



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

SECOND SECTION

CASE OF PISANSKI v. CROATIA

(Application no. 28794/18)

JUDGMENT

Art 10 • Freedom of expression • Imposition of fine on an advocate for contempt of court for remarks made in the context of appeal proceedings in which he was representing a client • Applicant's remarks did not go beyond bounds of acceptable criticism • Domestic courts' failure to set his remarks within the context and forum in which they were expressed • Lack of relevant and sufficient reasons • Decisions not based on criteria laid down in Court's case-law • Fair balance not struck • Interference not "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 June 2024

FINAL

04/09/2024

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

In the case of Pisanski v. Croatia,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 28794/18) 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 Viktor Pisanski (“the applicant”), on 12 June 2018;

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning freedom of expression and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 14 May 2024,

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

INTRODUCTION

1. The case concerns the imposition of a fine on the applicant, an advocate (*odvjetnik*, hereafter “lawyer”), for contempt of court. The applicant complains of a violation of his right to freedom of expression guaranteed by Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in Zagreb. He was represented by Mr Obradović, a lawyer practising in Zagreb.

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

4. The facts of the case may be summarised as follows.

I. ENFORCEMENT PROCEEDINGS

5. The applicant, who is a lawyer, represented a creditor, a certain Mr J.C., in enforcement proceedings instituted on 9 May 2016 in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*). His client sought to enforce a debt of 2,457,005.19 Croatian kunas (HRK – equivalent to

326,100.63 euros (EUR)), together with the accrued statutory default interest, by the seizure of funds in the debtor's bank accounts.

6. Mr J.C. was not the original creditor. The application for enforcement was based on an earlier enforcement order of 11 September 2009 issued by a notary public in favour of the original creditor, the P. company, and on an assignment contract (*ugovor o cesiji*) whereby that company had transferred its claim to J.C. The signatures on the assignment contract were certified by a notary public.

7. By a decision of 11 May 2016, the Municipal Court dismissed the application for enforcement. It referred to the relevant provisions of the Enforcement Act pursuant to which a debt established in an enforceable instrument could be transferred to another creditor only on the basis of a public document or a publicly certified document (see paragraph 43 below), and held that the assignment contract in question did not constitute such a document. The decision was prepared by a law clerk, V.P.V., and approved and delivered by Judge E.M.S.

8. On 31 May 2016 the applicant, on behalf of his client, lodged an appeal against that decision. Under Croatian law, an appeal to a second-instance court must first be submitted to a first-instance court, which conducts a preliminary examination of the appeal and may declare it inadmissible, but which is not authorised to decide on its merits. The applicant therefore submitted his appeal to the Zagreb Municipal Civil Court.

9. In the appeal, the applicant referred to the relevant provisions of the Enforcement Act (see paragraphs 42-43 below) and argued that an assignment contract on which the signatures of the parties were certified by a notary public was most certainly a publicly certified document and thus a document suitable for transferring a debt established in an enforceable instrument. Criticising the opposite view taken by the Municipal Court in the contested decision, which followed the same approach as that of the Zagreb County Court on appeal in another case, the applicant wrote, *inter alia*:

“... if this were not an approach also taken by the Zagreb County Court in one of its decisions, the approach of the first-instance court would justifiably provoke both outrage and ridicule. However, given that such a ‘peculiar’ approach has been taken by a higher court, the matter has reached dramatically serious proportions.

The creditor therefore contradicts the court's citations of mostly irrelevant legal provisions with the only two pertinent provisions ... [namely, sections 2 and 32(1)] of the Enforcement Act.

It is incredibly difficult to draw up a meaningful and concise appeal when you are faced with someone in a position of power who, solely because of that position, persuades ‘the subordinates’ that the sea is red, the sky is yellow, and the sun is green. The ‘subordinate’ may point the finger at the bright yellow circle in the sky, explaining to the ‘superior’ that the colour is a bright yellow, but the ‘superior’ is persistent and coolly claims that the colour is green. Because they can ...

Here, too, the creditor, as a ‘subordinate’, in a naïve desire to indicate that the sun is yellow, and not green, is pointing the finger at the two provisions of the Enforcement Act [namely, its sections 2 and 32(1)].

