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

FIRST SECTION

DECISION

Application no. 57860/14
Vedrana BILAN
against Croatia

The European Court of Human Rights (First Section), sitting on 20 October 2020 as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Linos-Alexandre Sicilianos,
Alena Poláčková,
Péter Paczolay,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 August 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Vedrana Bilan, is a Croatian national, who was born in 1949 and lives in Split. She was represented before the Court by Mr D. Medak, a lawyer practising in Split.

2. The Croatian Government ("the Government") were represented by their Agent, Mr Mrs Š. Stažnik.

A. The circumstances of the case

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

4. The applicant is a notary public. In an extensive thread on the internal forum of the Notaries Chamber (*Javnobilježnička komora*) posted on 10 and

11 September 2011, she strongly criticised the members of its administrative board and its president, accusing them of wrongdoing. The relevant parts of her posts read as follows:

> "...You constantly claim that all your actions are lawful, honourable and fair. But if all your actions are lawful, honourable and fair as you claim, why you, respected colleagues, are hiding and keeping ... your meetings confidential. And why you do not allow me as, a member of the Chamber, to be present and follow the work of your meetings ...
>
> ...Respected colleagues, come down from your universe, especially you, the president of the Chamber, who is making millions working on enforcement cases, abandon your dealings with tariffs and start doing work in a Chamber which is not oriented towards such deals and interests ... but instead towards transparency, democracy, application of the Constitution, laws and regulations in force, and respect for the legal system and rule of law of the Republic of Croatia ...
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> ...For instance, at a meeting of the administrative board of the Chamber it was openly stated that the Chamber had made an agreement with the Minister of Justice not to apply the provisions of laws in force on notaries' tariffs... in [certain types of] cases, and that you made a good deal because you protected your tariffs. Respected colleagues, for you that was a new source of law and a 'legal basis' for making an unlawful [decision] ..., which you adopted and which I will continue to challenge because it was not adopted on the basis of applicable legislation, but instead on various non-transparent deals, as a new source of law. In addition, I claim that [the said decision] is withholding large multimillion amounts from the State budget in times of economic crisis and large State debt...
>
> ...Although I am still wondering how the president of the Chamber, who should be prosecuted and sanctioned for [his] unlawful actions, which I have been pointing out for years, so bravely acts towards me without any fear of unlawful and brutal prosecution and sanctioning, even when I merely open the door of the Chamber to follow the work of its administrative board ... He does that so bravely and without fear, almost in the same way that he signed and approved an unlawful [decision] which is every day withholding large amounts from the State budget, which it is entitled to do by law ...
>
> ... Have any of you, as members of the Chamber's administrative board, distanced yourselves from backdated and forged documents and from the unlawful [decision]... which is consciously and unlawfully causing [millions worth of] damage to the State budget of the Republic of Croatia in the form of uncharged notary fees ..."

5. In reaction thereto, on 12 September 2011 the members of the administrative board of the Notaries Chamber published a response on the internal forum, distancing themselves from the applicant's accusations and insinuations that they were a part of a team which persistently and systematically rendered poor and unlawful decisions.

6. Subsequently, on 14 September 2011 the president of the Notaries Chamber issued a written warning (*pisano upozorenje*) to the applicant about her conduct, which reads as follows:

> "The Croatian Notaries Chamber has received your last four posts via the closed forum page for the Chamber's members: three posts dated 10 September 2011 and one post of 11 September 2011.

> In those posts, in addition to the Rules of procedure of the administrative board, you comment and express your subjective opinion about the events of the administrative board's meeting of 10 September 2011. You repeatedly make insinuations and slanderous remarks that all members of the administrative board are part of a systematically illegally operating team. You address the administrative board, the legally elected body of the Notaries Chamber, in a particularly insulting manner. You denigrate and insult the president of the Notaries Chamber as well as the members of the administrative board, in that with your posts you misinform the members of the Notaries Chamber about their work, strongly accusing the administrative board and its president of unlawful actions.
>
> Despite the written warning I have already issued to you ... on 24 September 2010, you again in a most serious manner [failed to show] due respect to the Notaries Chamber, that is, its administrative board and president, who, in accordance with sections 10 and 141 of the Notaries Act, supervise the work of the notary public service and the conduct of public notaries.
>
> Given that the administrative board has also distanced itself from the allegations you formulated in your posts, as president of the Notaries Chamber, I am forced to protect the dignity of the administrative board, as well as the reputation and honour of its members; for all of the above-mentioned reasons I have decided as follows:
>
> 1. In line with powers from section 135(3) point 2 of the Notaries Act and section 17(2) of the Statute of the Croatian Notaries Chamber, I am again issuing you, as member of the Notaries Chamber, a written warning.
>
> 2. This warning shall be put on the file of the person receiving the warning, pursuant to section 17(2) of the Statute of the Croatian Notaries Chamber."

