

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 49910/06
by Ljerka KOVAČ
against Croatia

The European Court of Human Rights (First Section), sitting on 23 August 2011 as a Chamber composed of:

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 23 November 2006,

Having regard to the partial decision of 11 March 2010,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Ljerka Kovač, is a Croatian national who was born in 1941 and lives in Varaždin. She was represented before the Court by Mr M. Fosin, an advocate practising in Varaždin. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

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

1. Background to the case

On 5 January 1998 the applicant concluded a loan agreement whereby she as a lender lent a sum of 5,000 German marks (DEM) to company A. in return for monthly interest at 2%. The company also agreed to return the money, together with the accrued interest, upon the applicant's demand.

In August 1998 the applicant brought a civil action in the Varaždin Municipal Court (*Općinski sud u Varaždinu*) against company A., seeking repayment of the loan. In October 1998 the court ruled in her favour and ordered the company to pay her 17,600 Croatian kunas (HRK) together with the accrued statutory default interest. However, the applicant was unable to enforce that judgment because company A. had no assets. In March 2001 the Varaždin Commercial Court (*Trgovački sud u Varaždinu*) instituted summary liquidation proceedings against company A.

Meanwhile, in July 1999 the applicant, together with thirty-eight other plaintiffs (who also deposited their savings with company A.), brought a civil action in the Varaždin Municipal Court against the directors (and only shareholders) of the company A., Mr B.D. and Mrs N.D., seeking pecuniary damages. In July 2006 the court ruled for the plaintiffs. In particular, it ordered B.D. and N.D. to pay the applicant 2,556.46 euros (EUR).

In December 2000 the Varaždin Municipal State Attorney indicted B.D. and N.D., before the Varaždin Municipal Court on several counts of fraud and a number of other criminal offences. They were eventually found guilty as charged and sentenced to four years and four months' and four years and two months' imprisonment, respectively. The applicant participated in those proceedings as an injured party (*oštećenik*).

2. Criminal proceedings against B.D. for bodily harm

On 7 January 2002 the applicant was assaulted in the street by Mr B.D., who punched her once in the face, as a result of which she sustained injuries (a bruised nose and cracked nose cartilage).

On 10 June 2002 the applicant submitted a motion to indict (*optužni prijedlog*) B.D., accusing him of inflicting minor bodily injury, to the Varaždin Municipal Court.

On 12 July 2005 the Municipal Court found B.D. guilty and sentenced him to thirty-five days' imprisonment.

On 3 October 2005 the applicant appealed against the first-instance judgment. In her appeal she wrote, *inter alia*:

"From the very beginning of these proceedings the bias of Judge M. was obvious, which I will explain in my appeal.

... in the judgment Judge M. gave credence to the statement of the accused because his statement was 'logical and convincing'. ... Such a view on the part of the judge I can only qualify as an obvious bias.

...

Only then did I realise why the judge was simply [giving vent to her instincts and] harassing my witnesses [when examining them] regarding the injury the accused B.D. had inflicted on me by punching me.

...

That statement was given by my husband S.M. on 26 April 2005 ... and all this is the result of him being provoked by the judge.

...

On 26 April 2005 the main hearing started anew because of a deliberate lapse of the two-month time-limit. ... B.D. ... suggests that the witness [B.G.] be summoned and examined at the hearing. Of course this proposal from B.D. was accepted, even though the judge knew why B.D. had not attended the hearing when B.G. and S.M. had testified, but B.D. has a statutory right to dictate the pace of the court proceedings. ... When my husband had to testify again on 26 April 2005 he was so upset that he ... exaggerated my injuries in order to express his rage [as regards] such conduct – the protraction of these criminal proceedings. Is it then really surprising that there are so many unsolved cases if for such simple criminal proceedings five or maybe even more hearings have to be scheduled? Anyway, by then I already had the impression that the judge had already reached a decision, so I was not surprised when on 27 September 2005 I received the judgment as it stands. The fact that my husband was obviously upset was noticed by other lenders [observers, namely, individuals who had lent money to B.D.'s company] who were present in the courtroom and followed the trial ..., who were appalled by such conduct of the proceedings, in which the judge's bias could not be hidden.

...

The finding of the judge ... in which she gives credence to the statement of the accused, because his statement is 'logical and convincing' ... is regrettable but even more biased. What is important is that the accused gained the trust of the court.

...