...

What really stings is the conformism reflected in the uncritical acceptance of the approach (for now the only example!) of the higher court in a legal system not based on precedent ... regardless of that approach being manifestly incorrect and failing to meet any accepted standards or criteria.

What is at stake here is not the discretion of the court, [its] right to interpret [the relevant] provisions and so on. [Rather,] this is a most severe form of arbitrary adjudication, which causes immense damage to the parties. In particular, what is at stake is the claim of two and a half million kunas, which ... has not been considered with sufficient respect.

While one person will have nothing to live on tomorrow, the others will still claim, safely sheltered, that the sun is green. Because they can.”

10. The Osijek County Court (*Županijski sud u Osijeku*) accepted the argument raised by the applicant in the appeal. Accordingly, by a decision of 18 August 2016, delivered by Judge J.T.B., it quashed the contested decision and remitted the case for rehearing. However, it also instructed the Zagreb Municipal Civil Court to examine whether the applicant’s remarks in the appeal amounted to contempt of that court, and to proceed accordingly.

11. In the resumed proceedings in the Zagreb Municipal Civil Court, the applicant in his submissions of 4 October 2016 stated that, even though he had been right regarding the merits of the case, he wished to apologise to the court if it had considered some of his arguments on appeal to have been offensive. He added that “some harsh words were most certainly not directed at that court” but that “anyway that does not matter anymore”.

12. On 7 November 2016 the Municipal Court issued a writ of execution (*rješenje o ovrsti*) for the seizure of funds in the debtor’s bank accounts.

13. On 2 April 2019 the applicant informed the court that the domestic payments agency FINA had executed the writ and that his client’s claim had been satisfied in full. Accordingly, by a decision of 10 October 2019 the court discontinued the enforcement proceedings.

II. CONTEMPT-OF-COURT PROCEEDINGS

14. Meanwhile, by a decision of 9 November 2016, the Municipal Court fined the applicant HRK 2,000 (equivalent to EUR 265) for contempt of court. The decision stated that, if the applicant failed to pay the fine within eight days, the domestic payments agency FINA would collect the fine from the funds in his bank account (see paragraph 37 below). The decision was based on sections 110(1) and 10(7) of the Civil Procedure Act, read in conjunction with section 21 of the Enforcement Act, as well as on section 16(8) of the Enforcement Act (see paragraphs 35, 37, 44 and 46

below). It was prepared by the law clerk V.P.V. (see paragraph 7 above) and approved and delivered by Judge M.A.D.

15. The court pointed out that all participants in proceedings, and especially lawyers, had to respect the dignity of the court and address it in a polite and appropriate manner. However, in his appeal the applicant had demonstrated his dissatisfaction with the court's decision in an impermissible and inappropriate way, namely by insulting the court and describing it as a centre of power, which was unacceptable because any party dissatisfied with the court's work could seek an appropriate remedy. The relevant part of that decision reads:

“Any negative value judgment ... which undermines self-esteem or expresses disrespect for the human dignity of another person is considered an insult.

Given that the procedural rules of judicial proceedings, including enforcement proceedings, expressly prescribe the imposition of a fine for insulting the court ..., it is evident that the parties and other participants in proceedings must respect the dignity of the court.

The parties and other participants in the proceedings ... show due respect to the court primarily by addressing [it] ... in a polite and appropriate manner ...

Assessing the ... remarks of the creditor's representative ... in the appeal ... the court found that [he] had insulted the court ...

... the creditor's representative Viktor Pisanski shows his obvious dissatisfaction with the court's decision. However, he does it in an unlawful way, by insulting the court in stating that its approach to the law ‘would justifiably provoke both outrage and ridicule’, instead of using the available legal remedy in that regard, namely an appeal.

Furthermore, the court is of the opinion that such a manner of communication ... represents an inappropriate and insulting way of addressing the court and that portraying the court as a centre of power is completely unacceptable, given the fact that each party in the proceedings has the right to appeal if they are not satisfied with the way the court works, a right of which the creditor's representative availed himself in the present case.

