance, in passing” and that he did “not have any connection with him at the time”. Then he added:

“Why this advocate who lodged the criminal complaint says that I am [H.P.’s] political patron is probably known only to him, but I would suggest to him that he visit Vrapče [a psychiatric hospital] when he comes to Zagreb because people [such as him] can receive effective treatment there. It is a great opportunity; it won’t cost him a lot and our physicians are known for their efficiency.”

12. This statement was reported on the official website of the President of Croatia, on the websites of the weekly news magazine *Nacional*, Croatian Radiotelevision (*Hrvatska radiotelevizija* – Croatia’s public broadcasting company) and the Croatian American Association, as well as by the Croatian news agency HINA, the web portal Index.hr, the daily newspaper *Večernji list* and Nova TV.

## II. CIVIL PROCEEDINGS FOR DEFAMATION

13. Given that under Croatian law the national President has immunity from criminal prosecution but not from civil liability, on 22 January 2007 Mr Jurašinović brought a civil action for defamation against the applicant in the Zagreb Municipal Court (*Općinski sud u Zagrebu*). He sought HRK 70,000 (approximately EUR 17,570 at the material time) in compensation for non-pecuniary damage.

14. Mr Jurašinović, as the plaintiff, argued that the applicant had used his position as President of Croatia and the related media attention to harm his honour and reputation, and his professional and moral credibility, in the most

egregious way and to publicly disqualify him from holding the position of advocate by implying that he was a mentally disturbed person. He submitted that the offensive statement at issue (see paragraph 11 above) had caused him intense emotional distress in the form of anxiety, agitation, insomnia, indignation, heavy psychological pressure and constant tension. He also stated that, after the publication of the impugned statement, he had experienced difficulties in his work and in establishing social and professional contacts, having been constantly forced to justify his actions and answer uncomfortable questions about the applicant's statement. He also asserted that he had experienced a fall-off in the number of new clients.

15. In response, the applicant denied having harmed the plaintiff's honour and reputation and submitted that his statement had not been offensive and that it had not been his intention to offend the plaintiff. Rather, his statement had constituted an attempt at irony in respect of the unfounded severe accusations that had been made against him and had to be understood in the context of his reply to the journalist's question. The impugned part of his statement had been a figure of speech (*figurativna*) and thus a value judgment rather than an unjustified personal attack against the plaintiff.

16. On 23 October 2008, the Zagreb Municipal Civil Court ruled in favour of the plaintiff and ordered the applicant to pay him HRK 70,000 in compensation for non-pecuniary damage; it also ordered the applicant to pay to the plaintiff the costs of the proceedings. However, following an appeal by the applicant, that judgment was on 31 May 2011 quashed by the Zagreb County Court (*Županijski sud u Zagrebu*), and the case was remitted to the first-instance court.

17. In the fresh proceedings, by a judgment of 23 December 2011 the Zagreb Municipal Court again ruled in favour of the plaintiff and ordered the applicant to pay him HRK 70,000 (approximately EUR 9,290 at the material time), together with the accrued statutory default interest, running from the date of the judgment, in compensation for non-pecuniary damage; the court also ordered the applicant to pay the plaintiff HRK 9,300 (approximately EUR 1,235 at the material time) for the costs of the proceedings. The relevant part of that judgment reads as follows:

"In his statement – uncontested in terms of its content and the fact that it was made public on 10 November 2006 – the defendant suggested to the plaintiff that he visit Vrapče in order to get effective help. [The court finds it convincing] that the plaintiff understood this as implying that he should be treated for mental illnesses or disorders. In particular, it is well known that Vrapče is the location of the best-known Croatian hospital for mental illnesses ...

... this court ... has established that the defendant did not directly call the plaintiff mentally ill by means of [making] the said statement, but [rather] told him to get treatment in Vrapče, where physicians [would] provide effective help. This [was offensive] to the plaintiff, who understood it as a suggestion that he needed to be treated for a mental illness or disorder ...

... the defendant breached the plaintiff's right of personality, namely his honour and reputation, by implying that he should be treated for a mental illness or disorder. In this court's view it is unacceptable for anyone to state publicly in any manner that someone should be treated for such illnesses or disorders, since that is exclusively a personal matter for every citizen and not information that anyone would be allowed to disclose, let alone suggest treatment for such illness.

The defendant's objection that this statement is a value judgment on his part ... is ill-founded. To think something about someone and to say it publicly are two very different things. That is even more the case given that words spoken publicly, especially by the State President, have consequences. In the present case the statement breached the plaintiff's right of personality – that is to say it [harmed] his honour and reputation – especially because anyone's need, including that of the plaintiff, to be treated for mental illness, is that person's personal matter and no one is entitled to comment on it against the will of the person concerned, let alone suggest treatment, if they are not medical professionals. It is correct that Article 38 §§ 1 and 2 of the Croatian Constitution guarantees freedom of thought and expression, but that right may be limited if it causes harm to other persons, as set out in section 8 of the Obligations Act, and by [need to] protect the rights of personality, as provided in section 19(1) and (2) of the same Act, which results in the application of [its] section 1045(1) ....

The defendant's argument about the ironic or symbolic nature of his statement is neither decisive nor acceptable because the manner of expressing oneself in public must in itself be such as to not cause damage to anyone, in accordance with section 8 of the Obligations Act.

...

The arguments that the defendant's statement was perceived by the plaintiff, his clients and parents and fellow advocates as a threat were not accepted. ... [It] is true that Croatia used to be under the Communist rule, and that it is common knowledge that over the entire Communist world, psychiatric hospitals were also used for the internment of political opponents. However, Croatia is now a free democratic country, with a prescribed method of placement in psychiatric hospitals ... and ... it is [therefore] unfounded to conclude that the defendant could by his statement [genuinely have] threatened the plaintiff with placement in such an institution.

Moreover, in the part of the statement of claim [concerning the factual basis of his civil action], by which the court is bound, the plaintiff nowhere mentions threats or seeks damages [on that account], but [seeks damages] only for the breach of his right of personality – i.e. [for the injury to] his honour and reputation, and not for the possible fear that only a threat can cause. Consequently, the plaintiff's testimony was not accepted, as [it was] unconvincing in so far as he referred to the fear for his safety [expressed] by his parents, clients and fellow advocates."

