

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

FOURTH SECTION

CASE OF ČEFERIN v. SLOVENIA

(Application no. 40975/08)

JUDGMENT

STRASBOURG

16 January 2018

FINAL

16/04/2018

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



In the case of Čeferin v. Slovenia,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani, *judges,*
Aleš Galič, ad hoc *judge,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 40975/08) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Peter Čeferin, on 20 August 2008.

2. The applicant was represented before the Court by "Odvetniška družba Čeferin", a law firm based in Grosuplje. The Slovenian Government ("the Government") were represented by their Agent, Mrs V. Klemenc, State Attorney.

3. The applicant alleged, in particular, that the decisions to fine him in contempt of court proceedings had been in violation of Article 10 of the Convention and that the Constitutional Court's decision in the second set of proceedings had lacked impartiality.

4. On 6 September 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Mr Marko Bošnjak, the judge elected in respect of Slovenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the President of the Fourth Section decided to appoint Mr Aleš Galič to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

6. The applicant, a practising defence lawyer, represented – initially before the Ljubljana District Court and subsequently before the appellate courts – a defendant, I.P., who had been charged with three murders committed on 15 August 2002. The offence carried a thirty-year prison sentence. During the first-instance criminal proceedings, three certified sworn-in experts were appointed. A psychologist, J.R., and a psychiatrist, V.R., were asked to assess the accountability of the defendant and the probability that he had committed the criminal offences of which he had been accused. An expert in forensic medicine, J.B., was asked to prepare a report and testify, among other things, about the time of death of the victims, which was an important element in the accusation against the applicant's client. In his written and oral submissions the applicant continuously protested his client's innocence, pointing to what in his view was unreliable expert evidence, and requesting the exclusion of all evidence obtained by alleged violations of his client's human rights. It would also appear that at some point in the proceedings the applicant asked to be given the results of a lie-detector test performed during the police investigation, but his request was refused.

7. At the final hearing held on 12 March 2004 V.R. replied to questions put by the applicant and the public prosecutor. Subsequently, the applicant requested that a new expert psychiatrist be appointed and that he should be assisted by a psychologist specialising in psychodiagnosis. Under the rules of the Criminal Procedure Act, a new expert witness should not be appointed unless there are contradictions or deficiencies in the available expert opinion or if reasonable doubt arises with regard to its correctness – the applicant therefore pointed out what he considered to be such deficiencies with respect to V.R. and J.R. In his oral submissions, the applicant argued that J.R. was known to be inclined towards psychodynamics which, in the applicant's opinion, meant that "he was not familiar with top-level means of diagnosis, which were to be used in the process of psychosocial diagnosis". He also stated that the psychodynamic psychotherapy used by the expert was not a scientific method and did not produce reliable data. The applicant further maintained in his speech that the results of the test used on his client were wholly contradictory and as such invalid. He gave examples from the expert opinion, such as its finding that the accused had little sense of reality but, at the same time, good general

knowledge, and that while he was mentally rigid he was of above-average intelligence. The applicant continued by saying:

> "That this was just senseless extensive talking without any meaning, full of contradictions, is supported by the fact that the expert did not link his mental constructs with any concrete mental disorder, not least with the personality disorder in which he had proclaimed himself to be the expert."

8. The applicant then went on to say that none of the tests could lead to a finding of the narcissist characteristics mentioned by expert J.R. and that, in any case, narcissism was not part of the valid method of diagnosis. He then stated:

> "The opinions of both the psychiatrist and psychologist indicate the sad truth that in their professional weakness, both experts resorted to methods that did not form part of their professional practice. The psychiatrist used psychological methods which he absolutely did not understand and applied them only mechanically; the psychologist applied outdated psychological methods from the stone age of psychology and unscientific psychodynamic concepts and thereby failed to obtain any useful results, therefore he resorted to the field of medicine ..."

9. The applicant concluded by saying that the proposed new expert opinions would have proven that his client could not have committed the crimes with which he had been charged.

10. The court rejected the applicant's proposal to appoint new experts and concluded the evidence-taking procedure.

11. On 16 March 2004 the applicant's client, I.P., was convicted of three counts of murder and sentenced to thirty years' imprisonment. On 22 June 2004 the applicant lodged an appeal with the Ljubljana Higher Court. He supplemented it with further written submissions and on 16 December 2004 attended a session and a hearing before the court. The applicant argued, *inter alia*, that the date of the murder could not have been 15 August 2002 as established by expert, J.B. (see paragraph 6 above), which meant that his client could have not committed it; that the public prosecutor had not submitted the results of the lie-detector test which would have allegedly exculpated his client and the court had refused to obtain them from the Croatian authorities; and that his client had not been psychologically capable of committing the alleged crime. In his written and oral submissions before the Ljubljana Higher Court, the applicant strongly criticised the work of the experts, public prosecutor and the court and used a number of expressions which the Higher Court found amounted to contempt of court (see paragraph 19 below).

B. First set of contempt of court proceedings

12. On 19 March 2004 the Ljubljana District Court issued a decision, fining the applicant 150,000 Slovenian tolars (SIT – approximately 625 euros (EUR)) for contempt of court for his statements given at the

hearing of 12 March 2004 regarding the expert witnesses, namely for making the following remarks, the translation of which has not been disputed by the parties: "senseless talking" (*neosmišljeno nakladanje*), "mental constructs" (*umotvori*), "professional weakness" (*strokovna šibkost*) of the experts and saying that "the psychiatrist used psychological methods which he absolutely did not understand" (*psihiater si je pomagal s psihološkimi metodami, ki jih absolutno ne razume*) and that "the psychologist [applied] outdated psychological methods from the stone age of psychology and unscientific psychodynamic concepts" (*psiholog z zastarelimi psihološkimi metodami iz kamene psihološke dobe ter neznanstvenim psihodinamskim konceptom*) (see paragraphs 7 to 9 above). The court took the view that the applicant had expressed insulting value judgments with regard to the expert witnesses' professional qualifications. Moreover, it considered that the professional competence of certified experts approved by the Ministry of Justice was not open to doubt. As regards the level of the fine imposed on the applicant, the court noted that it reflected the nature and seriousness of the offensive statements and the fact that he was a lawyer with many years' experience of representation in court proceedings.

13. The applicant appealed on 8 July 2004. He argued that he had not intended to insult anyone, and had only wanted to draw attention to the unacceptable way by which the opinions that could result in a potential thirty-year prison sentence had been prepared. He maintained that the impugned allegations were substantiated by the criticism expressed in the appeal. He pointed out that he did not have the required knowledge to substantiate the criticism but had been warned about the serious errors committed by the two experts by those from the "psychiatric and psychological profession". According to the applicant, the courts had to reflect on their practice of punishing lawyers, which was used by some judges to "cover up" their own unprofessional and incompetent work. He alleged that the punishment of defence counsels often had a chilling effect and thereby interfered with freedom of expression.

14. On 3 February 2005 the Ljubljana Higher Court dismissed the applicant's appeal as unfounded, finding that his remarks "constituted insulting value judgments which were damaging to the honour and reputation of both experts, since they expressed contempt and disrespect for the human dignity of other people and were as such unworthy of the profession practised by a lawyer". The court considered that it was obliged to protect its authority and the personal dignity of other participants in the criminal proceedings and pointed out that the applicant could have expressed his criticism in a number of legally acceptable ways. It also held that punishing a defence counsel did not constitute a serious interference with the constitutional right of freedom of expression, nor did it limit the constitutional right of defence. The court concluded that the lower court's

decision was correct and did not restrict the rights of the defence "as alleged by the appellant who obviously, lacking any self-criticism, still maintains that the allegations laid against the experts were justified".

15. On 31 March 2005 the applicant lodged a constitutional appeal, in which he complained of a violation of Article 10 of the Convention and Article 39 of the Constitution, which guarantees freedom of expression. He argued that he had expressed the impugned opinions with the aim of providing the best possible defence to his client and that his punishment had not been necessary in a democratic society. Relying on the case of *Nikula v. Finland* (no. 31611/96, ECHR 2002-II), he argued that the critical comments had been directed solely at the unprofessional and inadequate work of the experts and had not insulted the court in any way. His criticism of the two experts "was fully justified and based on scientific fact". Furthermore, alternative less severe measures were available, such as a private prosecution for slander.

