

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

THIRD SECTION

CASE OF KUNSTELJ v. SLOVENIA

(Application no. 5257/22)

JUDGMENT

Art 10 • Freedom of expression • Applicant's criminal conviction and sentence of six-month imprisonment for the insult and slander of two private individuals via his internet blog posts • Impugned posts contained serious insulting language portraying the individuals extremely negatively, causing them distress, and constituted continuous harassment • Impugned posts made in a personal capacity outside the exercise of any journalistic activity, did not contribute to any public debate and were made available to a large number of people • Imposition of unconditional prison sentence as an exceptional measure in specific case-circumstances not excessive or disproportionate • Relevant and sufficient reasons • Balancing of competing interests properly conducted • Interference "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 July 2026

FINAL

07/10/2026

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



In the case of Kunstelj v. Slovenia,

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

Ioannis Ktistakis*, President*,
Peeter Roosma*,*
Darian Pavli,
Úna Ní Raifeartaigh,
Mateja Đurović,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 5257/22) 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 Mitja Kunstelj ("the applicant"), on 19 January 2022;

the decision to give notice to the Slovenian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 16 June 2026,

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

INTRODUCTION

1. The case concerns criminal proceedings against the applicant, in which he was convicted of insult and slander and sentenced to six months' imprisonment. It raises an issue under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Ljubljana. He was represented by Mr Rotar, a lawyer practising in Ljubljana.

3. The Government were represented by their Agent, Mrs A. Vran, Senior State Attorney.

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

I. BACKGROUND OF THE CASE

5. In 2010, for unknown reasons, the applicant began writing about V.V. and Š.P., two journalists in his numerous posts on his personal blog. In particular, he called V.V. a "fag" (*peder*), a "homo" (*homič*), a "gay lover", a "rat" (*podgana*), a "pus-filled sore" *(gnojna bula),* a "pervert" (*iztirjenec*), a "drunkard" (*pijanec*), a "pet molester" (*nadlegovalec domačih živali*), a "cheat" (*goljuf*), an "old crook" (*stari pokvarjenec*), the "filthiest sellout"

(*najbolj umazana prodana duša*), a "scumbag" (*smet*), "disgusting scum" (*ostuden izmeček*), a "frightened weasel" (*prestrašena podlasica*), a "frightened servant" (*prestrašeni hlapec*), a "pill-bloated old man" (*od tablet zabuhel starec*), an "underdog" (*podrepnik*), a "zoophile" who "has two dogs to lick the cream off his cock" (*cucka ima, da mu ližeta smetano s kurca*), a "puff" (*buzerant*), an "aggressive faggot" (*agresivni toplovodar*) and variations of "poof(ter)" (*pederajs, pederčina jedna*). He also alleged that V.V. had forced him into a sexual encounter and groped him, and that he abused dogs.

6. Š.P. was described by the applicant as "that whore from Zalog" (*tista vlačuga iz Zaloga*), "a real Mata Hari" (*prava Mata Hari*) and "less than a piece of shit" (*manj kot drek*). He stated that she "emptied many men's balls" (*da je marsikomu spraznila jajca*), that she held "the primacy of a media whore" (*da ima primat medijske vlačuge*) and that she was "an idiotic rude bitch" *(idiotska neoteseana pička),* a "hussy" (*lahkoživka*), and a "prostitute" (*prostitutka*).

7. V.V. and Š.P. initiated several sets of civil proceedings against the applicant. As a consequence, on 8 August 2012 the Ljubljana District Court issued a judgment in civil proceedings, prohibiting the applicant from further reporting on V.V. in a manner that characterised him as a cheater, a liar and a person who sexually harassed people and abused animals, and from using foul language such as "fag", "homo", "pus-filled sore" and other similar expressions.

8. Moreover, over the years the courts issued several interim injunctions ordering the applicant to stop insulting V.V. and Š.P. via his blog posts. Nonetheless, the applicant continued publishing posts about them and was ultimately sanctioned in civil proceedings with two fines of 10,000 euros (EUR) each, for failure to comply with the interim injunctions. Furthermore, in a subsequent blog post, he threatened V.V. and his counsel with physical violence, which became the subject of separate criminal proceedings.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

9. On 8 March 2012 V.V. and Š.P. lodged a private criminal action against the applicant for the criminal offences of insult and slander. The proceedings concerned posts published on the applicant's personal blog using the Wordpress web service between 3 June 2010 and 22 February 2012 (see paragraphs 5 and 6 above). After the posts had been removed following a court order, the applicant republished them on 4 March 2012 on his new personal blog using the Google Blogger web service where he continued with his writings.