18. On 30 January 2012 the applicant lodged an appeal against the first-instance judgment.

19. By a judgment of 26 October 2016, the Zagreb County Court upheld the first-instance judgment but reduced the amount of compensation payable to the plaintiff to HRK 50,000 (approximately EUR 6,660 at the material time), and the costs to HRK 6,057 (approximately EUR 806 at the material time). The applicant was ordered to pay those amounts within fifteen days. The relevant part of that judgment reads as follows:

“... on the basis of the evidence taken, the first-instance court correctly established that the defendant ... harmed the plaintiff’s honour and reputation by publicly ... implying that the plaintiff should be treated in Vrapče ..., the uncontested location of an institution treating mental or psychiatric illnesses and disorders ... The content of this statement is not allowed in the light of the [relevant] statutory provisions because a person’s health is the personal matter of that person and not public information. By holding that the contested statement was injurious for the plaintiff’s honour and reputation, the first-instance court correctly accepted the plaintiff’s testimony as logical and convincing and found that the statement had harmed his honour and reputation.”

20. The County Court’s judgment was served on the applicant’s representative on 25 November 2016.

21. The applicant then, on 23 December 2016, lodged a constitutional complaint against the civil courts’ judgments alleging a breach of his freedom of expression. He relied on Article 38 §§ 1 and 2 of the Croatian Constitution (see paragraph 24 below) and Article 10 of the Convention.

22. By a decision of 27 September 2017, the Constitutional Court Croatia (*Ustavni sud Republike Hrvatske*) declared the applicant’s constitutional complaint inadmissible, finding that the case did not raise a constitutional issue. That decision was served on the applicant’s representative on 20 October 2017.

23. In the subsequent enforcement proceedings, on 23 July 2018 the Financial Agency collected HRK 129,552.74 (approximately EUR 17,515 at the material time) from the applicant’s bank account and transferred it to that of Mr Jurašinović. That sum consisted of the principal amount that the applicant had been ordered to pay by the Zagreb Municipal Court’s judgment of 23 December 2011 (as amended by the Zagreb County Court’s judgment of 26 October 2016 – see paragraphs 17 and 19 above) and of the accrued statutory default interest.

## RELEVANT LEGAL FRAMEWORK

### I. THE CONSTITUTION

24. The relevant part of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990 with subsequent amendments) provides as follows:

#### Article 16

“(1) Rights and freedoms may be only restricted by law in order to protect the rights and freedoms of others, the legal order, public morals or health.

(2) Any restriction of rights and freedoms should be proportional to the nature of the necessity for such restriction in each individual case.

...”

**Article 38**

“(1) Freedom of thought and expression shall be guaranteed.

(2) Freedom of expression shall include in particular freedom of the press and other media, freedom of speech and [the freedom] to speak publicly, and the free establishment of all media institutions.

(3) Censorship shall be forbidden. Journalists shall have a right to freedom of reporting and access to information.

(4) ...

(5) The right to [demand a] correction shall be guaranteed to anyone whose rights guaranteed by the Constitution or by statute have been breached by information in the public domain.”

**II. OBLIGATIONS ACT**

25. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, no. 35/05 with subsequent amendments), which has been in force since 1 January 2006, is the legislation governing contracts and torts. According to that Act, courts are entitled to award compensation for non-pecuniary damage caused, *inter alia*, by injury to one’s reputation and honour. The relevant provisions of the Obligations Act read as follows:

**Prohibition to Cause Damage  
Section 8**

“Everyone shall refrain from taking any action which may cause damage to another [person].”

**Rights of personality  
Section 19**

“(1) All natural persons or legal entities are entitled to the protection of their rights of personality (*prava osobnosti*) under the conditions provided by law.

(2) Rights of personality within the meaning of this Act are the right to life, physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, liberty, etc.

(3) ...”

**Grounds for liability  
Section 1045(1)**

“Anyone who causes damage to another shall compensate it, unless he or she proves that the damage occurred through no fault of his or her own.”

**Damage  
Section 1046**

“Damage is the diminution of one’s property (actual damage), prevention of its increase (lost profits), or a breach of a right of personality (non-pecuniary damage).”

...

## V. REDRESS FOR NON-PECUNIARY DAMAGE

### **Publication of a judgment or correction**

#### **Section 1099**

“In the event of a breach of a right of personality the victim may seek, at the expense of the wrongdoer, publication of the judgment or of a correction, retraction of the statement that caused the breach, or any other form of redress capable of attaining the purpose [otherwise] achieved by an award of damages.”

### **Non-pecuniary damages**

#### **Section 1100**

“(1) In the event of a breach of a right of personality, the court shall award non-pecuniary damages if it finds that the severity of the breach and the circumstances of the case justify such an award, irrespective of any award of pecuniary damages, and even in the absence of pecuniary damage.

(2) When deciding on the amount of non-pecuniary damages, the court shall take into account the intensity and duration of the physical pain, mental anguish and fear caused by the breach, the purpose of those damages, and [the requirement that] they should not favour aspirations that are incompatible with their nature and social purpose.”

## III. OTHER LEGISLATION

26. The relevant domestic law and practice concerning length-of-proceedings remedies in Croatia is set out in *Mirjana Marić v. Croatia* (no. 9849/15, §§ 29-41, 30 July 2020). Specifically, the relevant provisions of the 2005 Courts Act are set out in detail in *Vrtar v. Croatia* (no. 39380/13, § 51-56 and 61-64, 7 January 2016).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicant complained that the Zagreb Municipal Court’s judgment of 23 December 2011 (as amended by the Zagreb County Court judgment of 26 October 2016) ordering him to pay damages for the injury caused to Mr Jurašinović’s reputation (see paragraphs 17 and 19 above) had constituted a violation of his freedom of expression. He relied on 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.”

## **A. Admissibility**

### *1. The parties’ arguments*

#### **(a) The Government**

28. The Government argued that Article 10 was inapplicable to the present case and that this complaint was, in any event, of a fourth-instance nature.

29. The Government averred that by making the impugned statement the applicant had not intended to impart ideas or incite a debate on an issue of public interest. Rather, his only intent had been to publicly insult Mr Jurašinović. Consequently, Article 10 was inapplicable in the present case (the Government referred to *Rujak v. Croatia*, no. 57942/10, 2 October 2012).

