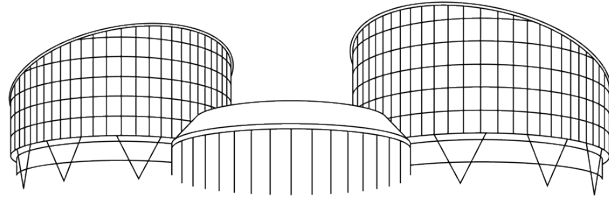

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF EUROPAPRESS HOLDING D.O.O. v. CROATIA

(Application no. 25333/06)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Europapress Holding d.o.o. v. Croatia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 25333/06) 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 Europapress holding d.o.o. ("the applicant company"), a company incorporated under Croatian law, on 22 May 2006.

2. The applicant company was represented by Mrs V. Alaburić, an advocate practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. The applicant company alleged that there had been a violation of its right to freedom of expression.

4. On 20 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company, Europapress holding d.o.o., is a limited liability company incorporated under Croatian law, which has its registered office in Zagreb.

A. Background to the case

6. The applicant company was founded in 1990 and is the biggest newspaper and magazine publishing company in Croatia, which publishes five daily newspapers and more than thirty magazines with an average annual circulation of 177 million copies. Its most prominent weekly publication, the news magazine *Globus*, on 2 February 1996 published an article headlined "*Minister Š. pointed a handgun at journalist E.V.!*", in which it reported on an incident that had allegedly occurred in the Government building on 26 January 1996 and had involved Mr B.Š., the then Minister of Finance and a deputy Prime Minister, and a journalist from the daily newspaper *Novi list*, Mrs E.V. The article suggested that B.Š and E.V. had had a conversation on the staircase of the building and that B.Š., displeased with a recent article by E.V., had told her that she should be killed. It also reported that B.Š. had subsequently followed E.V. to the press room, where he had allegedly taken a handgun from a security officer and pointed its barrel at E.V., saying that he would kill her, after which he had laughed loudly at his own joke. The article was published inside the magazine in the column "*Political Terminator*". The circulation of *Globus* at the time was some 185,000 copies.

7. The article in question reads as follows:

Minister Š. pointed a handgun at journalist E.V.!

> "Judging by the unusual scene made by B.Š. last week in the press room of the Government's headquarters, journalists may be facing a qualitatively different expression of disapproval of texts which are not to the Deputy Prime Minister's liking.
>
> Having published a critical text concerning the new budget entitled '*B.Š.'s phenomenal numbers*', E.V., commentator at *Novi List*, will remember her subsequent Government session for a very long time.
>
> B.Š. was waiting for her on the stairs of the building in St. Mark's Square and, still trying to give his voice a somewhat relaxed tone, started claiming that it had not been all right, that it all reminded him of settling personal scores and the like, and at some point he allegedly blurted something like: '*You should be killed!*'
>
> Obviously irritated by E.V.'s presence, he followed her to the press room, where, in addition to several other journalists, he found one of the security officers.
>
> And then B.Š., cool as a cucumber ['*mrtav-hladan*'], reaches for his [the security officer's] belt, takes out the handgun and points its barrel at the dumbfounded journalist, saying: '*I will kill you now!*'
>
> He then started laughing uproariously at his own 'joke', whereas the [other] journalists forced a smile.
>
> E.V., however, did not find it funny at all."

8. On 3 and 12 February 1996 *Novi list* published the same information, as did another daily newspaper, *Glas Slavonije*, on 14 February 1996.

9. Several days after the incident E.V. lodged a criminal complaint and brought an action in damages against B.Š. Both her criminal complaint and her action were dismissed on the ground that she was unable to prove that there had been a risk to her personal safety from a serious threat to her life.

B. Civil proceedings for defamation

10. On 10 May 1996 B.Š. brought a civil action for defamation against the applicant company in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking 500,000 Croatian kunas (HRK) as compensation for non-pecuniary damage. He argued that the published information had been untrue and that it had harmed his reputation as a public and political figure, in that the article had been published in a high-circulation weekly magazine, in which he had been depicted as an irresponsible and foolish person who was prone to bad and highly inappropriate jokes. The case was subsequently joined with two other actions brought by B.Š. on the same day against *Novi list* and *Glas Slavonije*.

11. The applicant company maintained that the information published was true or based on facts which it had had valid reasons to believe were true. Furthermore, the incident was of public interest and the public was therefore entitled to know about it, while the journalist E.V. was a serious and trustworthy source of information. Despite several attempts, the *Globus* journalists had been unable to obtain any comment from B.Š.'s office just a few days following the incident. Lastly, the applicant company claimed that the published article had been presented in such a way as to show that it had involved a joke rather than a serious threat.

12. During the proceedings the court heard evidence from the eyewitnesses, namely the security officer D.P., the journalist E.V., a journalist from *Glas Slavonije*, H.P., and a journalist from the State news agency *HINA*, S.Š., who were all present in the press room when the alleged incident took place. The court also heard evidence from the plaintiff, the author of the article, N.T., and the chief editor of *Globus*, D.B. At the applicant company's request, the court also heard evidence from the *Novi list* journalist J.V., who had been President of the Croatian Journalists Association at the time, and admitted a written statement from R.I, a journalist at the weekly magazine *Arena* (although it refused to call her as a witness).

13. At the hearing on 2 April 1997 the court heard evidence from security officer D.P. The relevant part of his testimony reads as follows:

> "I remember that at [the time of] the incident there was a meeting of the Government, on which occasion I was in the security team. After the meeting the chief of ... the cabinet told me to invite Mr B.Š., indicating that he was in the press

room. I went there and found [him]. As well as B.Š, there were some other persons present, Mrs E.V. and H.P.... Mr. B.Š. was talking with a woman whom I did not know. I cannot remember who that person was exactly. I addressed Mr B.Š. and informed him that the Prime Minister was looking for him, to which he jokingly replied, asking whether I had come to apprehend him. I noticed that the atmosphere in the room was relaxed and that they were joking about something.

I remained standing next to the exit, and on his way out Mr B.Š. passed next to me. Under his left arm he was holding documents, and with his right arm he [inadvertently] touched my right side, where my official handgun was [kept].

He said something when he touched it, something like '*these are the arguments*'.

On that, I took out the handgun of my own initiative, emptied the magazine ... and took out the frame of the handgun. I then placed the handgun horizontally on my left hand. At that, Mrs E.V., who was [sitting]... on my left side and was writing, commented that we should not play with weapons. I replied that she had nothing to fear, that I had emptied the weapon and put the ammunition in my pocket. The plaintiff then commented: '*Please, put that away, because they will write that I have threatened a journalist*'.

After that, Mrs. E.V. commented on the plaintiff's statement and said '*I will publish that'*. Just as the plaintiff told me to put the handgun away..., the journalist S.Š. entered and said: '*Not E.V., she is a good girl*'.

After that Mr. B.Š. left the room and Mrs E.V. continued to write her text. The only one who had my handgun in her hands was the journalist S.Š., with whom I went to the other corner of the room where we did not disturb anyone, because she was interested in weapons, given that she herself had a weapon. She has a museum piece and we talked about that.

Apart from telling me to put away the handgun because it would be published that he had threatened to kill the journalist, I did not notice that the plaintiff and journalist E.V. spoke to each other in my presence. As I said, apart from the journalist S.Š., no one held my handgun in his or her hands. The newspaper reports that the plaintiff took the handgun from me are not true.”

14. At the hearing on 21 May 1997 the court heard evidence from journalist E.V. The relevant part of her testimony reads as follows:

E.V.: “On 26 January [1996] a regular meeting of the Government was scheduled for Friday afternoon. I am an accredited journalist and follow the work of the Government. While going to the room from which I follow the meetings on a monitor with my colleagues, I met the plaintiff and G.S. The plaintiff reacted brusquely, stating that he was dissatisfied with the article which I had published in *Novi list* in January, in which I had written about the budget and the Government's policy. The plaintiff stated ... that he had seen the article as a personal attack on him. When I asked him to give reasons, he did not do so, saying that the article had amounted to settling scores with him. I replied that this was probably his impression because his name had appeared in the headline and the article had been accompanied by his photo. At that the plaintiff told me that I was '*a killer with a baby face*' and that I should be killed. ...