10. At a pre-trial hearing held on 16 January 2013 the applicant wanted to give the private prosecutors' lawyer a rubber puppy and the book *Hitler's*

Last Days as a gift, but she refused to accept them. The applicant pleaded not guilty and stated that he was unemployed with no income or assets.

11. On 6 February 2013 the Ljubljana District Court held a main hearing, attended only by V.V. and Š.P. V.V. explained that he was experiencing very severe distress and that the insults were being repeated every day across various forums. Š.P., visibly distressed and in tears in the courtroom, stated that she did not know why the applicant had written such things about her. She further said that she had once collapsed while reading his blog posts, and that she had had to be given sedatives because she had suffered an anxiety attack and could not breathe. She also said that she continued to have trouble sleeping and was still taking sedatives.

12. On 18 February 2013 the District Court held a hearing attended by the applicant, V.V. and Š.P. The applicant stated that his blog was not a medium or a means of public reporting, but rather his "private journal", which he was never going to stop writing. In reply to a question, he said that he had not paid, and would never pay, the two fines of EUR 10,000 imposed on him in the civil proceedings (see paragraph 8 above). While V.V. was giving evidence, the applicant verbally attacked him, claiming that he was lying and calling him a "pus-filled sore". Š.P. added that the applicant had embellished certain events with such vivid detail and named witnesses so precisely that his blog posts had appeared credible and had led others to believe them.

13. On 13 May 2013 the court found the applicant guilty of two counts of insult and one count of slander, under Article 158 §§ 1 and 2 and Article 159 §§ 1 and 2 of the Criminal Code. He was sentenced to six months' imprisonment in total. The court held that this was the only appropriate sentence given the applicant's prolonged and serious insults directed at V.V. and Š.P., his refusal to pay the previously imposed fines, his reuploading of the deleted blog posts, his lack of remorse, and his prior convictions for other offences.

14. While the appeal proceedings were pending, the applicant undertook to remove all offensive content referring to V.V. and Š.P. from all online platforms and to refrain from writing about them or republishing his old blog posts in the future. At the same time, V.V. undertook to request that the court impose only a cautionary sanction on the applicant. He also agreed that if the applicant complied with the above agreement, he would withdraw all ongoing civil and criminal proceedings initiated against him and refrain from initiating any further proceedings. However, the applicant failed to remove the impugned blog content and continued to publish similar posts about V.V.

15. On 30 October 2014 the Ljubljana Higher Court dismissed the applicant's appeal and upheld the first-instance judgment. The court held, *inter alia*, that the applicant was not a journalist, that he had committed the criminal offences through the mass media, and that V.V. and Š.P. were not public figures. The Higher Court held that the applicant's statements had defamatory and not based on facts. It further established that his blogs had

35,000 followers and that other media contributed to spreading them by publishing links providing access to them. It agreed with the Ljubljana District Court's position on the imposed sanction (see paragraph 13 above) and further emphasised that the applicant had persisted in his offensive conduct throughout the proceedings (see paragraphs 8, 9, 10, 12 and 14 above). In relation to the imposition of an unconditional prison sentence, the Higher Court reiterated the gravity of the criminal offences committed using the internet, the persistent and continuous perpetration of the offences, the untruthful and objectively insulting nature of the written content, the unprecedented quantity and severity of such content in the prior practice of Slovenian courts, the unprovoked nature of the writings, and the absence of prior contact between V.V., Š.P and the applicant. It concluded that the prison sentence had been imposed as a measure of last resort, given the applicant's extreme interference with V.V. and Š.P.'s rights.