30. In the alternative, the Government submitted that in his application the applicant had challenged the factual findings of the domestic courts by claiming that his statement had not been an insult or made with the intention of causing offence, that it had constituted a value judgement, that it had been taken out of context and that nobody could have taken it literally. However, since it was not the Court’s task to substitute its own assessment of the facts for that of the domestic courts, the applicant’s complaint was of a fourth-instance nature.

#### **(b) The applicant**

31. The applicant replied that his statement had not been given without any context (which could have led to the conclusion that it had constituted a gratuitous personal attack on Mr Jurašinović). Rather, it had been made in reply to a question posed by journalists regarding Mr Jurašinović’s manifestly unfounded accusation, which had been made against him as the president of a sovereign country before the authorities of another State. By accusing the applicant of being a political patron of criminals and linking him to an incident of attempted murder, Mr Jurašinović had knowingly entered the public sphere and could have expected that such accusations would provoke the applicant into making a public response. By making the statement in question the applicant had sought to protect public confidence both in himself as a person and in the institution of President. His statement had thus concerned a matter of public interest.

32. The applicant furthermore maintained that his arguments were not of a fourth-instance nature. Before the Court he had argued that there had been an unjustified interference with his freedom of expression, as the domestic courts had not taken into account all the relevant circumstances and had failed

to find a fair balance between the two conflicting rights at stake. He had thus not asked the Court to reassess evidence and establish the facts anew but to examine whether his freedom of expression guaranteed by the Convention had been violated.

## 2. *The Court's assessment*

33. The Court reiterates that an offensive statement may fall outside the protection of freedom of expression in very rare and exceptional circumstances where it amounts to wanton denigration and its sole intent is to insult. For example, in the *Rujak* case, where the applicant's statement mostly concerned vulgar and offensive language, the Court, having formed its judgment on the basis of the context of those statements, held that he had not been trying to "impart information or ideas" but that his only intention had been to insult. The Court thus declared the applicant's complaint under Article 10 of the Convention inadmissible as being incompatible *ratione materiae* (see *Rujak*, cited above).

34. In the Court's view, such circumstances do not obtain in the present case. Taking into account the circumstances in which it was given, the Court finds that by his statement the applicant wished to deny serious allegations made against him in the criminal complaint prepared and lodged by Mr Jurašinović on behalf of his client (see also paragraph 45 and 51 below). It thus cannot be said that the applicant was not trying to impart any information or ideas and that his sole intent was to insult Mr Jurašinović.

35. It follows that the Government's objection as regards the applicability of Article 10 of the Convention must be dismissed.

36. As regards the Government's remaining argument as to how the applicant's statement should be characterised (see paragraph 30 above), the Court considers that it will more appropriately be addressed at the merits stage (see paragraphs 80-81 and 98-101 below).

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

## **B. Merits**

### 1. *The parties' arguments*

#### (a) **The applicant**

38. The applicant contended that the interference with his freedom of expression had not been lawful, that it had not pursued a legitimate aim and that it had not been proportionate.

39. As regards the lawfulness of the interference, the applicant submitted that the Government had not specified the provision(s) of the Obligations Act that had constituted the legal basis for the interference in question. He also

argued that the damages that he had been ordered to pay had been of a punitive nature, in breach of the domestic law.

40. The interference had not pursued a legitimate aim because the domestic courts had given excessive weight to the protection of Mr Jurašinović's reputation at the expense of the applicant's freedom of expression.

41. The domestic courts in his case had not given relevant and sufficient reasons to justify the interference. Specifically, because those courts had not applied the relevant standards developed in the Court's case-law, they had not properly weighed the two conflicting rights at stake and had thus failed to find a fair balance between them. The resultant interference had therefore not been proportional to the aim that it had sought to achieve.

42. The applicant submitted that his statement had been made in reaction to the accusation made by Mr Jurašinović linking him to an attempted murder and to organised crime. Accusing the President of a sovereign State of such a crime was certainly a matter of public interest. In replying to such accusation, he had not only sought to protect his own reputation but also the reputation of the office and the institution of the President of Croatia and the reputation of the State itself.

43. By making such an accusation Mr Jurašinović had initiated a debate on an issue of public interest and must have been aware of the effects it would have on public opinion. He had thus consciously entered the public sphere.

44. As regards the Government's argument that the accusation in question had not been made publicly (see paragraph 56 below), the applicant pointed out that Mr Jurašinović had confirmed to journalists that he had lodged a criminal complaint containing the accusation (see paragraph 9 above). The applicant also wondered how the journalists had learned of the content of the criminal complaint.

45. The applicant furthermore submitted that his statement had been an ironic comment and that he had used a "personified metaphor" (*koristeći se personificiranom metaforom*) and, as such, a value judgment made in reply to completely unfounded serious allegations against him. It could thus not be understood literally, as a statement of fact and/or as a gratuitous personal attack on Mr Jurašinović. The applicant therefore had not needed to prove the veracity of his metaphorical statement. He pointed out that according to the Court's case-law, freedom of expression applied to sarcastic statements as well as to those that offended, shocked or disturbed (the applicant cited *Katrami v. Greece*, no. 19331/05, §§ 33-42, 6 December 2007, and *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI).

46. In this respect the applicant pointed out that he himself had been called an "idiot" by one of his political opponents in a newspaper article and that he had instituted criminal proceedings for defamation as a private prosecutor against that politician. Although the criminal courts had ruled in his favour,

the Constitutional Court had overturned their judgments, classifying the statement of the accused as a value judgment; that is to say the Constitutional Court had taken a legal view diametrically opposite to its own view in the present case.

47. As regards the consequences that his statement had allegedly had for Mr Jurašinović's reputation (see paragraph 14 above), the applicant submitted that they had been grossly exaggerated by Mr Jurašinović and were difficult to believe. The applicant furthermore argued that the consequences of the accusation levelled against him would have been far greater if it had remained unanswered than the consequences allegedly suffered by Mr Jurašinović on account of the applicant's statement in reply.