After I arrived at the press room ... I sat at a table to study the documents which were given to us before the [Government] meeting. ... As well as me, in the room there was H.P., who was following something on the computer... I was concentrating on the documents I was reading, and at some point I noticed that the plaintiff and a member of the security staff, whom I had seen before, were present in the room.

I did not pay attention to their conversation until I heard, at some point, that the plaintiff was mentioning journalists, after which I looked up and saw the plaintiff holding a handgun in the palm of his hand, while the security officer was standing on the other side of the table, next to me.

At this point, the *HINA* journalist S.Š., entered the room and said '*Not E.V., she is good*'; she took the handgun in her hands, saying that she had someone in her family who had a handgun like that and that she wanted to see it."

The judge: "Who was the plaintiff addressing when he said '*a killer with a baby face*'?

E.V.: "The plaintiff was facing me and we were in the small area near the staircase leading to the entry into the big foyer."

The judge: "From whom did S.Š. take the handgun?"

E.V.: "I cannot say for certain, because it all happened relatively fast and I was shocked, since I saw it as a personal threat to me because I connected the incident which had taken place before I entered the press room and the threats made by the plaintiff with the fact of seeing the handgun in his hand.

The plaintiff then left the room and the security officer and S.Š., who was checking the handgun, remained. After that the Government meeting that we were to follow started."

The judge: "Did anyone in the room react to protect you, given that you took [the incident] as a personal threat?"

E.V.: "I remember that the journalist H.P. said something... I cannot remember what she said ... "

The plaintiff's representative: "Did you and the plaintiff talk to each other in the press room?"

E.V.: "Before the handgun was taken out we did not talk. After that, as far as I remember, I said that I would publish that."

The plaintiff's representative: "Did the plaintiff address you in the press room in any way?"

E.V.: "No. While I was reading the documents for the meeting I was not, as I stated, paying attention to what the security officer and the plaintiff were talking about. I do not know whether the plaintiff was addressing me because I was reacting to the word '*journalists*' when I looked up and saw the handgun in his hand."

The plaintiff's representative: “Did the plaintiff or anyone else point the handgun at you?”

E.V.: “I did not see that.”

The plaintiff's representative: “Did you publish anything concerning the incident?”

E.V.: “I gave my comment after MPs asked a question about the incident and after the plaintiff gave his own account in the media of the events.”

The plaintiff's representative: “Why did not you react and report on the incident immediately?”

E.V.: “It happened on Friday and I ... did not want to react until I had calmed down. After the weekend I decided to inform the editor of *Novi list* and the presidency of the Croatian Journalists Association of the incident.”

The plaintiff's representative: “Did you inform the *Globus* journalists of the incident?”

E.V.: “I talked about the incident with my journalist colleagues in the Parliament Press Centre, where the journalists who followed the work of the Parliament were [based].”

The plaintiff: “In which hand was I holding the handgun?”

E.V.: “In your right hand.”

The plaintiff: “Do you remember what was I holding in my left hand?”

E.V.: “I am not certain whether you were holding anything in your left hand.”

The plaintiff: “Was I pointing the handgun at someone?”

E.V.: “I already said that I did not see that.”

The plaintiff: “At that moment in the press room did I say: '*I will kill you now!*'?”

E.V.: “I do not remember that you addressed me at that moment.”

The plaintiff: “Could you quote exactly what I said to you in the corridor?”

E.V.: “You told me: '*You are a killer with a baby face and you should be killed*'.”

The respondent's representative: “Did you talk to the *Globus* journalist about the incident?”

E.V.: “The *Globus* journalist was present when I discussed it with [a] colleague ... from my editorial board.”

The respondent's representative: “Did you consider the handgun in the plaintiff's hand as a personal threat?”

E.V.: “Yes.”

The respondent's representative: “Did you have any motive to invent the whole incident in order to harm the plaintiff?”

E.V.: “No. I consider myself a serious and responsible person and so far I have not had any incidents of this sort. As regards my reporting on the work of the Government, I have written a lot and there have never been any denials or claims that I wrote something that was not true.”

The respondent's representative: “Did you talk about the incident with S.Š.?”

E.V.: “No. I have to add that I talked to S.Š. only after the whole incident had been reported in *Feral* [*Tribune*], because her name had been mentioned, and after [she] had talked to J.V., the president of the [journalists] association. After that ... S.Š. and I met and on that occasion she practically confirmed my statement and said that she remembered seeing the handgun being pointed at me.”

The respondent's representative: “Did S.Š. state on that occasion that the handgun had been in the plaintiff's hand?”

E.V.: “Yes.”

15. At the hearing on 16 June 1997 the court heard evidence from the journalist S.Š. The relevant part of her testimony reads as follows:

S.Š.: “I was present during the incident ... in the press room. ... [W]hen I entered the press room I saw that the plaintiff and E.V. were talking. I understood from the conversation that that the topic was the article E.V. had written ... From what I heard ... I did not consider that they were talking with raised voices. To the contrary, on that occasion I said to the plaintiff jokingly something like '*As long as you politicians and us journalists exist, there will always be situations where you will not be satisfied with what we write*' after which I said something like '*E.V. is a good girl*'. I had said that before the security officer took out the handgun. Then, as the Government meeting was approaching, the security officer came to look for the plaintiff, to which he jokingly replied: '*Did you come to apprehend me? You have the power.*' When he was leaving the room he [inadvertently] touched the security officer and asked where his weapon was. The security officer took out the handgun and placed it on his palm, after which I told him that I had been taught that a weapon should always be pointed away from people. At that he said that I should not be afraid, because he had taken out the bullets. As far as I remember, the plaintiff [then] left the room, whereas I stayed with the security officer and asked about the handgun... I am certain that when I entered the press room the plaintiff and E.V. were talking. I even asked them what was going on because from the first [few] sentences I could not understand what the conversation was about. Neither of them replied to my question but I understood what the conversation was about, namely the article that E.V. had written.

While in the room, I did not hear the plaintiff saying anything that could sound like a threat to E.V. The plaintiff did not take the handgun from the security officer at any moment.

The plaintiff's representative: “Did the plaintiff at any moment call E.V. '*the killer with a baby face*'?”

S.Š.: “No.”

16. At the hearing on 10 September 1997 the court heard evidence from the journalist H.P. The relevant part of her testimony reads as follows:

H.P.: “I regularly follow Government meetings as a journalist for *Glas Slavonije*. On that day, at the top of the staircase [of the building] where the Government meeting was held, I saw the plaintiff in the company of my colleagues .... I stopped and we started talking about computers, after which the plaintiff started talking about the article E.V. had published in *Novi list*. The plaintiff was angry on account of the article and ... said that E.V. should be killed and that she was a killer with a baby face. After that I went to the press room.

After I entered the room ... I sat in front of the computer and E.V. subsequently entered; we greeted each other, and I continued working. I noticed when the plaintiff entered the room but I did not notice when the security officer entered .... I heard raised voices. I was to the side of the plaintiff and E.V., who was sitting at the table. I heard some rustling, so I turned toward them and saw that the plaintiff was searching the security officer. I continued working but again raised voices drew my attention. I cannot say for certain whose voices these were. As far as I can say, I think the plaintiff and E.V. were talking. When I looked toward them I saw that the plaintiff was standing in front of E.V. and was holding a handgun in his right hand, and his right hand was leaning on the palm of his left hand... He said that journalists would be able to write that he had tried to kill E.V. Then S.Š. entered and said: '*Not E.V., she is good.*' I got scared because I am afraid of weapons; I turned away and when I looked again the handgun was in the hands of S.Š.