16. On 15 May 2008 the Constitutional Court dismissed the applicant's constitutional complaint. The most relevant parts of its decision are as follows (as translated in the English version provided on the Constitutional Court's website):

> "9. ... Certainly it has to be taken into account that the freedom of expression of a lawyer in his capacity as defence counsel in criminal proceedings serves the purpose of the defendant's right to a defence ... The circumstance that a defence counsel in judicial proceedings exercises his right to freedom of expression because and only because he represents a client is of primary importance for the review of the admissibility of the interference with the right of a defence counsel determined in the first paragraph of Article 39 of the Constitution [freedom of expression], but this cannot entail that because of this circumstance the Constitutional Court would not review whether the courts' decisions on punishing the defence counsel violated his right to freedom of expression.
>
> 10. In accordance with the first paragraph of Article 39 of the Constitution, freedom of ... expression [is] guaranteed. The ECHR protects the freedom of expression in the first paragraph of Article 10...
>
> ...
>
> 12. The duty of the courts in general and the court deciding on the merits of the case is to direct proceedings in such a manner so as to ensure the proper conduct of the parties and above all the fairness of the trial – rather than to examine in a subsequent trial the appropriateness of the party's statements in the courtroom However, this does not entail that the defence counsel's freedom of expression in criminal proceedings should be unlimited. Due to the fact that a defence counsel takes part in judicial proceedings and that his right to freedom of expression is intended for the protection of the rights of others, it is limited to a greater extent than the right to freedom of expression of any other individual in a public space may be limited. A defence counsel is namely limited by the fact that he participates in proceedings that are [formalised] and as such conducted in a rational manner, as well as by his professional ethics. A defence counsel may express strong and sharp criticism, however his argumentation in protecting the interests of his clients must remain within the range of reasonable argumentation, and there is no room for insults charged with emotion. It is

understandable that in cases of defending a defendant charged with a grave criminal offence for which a severe penalty is prescribed, the tolerance threshold which may be allowed by the courts may be higher than in other cases, however, the defence counsel may not cross the outer boundaries of this tolerance. If he does cross them, it is proper that the court protects other values, i.e. confidence in the judiciary and the good reputation and authority of the judiciary, which ensures that the public respects the courts and has confidence that the courts are able to perform the role they have in a state governed by the rule of law. Protecting the authority of the judiciary includes the notion that the courts are the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence regarding a criminal charge, whereby it is important that the public at large have respect for and confidence in the courts' capacity to fulfil that function. The above-mentioned is a constitutionally admissible reason to limit the defence counsel's right to freedom of expression. The Constitutional Court has already [emphasised] in Decision No. U-I-145/03 that the institution of a punishment for insulting submissions is not the primary way to ensure the good reputation and authority of the judiciary, it is, however, an additional (and subordinate) tool which ensures the protection of the good reputation of the courts in situations in which confidence in the work of the judiciary is undermined by degrading criticism and [generalised], and from the viewpoint of the protection of rights in an individual case, unnecessary attacks on the work of the courts.

13. The complainant used the expressions mentioned in the first paragraph of the reasoning of this decision while defending a defendant who was charged with murder, for which the prescribed sentence is thirty years of imprisonment. The expressions entailed criticism of the expert witnesses who provided expert opinions in the criminal proceedings as permanently sworn-in experts. On the basis of [section] 248 of the Criminal Procedure Act, expert witnesses are engaged when the determination or assessment of a material fact call for the findings and opinion of a specialist possessing the necessary expertise for the task. The Constitutional Court in Decision No. U-I-132/95, dated 8 January 1998 (Official Gazette RS, No. 11/98 and OdlUS VII,1), [emphasised] that expert testimony is not only evidence, that is, a source for learning of relevant facts, but that an expert witness is an assistant to the court in exercising its function. The requirement that expert witnesses must be impartial follows from this, as otherwise parties to criminal proceedings would not be in an equal position. In view of the position that expert witnesses have as assistants to the courts in exercising their function, their authority must be protected in the same manner as the authority of the judiciary. This is a constitutionally admissible aim for which it was admissible to limit the complainant's right to freedom of expression. Therefore, the Constitutional Court cannot accept the complainant's view that a situation in which he directs insulting expressions towards the court is different than a situation in which such expressions are directed towards expert witness.

14. The courts' assessment that the complainant expressed contemptuous criticism towards the expert witnesses is supported by reasons and is not unsound. The complainant did not merely express sharp criticism of the expert opinions, but his insulting remarks entailed personal disparagement of the expert witnesses as experts. The expressed contemptuous criticism is beyond the reasonable argumentation by which the defence counsel could justify his motion that new expert witnesses be called. Therefore, it cannot be accepted that such criticism could be justified for the purpose of exercising the defendant's right to a defence as determined in Article 29 of the Constitution. Contemptuous criticism of an expert witness as a person who has been called to provide an expert opinion could even threaten a fair trial in criminal proceedings. The Constitutional Court has already [emphasised] in Decision No. U-I-145/03 that it is of exceptional importance that parties to proceedings [realise] that

insulting sharp speech before the court does not prove that the defence counsel has provided quality representation. The quality defence provided by a defence counsel can also not be based on expressing contemptuous criticism which shows contempt for expert witnesses, instead, the defence must be directed towards a criticism of their opinions provided in the individual proceedings, and supported by arguments and reason. Therefore, it cannot be expected from the courts that they should, within the boundaries of tolerance, also allow insults for which the courts reasonably assessed that they showed contempt for the expert witnesses in their capacity as expert assistants to the court. Therefore, the interference with the complainant's right to freedom of expression which the court made by punishing the defence counsel for the expressed insults with a fine, is not disproportional.

15. ...The Constitutional Court did not have to address the question whether by using the above-mentioned expressions the complainant had fulfilled all the statutorily determined elements of the criminal offence determined in Article 169 of the Penal Code, as this was not the subject of the challenged judicial decisions. ... In Decision No. 145/03, the Constitutional Court already [emphasised] that the possibility of independent criminal protection is not an appropriate substitute and cannot serve the purpose for which the legislature enacted the possibility that insulting submissions be punished. The Constitutional Court reiterates that the protection which the legislature defined in the first paragraph of [section] 78 of the Criminal Procedure Act is not intended to protect individual expert witnesses but to protect the good reputation and authority of the judiciary as a whole. The reasons why also the good reputation and authority of expert witnesses as impartial assistants to courts is a part of the protected value has been outlined in paragraph 13 of the reasoning of this decision.

16. ...Therefore, the constitutional complaint is not substantiated and the Constitutional Court had to dismiss it."

17. The Constitutional Court reached the above decision by six votes to one. Judge J.Z. wrote a separate concurring opinion. Judge C.R., who voted against, wrote an extensive dissenting opinion. He argued that the applicant's conduct had been judged too harshly by the majority, who had not approached the case correctly. In particular, the Constitutional Court had supported the finding of no violation by the fact that the impugned statements had been given during court proceedings, although – in his view – this should have weighed in favour of the applicant. Furthermore, proper attention had not been given in the reasoning to the nature of the proceedings, which had been criminal not civil, the target, which had been the experts and not the court, and the seriousness of the criminal offence the client had been risking – an offence carrying a potential thirty-year prison sentence. In this connection, the dissenting judge argued that the Constitutional Court should have taken account of the principles arising in *Kyprianou v. Cyprus* ([GC], no. 73797/01, ECHR 2005-XIII), especially those relating to the role of defence lawyers in criminal trials. He pointed out that a public prosecutor could not be fined for contempt of court and that less invasive measures were available to the court which were applicable to both defence lawyers and public prosecutors. In his opinion, such measures might constitute interruption of the speech in question, a formal warning, and the informing of the appropriate professional association or body.

Lastly, he pointed to the danger that the decision in the present case might have a discouraging effect on other defence lawyers, particularly given that the penalising of expressions such as "professional weakness" had been considered justified by the Constitutional Court.

18. According to a letter by the Ljubljana District Court of 30 March 2017, prepared for the purposes of the present proceedings, the applicant paid the first fine (see paragraph 12 above) on 1 April 2005.

C. Second set of contempt of court proceedings

19. On 3 February 2005 the Ljubljana Higher Court issued a decision fining the applicant SIT 400,000 (approximately EUR 1,670) for contempt of court for his statements in the appeal proceedings regarding the expert witnesses, the State Prosecutor and the first-instance court (see paragraph 11 above). The court found that the following remarks of the applicant, the translation of which has not been disputed by the parties, amounted to contempt of court (taken from the decision):

> "As regards the State Prosecutor:
>
> '... it can be concluded that someone – a person who was aware of the exculpatory nature of this documentation for the defendant – hid this documentation ...'
>
> '... it is permissible for a prosecutor to hide crucial evidence which could release the defendant from his liability ...
>
> As regards the expert psychologist ... [J.R.] ... :
>
> '... he had intentionally overlooked any information pointing to another possibility...'
>
> '... on the other hand, I, as a layman, consider this to be a reflection of possible narcissism on the part of the expert himself ...'
>
> As regards the forensic expert psychiatrist ... [V.R] ... :
>
> '... from the perspective of forensic ethics, by which the forensic expert is bound, such a way of working represents an intentional violation of those ethics, giving statements without any scientifically based value ...'
>
> '... could be seen from the qualified (ab)use (*(zlo)rabe*) of the experiments, which the expert ...'
>
> '... as he cannot have the slightest idea (*ne more imeti najmanjšega pojma*) as to how far normality extends and when pathology starts ...'
>
> '... commenting on or describing handwriting analysis amounts to quackery (*je na nivoju šarlatanstva*) ...'
>
> '... the psychiatrist either does not know all this or he is narcissistically ignoring it ...'
>
> '... in this case we can talk of a typical abuse of a test, most likely a pirate version. In view of the fact that this abuse of the test took place in proceedings before a court – a judicial institution – this is almost grotesque ...'