... the court imposed a fine of HRK 2,000 on the creditor's representative ..., and in doing so took into account ... that [he] is a lawyer ... bound by the rules of conduct prescribed by ... the Bar Association, and is [therefore] ... expected ... to act conscientiously and professionally, and to treat the court with due respect, and to politely address all participants in proceedings, especially the judge.”

16. On 25 November 2016 the applicant appealed against that decision, arguing, *inter alia*, that it was in breach of his right to freedom of expression. He referred to the principles developed by the Court in contempt-of-court cases (see paragraphs 66 and 69 below).

17. The applicant first submitted that the decision to fine him had been based on the Civil Procedure Act instead of on the Enforcement Act. While similar, the provisions on imposing a fine for contempt of court in those Acts differed in one important aspect: in the event they were not paid, under the Enforcement Act such fines could be converted into a prison sentence

whereas under the Civil Procedure Act such fines were collected by the domestic payments agency FINA (see paragraphs 37 and 45 below).

18. The applicant admitted that he had drawn up the disputed appeal in an emotionally charged state. That was because the decision to dismiss his application for enforcement risked raising doubts about his competence in the eyes of a client who had entrusted him with enforcement of a substantial claim (see paragraph 5 above). Nevertheless, he averred, his remarks had not been offensive.

19. In particular, he submitted that his criticism had been mainly directed at the Zagreb County Court, specifically at its approach to the law in another case where it had held that a private document on which the signatures of the parties were certified by a notary public was not a publicly certified document. He had criticised the Municipal Court for its conformism only because in the present case it had uncritically accepted that approach by the higher court (see paragraph 9 above).

20. Furthermore, the applicant contended that he had not stated that the legal approach in question had provoked outrage and ridicule, as the contested decision suggested (see paragraph 15 above). Rather, he had remarked that that approach could potentially have provoked such feelings had it not been previously accepted by the Zagreb County Court, which had made the matter very serious (“the matter has reached dramatically serious proportions”; see paragraph 9 above). The applicant also stressed that his criticism had been justified, as the Osijek County Court had allowed his appeal and thereby confirmed that the contested approach was wrong (see paragraph 10 above).

21. In the applicant’s opinion, portraying the courts as centres of power (see paragraph 9 above) was not offensive because they constituted one of the three branches of power in a State and their decisions were binding. That was particularly true for the second-instance courts, including the Zagreb County Court, as they very often constituted the last judicial resort in enforcement proceedings given that their decisions, which had the force of *res judicata*, could not normally be contested by means of further remedies.

22. Lastly, the applicant pointed out that he had submitted his appeal containing the remarks in issue to the Municipal Court (see paragraph 8 above). That court had, however, not considered his remarks offensive until the Osijek County Court had instructed it to examine whether they amounted to contempt of court (see paragraph 10 above). Moreover, the Municipal Court had found those remarks contemptuous after he had apologised to it and explained which court had been the main target of his criticism (see paragraph 11 above).

23. In his appeal against the decision to fine him, the applicant also argued that if his appeal were to be decided by the Zagreb County Court or the Osijek County Court, that would call into question their impartiality as the former could be considered to have been offended by his remarks whereas the latter had instructed the Municipal Court to fine him for contempt and thus had

already expressed its view on the matter (see paragraph 10 above). He therefore asked for a transfer of the case (*delegacija nadležnosti*; see paragraph 40 below) to any other county court.

24. On 17 February 2017 the Osijek County Court, specifically Judge J.T.B. (see paragraph 10 above), asked the Supreme Court (*Vrhovni sud Republike Hrvatske*) to designate another county court to decide the applicant's appeal for the reasons stated by him (see the previous paragraph).

25. On 10 May 2017 the Supreme Court refused the Osijek County Court's request for a transfer of the case. It held that the applicant's doubts regarding the lack of impartiality of the Osijek County Court were not important reasons within the meaning of section 68(4) of the Civil Procedure Act (see paragraph 40 below) which would justify the transfer of the case.

26. By a decision of 12 September 2017, delivered by Judge J.T.B. (see paragraphs 10 and 24 above), the Osijek County Court dismissed the applicant's appeal and upheld the first-instance decision fining him (see paragraph 15 above). It agreed with the Municipal Court's assessment that the remarks made by the applicant in the appeal of 31 May 2016 were offensive (see paragraph 9 above).