Then I noticed that S.Š. was talking to the security officer about the handgun, but I did not notice when the plaintiff left the room. S.Š. then left the room and went to follow the Government meeting.

I remember that S.Š. told the security guard that her grandfather had a handgun like that.

After that we started following the meeting with other journalists.

I asked E.V. whether she would publish [the incident] in the newspapers and she said that she would not ....”

The plaintiff: “Was E.V. present when I said that she was a killer with a baby face?”

H.P.: “E.V. was not present at the time.”

The plaintiff: “What were my exact words?”

H.P.: “You said that, as for E.V., she should be killed, that she was a killer with a baby face.”

The plaintiff: “Did you ever convey those words ... to E.V.?”

H.P.: “I told [her] after the Government meeting was over.”

The plaintiff: “Why did not you do so before the meeting?”

H.P.: “I did not wish to talk about it with [her], and I thought that you would say something to her yourself. When I saw the handgun I realised that the situation was serious and after the meeting I retold the conversation to [her]”

The plaintiff's representative: “Could you describe exactly how the plaintiff searched the security officer?”

H.P.: “He was searching him on the upper part of his body, until the belt. After that I turned away and was working on the computer.”

The plaintiff's representative: “Did the plaintiff take the handgun from the security officer?”

H.P.: “I do not know.”

The plaintiff's representative: “Did the plaintiff point the handgun at E.V.?”

H.P.: “He did not point the handgun at E.V. I saw that the plaintiff's right hand, in which he was holding the handgun, was bent, but I did not see whether he was holding his fingers on the trigger.”

The plaintiff: “With how many hands was I searching the security guard? Was I holding something in my hands?”

H.P.: “You were using both hands. You were not holding anything in your hands.

The plaintiff's representative: “Did you see where the handgun went from the plaintiff's hands?”

H.P.: “I did not see. But I turned my head away and said: '*Put that away.*'”

The plaintiff's representative: “Why did not you publish anything about the incident, given that you are a journalist?”

H.P.: “I asked E.V., who did not wish it to be published. Out of journalistic solidarity I could not publish it.”

17. At the same hearing the court also heard evidence from the chief editor of *Globus*, D.B. The relevant part of his testimony reads as follows:

D.B.: “I found out about the incident ... from the colleague who follows the Government meetings and reports on them. The editor of the *Terminator* [column in *Globus*] checked with the people from the Government. As we received similar information from them ..., we decided to go ahead with the text that was published in the *Terminator* column in *Globus*.

I did not personally verify anything, because that was the responsibility of the editors of specific columns in the newspaper.”

The plaintiff's representative: "Who were the people close to the Government with whom you checked the information published in *Globus*?"

D.B.: "It is not appropriate to discuss that, because if I reveal it now I will no longer have that source."

The plaintiff's representative: "Did someone talk to the plaintiff about this matter?"

D.B.: "I do not know. I would have to ask the editor [of the *Terminator* column]."

The respondent's representative: "What was meant by the part of the text in which it was indicated that the handgun was pointed at the dumbfounded journalist?"

D.B.: "It was figurative; I do not think that the plaintiff literally pointed the handgun at E.V."

...

The plaintiff: "Why did not you consider it necessary to address me personally in order to verify the accuracy of the allegations concerning the handgun?"

D.B.: "Because the editors of specific columns bear the responsibility for those columns."

18. The court then heard evidence from B.Š. as the plaintiff. The relevant part of his statement reads as follows:

B.Š.: "On that day, while walking down the corridor to my room, I met the journalists D.K. and H.P., who usually followed Government meetings. On that occasion D.K. asked me when the next Government press conference would take place, to which I replied: '*What is the point in deceiving the public?*'. D.K. asked if I had in mind E.V.'s article. I replied that I had been hurt by E.V.'s article, which implied that I was deceiving the public... After that E.V. came, and we discussed her article in her presence. I said: "*I can understand that you do not like me but I cannot understand that you are writing such things.*" I considered her a very responsible journalist, because she had previously published an interview with me, which was, in my opinion, very fair.

At that point I saw minister M. who was coming to the Government meeting... I said '*Here is the killer with a baby face*', referring to minister M.

After that I went to my office to pick up the documents for the Government meeting.

...

B.Š. then described the incident in the press room:

"... Shortly afterwards, security officer D.P., whom I knew, entered the room. ... [He] said that he had an order to take me to the Prime Minister, to which I replied asking if he had come to take me or apprehend me, whereupon he said that he did not mind, so long as he complied with his order. At that moment I patted him on his jacket on the right side and, since it was visible that he had a handgun in the inside pocket, I said: '*You have the power.*' D.P. ... took out the handgun, saying '*Here are*

the arguments.' At that point I heard a female voice – I am not certain whether it was H.P.'s voice – saying: "*Do not play with weapons!*", at which I said: '*You should put that away, otherwise the newspapers will write about it.*'

I said that because we were among journalists. I never held the handgun in my hands. I had the documents for the meeting and in my right hand I had a cigarette. I had never put those documents away. It is not true that I was searching the security officer with both hands.

After I said that to the security officer, E.V. showed up and said: '*Just so that you know, I will publish that.*' I did not reply ... because I was not certain whether she was serious or was joking, and left the room.

I was present when S.Š. came and commented on the security officer's handgun, saying something like: '*My grandfather has a better handgun.*'

...

It was not until Wednesday that I was informed that *Globus* had published a text mentioning that I had threatened the journalist E.V. I simply failed to react ... out of naivety, because I expected that one of the journalists [who had been] present would write ... what had actually happened and state that the incident had not been the way it was described in *Globus*.

...

None of the authors of the texts that are the subject of these proceedings called me concerning the incident, in order to talk to me or get a statement from me."

The judge: "Did you address E.V. in the press room?"

B.Š.: "I did not address her. As I said, she addressed me first when she said that she would publish that. It is not true that I said that E.V. was a killer with a baby face and that she should be killed."

...

The respondent's representative: "Why did you enter the press room?"

B.Š.: "I cannot say for certain. I assume that I entered to tap [the ashes] off my cigarette or because I was talking to someone."

...

The respondent's representative: "Did you see it as normal for the security officer to take out his handgun?"

B.Š.: "I felt uneasy. Especially with the journalists in the room."

...

The respondent's representative: “Do you remember what S.Š. said when she entered the room?”

B.Š.: “I do remember. ... The first words she said were: '*Not E.V., she is good*.'

The respondent's representative: “Did you understand that these words were addressed to you?”

B.Š.: “At that moment I was not looking at S.Š. Given the phrase '*E.V. is good*', those words could have been addressed to anyone in the press room.”

19. At the hearing on 10 December 1997 the court heard evidence from the author of the article, the *Globus* journalist N.T. The relevant part of his testimony reads as follows:

N.T.: “I had obtained the information I wrote about in *Globus* from E.V. on the day after the incident – actually, I am not certain that it was the next day – in the café at the Parliament. E.V. was sitting with a colleague and I found them talking. She was excited. I asked her what was going on, after which she told me about the incident that had occurred in the Parliament, when the plaintiff had addressed her on the staircase about the article she had written and had threatened to kill her. This is what she said. He had been verbally attacking her. He had continued to follow her to the press room and had continued with verbal attacks, even though, as E.V. told me, he had been trying to do so jokingly. Among journalists the plaintiff is known for his specific sense of humour.

When I speak of the plaintiff's specific sense of humour, I mean that he is not willing to accept journalists' criticism, and reacts vehemently to texts concerning him. For the most part, he reacted [to E.V.'s text] jokingly. E.V. then told me that during these verbal attacks the plaintiff had asked for a handgun from the security officer, saying '*Give me the handgun!*' and pointed it at E.V. while saying: '*What should I do now? Should I kill her?*'

I tried to check this information by contacting the plaintiff's office. It was Tuesday, the day on which the edition closes, and the deadlines were running out. I tried to reach the plaintiff a few times but did not succeed because, as his secretary told me, he was unavailable.”