'... the conclusion is almost dilettantish ...'

'... The expert did not show the slightest scientific doubt (*niti trohe prisotnosti znanstvenega dvoma*), but instead focused all his energy on defending his own infallibility, which is extremely inappropriate for any expert, and for one who is "accepting" the expert skills (*"sprejemnika" izvedenske veščine*) it is dangerous ...'

As regards the forensic expert ... [J.B.], the head of the forensic medicine institute:

'... and when such negligence (*malomarnost*) by experts in preparing their opinions, resulting in a [thirty]-year prison sentence, justifiably upsets me ...'

'... that the negligence (*šlamparija*) of this expert is immense ...'

As regards the court:

'... the judicial farce referred to is of course not over ...'"

Of the above, the second of the statements referring to the public prosecutor and the statements referring to expert J.B. were expressed orally at the Ljubljana Higher Court's session; the remainder were given in writing.

20. In providing its reasoning for the decision, the Ljubljana Higher Court found that the applicant had expressed insulting value judgments which had shown contempt for the participants in the proceedings and the court and had had nothing to do with freedom of expression. The court also noted that the applicant had previously been offensive within the same set of proceedings and that therefore, even from a subjective perspective, the offensive statements had to have been made intentionally. As regards the level of the fine imposed on the applicant, the court noted that it reflected the nature and seriousness of the offensive statements, the fact that he was a lawyer with many years' experience of representation in court proceedings and the fact that he had previously made similar offensive statements during the first-instance proceedings. Lastly, the court decided to inform the Bar Association of the outcome of the proceedings.

21. The applicant appealed against this decision on 17 March 2005. He argued that his statements had not been offensive, given their context. As regards the criticism expressed against the public prosecutor and the court, he referred to the arguments of the defence concerning the undisclosed results of the lie-detector test. Among other things, he stated that "such a way of evidence taking [was] mystic and [had] no connection with the modern trial". As regards expert J.R., the applicant stated that he had "directed all his intellectual abilities at defending his unprofessional opinion". The applicant further referred to the objections made by the defence, which had allegedly been ignored by J.R., and stated that he, "as a layman, [could not] consider such conduct to be anything else than a reflection of possible narcissism on the part of the expert himself". Regarding the criticism of expert V.R., the applicant referred to the examination of this expert during the trial, to the statements he had given

and which, in the applicant's view, showed that V.R. had been using methods which had not been within his competence, and had claimed to have been using a particular test "without ever seeing the original ... in his life". The applicant also argued that V.R. had not shown "the slightest scientific doubt but had focused all his energy on defending his own infallibility". As to expert J.B., the applicant stressed that his comments had related to J.B.'s assessment of the time of death – the air temperature at the time of the victims' death had been an important, but disregarded, factor. In the applicant's opinion, the assessment of the time of death had been done carelessly by J.B., who had kept changing his mind on the issue. The applicant pointed out that the time of death had been a crucial element in the trial and could have led to an acquittal if assessed properly. He concluded that "such expert opinions [were] a catastrophe for the Slovenian judiciary and very dangerous for its citizens".

22. On 19 January 2006 the Supreme Court – sitting as a panel of five judges, one of whom was B.Z. – dismissed the applicant's appeal. The Supreme Court noted that the courts were under obligation to protect their authority and the dignity of the participants in the proceedings. While section 78 of the Criminal Procedure Act provided for disciplinary sanctions, it could not be interpreted as allowing sanctioning of every inappropriate expression. Instead, the courts were called to take into account all the circumstances and decide whether, on balance, the insult had been such as to require a disciplinary sanction. The Supreme Court stressed that the courts had to show particular restraint and caution in deciding on a disciplinary sanction against a defence counsel, because in such cases not only was his or her right to freedom of expression at stake but also his or her role in defending the accused person in criminal proceedings. It noted that a defence counsel might, therefore, be critical of the State prosecutor and other participants in the proceedings, including the court, but even this rule did not apply in absolute terms. If a defence counsel conducted his defence in criminal proceedings by insulting or humiliating other participants, by accusing them of personal dishonesty or bias or of lacking the essential professional capacities, personal qualities or similar, or if he or she was also insulting to the court, his or her conduct was deemed unacceptable and therefore had to be subject to a sanction by a fine pursuant to section 78 of the Criminal Procedure Act. The Supreme Court concurred with the Higher Court that the case at hand involved insulting value judgments and expressions of contempt and disrespect for other participants in the proceedings and the court. The Supreme Court referred to the applicant's statements and examined their semantic meanings and upheld the view that he "had expressed contempt for the court experts, not only regarding their professional abilities but also by attributing to them negative personal characteristics, thereby expressing insulting value judgments". The Supreme Court also pointed out that the applicant had had the right to

challenge the correctness of the court's procedural decisions, but should have done so in a legally acceptable manner. The Supreme Court also found that the Higher Court had provided reasonable grounds for the amount of the fine imposed.

23. On 16 March 2006 the applicant lodged a constitutional appeal in which he complained of a violation of Article 10 of the Convention and Article 39 of the Constitution, which guarantees freedom of expression. He argued that his criticism had been essentially directed against the experts and the public prosecutor and not against the court. Although the participants in question might have preferred not to hear his opinion, he had had to express it for the benefit of the defendant. In the applicant's view, the court had to take into account the importance of freedom of expression in the process of a criminal trial, which was one of the most important mechanisms of State repression. He also argued that he had expressed acceptable criticism which, though presented in a slightly illustrative manner, had not been insulting to the experts but instead had challenged the credibility of their opinions. He argued that he had expressed the impugned opinions with the aim of providing the best possible defence to his client and that his punishment had not been necessary in a democratic society. Relying on *Nikula* (cited above), he argued that the critical comments had been directed solely at the unprofessional and inappropriate work of the experts and had not insulted the court in any way.

24. On 31 March 2008, at an administrative session, the Constitutional Court decided that Judge J.Z. (who was not present) would not sit it the cases concerning the Supreme Court's decisions in which he had taken part, or those in which his wife, Judge B.Z., had taken part.

25. On 2 April 2008 an order was issued by the secretary general of the Constitutional Court for Judge J.Z.'s removal from the "consideration and decision-making" in the applicant's case.

26. On 3 December 2008 a panel of three judges of the Constitutional Court issued a decision refusing to accept the applicant's constitutional complaint for consideration on the merits as, in its view, it did not meet the criteria set out in paragraph 2 of section 55b of the Constitutional Court Act. Two judges, Judge E.P. and Judge J.P., voted in favour of the dismissal while Judge C.R. voted against it. It was also noted that as the panel had not been unanimous, the decision had been submitted to the remaining Constitutional Court judges pursuant to section 55c of the Constitutional Court Act. However, as the three votes in favour of examination had nevertheless not been obtained, the constitutional complaint was rejected.

27. On 5 December 2016 the Constitutional Court sent to the applicant a corrigendum of its decision of 3 December 2008, noting that Judge J.Z. had not been submitted a decision as he had withdrawn from the case. The explanation to the corrigendum noted that after being requested by the State Attorney to send information for the purposes of the proceedings before this

Court, the Constitutional Court upon looking into the file had discovered a clerical error, namely the omission to indicate in the decision sent to the applicant that Judge J.Z. had not taken part in the proceedings in question.

28. According to a letter by the Ljubljana District Court of 30 March 2017, prepared for the purposes of the present proceedings, there was no record of the applicant having paid the second fine of SIT 400,000 (equal to approximately EUR 1,670 – see paragraph 19 above).

II. RELEVANT DOMESTIC LAW

29. The Criminal Procedure Act lays down the following rule in relation to penalties for contempt of court:

Section 78

"(1) The court shall impose a fine on the defence counsel, lawyer, legal representative, injured party, private prosecutor or injured party acting as a prosecutor if in their submissions, or in spoken comments, they insult the court or any participant in the proceedings. The fine shall be between a minimum of one fifth of the last officially announced average net monthly salary in the Republic of Slovenia per employee and a maximum of three times that salary. The ruling on the fine shall be given by the investigating judge or the panel before which the abusive statement was made; if the insult was in a submission, the ruling on the fine shall be given by the court with which the submission was filed. An appeal shall be permitted against such ruling. Any insult expressed by a public prosecutor or a person deputising for him shall be reported to the competent public prosecutor. The imposition of a fine on a lawyer or [a trainee] shall be reported to the Bar.