27. On 2 November 2017 the applicant lodged a constitutional complaint. He again complained that the decision fining him for contempt of court was in breach of, *inter alia*, his right to freedom of expression, as guaranteed by the Convention and the Croatian Constitution. In so doing, he reiterated the arguments he had previously raised in his appeal against the decision to fine him (see paragraphs 16-22 above). The applicant also complained of a lack of impartiality on the part of the Osijek County Court because his appeal against the decision to fine him had been decided by Judge J.T.B., the same judge who had previously instructed the Municipal Court to examine whether his remarks had amounted to contempt of court and who had agreed to his request for the case to be transferred to another county court because of a lack of impartiality (see paragraphs 10, 23-24 and 26 above).

28. By a decision of 5 December 2017, the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicant's constitutional complaint inadmissible on the grounds that the contested decision was not open to constitutional review. He was notified of that decision on 29 December 2017.

29. The Government submitted that on 31 January 2018 the domestic payments agency FINA had collected a sum corresponding to the amount of the fine from the applicant's bank account and transferred it into the State budget. They enclosed a document from FINA as evidence of that transfer. The applicant submitted that the information provided by FINA was incorrect and that the sum corresponding to the amount of the fine had never been taken from his bank account, nor had he paid it himself.

III. DISCIPLINARY PROCEEDINGS BEFORE THE CROATIAN BAR ASSOCIATION

30. On 3 April 2018 disciplinary proceedings were instituted against the applicant before the Croatian Bar Association for the same conduct. In particular, the disciplinary prosecutor of the Croatian Bar Association submitted that in his appeal of 31 May 2016 (see paragraphs 8-9 above) the applicant had made a number of insulting and disparaging remarks about court decisions, in breach of rules 85 and 92 of the Lawyers' Code of Ethics (see paragraph 48 below).

31. By a judgment of 27 November 2018, the Disciplinary Court of the Croatian Bar Association (*Disciplinski sud Hrvatske odvjetničke komore*) found the applicant not guilty. It held that in making the disputed remarks the applicant had had no intention of insulting any of the courts or undermining their authority. Rather, in the exercise of his duties as a lawyer, he had criticised the case-law on which the decision contested by his appeal of 31 May 2016 (see paragraph 8-9 above) had been based, with the intention of obtaining a favourable decision for his client. Although the wording of his appeal was indeed unusual, he had expressed himself more freely given the importance of the case, which had concerned the enforcement of a substantial claim. The relevant part of that judgment reads as follows:

“... it is true that in his appeal the defendant used terminology which is neither usual nor conventional when addressing a court ... [I]t is also true that in the appeal the defendant [criticised] the court's approach by using terms such as ‘outrage and ridicule’, ‘conformism’ and ‘approach ... failing to meet any accepted standards or criteria’.

However, the [disciplinary] court has established that ... the defendant ... did not make those remarks with the intention of insulting the court or undermining [its authority].

... in order to establish whether by the above-mentioned remarks in his appeal ... the defendant breached the Lawyers' Code of Ethics ... the wording of the appeal had to be viewed in its entirety ... In the present case, the disciplinary court has established that the defendant does not express [negative] value judgments about the first-instance court or the second-instance court, but that in [his] legal argument he uses unusual terms to link the contested court decision with recent case-law. [He] thereby even shows a certain understanding of the first-instance court's decision, stating that it is supported by a final decision of the Zagreb County Court. The defendant, however, disputes that the aforementioned case-law applied by the first-instance court is correct and in accordance with the law, and [argues] that a party to the proceedings has the right to point that out.

The disciplinary court accepts the defence of the defendant and considers that it is the right of lawyers ..., and even their duty, to point to case-law that may not be correct and in accordance with the law, because doing so contributes to equality, fairness, and ... the rule of law.

The [disciplinary] court therefore finds that the defendant ... tried to change the current case-law and expressed himself more freely and in a legally unusual way in order to point out that the approach to the law taken by the second-instance court in a [similar]

case and [applied] by the first-instance court [in his client's case] was wrong, and [that he did so] with the aim of obtaining a favourable decision for his client ...