48. Accusing someone of sponsoring a murder could not be considered as the kind of criticism for which politicians should have unlimited and unconditional tolerance. Accordingly, the expectation that political figures should display a higher level of tolerance than would be expected of non-public figures did not mean that they had to refrain from replying to criticism against them – especially to wholly unfounded and very serious accusations, such as the one in the present case. That had been confirmed by the Court which in its case-law had often pointed out that the Government should, instead of resorting to criminal proceedings, use other means available for replying to the unjustified attacks and criticisms of its adversaries or the media (the applicant referred to *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

49. As regards the comments by Mr Jurašinović as an interested third party (see paragraphs 64-73 below), the applicant firstly pointed out that the content of the criminal complaint and the reasons for lodging it had been unknown to him before Mr Jurašinović had mentioned them in his comments before the Court (see paragraphs 7 and 10 above and paragraph 65 below); secondly, the accusations contained therein had been completely unfounded and that their nature actually demonstrated how absurd and arbitrary they had been.

50. As regards the comments made by the remaining two interveners (see paragraph 74 below), the applicant submitted that they had been completely misplaced and irrelevant because the present case concerned his own freedom of expression, and not that of Mr Jurašinović, which had not been restricted in any way. In any event, linking – in a criminal complaint – a State President with attempted murder and organised crime without any evidence and then leaking those accusations to the media with a view to tarnishing the President's reputation and creating a negative public opinion of him and thereby putting pressure on the courts, went beyond the freedom of expression enjoyed by advocates in the exercise of their profession.

51. Lastly, the applicant vehemently denied as absurd the suggestion made by all the interveners that by his statement he had intended to discredit Mr Jurašinović and to threaten him with involuntary psychiatric confinement

so that he would stop representing his client. He reiterated that his statement had merely been an ironic reply to serious and baseless accusations made publicly against him (see paragraph 45 above).

**(b) The Government**

52. The Government submitted that, if the Court were to find Article 10 of the Convention applicable in the present case, they would not deny that there had been an interference with the applicant's freedom of expression. However, the interference in question had been in accordance with the law, it had pursued a legitimate aim, and it had been necessary in a democratic society.

53. The interference had been lawful because the domestic courts' judgment ordering the applicant to pay non-pecuniary damages to Mr Jurašinović had been based on section 1045(1) of the Obligations Act (see paragraph 25 above). It had also pursued the legitimate aim of protecting the reputation and the rights of others – namely the reputation of Mr Jurašinović. It had also been “necessary in a democratic society”, having regard to the criteria established in the Court's case-law (the Government cited *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012) for determining whether the requisite balance had been struck between the freedom of expression and the right to respect for private life.

54. The applicant's statement (implying that Mr Jurašinović needed psychiatric treatment) had not imparted information of public interest. In that respect the Government referred to the domestic courts' finding that it was unacceptable to state publicly that someone should be treated for a mental illness or disorder since that was a personal matter and not the kind of information that anyone would be allowed to disclose, let alone suggest treatment for such illness (see paragraph 17 above). The applicant had thus disclosed information about the health of Mr Jurašinović that had had nothing to do with the public interest, and the public had not in any way benefitted from the false information that Mr Jurašinović should be treated in a psychiatric hospital.

55. Mr Jurašinović was an advocate of Croatian origin living and practicing in France. Although he had appeared in the media by virtue of his profession, it could not be said that he was known to the wider public. Thus, he could not be considered a public figure and as such be expected to have a greater degree of tolerance of criticism. Even though he was himself a lawyer, the applicant had also failed to take into account the fact that Mr Jurašinović had lodged the criminal complaint as an advocate acting on behalf of his client.

56. The allegation that had provoked the impugned statement had thus not been made publicly, and nor had it been intended for a public readership. Likewise, the content of the said criminal complaint had not been disclosed by Mr Jurašinović, who had only confirmed to the above-mentioned

journalists that he had lodged it in his capacity as an advocate acting on behalf of his client, and had refrained from making any further comments (see paragraph 9 above). The Government also stressed that a criminal complaint was a legal instrument whereby the person lodging it merely expressed the suspicion that a criminal offence had been committed, thus bringing that alleged offence to the attention of the prosecuting authorities, in order that they might investigate whether that suspicion was well- or ill-founded.

57. The domestic courts had held that the applicant's statement had constituted a statement of fact and not a value judgment. That statement had been unsubstantiated and completely untrue, and its sole intent had been to insult. As regards the applicant's argument that his statement had been purely metaphorical in nature and as regards his reference to the Court's case-law (see paragraph 45 above), the Government submitted that the present case concerned neither criminal proceedings nor journalistic freedom (which could allow, to a certain degree, for exaggeration and even provocation).

58. The award that the applicant had been ordered to pay, which amounted to two of his monthly salaries as President, had not been disproportionate. Being publicly portrayed by the State President as "a crazy lawyer who belongs in a mental institution" had had harmful consequences for Mr Jurašinović's professional and private life, which he had described before the domestic courts (see paragraph 14 above). The domestic courts had accepted that such statements could indeed lead to such consequences and held that words spoken by the State President carried more weight than words spoken by ordinary people. In making the award those courts had taken into account the intensity and duration of the emotional distress suffered by Mr Jurašinović, as well as numerous unpleasant situations that he had been faced with in his professional environment. The level of damages the applicant had been ordered to pay had also to be seen in the light of the fact that his statement had not been in the public interest (in that connection they referred to the arguments set out in paragraphs 29 and 54 above). For those reasons the damages that the applicant had been ordered to pay could not have had a chilling effect on his freedom of expression.

59. Having regard to the foregoing (see paragraphs 52-58 above), the Government argued that the domestic courts had undertaken a balancing exercise in conformity with the criteria laid down in the Court's case-law, and had struck the right balance between freedom of speech and the public interest on the one hand, and the rights of Mr Jurašinović under Article 8 of the Convention on the other. Moreover, the reasons that those courts had set out in their decisions had been relevant and sufficient. Thus, there were no strong reasons for the Court to substitute its view for that of the domestic courts.

60. The Government then went on to argue that the expectation that political figures should display a higher level of tolerance than would be expected of non-public figures did not only mean that they should refrain

from instituting criminal or civil proceedings against persons who may have tarnished their reputation. Rather, it also meant that they must sustain from replying to such criticism in a manner that may be injurious to the reputation of those who had offended them in the first place.