16. The applicant filed a request for the protection of legality (*zahteva za varstvo zakonitosti*). By a judgment of 19 September 2015, the Supreme Court dismissed the request, upholding the reasoning of the lower courts. The court stated that, in the absence of any possibility of a change in behaviour, the lower courts had appropriately taken into account the applicant's prior convictions for other offences, the ineffectiveness of the prison sentence he had already served for an unrelated offence, and the fact that he had continued to write about V.V. and Š.P. even after the impugned criminal proceedings had been initiated. The court also upheld the Higher Court's view that the quantity and substantive offensiveness of the disputed blog posts were unprecedented in cases involving offences against honour and reputation dealt with by the Slovenian courts to date. The court further held that an unconditional prison sentence in the applicant's case had been a measure of last resort – *ultima ratio* – which had not been disproportionate to the offences in question. A fine had been deemed insufficient to prevent repeated and persistent defamation, especially given that the applicant had refused to pay the fines previously imposed in civil proceedings. The court further noted that the District Court and the Higher Court had not refused to impose a fine merely because the applicant had declined to pay previous fines imposed in civil proceedings voluntarily; rather, the judgments indicated that the prison sentence he had already served for other criminal offences had failed to deter him from reoffending, and that a fine would likewise be unlikely to have such an effect. Therefore, even if the applicant had been fined in the criminal proceedings, this would not have deterred him from continuing his unlawful behaviour towards the private prosecutors. In the light of all the circumstances, the court concluded that a prison sentence had been the only penalty capable of effectively protecting V.V. and Š.P.'s rights.

17. The court also held that, in the present case, it was no longer even possible to speak of the applicant's exercise of his right to freedom of expression, but only of the "use – or rather abuse – of the human ability to

speak (language as a means of communication) for (publicly) making negative value judgments about the private and intimate family life of others".

18. The applicant filed a constitutional complaint, in which he argued that, according to the Court's case law, it was not possible to impose a prison sentence for an act committed against honour and reputation, even if the rights of the injured parties could not be protected with milder (civil) sanctions.

19. On 17 June 2021 the Constitutional Court (*Ustavno sodišče*) dismissed his complaint, holding that his blog did not qualify as a media outlet. Consequently, although the offences had been committed through the mass media, the applicant could not be regarded as a journalist. Moreover, his blog posts were neither protected as political speech nor as contributing to the public debate. He had cited untrue facts and passed inadmissible value judgments concerning the personal and intimate lives of the private prosecutors, and this was not an expression of criticism necessary in a democratic society, the defence of any right or the protection of legitimate interests. The court concluded that the courts had properly taken into account all the circumstances of the case and justified why imposing a prison sentence in the applicant's case was an appropriate sanction. The court did not address the Supreme Court's stance on the exclusion of the applicant's speech from the right to freedom of expression (see paragraph 17 above), since he had not contested this in his constitutional complaint.

RELEVANT LEGAL FRAMEWORK

20. The relevant provisions of the Criminal Code (*Kazenski zakonik*) (Official Gazette no. 55/08, 66/08) read as follows:

Insult
Article 158

"(1) Anyone who insults another shall be punished by a fine or imprisonment of up to three months.

(2) If an act referred to in the preceding paragraph is committed through the press, radio, television or other mass media or through websites or at a public gathering, the perpetrator shall be punished by a fine or imprisonment of up to six months.

..."

Slander
Article 159

"(1) Anyone who issues or circulates any false information about another that could tarnish that person's honour or reputation and which he or she knows to be false shall be punished by a fine or imprisonment of up to six months.

(2) If an act referred to in the preceding paragraph is committed through the press, radio, television or other mass media or through websites or at a public gathering, the perpetrator shall be punished by a fine or imprisonment of up to one year."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant complained that his conviction had violated his right to freedom of expression as provided 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...
>
> 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 ... for the protection of the reputation or rights of others ...."

A. Admissibility

1. The parties' arguments

(a) The Government

22. The Government submitted that the applicant had not exhausted domestic remedies, as he had failed to challenge, in his constitutional complaint, the Supreme Court's position regarding the exclusion of his speech from the right to freedom of expression (see paragraphs 17 and 19 above).

(b) The applicant

23. The applicant pointed out that, in his constitutional complaint, he had drawn attention to the absence of any balancing of the right to freedom of expression against the right to respect for private life by citing the Court's case-law. He also stated that the Supreme Court had justified the prison sentence by referring to the offensiveness and quantity of his blog posts.

2. The Court's assessment

24. The general principles concerning the exhaustion of domestic remedies have been summarised in *Communauté genevoise d'action syndicale* (*CGAS*) *v. Switzerland* ([GC], no. 21881/20, §§ 138-46, 27 November 2023). The Court notes that the applicant had challenged the proportionality of the sanction imposed on him before the Constitutional Court, which examined the matter and concluded that the interference had been necessary in a democratic society. In these circumstances, the Court is satisfied that the complaint has been raised in substance at national level (see *Vučković and Others v. Serbia* (*preliminary objection)* [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014). The Government's

objection on the ground of non-exhaustion of domestic remedies must therefore be dismissed.

25. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

26. The applicant argued that the interference with his right to freedom of expression had not been necessary in a democratic society. He pointed out that, as a journalist with a blog documenting his thoughts and observations on his past experiences, current events and general topics of interest to his readership, he was protected under Article 10 of the Convention. He further argued that his posts did not fall within the category of hate speech or incitement to violence.

(b) The Government

27. The Government acknowledged that the prison sentence against the applicant had constituted an interference with his right to freedom of expression. They pointed out that the interference had been based on Articles 158 and 159 of the Criminal Code and had pursued the legitimate aim of protecting the reputation or rights of others.

28. As to the necessity of that interference, the Government argued that the domestic courts had carefully weighed the two conflicting rights, namely the applicant's right to freedom of expression and V.V. and Š.P.'s right to the protection of their reputation. As regards the factors considered by the domestic courts in carrying out their balancing exercise, the Government emphasised that the domestic courts had taken into account various factors that had contributed to the conclusion that the only appropriate sanction in the applicant's case was the imposition of a prison sentence. In particular, the applicant had repeatedly published unprovoked, offensive blog posts over a long period of time, inventing fictitious events and witnesses while targeting V.V. and Š.P. with escalating threats, including violence. Despite court injunctions and fines, he had openly refused to stop, continued his insults even during hearings and shown no self-criticism. Moreover, the present case did not involve political speech or a debate of broader public importance, and since V.V. and Š.P. were private individuals, they were entitled to stronger protection of their privacy than public figures.

2. The Court's assessment

(a) Existence of an interference and legitimate aim

29. It was not disputed between the parties that the applicant's criminal conviction in the present case amounted to an interference with his right to freedom of expression, that it was "prescribed by law", namely Article 158 §§ 1 and 2 and Article 159 §§ 1 and 2 of the Criminal Code (see paragraphs 13 and 20 above), and that it pursued a legitimate aim, namely the protection of the reputation and rights of V.V. and Š.P.

30. The Court notes that, given the vulgar and highly insulting nature of the applicant's statements, which did not contribute to a public debate, it may be questionable whether, by making such statements, he was at all trying to "impart information or ideas" or whether his sole intention was to insult V.V. and Š.P. (see the Supreme Court's conclusion cited at paragraph 17 above; and compare *Rujak v. Croatia* (dec.), no. 57942/10, §§ 4-6 and 27-32, 2 October 2012), but it will proceed on the basis that it fell within the scope of Article 10 and that there was an interference with his freedom of expression.

(b) Whether the interference was necessary in a democratic society

(i) General principles

31. The general principles for balancing the necessity of an interference with the exercise of freedom of expression are well established in the Court's case-law and have been reiterated in a number of cases (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 103-13, ECHR 2012, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012; and *Pentikäinen v. Finland* ([GC], no. 11882/10, § 87, ECHR 2015).

32. The Court has stated, in particular, that when it is called upon to examine the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", it may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Mortensen v. Denmark*, no. 16756/24, § 37, 21 October 2025).

33. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Mladina d.d. Ljubljana v. Slovenia (no. 2)*, no. 43388/17, § 52, 13 January 2026).

34. Where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria laid down in the Court's

case-law include: (a) contribution to a debate of public interest, (b) how well known the person concerned is, (c) the subject of the publication, (d) the prior conduct of the person concerned, and (e) the content, form and consequences of the publication. Where it examines an application lodged under Article 10, the Court will also examine (f) the way in which the information was obtained and its veracity and (g) the severity of the penalty imposed (see, for example, *Balaskas v. Greece*, no. 73087/17, §§ 37 and 38, 5 November 2020, and the cases cited therein).

35. The Court considers in each case whether the above criteria may be transposed to the case in question, although certain criteria may have more or less relevance given the particular circumstances of the case (see *Mladina d.d. Ljubljana (no.2)*, cited above, § 56, and the cases cited therein).

36. Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, weighty reasons are required if it is to substitute its view for that of the domestic courts (see *Balaskas*, cited above, § 39).

37. Finally, the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation (see *Von Hannover*, cited above, § 104, and contrast *Bédat v. Switzerland* [GC], no. 56925/08, § 49, 29 March 2016).

(ii) Application of the general principles in the present case

38. The Court firstly notes that the applicant's blog posts contained serious insulting language portraying V.V. and Š.P. extremely negatively and causing them distress (see paragraphs 5, 11 and 15 above). In the Court's view, the content of those posts undoubtedly attained the requisite level of seriousness to bring into play V.V. and Š.P.'s right to respect for private life including reputation (see *Mesić v. Croatia (no. 2)*, no. 45066/17, §§ 62 and 71, 30 May 2023, with further references).