...

The judge: “To whom did you pass the information?”

N.T.: “I cannot remember with certainty but I think to Mr G., the editor of the *Terminator* column.”

The judge: “Did you really believe, on the basis of E.V.'s statement, that the plaintiff had threatened her or tried to kill her?”

N.T.: “Of course I did not, nor did E.V. say that. She described it as an inappropriate joke, and I understood it that way. Since she is a colleague whom I have known for many years I accepted her statement as being true. The text was published in *Terminator* column precisely because it was a joke, otherwise it would have been published on the front page.”

> **The judge**: "Did you believe that the information was true because you got it from E.V.?"
>
> **N.T.**: "It is difficult for me to reply to that question. She is a person that I know well, who is almost my friend, and that is why I accepted the information."
>
> ...

20. At the same hearing the court also heard evidence from the *Novi list* journalist J.V., who was the President of the Croatian Journalists Association at the time. The relevant part of her testimony reads as follows:

> **J.V.**: "I got the information ... from E.V., and from [my] conversation with H.P. and S.Š.
>
> ...
>
> As regards E.V., she told me that on that day she had met the plaintiff on the staircase of the Parliament... The plaintiff had reacted vehemently to the article she had written on the budget, and had said ... angrily that she was a killer with a baby face and should be killed. After that he had followed her to the press room ..., had taken a handgun from the security officer, and had pointed it at [her]. From the conversation with S.Š. I found out that [she] had entered the press room when the plaintiff was holding the handgun in his hand. According to S.Š., it was a tense and uneasy situation so she took the handgun from the plaintiff's hands in order to calm the situation and said that she had already seen such a handgun. ... When taking the handgun S.Š. said: '*Not E.V., she is good.*'"
>
> ...
>
> **The plaintiff's representative**: "When did you talk to E.V. and find out [about the incident]?"
>
> **J.V.**: "About seven or five days after the incident, the day before [the information] was published in *Globus*."

21. In her written statement the journalist R.I. stated that she had heard that the security officer involved in the incident had been dismissed for allowing a third person to take his official handgun. Since she was unable to obtain either confirmation or denial of that information from the Parliament or the Government, she decided to call S.Š., who had witnessed the incident. The relevant part of R.I.'s statement reads as follows:

> "I called my colleague S.Š. and told her what I wanted to know. She was unable to confirm the veracity of my information. On the contrary, she claimed that it was not correct and, in a ten-minute telephone conversation, told me the following:
>
> '*Unbelievable! Everybody is writing about the incident between B.Š. and E.V. as if they were personally present. I wanted to tell you that you are the first journalist who has called me for information... I was really the right person, since I saw what happened. I was standing next to B.Š. and E.V. when they were discussing her recently published article on the Deputy Prime Minister* [i.e. B.Š.]. *I did not have the impression that they were arguing. At one point the Deputy Prime Minister B.Š. took*

> *the handgun from the security officer in his hands and said rather jokingly:* 'What should I do to her? Should I kill her?' *And that was all. None of us present understood it as a threat, nor did I think that something could happen to... E.V. I was surprised that she published it at all in* Novi list.'"

22. On 27 February 1998 the Zagreb Municipal Court gave judgment, partially granting the plaintiff's claim. It ordered the applicant company to pay B.Š. 100,000 Croatian kunas (HRK) as compensation for non-pecuniary damage, together with the statutory default interest running from the adoption of the judgment until payment, and HRK 14,640 in costs.

23. In its reasoning, the court held that the published information had been untrue and that the applicant had not properly verified its accuracy. In particular, it found that B.Š. had not held the handgun in his hands during the described incident, since this had been confirmed by the testimonies of two eyewitnesses, D.P. and S.Š., and by B.Š. himself. Although the two remaining eyewitnesses, E.V. and H.P., testified that the handgun had indeed been in B.Š.'s hands, the court did not find their testimonies convincing, on the ground that they differed. The relevant part of the judgment reads as follows:

> "As to ... whether the plaintiff ... took the official handgun from the security officer in the press room and threatened E.V. with it, the court ... heard evidence from the plaintiff ... and witnesses E.V., D.P., H.P. and S.Š.
>
> The plaintiff and witnesses D.P. and S.Š. stated in their testimonies that the plaintiff had not had D.P.'s official handgun in his hands. Witness E.V. testified that, while reading the documents for the forthcoming session, she had at some point looked up and seen the plaintiff ... holding the handgun in the palm of his hand, after which the journalist S.Š. had come in and had taken the handgun, saying '*Not E.V., she is good*'. In reply to the question from whom [S.Š.] had taken the handgun, the plaintiff or D.P., witness E.V. could not reply with certainty, explaining that it had all happened relatively quickly and that she had been shocked to see the handgun in the plaintiff's hands, since she had seen this as a personal threat.
>
> Witness H.P. in her testimony also stated that ... she had seen the plaintiff searching the security officer D.P., after which the plaintiff had held the handgun in the palm of his right hand, which he had been holding ... on the palm of his left hand. According to [her] testimony, the plaintiff was at that moment talking to E.V. with a raised voice.
>
> The court does not accept the testimonies of E.V. and H.P., because they are not convincing. E.V. expressly stated that in the press room she had neither talked to the plaintiff nor had [he] addressed her, whereas witness H.P. stated that the plaintiff and E.V. had talked with raised voices.
>
> Witness E.V. said that the plaintiff had had the handgun on the palm of his right hand, whereas H.P. testified that he had been holding [it] with both hands, that is, that one palm had been resting on the other. E.V. was unable to say from whom S.Š. had taken the handgun, whereas H.P. stated that she had taken it from the plaintiff's hands.
>
> On the other hand, the testimonies of S.Š., D.P. and the plaintiff ... are in concordance ... From the testimony of the plaintiff and D.P. it follows that while in the

press room the plaintiff was holding the documents for the forthcoming session under his left arm, so it was not possible that he was holding the handgun in his hand [at the same time], as ... H.P. testified.

This court does not accept the written statement ... by R.I. or the testimony of J.V., because they were not present during the incident and have no direct knowledge of it. It is to be noted that R.I.'s written statement and the testimony of J.V. concerning S.Š.'s testimony... are completely contradictory and different, for which reason the court does not accept them as convincing.

...

Given that the plaintiff was acquitted by a final judgment in criminal proceedings on a charge of ... having told E.V. on 26 January 1996 '*you should be killed*', and of having taken the handgun afterwards from the security officer D.P. and held it in his hand, and having regard to the testimonies of witnesses S.Š., D.P. and the plaintiff himself..., and even E.V. herself, this court finds that on the critical [date] the plaintiff did not threaten E.V., nor did he say on the same occasion that ... she should be killed. For that reason the conditions set forth in section 23(1)3 of the [Public Information] Act for exonerating the [respondent] from liability to pay damages are not met, in that the information causing the damage is not based on true facts. The court also establishes that the conditions for exculpation of the publisher – according to which the publisher is to be exonerated from liability if the information causing damage is based on facts which the author had reasonable grounds to believe were true and with regard to which it took all necessary measures to verify their accuracy – were not met either.

In this respect the court ... heard evidence from witnesses ... D.B. and N.T. ...

D.B. stated that he had not checked the accuracy of the published information, whereas N.T., as the author of the article, ... stated that he had obtained the information from E.V. [N.T.] testified that he had contacted the plaintiff's office in order to verify the information, but had been unable to reach the plaintiff, who was very busy, and that, given the source of the information, he had considered [it] accurate.

...

The court therefore finds that the [respondent] did not, as provided by section 23(1)3 of the [Public Information] Act, take all necessary measures to verify the accuracy of the information..., for which reason the conditions for [its] exculpation [were not met] in the present case.