(2) The punishment referred to in the preceding paragraph shall have no effect on the prosecution or the imposition of criminal sanctions for a criminal offence committed by insult."

30. Paragraph 2 of section 55b of the Constitutional Court Act provides as follows:

"(2) A constitutional complaint shall be accepted for consideration:
- if there is a violation of human rights or fundamental freedoms which had serious consequences for the complainant;

or
- if it concerns an important constitutional question which exceeds the importance of the particular case in question."

31. Section 55c of the Constitutional Court Act provides, in so far as relevant, as follows:

"(1) The panel shall decide on the rejection or acceptance of the constitutional complaint unanimously by an order.

...

(3) If the panel is not unanimous with regard to whether or not the conditions referred to in the second paragraph of section 55b are fulfilled, the constitutional

complaint shall be accepted for consideration if any three Constitutional Court judges decide in favour of acceptance within [fifteen] days.

(4) If the panel does not decide otherwise, the statement of reasons justifying a decision ordering the rejection or non-acceptance of the constitutional complaint shall include only a reason referred to in the first or second paragraphs of the preceding section of this Act and the composition of the Constitutional Court."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant complained that the decisions to fine him for contempt of court had violated his right to freedom of expression as provided for in Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

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

B. Merits

1. The parties' arguments

(a) The applicant

34. The applicant argued that his impugned statements had remained within the limits of acceptable criticism. In his view, the domestic decisions had fallen short of respecting the Convention standards. In particular, the courts had failed to take account of the context in which the remarks had

been made. They had not had sufficient regard to the fact that he had been defending his client, who had been risking the most severe criminal sentence, that the remarks had been made in the courtroom and not in public, that they had sufficient basis in fact, namely in his extensive submissions pointing out the deficiencies in the expert opinions and the actions of the public prosecutor and the court regarding non-disclosure of the lie-detector test results, that they had focused on the experts' work in the actual proceedings and their obligation of diligence and impartiality, that they had aimed at undermining the credibility of the expert opinions, which had been important incriminating evidence, and had supported his request for the appointment of new expert witnesses.

35. The applicant also argued that the courts had failed to consider other less severe measures, such as a warning, interruption of the speech in question or the informing of the Bar Association. The expert witnesses could have pursued a private prosecution or civil action for defamation and therefore there was no need for the court to act of its own motion. In addition, the applicant submitted that section 78(1) of the Criminal Procedure Act applied only to defence counsel not prosecutors and therefore had treated the two parties unequally which was incompatible with the concept of democratic society enshrined in Article 10 § 2.

36. The applicant disputed the Government's suggestion that the expert witnesses' position could be compared to that of the courts. He was particularly critical of domestic court's opinion that, since the certified experts had been approved by the Ministry of Justice, their competencies were not open to doubt. In this connection, the applicant argued that the experts had not exercised a judicial function themselves and their opinions counted as evidence. Therefore, the limits of acceptable criticism directed at expert witnesses should be – as was the case with the criticism of public prosecutors – wider.

37. The applicant also argued that the courts had failed to explain why the minimum fine provided by law would not have sufficed. The fines imposed on him were of a serious nature. The first fine reached the average net salary in Slovenia and the second amounted to more than twice that much. In addition, the sanctioning of the applicant had also had damaged his reputation, and had had a chilling effect, which was ignored by the domestic courts.

38. Lastly, the applicant argued that it had been up to him to decide which defence strategy to use and what statements would have best benefited his client's defence. He pointed out that the impugned statements had been made in the courtroom and, as they had been made in the defence of his client's rights, they could not, under domestic law, have been subject to criminal prosecution. It was therefore unacceptable that they had amounted to contempt of court and resulted in fines.

(b) The Government

39. The Government did not contest the translation of the impugned remarks provided in the Statement of facts. They did, however, argue that the domestic courts had applied the Convention standards when deciding the applicant's case and that his insulting value judgments directed at the public prosecutor and the court and those referring to the general and even personal qualities of expert witnesses had gone beyond acceptable criticism. As such, the impugned statements could have not advanced the defence of the applicant's client.

40. The Government also argued that the court had to take into account the fact that the public officials, such as judges and public prosecutors, must enjoy the confidence of the public if they are to perform their job efficiently. This requirement should apply also to certified experts who do not act as opponents to the defendants but as assistants to the court and are expected to be impartial.

41. The Government further argued that even if someone took the view that the critique of the public prosecutor had been limited to his performance of duties in relation to the applicant's client, the large majority of the impugned statements had been insults directed against experts.

42. As regards the applicant's argument that section 78(1) of the Criminal Procedure Act applied only to defence counsel not the prosecutor, which was put forward in his application form, the Government argued that the applicant had failed to raise it before the domestic courts.

43. The Government argued that most of the impugned statements had been expressed in writing and therefore an interruption or a warning by the court had not been an option. Moreover, the fact that the applicant had made and/or had repeated the statements in writing, and therefore after prior deliberation, weighed heavily against him. The Government also maintained that the monetary fine was not excessive. In any event, the applicant was precluded from raising the argument concerning the alleged excessive penalty as he had not invoked it in the domestic proceedings, or in his application, but had raised it for the first time in his observations before the Court.

2. The Court's assessment

44. The Court reiterates that Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, for example, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, 13 July 2012). Furthermore, freedom of expression protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 174, ECHR 2005-XIII).

45. It is not disputed between the parties – and the Court sees no reason to hold otherwise – that the fines imposed on the applicant for contempt of court amounted to an interference with his freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

46. The Court notes that freedom of expression is subject to the exceptions set out in Article 10 § 2 of the Convention. It observes that the interference with the applicant's freedom of expression was based on section 78(1) of the Criminal Procedure Act, which provides that a fine can be imposed on defence counsel if he or she insults the court or any participants in the proceedings (see paragraph 29 above). It was thus "prescribed by law". Moreover, it is undisputed that it pursued the legitimate aim of maintaining the authority of the judiciary and protecting the reputation and rights of participants in the proceedings, within the meaning of Article 10 § 2 (see, *mutatis mutandis*, *Nikula v. Finland*, no. 31611/96, §§ 45 and 48, ECHR 2002-II).

47. Therefore, the only question for the Court to determine is whether the interference was "necessary in a democratic society". In this connection the Court is called upon to decide whether a fair balance was struck between, on the one hand, the need to protect the authority of the judiciary and, on the other hand, the protection of the applicant's freedom of expression in his capacity as a lawyer (see *Kyprianou*, cited above, § 177). The Court refers to the specific principles applicable to this subject-matter which have been summarised in *Nikula v. Finland* (cited above, §§ 45-50; also see *Steur v. the Netherlands*, no. 39657/98, § 36, ECHR 2003-XI) and *Morice v. France* ([GC], no. 29369/10, §§ 128 to 137 and 139, ECHR 2015).

48. The Court will proceed to ascertain whether the national authorities applied standards which were in conformity with the aforementioned principles, whether they based themselves on an acceptable assessment of the relevant facts and whether thereby the reasons adduced to justify the interference were "relevant and sufficient" (see *Kincses v. Hungary*, no. 66232/10, § 28, 27 January 2015, and *Nikula*, cited above, § 44).

49. The present case concerns two separate sets of contempt of court proceedings which both relate to certain statements the applicant made or expressions he used when defending his client accused of murdering three people. The translation of these statements and expressions (see paragraphs 12 and 19 above) has not been disputed by the parties.

50. In the first set of proceedings, the applicant was fined EUR 625 by the Ljubljana District Court for the following statements he had expressed during a hearing in relation to the work of the certified experts: "senseless talking", "mental constructs", "professional weakness of the experts", "the psychiatrist used psychological methods which he absolutely did not understand" and "the psychologist applied outdated psychological methods

from the stone age of psychology as well as unscientific psychodynamics" (see paragraph 12 above).

51. In the decision imposing the fine on the applicant, the Ljubljana District Court found that the impugned remarks amounted to value judgments and concerned the experts' professional qualifications (ibid.). Following the applicant's constitutional complaint, the Constitutional Court delivered a decision on the merits, referring to the relevant principles of the Court's case-law and acknowledging the importance of counsel's right to free speech for a defendant's right to a fair trial. It rejected the applicant's complaint on the grounds that the criticism should have remained within the limits of reasonable argumentation, that the authority of the certified experts should have been protected in the same manner as the authority of the judiciary, and that the applicant's remarks had been personally disparaging of the experts in their professional capacity and had gone beyond the limits of reasonable argumentation aimed at convincing the court to appoint new experts (see paragraph 16 above).