7. The applicant filed an administrative action against the written warning. On 26 October 2011 the Administrative Court (*Upravni sud Republike Hrvatske*) declared it inadmissible on the grounds that the warning in question was not an administrative act within the meaning of the relevant legislation. On 29 January 2014 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed a constitutional complaint subsequently lodged by the applicant, finding no breach of her rights.

8. In the meantime, on 3 October 2011 the applicant lodged an appeal with the Notaries Chamber against the written warning. Since she received no reply, on 3 January 2012 she lodged an administrative action for failure to respond (*šutnja administracije*).

9. On 22 January 2013 the Split Administrative Court (*Upravni sud u Splitu*) allowed the applicant's action and ordered the Notaries Chamber to decide her appeal within eight days. In its decision, the court concluded that, although the impugned written warning was not an administrative act, it nonetheless constituted an action by a public authority in the field of administrative law, against which the aggrieved individual had a right of appeal, pursuant to section 156 of the Administrative Procedure Act (see Relevant domestic law below).

10. On 14 February 2013 the president of the Notaries Chamber dismissed the applicant's appeal against the warning, finding that the

measure taken had been justified. The decision stated that an administrative action could be initiated against that decision.

11. The applicant lodged an administrative action against the decision on her appeal, which was dismissed by the Split Administrative Court on 9 May 2016. It found that in her comments and posts accusing the president and members of the Notaries Chamber's administrative board of unlawful conduct, she had overstepped the limits of freedom of expression.

12. On 9 March 2017 the High Administrative Court (*Visoki Upravni Sud Republike Hrvatske*) quashed the first-instance judgment on appeal and declared the applicant's administrative action inadmissible. The relevant part of that decision reads as follows:

> "In this court's opinion, the decision dismissing the [applicant's] appeal against a written warning issued by the president of the Notaries Chamber is not an administrative act, nor is such a warning issued in an administrative matter, so no administrative action can be pursued. In its decision ... this court has already held that a written warning does not constitute a decision by the Notaries Chamber on the rights or obligations of a public notary, but rather a warning about the conduct of [the applicant] as a public notary, which neither in form nor content can be considered an administrative act.
>
> This is because section 135(3) point 2 of the Public Notaries Act provides that the president of the Notaries Chamber shall warn members of the Notaries Chamber ... about their conduct. Section 137 of the same Act provides that an administrative action may be initiated against any decision deciding on the rights and obligations of public notaries ...
>
> Under section 17(1) and (2) of the Statute of the Croatian Notaries Chamber ... the president of the Chamber is free to decide the manner of resolving disputes among the members of the Notaries Chamber ... in accordance with the circumstances of each case, and shall warn members of the Notaries Chamber ... about their conduct verbally or in writing ... A note on a verbal or written warning shall be put on the file, held by the Notaries Chamber, of the person receiving the warning.
>
> In the light of the foregoing, since in this case [the applicant] is contesting the decision dismissing her appeal against a written warning, which by its nature is not an administrative act, the first-instance court was incorrect in concluding that it was, since it does not constitute a disciplinary measure ..."

13. The applicant did not file a constitutional complaint against that decision.

B. Relevant domestic law

14. The relevant provisions of the Public Notaries Act (*Zakon o javnom bilježništvu*, Official Gazette nos. 78/93, 29/94, 162/98, 167/98 and 75/09), as in force at the material time, read as follows:

Section 2 - Notary public service and public notaries

"2. The notary public service is performed by public notaries, who are autonomous and independent providers of that service, having the capacity of persons of public trust."

Section 135(3) - President of the Notaries Chamber

"The president of the Notaries Chamber shall:

1. strive to resolve disputes between members of the Notaries Chamber ... in a peaceful manner;

2. warn members of the Notaries Chamber ... about their conduct ..."

Section 137 - Legal remedies

"An administrative action may be initiated against decisions of the bodies of the Notaries Chamber which concern the rights and obligations of public notaries ..."

Section 145 – Disciplinary acts and sanctions

"1. If a public notary, through his [or her] conduct in the performance of notary duties or private life, violates the honour and reputation of the notary public service or puts into question the trust therein, particularly if he [or she] performs official duties in unlawfully or intentionally protracts them, shall be sanctioned for disorderliness or for a disciplinary infraction.

2. Disorderliness (*neurednost*) is any minor breach of official duty, which does not amount to a disciplinary infraction.