...

The court finds that by [publishing] the disputed text the [respondent] harmed the dignity, honour and reputation of the plaintiff, and that therefore there is a legal basis for [awarding the] compensation for non-pecuniary damage sought by the plaintiff.

According to the information in the case file, it is established that the circulation of *Globus* is 185,000 copies ...

In deciding on the amount claimed by the plaintiff and the damages to be awarded ... for his mental pain, the court took into account the circulation of [*Globus*], ... the way in which the article was worded, and ... the fact that the plaintiff is a public figure who must as such accept the fact that not all members of the public are favourable towards him, [for which reason] his reactions to negative reviews must be different from that of an ordinary person. ... [G]iven that *Globus* first wrote on the incident ... of 26 January 1996 in a manner which, in the view of this court, harmed the plaintiff's dignity, reputation and honour, the court awards [him] 100,000 [Croatian] kunas together with the statutory default interest from the adoption of the judgment until payment, as just satisfaction for the damage sustained... The remainder of the plaintiff's claim, in the amount of 400,000 [Croatian] kunas, is dismissed as unfounded."

24. On appeal, on 1 December 1998 the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the first-instance judgment but reduced the amount of damages payable to B.Š. to HRK 60,000 and the costs to HRK 8,784.

25. The applicant company then lodged an appeal on points of law (*revizija*) against the second-instance judgment. On 19 December 2002 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant company's appeal on points of law, endorsing the reasons given by the lower courts in their judgments.

26. Finally, on 23 November 2005 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant company's subsequent constitutional complaint, finding no violation of its constitutional right to freedom of expression. The relevant part of the decision reads as follows:

The Constitutional Court found that the complainants' constitutional rights guaranteed by Article 38(1) and (2) of the Constitution had not been breached by the impugned judgments.

Constitutionally guaranteed freedom of expression of thoughts, which includes the freedom of the press, is not absolute but is subject to restrictions prescribed by Constitution or statute.

Those restrictions stem, in respect of the media, from the ... Public Information Act ...

Having regard to the findings of the [lower] courts that the complainant harmed the plaintiff's dignity, reputation and honour by publishing incorrect information and that he is ordered by the impugned judgments to compensate the plaintiff for the damage caused thereby, the complainant's reliance on Article 38(1) and (2) is unfounded.

As regards the provisions of Article 10 of the Convention, according to which the exercise of freedom of expression carries with it duties and responsibilities and may be subject to restrictions, the Constitutional Court notes the following:

Freedom of expression represents one of the important foundations of every democratic society. Its protection is of special significance where the press is concerned because the latter's task is, *inter alia*, to publish information of public importance. However, the freedom to publish information in the press is

circumscribed by the protection of the dignity and reputation of other persons. It is therefore important to determine the conditions under which the State authorities may take measures which could impinge on the activity of the press in cases of legitimate public interest.

Freedom of expression of thoughts concerns not only the publication and expression of information with positive connotations, but also the publication of information which may resonate negatively in the public. However, freedom of the press is not absolute, but is subject to certain restrictions, even in respect of press articles which concern information of public interest. These duties and responsibilities come into play also when, as in the present case, the reputation of a State official is harmed. It is precisely because of these duties and responsibilities of those who exercise their right to freedom of expression that the press, when imparting information of public interest, is bound to act in good faith in order to provide trustworthy information in accordance with the ethics of journalism.

In assessing whether freedom of expression has been breached it is necessary to view each individual case in the light of all the circumstances, including the content of the impugned statements, as well as the context in which they were made. In particular, it is necessary to establish whether the measures taken in order to restrict freedom of expression are proportionate to the legitimate aim pursued by that restriction. The protection of a State official from harassment must however respect the right and the interest of the press to free reporting and allow it to impart freely information of public interest.

The article for which the [complainant] was ordered to pay damages to the victim is, by its content, of such a nature that it constituted an attack on the victim as a public figure, in particular on his reputation, and it certainly influenced public confidence in him, given his function as Deputy Prime Minister of the Government of the Republic of Croatia at the time. The Constitutional Court, in this particular case, and on the basis of the findings of the [lower] courts, finds that the impugned article contained allegations on the behaviour of another individual (public figure), which harmed [his] reputation...

It has to be noted that the impugned allegations were based on the statement of one individual and were not completely arbitrary in nature. Namely, even if a public figure was involved, the complainant was required to verify the accuracy of the information before its publication. This is especially so because the impugned allegations related to a specific incident. The [lower] courts found that the [complainant], in publishing information which could have harmed the dignity, honour and reputation of another person, had not taken all necessary measures in order to verify its accuracy.

Given that the [complainant] in this case did not satisfy its duty to verify the information before publication, as ... it was required to do, and given that the information harmed the reputation and honour of another person, the Constitutional Court considers that the measures restricting the [complainant's] freedom of expression were necessary and justified.

As regards the compensation for non-pecuniary damage awarded for harming the reputation of another person, the Constitutional Court emphasizes that the courts have discretion in assessing the amount of compensation for mental pain sustained by the victim, having regard to the circumstances of each case. However, a judicial decision on the amount of such compensation may also breach the principle of proportionality

between the intensity of the interference by the courts with freedom of expression and the importance of the interest pursued by the restriction of that freedom.

The Constitutional Court finds that the measure taken to protect the reputation of another person, that is, the award of damages in the above-mentioned amount, is proportional to the intensity of the breach of that person's reputation, and to the intensity of the interference by the courts with the freedom of expression caused by that measure. Given that the complainant as a publishing house did not comply in its activities with the provisions of the [Public Information Act], the Constitutional Court considers that the article tarnished the reputation of another person and undermined the public confidence in that person as a State official.

Therefore, it is established that the measure taken in this case to restrict the freedom of the press is, taken as a whole, proportional to achieving the legitimate aim – the protection of the reputation of another person, and that the impugned judicial decisions did not lead to a restriction of the complainant's rights or freedoms, contrary to Article 16 of the Constitution.

The Constitutional Court's decision was served on the applicant company's representative on 8 December 2005.

II. RELEVANT DOMESTIC LAW

A. The Constitution

27. The relevant part of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum)) provides as follows:

Article 16

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

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

Article 38

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

(2) Freedom of expression shall include in particular the freedom of the press and other media, freedom of speech and public expression, and free establishment of all media institutions.

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

(4) The right to correction shall be guaranteed to anyone whose rights guaranteed by the Constitution or a statute were breached by public information."

B. The Obligations Act

28. Sections 199 and 200 of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/1978, 39/1985 and 57/1989, and Official Gazette of the Republic of Croatia no. 53/1991 with subsequent amendments – "the 1978 Obligations Act") provided, *inter alia*, that anyone who has suffered mental anguish as a consequence of an injury to his or her honour or reputation may, depending on its duration and intensity, sue for damages before the civil courts and, in addition, request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

C. The Public Information Act

29. The relevant part of the Public Information Act (*Zakon o javnom priopćavanju*, Official Gazette nos. 83/96, 143/98 (corrigendum), 96/01 (amendments) and 69/03 (consolidated text)), as in force at the material time, provided:

Section 22

"(1) A publisher who causes damage to another person by publishing certain information in the media shall be obliged to compensate it.

...

(4) Non-pecuniary damage shall be compensated by correcting false information, by publishing a correction of the information and an apology, and by payment of just satisfaction for sustained pain and anguish, if their duration and intensity so justify, in accordance with the general provisions of civil law.

(5) Non-pecuniary damage shall be compensated by a publisher who, through information about personal or family life, or by any other information published in the media, violated another person's privacy, dignity, reputation, honour or any other constitutionally or statutorily protected right."

Section 23 (1)

"The publisher shall not be liable in damages:

...

> 3. if the information causing the damage is based on:
>
> - true facts, or
>
> - facts which the author had reasonable grounds to believe were true and undertook all necessary measures to verify their veracity, provided there existed a legitimate public interest in publishing such information and the author acted in good faith,
>
> ...”