61. The Court had often in its case-law warned of the importance of the public officials' choice of words – for example in cases concerning the presumption of innocence (they referred to *Peša v. Croatia*, no. 40523/08, §§ 138-51, 8 April 2010).

62. The applicant, as a high-ranking official, should have therefore chosen his words with particular care and reacted in a different way to the allegation articulated in the above-mentioned criminal complaint. In other words, he should have refrained from insulting the advocate who had lodged that complaint on behalf of his client in the exercise of his professional duty and who was not obliged to tolerate criticism to the same extent as the applicant.

63. The Government fully endorsed the arguments of the third parties (see paragraphs 64-74 below) – in particular that of Mr Jurašinović emphasising the fact that the allegation that had provoked the applicant's statement had not been made publicly and that neither had Mr Jurašinović made it available to the public. They reiterated their position that politicians were obliged to show greater tolerance of criticism than would be expected of non-public figures – especially if it had not been voiced publicly, as in the present case. The applicant should have therefore refrained from making the impugned disparaging statement (the only goal of which had been to harm the reputation and honour of Mr Jurašinović).

**(c) The third-party interveners**

*(i) Mr Jurašinović*

64. Mr Jurašinović submitted that he had an interest in intervening in the present case both in his professional capacity as an advocate, and in his private capacity as the victim of the applicant's statement, which had been injurious to his reputation.

65. He firstly explained in greater detail the reasons for his lodging the criminal complaint on behalf of his client, gave certain details regarding its content (see paragraph 7 above), and the reasons behind the media interest that it had attracted (see paragraph 10 above).

66. He then emphasised that he had lodged the criminal complaint in question in his professional capacity, namely as the advocate of his client, M.T., in respect of certain facts that could be interpreted as constituting a criminal offence. The French authorities had then opened an investigation that had lasted several years.

67. Mr Jurašinović furthermore stressed that he had not made any public statement as regards the applicant. When the journalists had enquired about the criminal complaint that he had lodged on behalf of his client, he had

merely confirmed that the complaint had indeed been lodged against certain Croatian nationals. He had not mentioned their names as he had been bound to maintain the secrecy of the investigation.

68. In view of this it could not be argued, as the applicant had (see paragraph 43 above), that by his actions Mr Jurašinović had consciously entered the public sphere and opened himself to criticism. For that reason the present case could not be compared to those concerning politicians (including the applicant – see paragraph 46 above) who had been publicly criticised, often by other politicians.

69. As regards the question of how journalists had learned of the criminal complaint and its contents, Mr Jurašinović had only mentioned that his client had retained one copy of it.

70. When replying to the journalists' question about his links with H.P., the applicant had targeted him personally instead of his client. In so doing he had used a harsh medical metaphor that had a meaning for all Croats who had lived under the Communist regime. Involuntary psychiatric confinement had been a method of silencing political opponents in many Communist countries and the former Yugoslavia had not been an exception (he referred to Amnesty International's 1982 report and noted that the applicant had been the last President of Yugoslavia).

71. By threatening him with involuntary psychiatric confinement the applicant had sought to discredit him and to force him to abandon the defence of his client.

72. As regards the applicant's argument that the impugned statement had concerned a matter of public interest (see paragraph 42 above), Mr Jurašinović contended that while the possible involvement of a State President in an attempted murder had certainly been a matter of public interest, the applicant had failed to explain how the above-mentioned offensive and menacing statement – directed at him as an advocate and not at his client – had contributed to a constructive debate on that matter.

73. Mr Jurašinović furthermore submitted that finding a violation of Article 10 in the present case would affect his reputation as an advocate because it would amount to professional criticism. It would also deny the harm that he had suffered on account of the applicant's statement (see paragraph 14 above), which had been redressed by the domestic courts.

*(ii) The National Bar Council and the Paris Bar Association*

74. The interveners, referring to a number of cases in which the Court had emphasised the need to protect the freedom of expression of advocates, argued that the Court should find that condemnation by the domestic courts of a person who made menacing statements against an advocate for doing his job did not constitute a violation of Article 10 of the Convention, as such interference pursued a legitimate aim, was proportional, and was necessary in a democratic society. The absence of sanctions against intimidating or

menacing statements or threats against advocates, especially if such statements came from influential public figures, could compel advocates to abandon the defence of their clients and could thus have serious consequences for the rights of defence and the right of access to a court, which were essential components of the right to a fair trial guaranteed by Article 6 § 1 of the Convention.

## 2. *The Court's assessment*

### (a) **As to whether there was an interference**

75. The Court notes that in its judgment of 23 December 2011 (which was amended by the Zagreb County Court's judgment of 26 October 2016), the Zagreb Municipal Court held that the applicant's statement of 10 November 2006 (see paragraph 11 above) had been injurious to the reputation of Mr Jurašinović and ordered the applicant to pay him HRK 50,000 (approximately EUR 6,660 at the material time) in compensation for the resultant non-pecuniary damage, as well as HRK 6,057 (approximately EUR 806 at the material time) in costs (see paragraphs 17 and 19 above).

76. In the light of its above finding that the applicant may rely on Article 10 of the Convention in the present case (see paragraphs 33-34 above), and having regard to its case-law (see, for example, *Stojanović v. Croatia*, no. 23160/09, § 56, 19 September 2013), the Court finds that the judgment in question constituted an interference with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

### (b) **Lawfulness and legitimate aim**

77. As to the lawfulness of the interference in question, the Court notes that it had a legal basis in domestic law as it was based on the relevant provisions of the Obligations Act (see paragraphs 17 and 25 above). The Court also considers that the legislation in question met the qualitative requirements of accessibility and foreseeability. It is therefore satisfied that the interference with the applicant's freedom of expression was "prescribed by law", as required by Article 10 § 2 of the Convention.

78. The Court likewise accepts that the interference pursued a legitimate aim, as it was intended to protect the reputation or rights of others – namely the reputation of Mr Jurašinović.

79. Having established that the interference with the applicant's freedom of expression in the present case was lawful and pursued a legitimate aim, the only remaining question for the Court to determine is whether it was "necessary in a democratic society".

