

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

SECOND SECTION

CASE OF GOSPOČIĆ v. CROATIA

(Application no. 18827/21)

JUDGMENT

STRASBOURG

17 June 2025

This judgment is final but it may be subject to editorial revision.



In the case of Gospočić v. Croatia,

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

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 18827/21) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 March 2021 by a Croatian national, Ms Darinka Gospočić ("the applicant"), who was born in 1965, lives in Stubičke Toplice and was represented by Mr M. Križanović, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning freedom of expression to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 27 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's right to freedom of expression in connection with her criminal conviction for an offence of defamation.

2. The applicant's neighbours constructed a farm on which they raise wild game (fallow deer). The applicant maintained that the farm had been built illegally and that she has been exposed to unpleasant smells and excessive noise from the animals. She had lodged several complaints against the neighbours and local officials, alleging various unlawful actions on their part, but her complaints were dismissed.

3. In 2017 the applicant was invited to a land surveyor's office concerning a survey conducted of the neighbours' farm. Expressing her disagreement with the survey, she uttered, in front of three other people, that her neighbours were "criminals, who were in mafia with the town chairman, and who had conspired to commit criminal offences for their personal gain".

4. Following a private action by the neighbours, on 8 February 2019 the Zlatar Municipal Court found the applicant guilty of defamation (*teško sramoćenje*), a criminal offence under Article 148(2) of the Penal Code. She was convicted to a suspended fine in the amount equivalent to 30 times her daily income, that is, 3,000 Croatian kunas (HRK; approximately 400 euros (EUR)). The criminal court noted that she had filed numerous complaints against her neighbours and the town chairman and that she could therefore

not be convicted of slander (*kleveta*), since it could not be shown that she had been aware that her statements had been untrue. However, her statements, which she had uttered in front of three other persons, were nonetheless susceptible of causing harm to her neighbours' honour and reputation. It further held that, since those statements concerned her neighbours' personal and family circumstances, she was not allowed to attempt to prove their veracity nor were there any serious reasons for which she held them to be true – i.e., circumstances which could exclude the unlawfulness of her act.

5. Her appeal, in which she argued that the first-instance court erred in the assessment of the evidence, maintaining that she had never uttered the impugned statements, was dismissed by the Varaždin County Court's judgment of 27 August 2019, which endorsed the reasoning of the Municipal Court.

6. In her constitutional complaint, the applicant alleged, *inter alia*, a violation of her right to freedom of expression, arguing that the criminal courts not only failed to differentiate between a factual statement and a value judgment but also failed to establish that her neighbours had suffered any damage which could serve as a basis for her conviction. By a decision of 30 September 2020, notified to the applicant's representative on 21 October 2020, the Constitutional Court declared her constitutional complaint inadmissible. In examining her fairness complaint, the Constitutional Court held that the applicant had failed to raise already in her appeal that her statements were to be regarded as value judgments and that therefore she had not properly exhausted domestic remedies. As regards her freedom of expression complaint, noting that the exercise of one's right to freedom of expression should not endanger the right to reputation of others, the Constitutional Court declared it manifestly ill-founded.

7. Meanwhile, the applicant's neighbours also instituted civil proceedings against her for the same statements and, by a final judgment of 3 March 2020, the applicant was ordered to pay them damages in the amount of HRK 6,000 (approximately EUR 800).

8. Before the Court, the applicant complained that her criminal conviction for the offence of defamation amounted to a violation of her right to freedom of expression.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Preliminary issue concerning the scope of the application

9. The Government invited the Court to examine the scope of the application, submitting that the applicant did not raise an Article 10 complaint before the Court.

10. The Court notes that the applicant explicitly complained before the Court, among other things, about the violation of her right to freedom of expression in the criminal proceedings against her, thus submitting the same complaint she had already raised at the domestic level (see paragraphs 6 above and 14 below).

B. Admissibility

11. The Government firstly argued that the impugned statements, which were insulting and whose sole aim was to violate the honour and reputation of the applicant's neighbours, were not protected by Article 10 of the Convention and that the present complaint should be declared inadmissible as incompatible *ratione materiae* with the provisions of the Convention.

12. Taking into account the context in which the impugned statements were made – at an occasion concerning a survey of the neighbours' farm about which the applicant had, unsuccessfully, lodged numerous complaints with the authorities – the Court cannot agree that the statements amounted only to wanton denigration and their sole intent was to insult. Rather, it appears that the applicant intended to express, albeit in an offensive manner, her dissatisfaction with the operation of the farm and the authorities' (lack of) reaction to her complaints (contrast with *Rujak v. Croatia* (dec.), no. 57942/10, §§ 25-31, 2 October 2012; and compare with *Mesić v. Croatia*, no. 19362/18, §§ 33-35, 5 May 2022). It follows that this objection must be rejected.

13. The Government further argued that the applicant had failed to exhaust domestic remedies in that she had failed to put forward her Article 10 complaint already in her appeal against the first-instance judgment. In particular, she should have argued earlier that the impugned statements constituted value judgments (see paragraph 6 above). Moreover, the Government argued that in her constitutional complaint the applicant merely invoked, without putting forward any specific argument in that regard, a violation of her right to freedom of expression.