D. The Code of Ethics of Croatian Journalists

30. The relevant part of the Code of Ethics of Croatian Journalists (*Kodeks časti hrvatskih novinara*, of 27 February 1993, applicable at the material time, reads as follows:

> “A journalist is bound to publish true, balanced and verified information. He or she shall indicate persons or institutions from which he or she obtained data, information or statement. He or she has a right not to disclose the source of information, but for published information bears moral, material and criminal responsibility.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant company complained that the decisions of the domestic courts had violated its right to freedom of expression as guaranteed by Article 10 of the Convention, which provides:

> “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.”

32. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' arguments

(a) The Government

34. The Government argued that the interference with the applicant company's freedom of expression had been prescribed by law, in particular section 22 of the Public Information Act, and had pursued the legitimate aim of protecting the rights and reputation of others.

35. To determine whether the interference had been "necessary in a democratic society", the Government considered it essential to carefully examine all the circumstances of the case.

36. Firstly, the discussion on the incident involving B.Š. (who had been the Minister of Finance and Deputy Prime Minister at the time) as described in the disputed article, was the subject of public debate for a long period of time. The disputed information had been published in the most respected political weekly magazine in Croatia, with a circulation of more than 180,000 copies. The published article had not contained value judgments, but factual information. This information had stirred up great public interest. Many articles had been published commenting on the incident. B.Š.'s alleged conduct, as presented in the article, had been the subject of a parliamentary debate, and B.Š.'s alleged handgun threats had been mentioned in international reports on the human-rights situation in Croatia.

37. Secondly, the interference complained of by the applicant occurred in the context of the civil proceedings for damages brought against the publisher, which was, in the Government's opinion, the mildest form of interference with freedom of expression. The journalist had not been criminally prosecuted, nor had any action been taken with a view to banning the weekly newspaper in which the information had been published. Moreover, the interference - in the form of the court order to pay damages - was directed neither against the journalist who had written the information nor against the editor of the weekly.

38. Thirdly, the Government reiterated that the applicant had been ordered to pay damages because the published information had not been true, and because its veracity had not been appropriately checked by the journalist and the editor who had published it. Having analysed the

statements of numerous witnesses and other evidence, the first-instance court had established that B.Š. had not threatened the journalist with a handgun. In addition, on the basis of the testimonies given by the journalist and the editor during the proceedings, the first-instance court established that they had not adequately checked the veracity of the information they had published. Bearing in mind that the civil proceedings which led to the interference had been conducted with due regard for all the guarantees of a fair hearing and the manner in which the facts were established, the Government argued that these findings by the domestic courts had been based on "an acceptable assessment of the relevant facts", as required by Article 10 of the Convention.

39. Fourthly, the Government further argued that the damages awarded bore a reasonable relationship of proportionality between the right to media freedom and the right to protection of another person's reputation. The applicant company had eventually been ordered to pay B.Š. HRK 60,000, or a little more than 8,000 euros, which had been neither an unpredictable nor a large amount. The case-law of the Supreme Court showed that that court had been awarding damages of between HRK 60,000 and 200,000 in similar cases. Accordingly, the damages awarded to B.Š. had been in the lower range of those normally awarded by the Croatian courts. The amount of damages itself could not be deemed high, nor could it have a "chilling effect" on media freedom, if account was taken of the fact that the applicant company was the publisher of the best-selling daily and weekly newspapers in Croatia.

40. Taking into account all of these elements, the Government considered that the interference in the present case had been "necessary in a democratic society" and therefore had not contravened Article 10 of the Convention.

(b) The applicant company

41. The applicant company did not dispute that the interference complained of had been prescribed by law and pursued the legitimate aim of protecting the reputation and the rights of others, as provided in Article 10 § 2 of the Convention.

42. The applicant company argued, however, that its rights as guaranteed under Article 10 had been violated in that the interference with its freedom of expression and freedom of the press had been neither "necessary in a democratic society" nor proportionate, nor had it corresponded to a pressing social need.

43. Firstly, the applicant company challenged the assessment of evidence and the standard of proof used by the domestic courts, claiming that their decisions had not been based on "an acceptable assessment of the relevant facts". In particular, it argued that the description of the incident published in *Globus* had been true, or at least true in substance. In this

connection, the applicant company asserted that two out of five eyewitnesses (E.V. and H.P.) had explicitly confirmed, in its essential and relevant part, the version of the incident published in *Globus*, namely, that at a certain moment the handgun had been in the hands of B.Š. On the other hand, B.Š. and the security officer (the two individuals most responsible for the incident) and the journalist S.Š. had denied that assertion. Placing its confidence in their statements, the first-instance court had found that the published information was false, that is, that the applicant company had not proved its veracity. In doing so, the first-instance court attached special importance to the testimony of S.Š. However, in respect of her testimony, the applicant company pointed out that the journalist J.V., in her testimony before the court, as well as the journalist R.I., in her written statement, testified that immediately after the incident S.Š. had told them that the handgun had been in the hands of B.Š.

44. In the light of all of the above, the applicant company considered that the domestic courts had imposed a standard of proof that was absolutely impossible to meet: to prove beyond a shadow of doubt the veracity of the published information in every detail. In the absence of a surveillance video-tape of the incident, and considering the limited number of eyewitnesses, that burden of proof could only be satisfied if both B.Š. and the security officer had admitted that the handgun had been in the hands of the plaintiff, which it would have been unreasonable to expect in the circumstances. In the applicant company's view, such a burden of proof seriously jeopardized the pre-eminent role and function of the press in a democratic society.

45. Secondly, the applicant company submitted that in the specific circumstances of the case the *Globus* journalists had taken all reasonable steps to verify the information before publication. Their primary source was the journalist E.V., whom they had considered as a credible and reliable source of information. She had been a prominent journalist at *Novi list*, accredited to report on the work of the Government, and had published numerous articles in that connection. There had not been the slightest media scandal linked to her name and her professional and moral *habitus* had never been questioned by anyone. In addition, the *Globus* journalists had received confirmation of the information from Government circles prior to publication.

46. Nonetheless, the author of the article had tried to check the information with B.Š. by contacting his office directly, but without success, because the latter had been unavailable. In addition, although the incident, which occurred on 26 January 1996, had instantly drawn the attention of the domestic and international public and had been discussed in Parliament, B.Š. himself had not found it necessary or appropriate to express himself publicly on the matter until 13 February 1996. Accordingly, B.Š. had been

offered, prior to publication, a fair opportunity to express his point of view publicly, but he had not done so.

47. Against this background, the applicant company considered that the domestic courts should have indicated, especially in the particular circumstances of the case, what additional steps the *Globus* journalists should have taken so that these courts would be satisfied that they had taken all necessary measures to verify the information. Since the courts had not done so, their decisions, in the applicant company's view, actually implied that the information in question should not have been published at all before B.Š. gave a statement concerning the incident. However, this was contrary to the basic principles of journalism and the role of the media in a democratic society.

48. Thirdly, the applicant company deemed that in this particular case the *Globus* journalists acted in good faith and in accordance with the rules of their profession, in that: (a) there was no doubt that the information at issue had been of the interest to the public; (b) they were fully entitled to trust their colleague E.V. as their primary source, taking into account everything they knew about her; (c) B.Š. had been provided with a fair opportunity to state his position but had chosen to remain silent; (d) the article had not been published in a sensational manner (for example, by being advertised on the front page) but inside the newspaper, in the column "*Political Terminator*" which contained short information on various "peculiarities" from political life; (e) the article had been very short, seven sentences only, and; (f) from the content of the article, its style and tone, as well as from the manner, form and the position of its presentation in the newspapers, it had been obvious that the *Globus* journalists had considered B.Š.'s conduct as a highly inappropriate joke, and not as a serious threat to E.V.'s life.