**(c) “Necessary in a democratic society”***(i) General principles*

80. In determining whether an interference with the freedom of expression was “necessary in a democratic society” the Court’s task is to review the decisions of the competent national authorities by examining whether the reasons they adduced to justify the interference were relevant and sufficient. In doing so, the Court has to satisfy itself that those authorities applied standards that were in conformity with the principles embodied in Article 10 and relied on an “acceptable assessment of the relevant facts” (see, among many other authorities, *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts)).

81. It is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see, for example, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009, and *Stojanović*, cited above, § 65). It has, however, held that such elements exist in cases where the decisions of the domestic authorities were not based on “an acceptable assessment of the relevant facts” (see, for example, *Stojanović*, cited above, § 70, and *Chemodurov v. Russia*, no. 72683/01, §§ 28-29, 31 July 2007),

82. The Court has consistently held that when examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the “protection of the reputation ... of others”, it may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention that may come into conflict with each other in certain cases – namely on the one hand freedom of expression, as protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see, among many other authorities, *Axel Springer AG*, cited above, § 84).

83. However, in order for Article 8 of the Convention to come into play, an attack on a person’s reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life (*ibid.*, § 83). The Court therefore first needs to examine whether Mr Jurašinović’s Article 8 rights were engaged, in order to determine whether the applicant’s Article 10 right is to be balanced against Mr Jurašinović’s Article 8 right to protection of his reputation.

*(ii) Application of the above-mentioned principles to the present case*

84. The Court notes that the applicant stated that Mr Jurašinović needed psychiatric treatment (see paragraph 11 above). The applicant made that statement when he was the State President, and it was widely distributed by

various media outlets (see paragraphs 5 and 12 above). Therefore, regardless of whether that statement should have been understood literally (as the domestic courts held – see paragraphs 17 and 19 above) or metaphorically (as the applicant submitted – see paragraph 45 above) – which is a matter to be examined below (see paragraph 99) – the Court accepts that it was not only capable of tarnishing the reputation of Mr Jurašinović, but also of fomenting prejudice against him in both his professional and social environments. Accordingly, the Court finds that the applicant’s statement attained a level of seriousness capable of bringing Mr Jurašinović’s rights under Article 8 of the Convention into play. By way of observation, the Court also considers that referring to a need of psychiatric treatment and using it as an insult is disrespectful of persons with mental health issues.

85. The Court further reiterates that in cases concerning a conflict between the right to reputation and the right to freedom of expression, domestic courts hearing defamation claims are expected to perform a balancing exercise between those two rights (see *Perinçek*, cited above, §§ 198-99), in line with the criteria established in the Court’s case-law regarding that type of case, which include:

- whether a contribution has been made to a debate of public interest,
- the notoriety of the person concerned,
- his or her prior conduct,
- the content, form and consequences of the statement in question, and
- the severity of the sanction imposed (see, among many other authorities, *Axel Springer AG*, cited above, §§ 78-95, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 82-93, 10 November 2015).

86. In cases such as the present one, domestic courts may also be required to take into account certain additional criteria: in this case, for example, the applicant’s status as a politician and as a high-ranking State official, and on the other hand, Mr Jurašinović’s status as an advocate, may be of importance for the outcome of the balancing exercise.

87. Where such a balancing exercise has been undertaken, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 138-39, ECHR 2015, with further references).

88. However, even though the civil courts recognised that the present case concerned two conflicting rights (see paragraphs 17 and 19 above), in their examination they made no reference to the relevant criteria developed in the Court’s case-law (see paragraph 85 above). Instead, they examined the case only in terms of civil law, without taking into account its constitutional and Convention aspects.

89. It is evident from the text of their decisions (see paragraphs 17 and 19 above) that those courts did not, for example, examine whether the

applicant's statement concerned a matter of public interest or take into account the context in which it was made.

90. The domestic civil courts classified the applicant's statement as a factual statement rather than a value judgment (see paragraphs 17 and 19 above). Specifically, those courts limited their analysis to the fact that the applicant had implied that Mr Jurašinović should be treated for a mental illness or disorder. In their view it was unacceptable for anyone to state publicly whether someone should be treated for such illnesses or disorders, since such an issue was exclusively the personal matter of every citizen (see paragraphs 17 and 19 above).

91. It thus follows that, contrary to the Government's argument (see paragraph 59 above), the civil courts failed to carry out the required balancing exercise between Mr Jurašinović's reputation and the applicant's freedom of expression (compare *Perinçek*, cited above, § 278; *Reznik v. Russia*, no. 4977/05, § 43, 4 April 2013; and *Milisavljević v. Serbia*, no. 50123/06, § 38, 4 April 2017).

92. Similarly, the Constitutional Court did not examine the case from a constitutional-law perspective but instead simply declared the applicant's constitutional complaint inadmissible, finding that the case did not raise any constitutional issue (see paragraph 22 above).

93. Since the domestic courts did not apply the criteria laid down in the Court's case-law for balancing freedom of expression with the right to reputation (see paragraphs 85-86 above), the Court finds that it must carry out the required balancing exercise itself (see *Perinçek*, cited above, § 279).

(α) The notoriety and prior conduct of the person concerned

94. The Court considers that Mr Jurašinović had not been a public figure before information regarding part of the content of the criminal complaint was reported by the Croatian media, and nor did he make any public statement regarding the applicant. When contacted by journalists he only confirmed that he had lodged the criminal complaint in his professional capacity – namely as an advocate acting on behalf of his client, and refrained from making any further comments (see paragraph 9 above).

95. While it is unclear how the content of the criminal complaint reached the media, Mr Jurašinović denied disclosing that information (see paragraphs 67 and 69 above).

96. The Court therefore agrees with the Government (see paragraph 56 above) that the allegation which provoked the applicant's statement was not made publicly; nor was it intended for a public readership. Likewise, it cannot be said that Mr Jurašinović knowingly entered the public sphere.

97. His situation thus could not be compared to that of persons who voluntarily expose themselves to public scrutiny by virtue of their role as politicians, public figures or participants in a public debate on a matter of public interest, and who are therefore required to display a higher level of

tolerance than would be expected of non-public figures, in respect of which wider limits of criticism are acceptable (see, for example and *mutatis mutandis*, *Egeland and Hanseid v. Norway*, no. 34438/04, § 62, 16 April 2009).