The [disciplinary] court also considers that ... the freedom of expression relied on by the defendant ... has limits given that every party to proceedings, including the defendant, may legitimately try to achieve his or her aim and obtain [a favourable] judicial decision by ... using appropriate legal terms which unequivocally, unambiguously and logically support the arguments of the party in the proceedings. [T]he legal arguments used in the appeal in question are not unequivocal and unambiguous. By using his freedom of expression and resorting to improper terms and expressions, the defendant breached the rules of specific, comprehensive, and clear legal argument. However, those [expressions] are nevertheless not insulting or contemptuous but amount to improper and unusual legal argument ...

The [disciplinary] court likewise accepts [the applicant's] defence ... that it was not his intention to insult the court, but only to challenge the previous case-law and obtain a writ of execution to collect a claim of five million kunas, and that, because of the exceptional importance of the case, ... he expressed himself more freely in the appeal precisely with the aim of obtaining a County Court decision favourable to his client."

32. By a judgment of 8 July 2020, the High Disciplinary Court of the Croatian Bar Association (*Viši disciplinski sud Hrvatske odvjetničke komore*) dismissed an appeal by the disciplinary prosecutor and upheld the first-instance judgment. It emphasised that the case concerned the freedom of expression of a lawyer in the exercise of his duties, which was of paramount importance in a democratic society. The applicant had made the disputed remarks in an appeal of which the general public was not aware. By his remarks he had criticised the case-law applied in the case and not a particular judge, and his appeal had been successful. Therefore, even though his remarks had been on the verge of acceptable criticism, they had not been insulting or capable of undermining the authority of the courts, which were subject to wider limits of acceptable criticism than ordinary citizens. The relevant part of that judgment reads as follows:

"The question arising [in the present case] is whether the defendant in making his remarks failed to show due respect and undermined the authority of the court, and whether his remarks have an insulting character and [amount to] contempt of court.

[The High Disciplinary Court] considers that this case concerns the freedom of expression of lawyers in communication with the court. ... [I]n this case not a single insult was directed at an individual judge or the court. [Rather,] it concerns remarks about the court as an institution, with a view to achieving a legitimate aim in representing a client. Furthermore, the defendant relies on case-law, which is precisely the duty of lawyers. The fact that the defendant communicates in a manner which is on the verge of permissible communication does not mean that that way of communicating is not allowed. The freedom of expression of lawyers in ... representing their clients must be an imperative of a free society. How is the authority of the court undermined in [the eyes of] the public in the present case when [the remarks were made] in [an appeal, that is,] a document not available to a wide circle of persons, and how did the defendant in his appeal fail to show due respect and undermined [the court's authority] by expressing his legitimate value judgment about the [existing] case-law [?] ...

The legal profession [is subject to] a number of restrictions prescribed in the Lawyers' Code of Ethics. However, the members of that profession must also represent their client's interests and in so doing must distinguish between making critical remarks and insulting the court or individuals.

[The High Disciplinary Court] established that the defendant's intention was not to insult the court or the judge but merely to point to the facts and the case-law in a manner which some may consider objectionable, but which is not offensive in the opinion of this court.

In the present case one should not ignore the fact that the defendant's appeal was [successful]. The defendant did not ... reduce his communication with the court to a personal level. Likewise, the courts are regulators and should be prepared to [accept] public criticism and so within wider limits than other citizens. The public may convey that criticism through their representative, who will be a lawyer. If we denied citizens that possibility, we would deny not only freedom of expression but the freedom of individuals and the rule of law."

RELEVANT LEGAL FRAMEWORK

I. CIVIL PROCEDURE ACT

33. The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Republic of Croatia no. 53/91, with subsequent amendments), as in force at the material time, were as follows.

A. Provisions governing fines

34. Section 110 of the Act, read in conjunction with section 10, governed fines for, *inter alia*, contempt of court.

35. Section 110(1) entitled the first-instance court to fine individuals or parties' representatives between HRK 500 and HRK 5,000 if they insulted the court in their written submissions.

36. Section 10(5) provided that, if a court deciding on a legal remedy suspected that any of the persons participating in the proceedings had insulted the court, it could order the first-instance court to examine whether they had indeed done so.