49. Fourthly, as regards the damages awarded, the applicant company contested the Government's argument that awarding damages had constituted the mildest form of interference with freedom of expression, and that an award amounting to a little more than EUR 8,000 could not be considered high or have a "chilling effect" on the freedom of the media. Under Croatian legislation, there were a number of other less serious measures available to persons whose reputation had been damaged by published information, such as: (a) publishing a correction and/or a response; (b) publishing an apology; (c) a judicial declaration on the falsity of the published information; (d) a court order prohibiting repetition or dissemination of certain information, etc. In fact, awarding damages for defamation had been prescribed by the Public Information Act as a measure of last resort, to be used only in cases where the duration and intensity of the sustained pain and anguish caused by the published information justified it. Therefore, in cases involving newspaper publishing companies, an award

of damages was in Croatia the most serious form of interference with their right to freedom of expression and freedom of the media.

50. In addition, the damages amounting to HRK 60,000 awarded to B.Š. in 1998 could by no means be considered low, as they equalled 22 average monthly net wages in the country at the time. Thus, the applicant company argued that the damages awarded, regardless of the other circumstances of the case, violated the principle of proportionality, as their amount could not be deemed proportionate in a democratic society to the legitimate aim of protecting the reputation and the rights of others.

51. For all the above reasons, the applicant company considered that in the present case the domestic courts had not acted in conformity with the principles embodied in Article 10 of the Convention, and that they had based their decisions on a unacceptable assessment of the relevant facts, thus breaching its rights as guaranteed by that Article.

2. The Court's assessment

(a) Whether there was interference

52. It was not disputed between the parties that the Zagreb Municipal Court's judgment of 27 February 1998, as modified by the Zagreb County Court's judgment of 1 December 1998, ordering the applicant company to pay B.Š. HRK 60,000 as compensation for non-pecuniary damage and HRK 8,784 in costs, constituted interference with its right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention (see paragraphs 34 and 41 above).

(b) Whether the interference was justified

(i) Lawfulness and legitimate aim

53. The parties were also in agreement that the interference was "prescribed by law", namely by section 22(1) and (5) of the Public Information Act. Furthermore, it was common ground that the interference pursued the legitimate aim of the protection of the reputation and rights of others, within the meaning of Article 10 § 2 of the Convention (see paragraphs 34 and 41 above). The Court sees no reason to hold otherwise. Accordingly, the only question for the Court to determine is whether the interference with the applicant company's freedom of expression was "necessary in a democratic society".

(ii) "Necessary in a democratic society"

54. In this respect, the following general principles emerge from the Court's case-law (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68-70 and 76, ECHR 2004-XI):

(a) The test of necessity in a democratic society requires the Court to determine whether the interference complained of corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 68, ECHR 2004-XI).

(b) The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken in accordance with their margin of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them (*Id.*, § 69).

(c) In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (*Id.*, § 70).

(d) In assessing the proportionality of interference, a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof even though there must be a sufficient factual basis to support it, failing which it may be excessive (*Id.*, § 76). Therefore, the difference between facts and value judgments lies in the degree of factual proof which has to be established (see, for example, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40, ECHR 2003-XI). In other words, while the requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes Article 10 (see, for example, *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103, and *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 63, Series A no. 204), the requirement to prove to a reasonable standard of proof that a factual statement was substantially true does not contravene Article 10 of the Convention (see, for example, *McVicar v. the United Kingdom*, no. 46311/99, § 87, ECHR 2002-III; *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 39, 14 February 2008; and *Alithia Publishing Company Ltd and Constantinides v. Cyprus*, no. 17550/03, § 70, 22 May 2008).

(e) The nature and severity of the sanction imposed are also factors to be taken into account when assessing the proportionality of the interference under Article 10 of the Convention (see, for example, *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006; and *Kwiecień v. Poland*, no. 51744/99, § 56, ECHR 2007-I). Under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (*Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B; and *Kwiecień*, loc. cit.).

55. The Court notes that in the instant case the applicant company, a newspaper publishing company, was ordered to pay damages for having published an article defamatory of a politician. The case therefore concerns in particular the freedom of the press. The Court has emphasised on numerous occasions the essential role played by the press in a democratic society. It has pointed out that, although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, and that not only does the press have the task of imparting such information and ideas, the public also has a right to receive them. The national authorities' margin of appreciation is thus circumscribed by the interest of a democratic society in enabling the press to play its vital role of "public watchdog" (see *Radio France and Others v. France*, no. 53984/00, § 33, ECHR 2004-II, with further references).

56. The Court also notes that the article in issue in the present case reported on an incident involving a well-known politician, given that B.Š. was the Minister of Finance and deputy Prime Minister at the relevant time. There is no doubt that this was a question of considerable public interest and that publishing information about it formed an integral part of the task allotted to the media in a democratic society (ibid., § 34).

57. It should further be observed that, as a politician, Minister of Finance and Deputy Prime Minister, B.Š. had inevitably and knowingly laid himself open to public scrutiny (see *Lingens*, cited above, § 42; and *Oberschlick*, cited above, § 59), in particular as regards issues concerning his behaviour toward journalists.

58. Article 10 of the Convention does not, however, guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern and of political figures. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. These "duties and responsibilities" are liable to assume significance when, as in the present case, there is a question of attacking the reputation of named individuals and undermining the "rights of others". By reason of the "duties and responsibilities" inherent in the exercise of freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on

issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III). In such cases, the Court must ascertain whether the domestic authorities struck a fair balance between, on the one hand, the protection of freedom of expression as enshrined in Article 10, and, on the other hand, the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention (see, for example, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 91, ECHR 2004-XI).

59. The Court notes in this regard that the article in question suggested that B.Š. had made an inappropriate joke by pointing a handgun at the journalist E.V. and saying "*I will kill you now*". It thus contained specific allegations of fact concerning a named individual, which were as such susceptible to proof (see, for example, *McVicar*, cited above, § 83; and *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 90 *in fine* and 94, ECHR 2005-II). The applicant company – which neither in the domestic proceedings nor in the proceedings before the Court claimed that these allegations amounted to value judgments – could therefore have expected that it would be required to prove their veracity.

60. The article was written in a manner leaving the reader in no doubt as to the truthfulness of the published information and made no reference to its source. Therefore, it cannot be said that the *Globus* journalist who wrote it was merely reporting what others had said and had simply omitted to distance himself from the information (see, *mutatis mutandis*, *Radio France and Others*, cited above, § 38; *Thoma v. Luxembourg*, no. 38432/97, §§ 63 and 64, ECHR 2001-III; and *Pedersen and Baadsgaard*, cited above, § 77). Rather, he adopted the offending allegations as his own, and the applicant company which published them was therefore liable for their veracity (see, *mutatis mutandis*, *Rumyana Ivanova*, cited above, § 62).

(α) As to the assessment of evidence and the standard of proof

61. The Court observes at the outset that in the above civil proceedings for defamation the applicant company was given an opportunity to prove the veracity of the published information. Contrary to the applicant company's claims concerning the assessment of evidence and the standard of proof used by the domestic courts in those proceedings, the Court considers that this task was not unreasonable or impossible in the circumstances. In other words, the Court is satisfied that the findings of the domestic courts were based on an acceptable assessment of the relevant facts and, consequently, cannot agree with the applicant company that the standard of proof used by those courts was impossible to meet.

62. In this connection the Court first notes that it has already emphasised that it is sensitive to the subsidiary nature of its role, and that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. 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. Though 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. It considers that this reasoning applies also in the context of Article 10 and in the circumstances such as those prevailing in the present case (see, for example, *Harlanova v. Latvia* (dec.), no. 57313/00, 3 April 2003; and *Hellum v. Norway* (dec.), no. 36437/97, 5 September 2000).