52. In the second set of proceedings, the Ljubljana Higher Court fined the applicant EUR 1,670 for a number of statements he had made in his oral and written submissions before it. In those statements the applicant criticised the actions of the public prosecutor, accusing him of hiding lie-detector test results. He further criticised the work of the certified experts appointed in the case, whose opinion he claimed had been decisive for the conviction, and called the proceedings an ongoing judicial farce. He accused the experts of negligence, incompetence, of abusing or misusing methods of diagnosis, of uncritical behaviour and/or linked their alleged ignorance of the alternative facts to a possible narcissistic behaviour. In its decision the Ljubljana Higher Court found the applicant's statements insulting without providing much explanation (see paragraph 19 above). The Supreme Court, which considered his appeal, endorsed the Ljubljana Higher Court's decision, finding the impugned statements insulting and noting that the applicant could have expressed his criticism in a legally acceptable manner (see paragraph 22 above). The Constitutional Court did not accept the applicant's constitutional complaint against the Supreme Court's decision for consideration, without providing any reasons (see paragraph 26 above).

53. In assessing the impugned statements and the reasons given in the domestic court's decisions to justify the interference with the applicant's freedom of expression, the Court finds the following issues of particular relevance.

(a) The applicant's status as an advocate and the context in which he made his remarks

54. The Court notes that the impugned remarks, which were regarded as contemptuous by the domestic courts, were made by the applicant in the context of judicial proceedings; he was acting in his capacity as an advocate

for a defendant who was charged with three murders. His remarks were connected to those proceedings and have to be seen in the context of his complaint regarding the non-disclosure of the lie-detector test results and his attempts to obtain the appointment of new experts and undermine the credibility of the expert opinions which he considered to be seriously flawed. The Court finds it important to note that the applicant consistently protested about the expert opinions which carried significant weight in the prosecution and conviction of his client and that his only way of obtaining new ones was to undermine the credibility of the existing ones (see paragraphs 6 to 11 above). His remarks were thus made in a forum where his client's rights were naturally to be vigorously defended (see *Radobuljac v. Croatia*, no. 51000/11, § 62, 28 June 2016). Moreover, they were confined to the courtroom, as opposed to the criticism of a judge voiced in, for instance, the media (see *Nikula*, cited above, § 52; *Steur*, cited above, § 41; and *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 29, 13 January 2009).

55. Having regard to the above and to the content of the impugned domestic decisions, the Court considers that the domestic courts in both sets of contempt of court proceedings, in their examination of the case, failed to put the applicant's remarks in the context and form in which they were expressed (see, *mutatis mutandis*, *Nikula*, § 44; *Morice*, § 162; and *Radobuljac*, § 62, all cited above).

(b) Status of certified experts and public prosecutor

56. The Court agrees with the Government (see paragraph 40 above) that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks (see *Fusch v. Germany* (dec.), nos. 29222/11 and 64345/11, 25 January 2015, and *Nikula*, cited above, § 48). Nonetheless, the limits of acceptable criticism may in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals (see *Nikula*, cited above, § 48, and *Morice*, cited above, § 131). This implies *a fortiori* to the criticism of the public prosecutor acting as an opponent of the accused (see *Nikula*, cited above, § 50).

57. In the present case, however, the Ljubljana Higher Court and the Supreme Court in the second set of contempt of court proceedings did not in any way appear to have afforded increased protection to the impugned statements directed at the public prosecutor's actions. In fact, they barely addressed them other them declaring them contemptuous (see paragraphs 20 and 22 above). As regards the certified experts, whose opinion played a considerable role in the prosecution and conviction of the applicant's client, the Ljubljana District Court in the first set of contempt of court proceedings considered that their professional competence could not be open to doubt because they were "approved by the Ministry of Justice" (see paragraph 12

above). This seems to imply that their professional competences could not be criticised.

58. Such a position, which was not sufficiently assessed by the Higher or Constitutional Court who reviewed the case, gives rise to serious disquiet. In this connection, the Court is of the view that because the expert witnesses were acting in their official capacity as "assistants to the court" (see paragraph 16 above) and having regard to the potential impact of their opinions on the outcome of the criminal proceedings, they should tolerate criticism of the performance of their duties.

(c) Nature of and factual basis for the impugned statements

59. While the applicant's remarks certainly had a negative connotation and were of a somewhat hostile nature, they amounted to value judgments relating to the certified experts' and public prosecutor's performance of their duties in the proceedings against the applicant's client. The Court considers that the impugned remarks could not be construed as gratuitous personal attacks and could not be taken to have had the sole intention of insulting the experts, the public prosecutor or the court (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003). This is so even if some of the remarks were made in writing and/or repeated (see paragraph 43 above).

60. Having established that, the Court notes that the domestic courts stopped at finding that all the impugned remarks were "insulting value judgments" and had overstepped the limits of acceptable criticism (see paragraphs 12, 14, 16, 20 and 22 above).

61. In this connection, the Court considers that it should be primarily for counsel themselves, subject to supervision by the bench, to assess the relevance and usefulness of a defence argument. It reiterates that freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb" (see paragraph 44 above). Similarly, the Court has already had an opportunity to state that the use of a "caustic tone" in comments aimed at a judge is not incompatible with the provisions of Article 10 of the Convention (see *Morice*, cited above, § 161). The Court further reiterates that where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement (see *Veraart v. the Netherlands*, no. 10807/04, § 55, 30 November 2006). In this connection, it is important for the defendant to be afforded a realistic chance to prove that there was a sufficient factual basis for his allegations (see, among other authorities, *Morice*, cited above, § 155, with further references).

62. In the present case, the domestic decisions in both sets of proceedings cited the expressions which the courts regarded as contemptuous, without giving the context in which they had been made.

They seem to have relied solely on the semantic meaning of the words and phrases the applicant used. None of the courts explored the relation of the impugned statements to the facts of the case.

63. Given that it was for the domestic courts to base their decisions on an acceptable assessment of the relevant facts (see paragraph 48 above, and *mutatis mutandis*, *Veraart*, cited above, § 61, and *Ayhan Erdoğan*, cited above, § 30) the Court will limit itself to noting that the applicant's statements cannot be *a priori* considered to be baseless. In particular, despite the regrettable lack of prudence in the applicant's expressions, it cannot be denied that the impugned remarks had basis in the facts he had put forward with a view to challenging the credibility of the experts and the non-disclosure of the lie-detector test results (see paragraphs 6 to 11 above). Whether those facts were sufficient to justify the impugned statements was a matter which should have been properly considered by the domestic courts, even more so given that the applicant had explicitly referred to the factual basis in his remedies (see paragraphs 13, 15, 21 and 23 above).

(d) Other factors

64. In addition to the above, the Court notes that the applicant expressed the impugned statements concerned in the first set of contempt of court proceedings and some of the statements concerned in the second set of contempt of court proceedings orally (see paragraphs 7 to 11 and 19 above). However, there is no indication that the sitting judges reacted to his criticism, by for instance interrupting his speech and rebuking him. Moreover, it is striking that the applicant had not been afforded any opportunity to explain or defend himself before the fines were imposed on him. In that connection, the Court would stress the duty of the courts and the presiding judge to direct proceedings in such a manner as to ensure the proper conduct of the parties and above all the fairness of the trial – rather than to examine in subsequent proceedings the appropriateness of a party's statements in the courtroom (see, *mutatis mutandis*, *Nikula*, cited above, § 53).

65. As regards the applicant's complaint that the public prosecutor could not be fined under the domestic law (see paragraph 35 above), the Court, in the light of its below conclusion, does not find it necessary to address it. Moreover, as this argument amounts to a distinctive complaint, the Court cannot but agree with the Government (see paragraph 42 above) that the applicant should have first raised it at domestic level and thereby given the domestic authorities an opportunity to elaborate on it.

(e) Conclusion

66. The above factors (see paragraphs 54 to 64 above) enable the Court to conclude that the domestic courts have not furnished "relevant and sufficient" reasons to justify the restriction of the applicant's freedom of

expression. They therefore failed to strike, on the basis of the criteria laid down in the Court's case-law, the right balance between, on the one hand, the need to protect the authority of the judiciary and the reputation of the participants in the proceedings and, on the other hand, the need to protect the applicant's freedom of expression.

67. This finding makes it unnecessary for the Court to pursue its examination of whether the amount of the fine in the applicant's case was proportionate to the aim pursued (see paragraphs 37 and 43 above). The Court would confine itself to noting that the fines were not insignificant and moreover that, even if they were to be considered moderate, this does not suffice to negate the risk of a chilling effect on the exercise of freedom of expression, this being all the more unacceptable in the case of a lawyer who is required to ensure the effective defence of his client (see *Morice*, cited above, § 127).

68. Accordingly, there has been a violation of Article 10 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

69. The applicant complained that in the second set of contempt of court proceedings the Constitutional Court had not been impartial because one of the judges, Judge J.Z., was married to a judge that had taken part in the decision on the applicant's appeal (see paragraph 22 above). The applicant relied on Article 6 of the Convention, which reads, as far as relevant, as follows:

> "In the determination of his civil rights and obligations and any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

70. The Government contested that argument, submitting that Judge J.Z. had not participated in the proceedings and that it had only been due to a clerical error that his withdrawal from the case had not been indicated in the decision rejecting the applicant's constitutional appeal. In their view, as the judges deciding on the case had had no "functional links" with the case, the applicant's complaint was unsubstantiated. The Government also argued that the Constitutional Court file had contained the order of 2 April 2008 (see paragraph 25 above) and that the mere fact that the applicant had not been aware of Judge J.Z.'s withdrawal could not give rise to a violation of Article 6.