37. Section 10(7) provided that, if the person fined failed to pay the fine within the set time-limit, it should be collected by the domestic payments agency FINA from the fined person's bank account.

38. Section 10(8) provided that, if, a year after the service on FINA of the decision to impose a fine, that agency had failed to collect it, the fine should be collected by the tax authorities in accordance with the rules for collecting unpaid taxes.

39. Section 10(12) provided that if, within a year of service on the tax authorities of the decision to impose a fine, they had failed to collect the fine,

it should be converted into a prison sentence, in accordance with the rules of criminal law on converting fines into prison sentences.

B. Other relevant provisions

40. Section 68(4) provided that the relevant second-instance court could, of its own motion or following a proposal by a party, ask the Supreme Court to assign another second-instance court to decide a particular case if this would obviously facilitate the proceedings or for other important reasons.

II. ENFORCEMENT ACT

41. The relevant provisions of the Enforcement Act (*Ovršni zakon*, Official Gazette, no. 112/12 Official Gazette, as amended), are as follows.

42. Section 2 defines the terms “publicly certified document” and “certified document” as documents on which a person’s signature has been certified by a notary public or another person or body vested with public authority.

43. Section 32(1) provides that enforcement may be ordered at the request and in favour of persons not designated as creditors in the enforceable instrument if they prove by a public or publicly certified document that the claim has been transferred to them or that it has passed to them in another way.

44. Section 16(8) entitles the enforcement court to fine individuals up to HRK 5,000 if they have insulted the court in their written submissions.

45. Section 16(4) provides that if the person fined fails to pay the fine within the set time-limit, the fine should be converted into a prison sentence in accordance with the rules of criminal law on converting fines into prison sentences.

46. Section 21 prescribes that the provisions of the Civil Procedure Act apply *mutatis mutandis* in enforcement proceedings unless the Enforcement Act or separate legislation provides otherwise.

III. LAWYERS ACT AND RELATED DOCUMENTS

47. Section 7(1) of the Lawyers Act (*Zakon o odvjetništvu*, Official Gazette no. 9/94 as amended), provides that lawyers must provide legal assistance conscientiously and in accordance with the Constitution and laws and with the statute and other internal regulations of the Bar Association, and also in accordance with the Lawyers’ Code of Ethics.

48. The Lawyers’ Code of Ethics (*Kodeks odvjetničke etike*) provides in rule 85 that in the exercise of their profession, lawyers must always protect the authority of the courts and to show them due respect. It also provides, in rule 92, that when acting in proceedings lawyers must not make insulting

statements or derogatory comments about court decisions or make accusations against judges.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

49. The applicant complained that the decision of the Zagreb Municipal Civil Court to fine him for contempt of court had been in breach of his right to 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

50. The Court notes that the application 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' submissions

(a) The applicant

51. Reiterating the argument he had raised before the domestic courts, the applicant submitted that the decision to fine him had not been prescribed by law because it had been based on the Civil Procedure Act instead of the Enforcement Act (see paragraphs 17 and 27 above).

52. He further submitted that in fining him for contempt of court the domestic courts had failed to strike a fair balance between the need to protect the authority of the judiciary and the need to protect his right to freedom of expression. They had failed to view his comments in the light of the case as a whole and to establish whether fining him had been proportionate to the legitimate aim pursued.

53. In that regard the applicant reiterated the arguments he had made before the domestic courts (see paragraphs 18-22 and 27 above) and referred

to the findings in the disciplinary proceedings against him before the Croatian Bar Association for the same conduct, in which he had been found not guilty (see paragraphs 31-32 above).

54. He again explained why his ironic and colourful remarks could not have been considered offensive (see paragraphs 19-21 above), and added that the expressions such as “arbitrary adjudication” or “conformism” (see paragraph 9 above) were not offensive either. The first was a legal standard used by the Croatian Constitutional Court and by the Court itself, and as regards the second expression, there was no better word to describe the Municipal Court’s acceptance of the Zagreb County Court’s non-binding legal view which had later been proved wrong and contrary to the law.