63. The Court further reiterates that in principle it is not incompatible with Article 10 to place on a respondent in defamation proceedings the onus of proving to a reasonable civil standard of proof (that is, on the balance of probabilities) that the defamatory statements were substantially true (see *McVicar*, cited above, § 87; and *Steel and Morris*, cited above, § 93).

64. Turning to the facts of the present case, the Court first notes that the security officer D.P. and journalist S.Š. both testified that B.Š. had never actually been holding the handgun in his hands, let alone pointing its barrel at E.V. (see paragraphs 13 and 15 above). It further notes that the journalist E.V. testified that she had not seen the handgun being pointed at her, but only saw B.Š. holding it in the palm of his hand, and that she had not known whether he had addressed her in the press room where the alleged incident took place (see paragraph 14 above). The Court also notes that the journalist H.P. testified that B.Š. had been standing in front of E.V. with the handgun in his right hand but had not pointed it at her (see paragraph 16 above). Furthermore, D.B., the chief editor of *Globus*, stated before the first-instance court that the part of the article indicating that the handgun had been pointed at E.V. was a figure of speech and that he did not believe that B.Š. was literally pointing the handgun at her (see paragraph 17 above). While it is true that, pursuant to J.V.'s testimony and R.I.'s written statement, S.Š. told them that the handgun had indeed been in the hands of B.Š., they did not claim that she had said that it was pointed at E.V. (see paragraphs 20 and 21 above).

65. In reply to the applicant company's argument that the description of the incident in *Globus* was true or true in substance, the Court considers that when reporting on facts it is one thing to allege that B.Š. had made an inappropriate joke by pointing the handgun at E.V. while saying that he would kill her, and quite another merely to say that "*at a certain moment the handgun had been in the hands of B.Š.*" (see paragraph 43 above). Therefore, there are no elements that would lead the Court to depart from the findings of the domestic courts to the effect that it was not demonstrated

that the information as published in *Globus* had been true. It thus amounted to the dissemination of incorrect information.

(β) As to whether the applicant company properly verified the published information

66. The Court must further examine whether the research conducted by the applicant company before the publication of the untrue statement of fact was in good faith and complied with the ordinary journalistic obligation to verify factual allegations. The Court's case-law is clear on the point that the more serious the allegation is, the more solid the factual basis should be (see *Pedersen and Baadsgaard*, cited above, § 78 *in fine*).

67. The applicant company's allegations appear quite serious. B.Š. was accused of having made a highly inappropriate joke by pointing a handgun at the journalist E.V. while saying that he would kill her, which is reprehensible conduct unbecoming of a politician or senior Government official. These allegations therefore required substantial justification, especially given that they were made in a high-circulation weekly magazine (see paragraph 6 above). The Court notes on this point that neither in the domestic proceedings nor in the proceedings before the Court did the applicant company adduce any evidence in support of its claim that the *Globus* journalists attempted to contact B.Š.'s office. Furthermore, it is clear that no attempt was made to contact any of their three journalist colleagues or the security officer D.P. who had actually witnessed the incident. The applicant company did not even claim that the *Globus* journalists made any efforts in that connection, although, in the Court's view, that would have been a logical step in the circumstances. Instead, they claimed to have verified the information with their source in the Government, who allegedly confirmed it but who clearly could not have had witnessed the incident and whose identity they were unwilling to reveal before the domestic courts on account of the protection afforded to journalistic sources. In these circumstances, the Court cannot but agree with the domestic courts in their finding that the applicant company did not sufficiently verify the information prior to publication.

68. That being so, the Court must also examine whether there were any special grounds in the present case for dispensing the newspaper from its ordinary obligation to verify factual statements that were defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable at the material time rather than with the benefit of hindsight (see, for example, *McVicar*, § 84; and *Pedersen and Baadsgaard*, § 78, both cited above). As already noted above (see paragraph 67), the accusation made in the article was a serious one. The *Globus* journalists relied on the journalist E.V. as their primary source of information. The Court notes, however, that she was personally

involved in the incident and perceived B.Š.'s behaviour in general as hostile. In this connection, the Court reiterates that where particularly serious allegations have been made by one of the parties to a dispute, particular vigilance is called for. In such situations journalists, rather than automatically giving credence to such allegations, should ascertain whether they were true by obtaining further information and, if appropriate, by hearing the other side's version of the facts (see, *mutatis mutandis*, *Harlanova*, cited above). Therefore, without calling into question E.V.'s professional and moral character, the Court does not consider that she was a reliable source of information concerning the incident to a degree that no further verification was necessary. This conclusion does not change even if the situation is examined as it presented itself to the *Globus* journalists at the material time rather than with the benefit of hindsight (see *Bladet Tromsø and Stensaas*, cited above, §§ 66 *in fine* and 72). The Court therefore finds that the applicant company was not dispensed from its duty to verify the published information properly.

69. The Court is however mindful that the role of journalists is precisely to inform and alert the public about social phenomena as soon as the relevant information comes into their possession (see *Cumpănă and Mazăre*, cited above, § 96). It is also aware that news is a perishable commodity and that to delay its publication, even for a short period, may well deprive it of all its value and interest (see *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 60, Series A no. 216; and *Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, § 51, Series A no. 217). Nevertheless, if the editor of *Globus* in the exercise of his editorial discretion, given the time-constraints and means available to verify the information, decided to publish it without adequately checking whether it was true or not, a more cautious approach was warranted. In that case, it should have been made clear that the information came from the journalist E.V. and it should not have been presented as uncontroversial fact. However, as already noted above (see paragraph 60), any uninformed reader could infer that B.Š.'s inappropriate behaviour was a firmly established fact, not open to controversy, and could not discern that the information actually came from E.V.

70. In assessing the necessity of the interference, it is also important to examine the way in which the domestic courts dealt with the case, and in particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see paragraph 54 above). The judgments of the domestic courts reveal that the domestic courts fully recognised that the present case involved a conflict between the right to impart information and protection of the reputation or rights of others, a conflict they resolved by weighing the relevant considerations.

71. Having regard to the foregoing, the Court is satisfied that the reasons adduced by the domestic courts for ordering the applicant company to pay

damages to B.Š. were “relevant and sufficient” within the meaning of its case-law.

(γ) As to whether the award of damages and their amount were disproportionate in the circumstances

72. The Court is unable to follow the applicant company's argument that awarding damages in the present case was disproportionate to the legitimate aim pursued because there were a number of other less strict measures available to persons whose reputation had been tarnished by published information. Having regard to the margin of appreciation left to the Contracting States in such matters, the Court finds in the circumstances of the present case that the domestic courts were entitled to consider it necessary to restrict the exercise of the applicant company's right to freedom of expression and that ordering it to pay damages met a “pressing social need”. Such a measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see, *a fortiori*, *Rumyana Ivanova*, cited above, § 62). What remains to be determined is whether the interference in question was proportionate, in view of the amount of damages awarded.

73. The Court must ascertain that the amount of damages did not upset the balance between the applicant company's freedom of expression and the need to protect B.Š.'s reputation (see *Cumpănă and Mazăre*, cited above, § 111). It considers that an order to pay B.Š. damages amounting to HRK 60,000 does not, in the specific circumstances of the case, appear excessive. The Court attaches particular weight to the fact that the payment of damages was ordered against the applicant company, the biggest newspaper publisher in the country (see paragraph 6 above), and not the editor of *Globus* or an individual journalist. It also notes that the domestic courts awarded less than one fifth of the damages sought by B.Š. Their decisions are therefore in line with the Court's case-law that an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see paragraph 54 above). The fact that the applicant was also ordered to pay B.Š.'s costs, which were not unreasonably high, was not disproportionate either (see *McVicar*, cited above, § 81).

(δ) Conclusion

74. In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of their decisions were “relevant and sufficient” and that the damages the applicant was forced to pay were not disproportionate to the legitimate aim pursued. Therefore, the interference with the applicant company's freedom of expression was “necessary in a democratic society”. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President