71. The applicant argued that he had learned that Judge J.Z. had not participated in the Constitutional Court proceedings eight years after his second constitutional complaint had been dismissed. In his view, he should have been able to trust in the impartiality of the Constitutional Court at the time the decision had been taken in his case. Thus, the impugned

proceedings did not meet the requirement of impartiality in its objective sense (appearance of impartiality).

72. The Court observes that it is undisputed that Judge J.Z., the husband of Judge B.Z., who sat on the Supreme Court panel deciding on the applicant's appeal in the second set of contempt of court proceedings, took no part in the consideration of the applicant's constitutional appeal (see paragraphs 24, 25 and 27 above). The Court also notes that due to a clerical error the applicant only learned of Judge J.Z.'s withdrawal from the case after the present case had been communicated to the Government. However, the Court does not find persuasive the applicant's argument that he in fact believed that Judge J.Z. had participated in the proceedings and that this had therefore undermined the appearance of the Constitutional Court's impartiality. It need only cite one reason for that. There is no indication that the applicant, knowing that Judge J.Z. was one of the nine Constitutional Court judges, ever requested that he withdraw from his case or made any inquiries about this issue with the Constitutional Court.

73. This complaint should therefore be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

75. The applicant claimed 2,295 euros (EUR) in respect of pecuniary damage, corresponding to the fines he was ordered to pay for contempt of court, plus interest. He also claimed EUR 15,000 in respect of non-pecuniary damage for the alleged breaches of Articles 6 and 10 of the Convention. He argued in this connection, that the contempt of court proceedings had affected his reputation and had had a chilling effect on him.

76. The Government disputed the applicant's claim, arguing that the applicant had never paid the second fine of EUR 1,670. As regards non-pecuniary damage, they invited the Court to find that the finding of a violation constituted sufficient just satisfaction.

77. The Court has found that imposition of the fine on the applicant for contempt of court was in breach of Article 10 of the Convention. Therefore, there is, in principle, a sufficient causal link between the alleged pecuniary damage and the violation found.

78. However, the Court notes that while it is not in dispute that the applicant paid the first fine in the amount of EUR 625, the Government submitted that he had not paid the second fine, which is further supported by the Ljubljana District Court's letter (see paragraphs 28 and 76 above). Bearing in mind that the applicant did not challenge this submission, the Court accepts the applicant's claim in respect of pecuniary damage only in the amount of the first fine. Accordingly, and considering that interest should be added in order to compensate for the loss of the award's value over time, the Court awards the applicant EUR 800 under this head plus any tax that may be chargeable on that amount.

79. As regards non-pecuniary damage, the Court rejects the applicant's claim in so far as it relates to the inadmissible complaint under Article 6 of the Convention (see paragraphs 69 to 73 above). On the other hand, the Court, ruling on an equitable basis, awards the applicant EUR 2,400 with respect to non-pecuniary damage relating to the violation of Article 10 of the Convention.

B. Costs and expenses

80. The applicant, referring to the official tariff for lawyers, also claimed EUR 5,106 for the costs and expenses incurred before the domestic courts and the Court.

81. The Government argued that the applicant had been represented by his own law firm and that it was unclear whether anybody else, other than the applicant himself, had done the legal work for him for payment. The Government also argued that the applicant had applied the wrong tariff and had submitted nothing to prove that the costs had actually been incurred.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Moreover, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009).

83. As to the present case, the Court notes that the applicant submitted a power of attorney authorising the law firm "Odvetniška družba Čeferin", of which he was a director, to represent him in the proceedings before the Court. In addition, the documents in the file indicate that he was also represented by the same law firm in the two sets of proceedings before the Constitutional Court. Therefore, and noting that in the constitutional proceedings he sought redress for the alleged violations of the Convention (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 224, ECHR 2012), the applicant is entitled to reimbursement of the costs in this respect.

84. Regard being had to the documents in its possession, the Court rejects the claim in so far as it relates to the proceedings before the Supreme Court and the Ljubljana Higher Court as there is no proof that the applicant was represented by the respective law firm (see *Radobuljac*, § 83, cited above). As regards the rest of the claim, the Court considers it reasonable to award the applicant the sum of EUR 3,000 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning Article 10 admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 800 (eight hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge E. Kūris;

(b) Dissenting opinion of Ad hoc Judge A. Galič.

G.Y.
M.T.

CONCURRING OPINION OF JUDGE KŪRIS

1. It is with not inconsiderable unease that I voted together with the majority in finding that the Slovenian courts have violated Mr Čeferin's freedom of expression, the right enshrined in Article 10 of the Convention.

2. The present case is about the use of words and expressions pronounced in Slovenian – a language foreign to judges of this Court, including myself. In such cases, international judges should rely on what meaning and emotional poundage carried by the impugned expressions is attributed to them by domestic courts. Judge Wojtyczek and I elucidated this approach in our joint dissenting opinion in *Ziembiński v. Poland (no. 2)* (no. 1799/07, 5 July 2016). In particular, we argued that "[t]he insulting nature of ... Polish expressions was established by the domestic courts [which] made their assessment on the basis of their knowledge of [*inter alia*] the semantics of Polish vocabulary and phraseology", that "[a]n international court should be extremely cautious in deciding to dismiss such findings by the domestic courts, whereby certain words or phrases are authoritatively held to be beyond the limits of acceptability in a particular society, on the ground that an international instrument (such as the Convention) allegedly allows for the use of certain language", because "this is a question not only of legal, but also of linguistic and cultural expertise", thus it would be a "false pride" for an international court to claim to "have ... these competences". We claimed that "if the domestic courts have found that a certain expression *in the language of that country* contaminates public

discourse to an extent that is intolerable, *that's it*", and that then "[n]o further discussion is required". I do not want to reproduce more from that opinion here.

3. The present case is very different from *Ziembiński (no. 2)* in a number of important respects. It does not relate to a public debate of general concern to which the applicant might have attempted to contribute. In addition, it involves neither a journalist nor a politician. Notwithstanding that, certain restrictions on a lawyer's speech in a courtroom or outside it can also be effectively tolerated by the Convention. Whether these restrictions fall within the limits of acceptability, as drawn by the margin of appreciation afforded to a respective member State, or not depends, first and foremost, on message conveyed by the impugned speech – its content and form. And who else can better perceive and legally asses such message than the domestic courts, which themselves operate in the respective language?

4. As a matter of principle, I can easily follow the arguments regarding the meaning of the impugned words and expressions presented in the dissenting opinion of Judge Galič, who is the *ad hoc* national judge in this case. He asserts that the translation into English of the "original" Slovenian words, as provided to the Court by the applicant himself, is distorted or at least toned down. I only wonder: why did the respondent Government did not object to such translation? They accepted that translation at face value. This omission (if it indeed is an omission, as the *ad hoc* judge suggests) is of paramount importance for the outcome of the case. This is where the *Ziembiński (no. 2)* precedent (which, despite my and my distinguished Polish colleague's dissent, represents the Court's valid case-law!) comes into play: as in the present case there was no dispute between the parties as to the meaning of the impugned words and expressions, the Court feels entitled to judge on their use on the basis of the translation provided.

5. In this respect (and if Judge Galič is right as to the "true" meaning of the impugned words and expressions), I would dare to say that it was not the applicant who won his case. It was the Government who lost the case.

6. At all events, it is the Slovenian legal community and the Slovenian public at large who are the most (or even solely) competent to judge whether the Court was right or wrong in finding for the applicant in the present case. And if it appears to them – not in the formal legal sense, because it is highly unlikely that this judgment will be referred to the Grand Chamber and even more unlikely that the latter would come to an opposite finding, but in the sense dictated by the knowledge of the national language and by common sense – that the majority (of which I am part) erred, then, most regrettably, there will be yet another opportunity for whoever they can be to conclude that yet another judgment of the Court has "contribute[d] to the brutalisation of ... speech in Europe and to the decline in the standard of ... debate". These words I borrow from Judge Wojtyczek's and my

dissenting opinion in *Ziembiński (no. 2)*, from which I almost pledged not to cite more.