55. The applicant emphasised, as he had before the domestic courts (see paragraph 18 above), that his client had risked losing a claim for HRK 5 million (consisting of his principal claim and the accrued interest; see paragraph 5 above) had the unlawful decision of 11 May 2016 (see paragraph 6 above) been allowed to stand. That decision had suggested that he had drawn up a faulty assignment of the debt to his client from the original creditor, which would have entitled his client to sue him for damages and would have certainly ended his career as a lawyer. The applicant therefore submitted that those who put someone else’s livelihood at risk by an arbitrary decision that had been proved wrong had to be ready to accept much more than irony.

56. Lastly, the applicant insisted that the fine had not been paid or collected (see paragraph 29 above) and that he therefore risked it being converted into a prison sentence (see paragraphs 17 and 45 above).

(b) The Government

57. The Government admitted that imposing a fine on the applicant for contempt of court had amounted to an interference with his right to freedom of expression. However, that interference had been prescribed by law, had pursued a legitimate aim, and had been necessary in a democratic society.

58. In particular, the decision to fine the applicant had been based on the relevant provisions of the Enforcement Act and the Civil Procedure Act (see paragraphs 33-39, 41-44 and 46 above) and had sought to maintain the authority of the judiciary. That interference had also been “necessary in a democratic society”, having regard primarily to the content of the applicant’s remarks.

59. In that regard the Government first emphasised that the role of lawyers in the administration of justice entailed a number of duties requiring them to be discreet, honest and dignified. Even though lawyers had the duty to defend their clients’ interests zealously, their criticism could not overstep certain bounds.

60. In the present case, in his appeal of 31 May 2016 the applicant had expressed his dissatisfaction with the Municipal Court’s decision of 11 May

2016 by suggesting that it was “failing to meet any accepted standards or criteria”, that it provoked “both ridicule and outrage” and “represented a most severe form of arbitrary adjudication” which made it “incredibly difficult to draw up a meaningful and concise appeal” (see paragraphs 7-9 above). He had also accused that court of “conformism” and had compared it to a potentate persuading his subordinates (the parties to the proceedings) that “the sea is red, the sky is yellow and the sun is green” (see paragraph 9 above).

61. Those remarks had been harsh, inappropriate, malicious, mocking, disrespectful and derogatory, and resembled those in respect of which the Court and the former Commission had found that applicants had gone beyond the bounds of permissible criticism (the Government cited *W.R. v. Austria*, no. 26602/95, Commission decision of 30 June 1997, unreported; *Kovač v. Croatia* (dec.), no. 49910/06, 23 August 2011; and *Žugić v. Croatia*, no. 3699/08, § 47, 31 May 2011). His remarks had therefore constituted an insult rather than justified or constructive criticism.

62. Moreover, the applicant’s appeal had mostly consisted of those remarks whereas the relevant legal arguments had been set out in only two paragraphs (see paragraph 9 above). That had transformed the appeal into an instrument for insulting the Municipal Court. The applicant could have raised the substance of his criticism without using offensive language.

63. The Government also pointed out that the applicant had apologised for his harsh remarks (see paragraph 11 above), which suggested that he had himself been aware that he had overstepped the bounds of acceptable criticism.

64. The fine imposed on the applicant, amounting to HRK 2,000, was in the middle of the statutory range for such fines (see paragraph 35 above), and had not been excessive given the content of his remarks.

65. The applicant’s allegations of bias (see paragraphs 27 and 51 above) were unfounded. Even though Judge J.T.B. of the Osijek County Court had indeed instructed the Municipal Court to examine whether the disputed remarks in the applicant’s appeal had amounted to contempt of court, she had at the same time allowed that appeal (see paragraph 10 above) and thereby demonstrated her impartiality.

2. *The Court’s assessment*

(a) **Whether there was an interference**

66. The parties agreed that fining the applicant for contempt of court amounted to an interference with his right to freedom of expression. Having regard to its case-law on the subject (see, for example, *Radobuljac v. Croatia*, no. 51000/11, §§ 51-52, 28 June 2016, and the cases cited therein), the Court sees no reason to hold otherwise.

(b) Lawfulness and legitimate aim

67. Despite the applicant's arguments to the contrary (see paragraphs 17 and 51 above), the Court is satisfied that the interference was prescribed by law as it was based on the relevant provisions of the Enforcement Act and the Civil Procedure Act (see paragraphs 33-39, 41-44 and 46 above).