- (β) The content and form of the statement and its contribution to a debate of public interest

98. As noted above (see paragraph 90), the domestic civil courts classified the applicant's statement as a factual statement rather than a value judgment (see paragraphs 17 and 19 above). They therefore summarily dismissed the applicant's argument that his statement had been purely metaphorical and instead interpreted it rather narrowly and strictly literally (see paragraphs 17 and 19 above).

99. However, in view of the fact that even Mr Jurašinović understood it as a harsh medical metaphor (see paragraph 70 above), the Court cannot but conclude that the impugned statement was indeed a metaphor and as such constituted a pure value judgment and was therefore not susceptible of proof.

100. In the Court's view, the alleged involvement of a State President in an attempted murder and/or his possible links with organised crime is undoubtedly a matter of public interest. The applicant had a right to reply to such an accusation and to defend himself, which he did first by making certain factual statements denying any connections with H.P., a person associated with organised crime (see paragraph 11 above).

101. Nevertheless, the applicant did not only express his opinion that the idea of him being behind an attempted murder and having connections with organised crime was absurd but went a step further and attempted to discredit Mr Jurašinović as a person to be trusted by an offensive statement using belittling and impertinent terms. There is nothing to suggest that the applicant could not have denied the serious accusations against him without using the impugned language. By personally insulting Mr Jurašinović, the applicant made no contribution to a debate on a matter of public interest and went beyond the limits of acceptable criticism.

102. As regards the form of the statement, the Court reiterates that the applicant made the statement in question when he was the State President, and that it was widely distributed by various media outlets (see paragraphs 5, 12 and 84 above). His statement was thus capable of causing greater harm to the reputation of Mr Jurašinović.

- (γ) The applicant's status as a high-ranking State official and Mr Jurašinović's status as an advocate

103. As regards high-ranking State officials, the Court has emphasised the importance of their freedom of expression by holding that, in order to protect their free speech in the exercise of their functions and to maintain the separation of powers in the State, it is acceptable in a democratic society for

States to afford functional immunity to their heads of State (see *Urechean and Pavlicenco v. the Republic of Moldova*, nos. 27756/05 and 41219/07, § 47, 2 December 2014).

104. On the other hand, the Court has also acknowledged, albeit in different circumstances, that, generally speaking, words spoken by high-ranking State officials, such as the applicant in the present case, carry more weight.

105. For example, the Court has in a number of cases emphasised the importance of the words chosen by public officials in their statements regarding persons suspected of a criminal offence before such persons have been tried and found guilty. The Court has accordingly found violations of Article 6 § 2 of the Convention on account of prejudicial statements made by various high-ranking State officials, such as the State President (see *Peša*, cited above, §§ 148-51), the Prime Minister (*ibid.*; see also *Gutsanovi v. Bulgaria*, no. 34529/10, § 194-98, ECHR 2013 (extracts)), the Minister of Justice (see *Konstas v. Greece*, no. 53466/07, §§ 43 and 45, 24 May 2011) and the Speaker of Parliament (see *Butkevičius v. Lithuania*, no. 48297/99, § 53, ECHR 2002-II (extracts)).

106. Likewise, the Court has also considered that certain statements by high-ranking State officials were *ipso facto* incompatible with the notion of an “independent and impartial tribunal” within the meaning of Article 6 § 1 of the Convention (see *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, § 147, 21 January 2016, which concerned the Prime Minister’s statement, and *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 80, ECHR 2002-VII, which concerned, *inter alia*, the statement by the State President).

107. The Court has in a number of cases emphasised that lawyers play a vital role in the administration of justice and that the free exercise of the profession of lawyer is indispensable to the full implementation of the fundamental right to a fair trial guaranteed by Article 6 of the Convention (see, for example, *Morice v. France* [GC], no. 29369/10, §§ 132-39, ECHR 2015, and *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002-II).

108. It is further mindful of the occurrence of harassment, threats and attacks against lawyers in many Council of Europe member States. However, in the present case the domestic courts established that the applicant’s statement had not constituted a threat of involuntary psychiatric confinement (see paragraph 17 above). The Court has no reason to question that assessment.

109. Nonetheless, it considers that high-ranking State officials attacking the reputation of lawyers and making them objects of derision with a view to isolating them and damaging their credibility – as the applicant did in the present case – is often as effective as a threat in preventing lawyers from exercising their professional duties. Such statements could, as noted by the interveners (see paragraph 74 above), have serious consequences for the

rights of the accused and the right of access to a court, which are essential components of the right to a fair trial guaranteed by Article 6 § 1 of the Convention.

110. Lastly, the Court is mindful of the fact that at the time that the applicant made the impugned statement, Mr Jurašinović was bound by the secrecy of criminal investigation in France (see paragraph 9 above). This precluded him from replying (by, for example, arguing that the accusations made in the criminal complaint were not absurd as the applicant's statement suggested) and placed him in an even more disadvantageous position *vis-à-vis* the applicant, a powerful public figure who, because of his role as a State President, enjoyed great media attention.

(δ) Consequences of the statement and the severity of the sanction

111. The amount in non-pecuniary damages that the applicant was ordered to pay was HRK 50,000 (approximately EUR 6,660 at the material time). This sum amounted, for example, to two-thirds of what Croatian courts normally award in non-pecuniary damages in respect of mental anguish caused by the wrongful death of a sibling (see the Supreme Court's guidelines referred to in *Klauz v. Croatia*, no. 28963/10, § 31, 18 July 2013).

112. While the size of that award may therefore appear substantial, the Court reiterates its findings above that (a) words spoken by high-ranking State officials carry more weight (see paragraphs 104-105 above) and, consequently, statements made by them that are injurious to the reputation of others cause greater harm, and that (b) the applicant's statement, to which Mr Jurašinović was not in a position to reply, was widely distributed by various media outlets (see paragraphs 84, 102 and 110 above).

113. Moreover, as established above (see paragraph 109), the applicant's statement was not only injurious to Mr Jurašinović's reputation but was also capable of having a "chilling", dissuasive effect on his exercise of his professional duties as an advocate. Therefore, the award of damages in the present case was, despite its size, an appropriate sanction to neutralise that chilling effect and proportionate to the legitimate aim of protecting the reputation of Mr Jurašinović.