39. The Court further notes that the applicant published the impugned posts on an internet blog, which he described as "his private journal" (see paragraph 12 above), and did so in a personal capacity, outside the exercise of any journalistic activity (contrast with *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, § 379, 11 December 2025). Although V.V. and Š.P. were both journalists, as established by the national courts, they were not public figures (see paragraph 15 above). Furthermore, the insults to which they were subjected were unrelated to their professional activities, as the applicant's allegations concerned intimate aspects of their private lives. The criminal proceedings therefore concerned defamation between private individuals, with the insulting statements made in a public manner on the internet.

40. The Court agrees with the domestic courts' assessment that the applicant's statements, which mostly contained vulgar and offensive

language, did not contribute to any public debate whatsoever (see paragraph 19 above), were in no way prompted by the conduct of V.V. or Š.P. and constituted continuous harassment (see paragraph 15 above). At the same time, they were made available to a rather large number of people, particularly given that the applicant's blog had more than 35,000 followers and that the posts were further disseminated by other media (see paragraph 15 above; and *Hurbain v. Belgium* [GC], no. 57292/16, § 236, 4 July 2023).

41. Lastly, the nature and severity of the penalty imposed are factors to be taken into account when assessing the proportionality of the interference (*Balaskas,* cited above, § 61, and the cases cited therein). The Court reiterates in this connection that the use of criminal-law sanctions in defamation cases is not in itself disproportionate (see *Ziembiński v. Poland (no. 2)*, no. 1799/07, § 46, 5 July 2016). At the same time, a prison sentence in this context will remain an exceptional measure, compatible with Article 10 only where other fundamental rights have been seriously impaired (see *Balaskas*, cited above, § 61).

42. In the present case, the applicant was sentenced to six months' imprisonment because the domestic courts concluded that no other sanction would dissuade him from continuing to insult V.V. and Š.P. Prior to that, and as a consequence of the applicant's insulting blog posts, several sets of civil proceedings were initiated where fines were imposed on him (see paragraphs 7 and 8 above). However, the foregoing did not dissuade the applicant from continuing with his actions and further posts (see paragraphs 8, 9, 12 and 14 above). Moreover, he explicitly stated that he would not stop posting about V.V. and Š.P. or pay the fines imposed on him (see paragraph 12 above).

43. The applicant continued with his inappropriate behaviour even while the criminal proceedings were ongoing – he continued to publish similarly insulting blog posts and acted disrespectfully in the courtroom (see paragraphs 8, 9, 12 and 14 above). The Court further attaches importance to the fact that, even after the first-instance judgment was issued in the criminal proceedings, the applicant was given the opportunity to avoid a custodial sentence by stopping further posts about V.V. and Š.P.; nonetheless, he continued to do so (see paragraph 14 above; and compare *Gough v. the United Kingdom*, no. 49327/11, §§ 173 and 176, 28 October 2014).

44. Therefore, in view of the specific circumstances of the present case, the Court considers that the imposition of an unconditional prison sentence on the applicant as an exceptional measure in the freedom-of-expression context cannot be regarded as excessive or disproportionate to the legitimate aim pursued, namely the protection of V.V. and Š.P.'s reputation.

45. The Court further reiterates the importance, in a case such as the present, of the reasoning provided by the domestic courts. It notes in this connection that the Supreme Court stressed that the case was unprecedented in Slovenian case-law concerning criminal offences against honour and

reputation. While it considered that the applicant's blog post fell outside the protection of Article 10 of the Convention, it also explained in detail why no other criminal sanction would have served as a deterrent or fulfilled the purpose of punishment in his case (see paragraph 16 above). For its part, the Constitutional Court convincingly explained that the domestic courts had taken into account all the circumstances of the case and had properly justified the imposition of a prison sentence on the applicant as the only appropriate sanction (see paragraph 19 above). In light of the foregoing, the Court is satisfied that the reasons provided by the domestic courts in support of their decisions were both relevant and sufficient.

46. Having regard to the margin of appreciation available to States and to the fact that the exercise of balancing the various competing interests was properly conducted by the domestic courts, the Court sees no compelling reason to substitute its assessment for that of the domestic authorities. The interference with the applicant's freedom of expression can thus reasonably be considered "necessary in a democratic society".

47. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 7 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President