68. The Court also considers that the interference in question pursued the legitimate aim of maintaining the authority of the judiciary. It remains therefore to be examined whether the interference was "necessary in a democratic society" within the meaning of Article 10 of the Convention.

(c) Necessity of the interference in a democratic society

(i) Relevant principles

69. The general principles for assessing the necessity of an interference with the exercise of freedom of expression in contempt-of-court cases were restated in *Radobuljac* (cited above, §§ 56-61). In particular:

- although their criticism must not overstep certain bounds, the special role of lawyers, which is crucial for the effective functioning of the fair administration of justice, gives them a certain latitude regarding arguments used in court as they have the duty to defend their clients' interests zealously;
- the courts are not immune from criticism and are subject to wider limits of acceptable criticism than ordinary citizens;
- a clear distinction has to be made between criticism and insult, it being understood that if the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention; and
- in distinguishing between the two, remarks must be seen in the light of the case as a whole, including their content and the context in which they were made.

(ii) Application of the above principles to the present case

70. The Court considers that the domestic courts, in their examination of the case, failed to set the applicant's remarks within the context and forum in which they were expressed. In that regard the Court first notes that the applicant made the disputed remarks in the context of judicial proceedings in which he was acting as a lawyer, and that his remarks related to those proceedings. Specifically, his remarks were conveyed in an appeal against a decision dismissing his application for enforcement, that is, a decision which went against the interests of his client (see paragraphs 7-9 above). This means that they were made in a forum where his client's rights were naturally to be vigorously defended. It further means that, as opposed to criticism voiced in, for instance, the media, the applicant's remarks were made in the context of internal communication between him as a lawyer and the appellate court, of which the general public was not aware (see *Radobuljac*, cited above, § 62,

and the cases cited therein, and compare also *Rogalski v. Poland*, no. 5420/16, § 47, 23 March 2023).

71. What is more, the Court is not convinced that the applicant's remarks, although strongly worded, had the sole intention of insulting the court (see, *a fortiori*, *Čeferin v. Slovenia*, no. 40975/08, § 59, 16 January 2018, and *Radobuljac*, cited above, § 66, and contrast *Žugić*, cited above, § 47). His remarks were not aimed at a particular judge but concerned the interpretation of the relevant domestic law by the Zagreb County Court in another case, which had also been followed by the Zagreb Municipal Civil Court in his client's case, and which he considered to be seriously flawed and contrary to the clear legal provisions of the Enforcement Act (see paragraphs 9 and 42-43 above). While it is true that the impugned remarks were somewhat discourteous and colourful and that their tone was caustic, the use of such a tone in commenting on the administration of justice has been regarded as compatible with Article 10 (see *Čeferin*, cited above, § 61, and the cases cited therein).

72. Lastly, it cannot be ignored that the applicant's appeal, containing the disputed remarks, was successful and that the Osijek County Court in its decision of 18 August 2016 confirmed his view that the interpretation he so vehemently criticised was indeed wrong (see paragraph 10 above). Nor can the Court disregard the fact that in the disciplinary proceedings before the Croatian Bar Association in relation to those remarks he was found not guilty (see paragraphs 30-32 above, and *Radobuljac*, cited above, § 68, and the cases cited therein).

73. The foregoing considerations are sufficient to enable the Court to conclude that the reasons adduced by the domestic courts to justify the interference with the applicant's freedom of expression were not "relevant and sufficient". Those courts did not base their decision on the criteria laid down in the Court's case-law (see paragraph 69 above) and therefore failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's freedom of expression. Since the applicant has not gone beyond the bounds of acceptable criticism, the interference in question cannot be regarded as having been "necessary in a democratic society".

74. This finding makes it unnecessary for the Court to examine other factors, such as the amount of the fine and the role of Judge J.T.B. (see paragraphs 10, 23-24 and 26 above, and the applicant's related arguments in paragraphs 27 and 51 above), which would otherwise be taken into account when assessing the proportionality of an interference with the freedom of expression in contempt-of-court cases (see *Žugić*, cited above, § 48, and *Radobuljac*, cited above, § 67).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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.”

77. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention.

Done in English, and notified in writing on 4 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President