14. The Court notes that in her constitutional complaint the applicant submitted specific arguments in support of the alleged violation of her right to freedom of expression, explicitly complaining about it in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had also been raised at the domestic level (see paragraph 6 above and contrast with *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013). More importantly, the Constitutional Court examined the merits of her freedom of expression complaint, and declared it inadmissible for being manifestly ill-founded (see paragraph 6 above). Lastly, the Court considers that the nature of the impugned statements, that is, whether or not they were value judgments rather than factual statements, is not a matter of exhaustion of domestic remedies

but rather an argument which will more appropriately be addressed when examining the merits of the case. It follows that the Government's non-exhaustion objection must also be rejected.

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

C. Merits

16. In the light of its above finding that the applicant may rely on Article 10 of the Convention in the present case (see paragraph 12 above), and having regard to its case-law on the matter (see, for example, *Mesić*, cited above, § 76), the Court considers that the applicant's conviction for the offence of defamation constituted an interference with her right to freedom of expression. That interference was prescribed by law, namely Article 148(2) of the Penal Code (see paragraph 4 above), and pursued the legitimate aim of the protection of her neighbours' reputation. What remains to be established is whether that interference was "necessary in a democratic society".

17. The general principles established in the Court's case-law for assessing the necessity of an interference with the right to freedom of expression in the interests of the protection of the reputation or rights of others have been summarised in *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 84-88, 7 February 2012), and *Miljević v. Croatia* (no. 68317/13, §§ 48-52, 56-59 and 66-67, 25 June 2020), among many other authorities. The Court has to satisfy itself whether the relevant standards were applied in the present case.

18. The Court firstly notes that the domestic courts failed to undertake any balancing exercise between the applicant's right to freedom of expression and her neighbours' right to reputation. In particular, they based their decisions on the fact that the applicant's statements had been susceptible of causing damage to her neighbours' honour and reputation, without making any reference to their content or to the context in which they had been uttered. The Constitutional Court provided only a general observation on the need to balance the two competing rights and, undertaking no such analysis itself, declared the applicant's complaint inadmissible (see paragraph 6 above). Such a limited examination of the case by the domestic courts is in itself problematic (see *Milisavljević v. Serbia*, no. 50123/06, § 38, 4 April 2017).

19. Moreover, the Court has consistently held that the existence of procedural safeguards for the benefit of a defendant in defamation proceedings is among the factors to be taken into account in assessing the proportionality of an interference under Article 10 of the Convention. In particular, 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 *Morice v. France* [GC], no. 29369/10, § 155, ECHR 2015). The Court is

mindful of the fact that, under domestic law, the defence of truth was excluded when the impugned statements concerned personal and family circumstances (see paragraph 4 above). In the present case, the applicant was expressly denied such an opportunity without the domestic courts offering any reasons as to why they considered that the statements in question – accusing her neighbours of being criminals – should be considered to fall under that exemption.

20. The Court also observes that the proceedings at issue were of a criminal nature, leading to the applicant's conviction and an entry in her criminal record. While the fine imposed on her – some EUR 400 – might not seem particularly significant, the Court notes that it constituted the applicant's monthly income and that, pursuant to Article 43 of the Penal Code, she ultimately faced the threat of 30 days' imprisonment in case of default. Although the Court has held that a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II), it has also noted on many occasions the inevitable chilling effect of such a sanction, and the fact that the sentence was suspended did not alter that conclusion (see, for example, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 116, ECHR 2004-XI).

21. In the present case, the impugned statements were undoubtedly offensive and capable of causing prejudice to the applicant's neighbours. However, having regard to the specific circumstances in which they were uttered – in the presence of three persons in a private office – the Court cannot but note that the domestic authorities failed to take into account those circumstances and to conduct an adequate proportionality assessment in order to find whether such statements warranted a criminal sanction (compare with, *mutatis mutandis*, *Matalas v. Greece*, no. 1864/18, §§ 55 and 59-60, 25 March 2021) or whether the means available under civil law would have sufficed to protect the reputation of the applicant's neighbours (see *Kanellopoulou v. Greece*, no. 28504/05, § 38, 11 October 2007).

22. In light of the above, the Court concludes that the domestic courts failed to apply standards which were in conformity with the principles embodied in Article 10 of the Convention and to ultimately strike a fair balance between the applicant's right to freedom of expression and the competing right to protection of their reputation of her neighbours. In particular, the criminal sanction imposed on her was disproportionate in its nature and severity to the legitimate aim pursued by the domestic authorities. Thus, the domestic courts went beyond what would have amounted to a "necessary" restriction on the applicant's freedom of expression (compare also *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, §§ 35-36, 15 January 2019).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 10,000,000 euros (EUR) in total, covering claims in respect of pecuniary damage, non-pecuniary damage and costs and expenses, in relation to various proceedings she had instituted before the domestic courts and the Court. However, she specified that EUR 3,683.10 of that amount pertained to costs and expenses she had incurred in connection with the proceedings complained of.

25. The Government contested these claims.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

27. However, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards her EUR 2,600 under that head, plus any tax that may be chargeable.

28. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 890 for costs and expenses incurred in the proceedings before the Constitutional Court and the Court, plus any tax that may be chargeable to her. As to the remainder of her claim under this head, the Court reiterates that under the domestic law – namely, under section 502(2) of the Criminal Procedure Act – the applicant may seek the reopening of the criminal proceedings in respect of which the Court has found a violation of the Convention. Therefore, the remainder of her claim for costs and expenses incurred before the domestic courts must be rejected, given that she will be able to have them reimbursed should the proceedings complained of be reopened (see, for example, *Stojanović v. Croatia*, no. 23160/09, § 84, 19 September 2013).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 890 (eight hundred ninety 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President