3. A public notary shall commit a disciplinary infraction if [he or she] ...

8) harshly violates due respect towards the courts or other supervisory bodies..."

Section 150 – Disciplinary bodies

"1. Disciplinary proceedings for disorderliness shall be conducted before the administrative board of the Chamber... Appeals against the administrative board's decision shall be decided by the notary public committee of the [competent] court...

2. ... Disciplinary infractions shall be decided by the notary public committee of the [competent] court... Appeals against first-instance decisions shall be decided by the notary public committee of the Supreme Court of the Republic of Croatia.

3. In the Republic of Croatia notary public committees shall be established in courts established by law..."

Section 152 – Composition of notary public committees

"1. First-instance disciplinary committee shall consist of two judges ... and one notary public, whereas the second-instance disciplinary committee shall consist of two judges of the Supreme Court of the Republic of Croatia..."

15. The relevant provisions of the Statute of the Croatian Notaries Chamber (*Statut Hrvatske javnobilježničke komore*, Official Gazette nos. 27/01, 33/01, 9/04, 139/06 and 65/07), as in force at the material time, read as follows:

Section 2

"1. The Notaries Chamber is an autonomous organisation of all public notaries ...

2. All public notaries in Croatia must join the Notaries Chamber."

President of the Notaries Chamber
Section 17

"1. The president is free to decide the manner of resolving disputes among the members of the Notaries Chamber ... in accordance with the circumstances of each case.

2. The president shall warn members of the Notaries Chamber ... about their conduct verbally or in writing ... A note on a verbal or written warning shall be put on the file, held by the Chamber, of the person receiving the warning."

16. Section 156 of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette no. 47/09) provides that any person who considers that a public authority has violated his or her rights, obligations or legal interests in the field of administrative law, in relation to which no administrative act (*rješenje*) has been adopted, may appeal, as long as the act or its consequences persist.

COMPLAINTS

17. The applicant complained under Article 6 § 1 of the Convention that the refusal of the judicial authorities to hear her case on the merits had amounted to a violation of her right of access to a court.

18. She also complained under Article 10, taken alone and in conjunction with Article 13 of the Convention, that the warning in question had violated her right to freedom of expression and that she had not had an effective remedy to protect that right.

THE LAW

19. The Government initially argued that the applicant had failed to exhaust domestic remedies because the proceedings concerning her second administrative action had still been ongoing at the time they had submitted their observations. They later pointed out that the applicant had never lodged a constitutional complaint against the decision of the High Administrative Court of 9 March 2017.

20. In their additional observations, the Government confirmed that a written warning issued to a public notary, or the fact of putting it on the notary's file, did not entail any legal consequences; it could not serve as basis for initiating disciplinary proceedings of affect any other right of a public notary.

21. The applicant disagreed, claiming that she had had multiple remedies at her disposal but could not have been expected to pursue all of them. She

reiterated that she had had no judicial protection against the allegedly arbitrary and unjust written warning issued to her.

22. The Court does not find it necessary to decide on the exhaustion of domestic remedies, since the application is in any event inadmissible for the following reasons.

A. Alleged violation of Article 6 § 1 of the Convention

23. The applicant relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

Article 6 § 1

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

24. The Court reiterates that the right of access to a court is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see, among many other authorities, *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018).

25. It recalls that applicability of Article 6 § 1 in civil matters firstly depends on the existence of a "dispute" (in French, "*contestation*"). Secondly, the dispute must relate to a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Lastly, the result of the proceedings must be directly decisive for the "civil" right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018; *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, 19 September 2017; *Károly Nagy v. Hungary* [GC], no. 56665/09, § 60, 14 September 2017; *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 106, 15 March 2018).

26. Turning to the present case, the Court observes that the applicant was issued a written warning by the president of the Notaries Chamber in the form of a letter (see paragraph 6 above). That warning did not constitute a disciplinary sanction under the relevant legislation, nor a ground for initiating such proceedings (see paragraph 20 above). The High Administrative Court observed that the domestic law guaranteed public notaries access to court against all decisions concerning their rights and obligations (see paragraph 14 above). The warning issued to the applicant,

neither in form nor content, concerned such a decision and could not therefore, in that court's opinion, have constituted an administrative act subject to judicial control.

27. At this juncture, the Court notes that even assuming that Article 6 § 1 was applicable to the proceedings in question, an issue that the Court considers not necessary to examine further, there will be no lack of access to court within the meaning of this provision when a restriction such as the one mentioned above pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

28. The Court has already accepted, in the context of private-law associations, that the scope of judicial review may be restricted, even to a significant extent, in order to respect aims such as the organisational autonomy of associations (see *Lovrić v. Croatia*, no. 38458/15, § 73, 4 April 2017). It considers that analogous considerations apply in the present context. In that connection, the Court notes that the Croatian Notaries Chamber is an autonomous association of all public notaries in Croatia (see paragraph 15 above), which has to have certain autonomy in deciding internal matters such as the rules of conduct of its members; it therefore must be able to wield some powers without outside interference.