7. But I find it quite pertinent to cite from the concurring opinion of the long-time (now already former) Slovenian Judge Zupančič at the Court in *Delfi AS v. Estonia* ([GC], no. 64569/09, 16 June 2015). That landmark case concerned a seemingly different topic, namely, it dealt with the responsibility for anonymous insults and hate speech on internet. Still, from a broader perspective; those "different" situations are yet other (out of many) manifestations of the more general problem of standards of public debate. Judge Zupančič stated, albeit almost incidentally: "I do not know why the national courts hesitate in adjudicating these kinds of cases and affording strict protection of personality rights and decent compensation to those who have been subject to these kinds of abusive verbal injuries, but I suspect that our own case-law has something to do with it." I just wish that the Court had not erred and that the assessment underlying Judge Zupančič's remark had not been applicable to the present judgment.

DISSENTING OPINION OF AD HOC JUDGE GALIČ

1. As regards the general principles reiterated in the draft judgment, I strongly agree with them. With regret, however, I must also admit that I could not follow the reasoning that convinced the majority with regard to the application of the general principles in the case at issue.

I. The issue of translation: The applicant's false statements of facts

2. The applicant, who submitted the application in English, asserted as a statement of fact that he had been fined for referring to (the expert's) "(senseless) talking". This, however, is clearly a false translation. The statement, in Slovenian, reads "(*neosmišljeno*) *nakladanje*". While "*neosmišljeno*" can be translated as senseless (meaningless, nonsense), "*nakladanje*" in Slovenian is far from value-neutral "*talking*" in standard English. It is a slang word with a clearly derogatory and contemptuous connotation.[1] The proper translation of this slang word would be, for example, "drivel" and in the given case this word is aggravated in combination with the word "*neosmišljeno*" – which in the cited decision of the Constitutional Court of the Republic of Slovenia is translated (by the Constitutional Court itself) as "meaningless drivel". Thus, the applicant, who asserts before this Court that he was fined for the value-neutral and standard-language word "*talking*", whereas in fact it was (at best) "*drivel*", has mislead the Court by knowingly submitting a false statement of fact. No one in Slovenia with at least an average knowledge of English would, in good faith, translate "*nakladanje*" as "talking". The same is true for another derogatory and abusive slang word used by the applicant in the domestic court proceedings – "*šlamparija*" (from German "*Schlamperei*"), which, however, he translated in his application to the European Court by the neutral and formal legal term "negligence" (in Slovenian: *malomarnost*). Equally, another phrase from the first set of contempt proceedings, namely the "expert's mental construct", is again an inaccurate and misleading translation of the phrase used by the applicant: (*izvedenčevi)* "*umotvori*". This too is a slang expression, detached from its literal meaning ("*umotvor*" – product of mind; in its original meaning, perceived nowadays as already archaic in Slovenia, has not just a neutral, but a strong positive connotation). However, in the given context the expression in Slovenian slang is used – in complete contrast to its original positive connotation – when one wishes to state that something was particularly stupid. As such, it is not merely

1. As a slang word "*nakladanje*" is not found in the *Slovar slovenskega knjižnega jezika* [Eng: Dictionary of Slovenian Literary Language]; otherwise, *nakladanje* literally means "loading" (e.g. cargo on a truck). See, however, translations ("backslapping", "jive", "bullshit", "talk shit", "crap", "window-talker"...), provided in the web search/dictionary which consolidates the already existing translations: https://glosbe.com/sl/en/nakladati.

"caustic" but entails personal and contemptuous disparagement that flatly dismisses the author's intellectual ability – e.g. if a scientific paper, a lawyer's appeal, a judgment or an expert's report were denounced as an "*umotvor*". The Constitutional Court translated "*izvedenčevi umotvori*" as the expert's piece of art (lacking any equivalent phrase in English, this translation comes closest to the cynical and, in the circumstances, contemptuous nature of the statement), not as the nearly value-neutral and standard language "mental construct", which merely implies a lack of a proper factual basis for the findings.

3. The exact meaning of the statements made by the applicant before the Slovenian courts is of importance for the outcome of this case – that is, ascertaining if they were merely gratuitous personal attacks deemed to have had the intention of insulting the experts. It is, in my view, regrettable that the present judgment simply cuts and pastes the translations submitted by the applicant himself, without examining whether the translation provided by him is accurate, or whether he tried to downplay the harshness and personally abusive character of his statements. Equally regrettably, the judgment – although it otherwise extensively cuts and pastes the decision of the Slovenian Constitutional Court (originally translated into English by the Constitutional Court itself) – does not accept the translation of the Slovenian Constitutional Court as regards the decisive disputed statements. Rather, it prefers to accept the applicant's own translation. While it is appalling that the Government failed to object to the applicant's false translations, I do not think this precludes the Court from checking the accuracy of the translations. After all, in standard cases, where applications are filed in the applicant's native language, it is the Court that provides translations. Thus (*argumentum a maiori ad minus*), if an applicant (as was exceptionally done in this case for certain apparent reasons) himself translates parts of an impugned decision of the domestic courts, the accuracy of such translations should not be left entirely out of the ambit of the Court's scrutiny.

II.

The judgment suggests that the impugned remarks had some basis in the facts and that the courts should have engaged in exploring the relationship between the statements and the facts of the case. Does this apply to the statements such as "judicial farce"? How then can the lawyer be offered an opportunity to demonstrate that something is a "catastrophe for the Slovenian judiciary" or that "a judicial farce" is in progress? Or to demonstrate the factual basis of the statement that there exists the "expert's piece of art" (*umotvor*) or that his opinion is "meaningless drivel", or that the expert is "narcissistic", "dilettantish", and his work "quackery" and "*Schlamperei*"? Or how can one assess the factual basis of the assertion that

a scientific method is from the "Stone Age"?[2] Suggesting that one should be given a chance to "establish a factual basis" for such statements would merely aggravate the level of contemptuous behaviour, which would further undermine the authority of the courts – exactly the behaviour the courts need to prevent. The standards, reiterated in *Morice v. France* ([GC], no. 29369/10, § 155, ECHR 2015), concerning "linking the statement to the facts of the case", should be read as meaning that one should be "afforded a realistic chance to prove that there was a sufficient factual basis" for allegations *unless* they are – as in the given case – nothing more than gratuitous personal attacks.

4. At least the above statements concerning the national judiciary ("farce", "catastrophe") manifestly overstepped the limits that lawyers must observe "in order to protect the judiciary from gratuitous and unfounded attacks" (see *Morice*, cited above, § 155). These contemptuous and unsubstantiated attacks on the authority of the judiciary directly challenge the legitimacy of the legal system as a whole, and as such can never be said to have a "sufficiently close connection to the facts of the case". Instead of engaging in such unsubstantiated criticism of the judiciary, a lawyer should actively help to maintain the legitimacy of the justice system and due respect for the judiciary (see, for example, *Nikula v. Finland*, no. 31611/96, § 45, ECHR 2002-II), and should strive to be a model for clients in showing respect for the role of the courts in the legal system. This case can be contrasted with the recent judgment in *Peruzzi v. Italy* (39294/09, 30 June 2015), where a lawyer was prosecuted (and fined approximately 15,000 euros) for stating that a judge had "*wilfully made mistakes, by malicious intent, serious misconduct or negligence.*" With regard to both the content and the language and phrases used by the lawyer in the above case, these statements were far less extreme and contemptuous than those made by the applicant in the present case. Yet this Court found no violation of Article 10 of the Convention in *Peruzzi*.

5. Furthermore, this case should be contrasted with *Nikula*, where the Court emphasised that the applicant's criticism did *not* concern the prosecutor's general professional or other qualities (see *Nikula*, cited above, § 51). On the contrary, the present case concerns exactly that: a contemptuous negation of the expert's intellect, professional and other qualities, and general level of expertise. It could not actually be more

2. The judgment attaches much weight to certain statements made by the applicant against the public prosecutor (see paragraphs 56-58 of the judgment). If these statements had been the only ones made by the applicant I would have easily joined the majority in finding a violation of Article 10. But it is clear that the statements directed against the public prosecutor constitute a merely negligible part of the overall assessment of the domestic courts (see paragraph 19 of the judgment: two out of the fourteen impugned statements in the second set of contempt proceedings were directed against the prosecutor, whereas there were no such statements in the first set of contempt proceedings at all).

obvious in the plain language used: "*professional weakness of the expert witnesses*", as well as "*quackery*" (that is, faking the status of a medical doctor, pretending to have experience or knowledge, especially in the field of medicine!), combined with "meaningless drivel", "piece of art", "stone-age methods", psychological methods that he clearly does not understand, and certain negative character qualities (narcissistic, dilettantish). Nevertheless, this crucial difference between the present case and *Nikula*, and the aspect that is strongly emphasised in *Nikula* as a necessary part of the test, was utterly ignored. I anticipate that one might argue that a comment such as "quackery" was directed against the work of the expert, not against the expert ("a quack"). But in reality, this Court – which itself stresses that it is not just the wording but the context that should be assessed – should easily recognise that the question of whether the statement is intended to degrade someone as a person or merely challenge the product of his or her work (a quack or quackery?) cannot depend on such technical distinction in the wording.