(iii) Conclusion

114. Having regard to all the foregoing considerations, the Court concludes that the interference with the applicant's freedom of expression was "necessary in a democratic society" for the protection of Mr Jurašinović's reputation and to avoid a "chilling effect" on professional duties carried out by advocates.

115. There has accordingly been no violation of Article 10 of the Convention in the present case.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

116. The applicant complained that the length of the civil proceedings (see paragraphs 13-22 above) had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

### A. Admissibility

#### 1. *The parties’ arguments*

117. The Government firstly submitted that the applicant had failed to exhaust the available domestic remedies in that he had not used the length-of-proceedings remedy available under the 2005 Courts Act, which had been in force until 13 March 2013.

118. The Government furthermore pointed out that in his observations the applicant had tried to extend the scope of his initial complaint by submitting that the proceedings complained of had ended only when the Constitutional Court (see paragraph 119 below) had decided his constitutional complaint. However, in his application to the Court he had only complained of the length of the proceedings before the Zagreb County Court (see paragraphs 18-20 above).

119. The applicant replied that the remedy in question was not effective and that during the period before 13 March 2013 the proceedings complained of had not exceeded a reasonable time. In any event, even after that date it had still taken four and a half years before the proceedings had been terminated by the decision of the Constitutional Court. During that period the case had been pending for three years and some seven and a half months before the Zagreb County Court, as the second-instance court.

#### 2. *The Court’s assessment*

##### (a) **The scope of the applicant’s complaint**

120. The Court notes that in his application to the Court the applicant formulated his complaint concerning the excessive length of proceedings in the following terms:

“... the applicant points out that the second-instance court, in deciding the applicant’s appeal against the judgment of the first-instance court, did not render the judgment within a reasonable time, which is why the applicant considers that his right to have his case examined by the court within a reasonable time has been breached ...

In particular, the applicant lodged an appeal against the first-instance judgment on 27 January 2012, and the second-instance court rendered the decision only on 26 October 2016. It follows that the second-instance proceedings lasted a little less

than five years. The proceedings in their entirety lasted almost ten years, which is not justified, given that the case was not big or complex.”

121. The Court therefore finds it evident that the applicant from the outset complained of the overall length of the civil proceedings, placing particular emphasis on the length of the proceedings before the County Court (see paragraphs 18-20 above). He reiterated his complaint in his observations (see paragraph 119 above), it being understood that applicants may subsequently elucidate or elaborate upon their initial submissions, and that the Court must take into account not only the application form but the entirety of their submissions in the course of the proceedings before it, which may eliminate any initial omissions or obscurities (see, for example, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 129, 20 March 2018).

**(b) Exhaustion of domestic remedies**

122. The Court reiterates that in the period between 29 December 2005 and 13 March 2013 a request for protection of the right to a hearing within a reasonable time under the 2005 Courts Act (see paragraph 26 above) was recognised by the Court as an effective remedy under Article 13 of the Convention. This also meant that it had to be exhausted for the purposes of Article 35 § 1 before any complaints concerning the excessive length of judicial proceedings in Croatia were brought before the Court (see *Pavić v. Croatia*, no. 21846/08, § 36, 28 January 2010, and *Mirjana Marić v. Croatia* (no. 9849/15, § 37, 30 July 2020).

123. In the present case the applicant did not use that remedy – which was both effective and available to him – to complain of the excessive length of the proceedings in his case. By 13 March 2013 those proceedings had already lasted six years and almost two months over two levels of jurisdiction (see paragraphs 13-18 above), which could be considered excessive.

124. Having regard to the Court’s case-law (see, *mutatis mutandis*, *Mirjana Marić*, cited above, §§ 69-70), it follows that this complaint, in so far as it concerns the period before 13 March 2013, is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected, pursuant to Article 35 § 4.

**(c) Conclusion as to admissibility**

125. What remains to be examined is the period between 14 March 2013 and 20 October 2017 (when the Constitutional Court’s decision of 27 September 2017 was served on the applicant’s representative – see paragraph 22 above), during which the proceedings lasted for four years and some seven months at two levels of jurisdiction (see paragraphs 18-22 above).

126. The Court notes that, to the extent that the applicant's length-of-proceedings complaint concerns that period, it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### **B. Merits**

127. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case in question and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

128. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the length of the civil proceedings in the instant case.

129. In the relevant period (see paragraph 125 above) there were no delays attributable to the applicant. The proceedings took place before the appellate court and the Constitutional Court, and no hearings were held (see paragraphs 18-22 above). The delays in that period were mainly attributable to the authorities, as it took three years and some seven and a half months for the Zagreb County Court to decide the applicant's appeal (see paragraphs 18-19 above).

130. Having regard to its case-law on the subject (see, for example, *Mirjana Marić*, cited above §§ 71 and 90-91), the foregoing considerations are sufficient to enable the Court to conclude that in the present case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

131. There has accordingly been a violation of Article 6 § 1 of the Convention.

## **III. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

132. 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 and costs and expenses**

133. As regards the violation of Article 6 § 1 of the Convention, the applicant claimed EUR 15,000 without making separate claims in respect of pecuniary damage, non-pecuniary damage and costs and expenses.

134. The Government contested the applicant's claim by pointing out that he had failed to specify whether and to what extent it concerned pecuniary damage, non-pecuniary damage and/or costs and expenses. The Government accordingly asked the Court not to award any sum by way of just satisfaction.

135. The Court reiterates that an applicant who wishes to obtain an award of just satisfaction must make a specific claim to that effect (Rule 60 § 1 of the Rules of Court); however, a claim in respect of non-pecuniary damage does not need to be quantified or substantiated. This, *inter alia*, means that an applicant should make separate claims in respect of pecuniary damage, non-pecuniary damage and costs and expenses.

136. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of his right to a hearing within a reasonable time. Ruling on an equitable basis, the Court awards him EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

137. On the other hand, in so far as his claim for just satisfaction concerns pecuniary damage and costs and expenses, the Court rejects it, because the applicant failed to comply with the requirements of Rule 60 § 1 of the Rules of Court.

#### **B. Default interest**

138. 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 complaints concerning the freedom of expression and the excessive length of proceedings in the period after 14 March 2013 admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 10 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 5 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Péter Paczolay  
President