29. As to the proportionality of the restriction, the Court notes that only minor issues, such as inappropriate conduct of public notaries or internal disputes between them, could result in a warning by the president of the Notaries Chamber (see paragraphs 14 and 15 above). It goes without saying that more serious issues, such as disciplinary proceedings against its members, have to be amenable to judicial review (see, in this sense, *Gautrin and Others v. France*, 20 May 1998, § 57, *Reports of Judgments and Decisions* 1998-III) and indeed are under domestic law (see paragraph 14 above). The applicant argued that, on that basis of the warning issued to her, disciplinary proceedings could be initiated in accordance with sections 145(2) or 145(3)8 of the Public Notaries Act. However, it is clear from the legislation relied on that such a warning could in fact not serve as basis for disciplinary proceedings (see paragraph 14 above). It does also not transpire that, other than being recorded in the personal file on each notary kept by the Notaries Chamber, such a warning had or could in future have any sort of bearing or consequences on the applicant's professional life as a notary (see paragraphs 14 and 15 above). This position has also been confirmed by the Government (see paragraph 20 above).

30. The applicant further submitted that the said warning would remain on her file for an unlimited period of time, since there were no provisions in the relevant legislation which would allow for the warning to be expunged. While this indeed seems to be the case, in view of the conclusions reached above (see paragraph 29 above), as well as the nature of such files which would appear to be accessible only to the Notaries' Chamber, the Court

does not consider that, in the absence of any evidence to the contrary, this fact alone would affect any of the applicant's civil rights to the point of requiring judicial review.

31. Given the autonomy of the Notaries Chamber and the limited powers given to its president, as well as the unhindered access to the courts by public notaries in all decisions concerning their rights and obligations, the Court is satisfied that any restriction of the applicant's right of access to a court in the circumstances at hand was not disproportionate.

32. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 10 taken alone and in conjunction with Article 13 of the Convention

33. Relying on Article 10, taken alone and in conjunction with Article 13 of the Convention, the applicant complained that the warning in question had violated her right to freedom of expression and that she had not had an effective remedy to protect that right.

34. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court considers that these complaints are closely linked and fall to be examined solely under Article 10 of the Convention, which reads as follows:

Article 10

> "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."

35. Even assuming that there has been an interference with the applicant's right to freedom of expression, the Court notes that the alleged interference was "prescribed by law", notably section 135 of the Notaries Act. It further considers that it pursued the legitimate aim of "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. What remains to be established is whether the measure applied was proportionate to the aim pursued.

36. The general principles for assessing whether an interference with the exercise of the right to freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention are well-established in the Court's case-law (see, for example, *Pentikäinen v. Finland* [GC], no.11882/10, § 87, ECHR 2015, and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016). In cases such as the present one, the Court must also ascertain whether a fair balance was struck between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations were made, a right which, as an aspect of private life, is protected by Article 8 of the Convention (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-95, 7 February 2012, and *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 101-13, ECHR 2012).

37. Turning to the present case, the Court observes that, in her impugned statements, the applicant put forward rather serious accusations of wrongdoing against the administrative board and the president of the Notaries Chamber on its internal forum (see paragraph 4 above). Although the overall topic of her posts – the internal functioning of a public association and alleged misappropriation of public funds – cannot be said to have been outside the public interest, the Court notes that it has not been shown that the applicant's accusations had any factual basis whatsoever.

38. The Court further reiterates that, in assessing the proportionality of an interference with an individual's freedom of expression, the nature and the severity of the sanction imposed are also factors to be taken into account (see, for example, *Kovač v. Croatia* (dec.), no. 49910/06, 23 August 2011, and *Kwiecień v. Poland*, no. 51744/99, § 56, ECHR 2007-I). In this connection, the Court notes that in the present case no civil or criminal proceedings have been instituted against the applicant for the statements she made. Instead, the president of the Notaries Chamber issued her with a written warning, which, as the Court has already stated in relation to Article 6, has had no bearing on her status as a public notary (see paragraph 29 above).

39. The Court considers that, in view of the nature of the statements made and the content of the warning, it cannot be said that the alleged interference with her freedom of expression, if any, had been disproportionate to the legitimate aim pursued.

40. Accordingly, the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 November 2020.

Renata Degener Deputy Registrar	Krzysztof Wojtyczek President