6. Equally, it remained unnoticed that these statements do not merely have a "caustic tone" as did certain comments made in the above-cited *Morice* case. A "judicial farce" entails not only a *caustic tone*, nor does it merely have a "*negative connotation*". Not much remains of the margin of appreciation if national courts are no longer trusted as being in a better position to at least understand their own language and to assess the exact meaning, degree of harshness and context of certain phrases.

7. Even if a national court was in a position to agree with the lawyer that a certain "factual basis" is established that sheds doubts as to the correctness of the experts' reports, this could not and should not mean that there are no limits (a "blank cheque") as to the language and expressions the lawyer can choose to argue this point and to convey a message in judicial proceedings. It has been universally accepted by bar associations themselves that courteous, respectful, and civil behaviour forms part of the lawyers' code of conduct and that such behaviour is not incompatible with the concept of zealous and firm representation. If the expert's report is wrong, this can be stated – and the client's interests duly protected – with adequate respect for the legal process and without contemptuous, vulgar, and degrading personal attacks and disparagements. As both the appellate court and the concurring opinion of Constitutional Court judge *Zobec* convincingly stated, there are *thousands of ways* in which the expert could have delivered the same message, with no less effectiveness as regards the protection of his client's interests, but with a sufficient degree of respect for the integrity of the judicial process and without contemptuous attacks on the expert witness. As countless of cases of fine advocacy demonstrate on a daily basis, it is possible to "tear apart mercilessly", "ruthlessly", and "aggressively" the expert's report with a firm and devastatingly sharp analysis and argument, but at the same time without outbursts of personal attacks against the expert

as a person. Sharp, uncompromising, and even destructive criticism can be expressed – actually much more effectively – in a dignified manner. This makes this case significantly different from, for example, *Nikula*, *Morice*, or *Kyprianou v. Cyprus* ([GC], no. 73797/01, § 118, ECHR 2005-XIII), where it was not the degrading and contemptuous language or personal disparagement of other participants in the legal process that triggered the courts' reaction, but to a far greater extent the merits of the statements themselves.

8. What I find particularly troubling is that, through this judgment, the Court will inevitably send a message that will trigger a lowering of the standards of professional conduct already adopted by bar associations on the national and supranational levels, of their own motion. Specifically, the Rules of Professional Conduct require zealous representation of a client's case, and also impose certain limitations on the manner of such representation. Lawyers, while being expected to fiercely represent their client's interests, also have duties to the court, the adversarial parties, and third parties. It has been accepted by bar associations themselves that staunch advocacy and zealous, fierce, and vigorous pursuit of a client's case does not legitimise and is no excuse for unprofessional, discourteous, or uncivil behaviour toward any person involved in the legal process. See, for example, Article 1 of the IBA International Principles on Conduct for the Legal Profession and Article 43 of the CCBE Code of Conduct for European Lawyers, which reads: "*A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly...*". The Commentary annexed to the Code explains as follows: "*This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other*." There are hence additional elements that have to be placed on the balance when lawyers' freedom of speech in a courtroom is being assessed.

9. The Court's previously established standard that a lawyer's "freedom of expression" in a courtroom is not unlimited (see *Nikula,* § 49) is perfectly in line with the above standards of professional conduct. Thus, the circumstances that (1) the impugned statements were made by a lawyer representing his client, (2) that they were made in the course of judicial proceedings, and (3) that they were directed against the judiciary and the court-appointed experts, as assistants to the judge, do not solely mitigate the lawyer's responsibility, as the majority opinion seems to suggest. Equally, they aggravate it. Thus a proper balance must be found – as was duly examined by the national Constitutional Court and the Supreme Court.

10. The courts should adjudicate cases through a dignified process, to which a certain degree of symbolism is attached and according to

procedures that command public confidence and respect.[3] It is legitimate to expect that lawyers, through their own behaviour in the courtroom, will maintain public confidence in the administration of justice. It is precisely for these reasons that the independently adopted rules of conduct favour civil and courteous behaviour over contemptuous insults, the use of vulgar or slang language, swearwords and derogatory attacks on the persons involved in the legal process. As was observed: "*[T]he justice system cannot function effectively when the professionals charged with administering it cannot even be polite to one another. Stress and frustration drive down productivity and make the process more time-consuming and expensive. Many of the best people get driven away from the field. The profession and the system itself lose esteem in the public's eyes*."[4] Lawyers must play their part in ensuring that their clients' cases can be decided according to the law. Driving proceedings away from reasonable discourse based on rational legal arguments, and towards the irrational emotional sphere, would be disastrous for the sound administration of justice – disastrous not merely from the viewpoint of expediency, but from the viewpoint of the goal that the system that is most suited to producing adequate results on the merits should be maintained.[5] Hence, when client's interests can *equally effectively* be pursued in a manner that does not jeopardise the above goals, such an approach should be chosen.

11. Advocacy in court hearings inevitably creates conflicts between these competing responsibilities. With regard to behaviour such as that demonstrated by the applicant in the present case, however, the situation is actually simpler. There is in fact no conflict between the expected level of professionalism, civility, dignity, and courtesy by a lawyer in the courtroom on the one hand, and the protection of the client's best interests on the other. Adjudication is – and should remain – a rational process, which should give rise to adequate results on the merits. Throwing outbursts of frustration and emotion into the arena, fostering hostility between professionals (the court, lawyers, court-appointed experts), blurring the legally relevant facts and legal arguments, and replacing them with the harassment or intimidation of other participants in proceedings not only renders the sound administration of justice more difficult, but also does a disservice to the client's interests. As stated above, it is perfectly possible to "mercilessly tear apart" an expert's opinion through staunch and firm analysis and legal argumentation, without personally and contemptuously attacking the personality of experts.

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3. ABA Compendium of Professional Responsibility Rules and Standards, 2017 Ed., p. 266.

4. The Honourable Sandra Day O'Connor, Civil Justice System Improvements, Speech to the American Bar Association (14 December 1993, quoted in Lawrence J Fox; Susan R Martyn; Andrew S Pollis, A Century of Legal Ethics : Trial Lawyers and the ABA Canons of Professional Ethics. 2009, p. 83).

5. Cf. the Concurring Opinion of Judge Zobec to the Decision of the Constitutional Court.

Replacing the former with the latter cannot serve the client's interests well. Even adding the latter to the former does not serve the client's interests, since it merely results in a distraction and drifting away from what is relevant. It also creates – as always where emotional outbursts and insults are offered instead of rational (counter-) arguments – a situation wherein the impression is formed that there are actually no rational counter-arguments at all. The presentation of such arguments in a professional and firm manner is more effective than abusive or disruptive behaviour. In adjudication based on rational legal discourse, personal attacks, harassment and contemptuous statements against (expert) witnesses do not benefit the client. Unless, of course, they produce the effect of intimidating (expert) witnesses (that is, tampering) in the courtroom. If the (expert) witness yields under such intimidation, this can certainly affect the outcome of the proceedings. But this is deemed to be a perversion of the course of justice.

12. The above considerations are not intended to suggest that the courts should paternalistically decide what kind of defensive tactics legal counsel should apply. It goes without saying that– it should be added: *within the limits of the law* – this is solely for the lawyer to decide. What matters, however, is how the lawyer's choice of statements, language, tactics, and overall behaviour in a courtroom affects the search for a proper balance when it comes to the inherent conflict between zealously protecting the client's best interests, on the one hand, and the need to maintain the authority and integrity of the legal system, on the other. There is a need to strike a balance between remaining professional, courteous, and civil and the zealous exercise of the lawyer's role. Logically, if the adoption of behaviour and tactics that seriously jeopardise the goal of preserving the authority and dignity of the legal system does not benefit the goal of effectively protecting clients' interests, the weight of the latter in the quest for a proper balance is negligible.

13. It would be disastrous – not just for the client in the case at hand, but also for all future litigants, for the justice system as a whole, and also for the vast majority of the members of the Bar and for the Bar as a profession itself – if what prevails is the public's opinion that the best lawyers – thus, those that they should engage should the need arise – are those who use the strongest and most insulting language (instead of "boring" legal and logical analysis) and who are contemptuous of the court and others involved in the proceedings, including the opposing party's lawyer, witnesses, and experts. Living in Slovenia, I have sadly witnessed this trend. Professional, respectful, civil, and courteous advocacy is increasingly being perceived as a sign of weakness and frowned upon in public opinion and in an influential part of the media. Likewise, cheap showmanship, along with contemptuous, derogatory, and unsubstantiated attacks on the dignity, authority, and integrity of the judiciary and all those involved in the process of law is increasingly being perceived as a synonym for the zealous, firm, and

vigorous exercise of the lawyer's true role. The courts – national and supranational – should fulfil their role in trying to avert such trends. Thus, the aspect of behaviour modification – namely the message that is being delivered to all future litigants and the impression that is being created in society as to what good advocacy actually is – should also not be neglected in the above-mentioned quest for a proper balance.