In ... the judgment the judge again incorrectly states that 'the plaintiff, S.M. and B.G. are all investors in the company of the injured party' (instead of 'the injured party' it should be 'the accused'). First of all Mr G. and I are lenders, which is very different from investors, and the judge should know that difference, given her job description.

...

> In the ... judgment the evident bias of the judge is visible because it cannot be said that she is inexperienced or incompetent when she assesses my behaviour towards the accused with bias ...
>
> ...
>
> The accused B.D. is lucky that he found understanding and protection in the judge. How wisely cited my husband's statement was in the judgment and its intention, but the judge did not indicate when this statement had been given because my husband had had to testify twice ...
>
> ...
>
> It is visible that in that part of the judgment the judge again ruled with certain intent against me ...
>
> ...
>
> I am asking the Varaždin County Court to assign my appeal to the members of the panel who did not decide on the appeal of married couple D. on 17 February 2003 in the criminal proceedings no. K-475/00, and these are judges Z.P., D.K. and M.O., because their protection of married couple D. and bias in delivering the judgment was obvious. As I was present at the [hearing], I witnessed that myself.
>
> ...
>
> Having regard to these protracted court proceedings, the unwarranted scheduling of five hearings and the biased judgment, which in a way justifies the act of physical violence of the accused against me, as well as the deliberate failure to record his statement that he was not sorry for having punched me, it is not surprising that, because of certain judges, other citizens and I think the judiciary is corrupt ... it is no wonder that in our country the legal order does not function and that every day crime and violence are burgeoning."

On 8 November 2005 the Varaždin County Court (*Županijski sud u Varaždinu*) dismissed the applicant's appeal and upheld the first-instance judgment.

3. Contempt of court proceedings

After it had completed the preliminary examination of the applicant's appeal of 3 October 2005 in the above criminal proceedings, on 8 November 2005 the panel of the Varaždin County Court, composed of judges I.M., S.M. and S.V.P., issued a decision whereby it fined the applicant 5,000 Croatian kunas (HRK) for contempt of court. The decision, which was served on the applicant on 22 November 2005 read, in its relevant part, as follows:

> "I. Pursuant to section 73(1) of the Criminal Procedure Act ... the private prosecutor Ljerka Kovač ... is hereby fined 5,000 [Croatian] kunas for insulting the court in her appeal lodged against the judgment of the Varaždin Municipal Court of 12 July 2005 ...

II. The private prosecutor Ljerka Kovač shall pay the above fine within six months of this decision becoming final.

III. If the private prosecutor does not pay the above fine of HRK 5,000 in full or in part within six months of this decision becoming final, the fine shall, on the basis of section 157 of the Criminal Procedure Act, be converted into a prison sentence, which shall be imposed by applying the provisions of the Criminal Code, *mutatis mutandis*.

Reasons

Apart from the accused B.D., the private prosecutor Ljerka Kovač also lodged an appeal against the judgment of the Varaždin Municipal Court of 12 July 2005...

While deciding on the appeal of the private prosecutor ... on 8 November 2005, this [court] found that the private prosecutor in her appeal against the above-mentioned judgment of the Varaždin Municipal Court had insulted the court. Since the provision of section 73 of the Criminal Procedure Act is mandatory as it provides that 'the court shall impose a fine of up to 20,000 [Croatian] kunas ...' – which means that the court is obliged to fine a person if he or she insults the court in his or her written submissions – this [court], finding that the private prosecutor had insulted the court, fined [her] as indicated in the operative provisions of this decision.

Namely, in her appeal the private prosecutor makes, *inter alia*, [the following] insulting incriminations: 'From the very beginning of the proceedings the **bias of Judge M. was obvious**.' ... 'Such an attitude on the part of the judge I can only qualify as **an obvious bias**.' ... 'Only then did I realise why **the judge was simply harassing** my witnesses.' ... 'All this is a result of **my husband being provoked by the judge**.' ... 'Because of the **deliberate** lapse of the two-month time-limit.' '...Mr D. has a statutory **right to dictate the pace of the court proceedings**' ... 'expressed his rage [as regards] **such conduct – protraction** of these criminal proceedings' ... 'Anyway, by then I already had the impression that **the judge had already reached a decision**, so I was not surprised when on 27 September 2005 I received the judgment as it stands.' ... '**I am appalled by such conduct of the proceedings in which the bias of the judge could not be hidden**.' ... '**The finding of the judge** ... is regrettable but even more **biased**.' ... 'The only important thing is that the accused **gained the trust of the court**.' ... 'The judge **should know that** difference given **her job description**.' ... '**The evident bias of the judge** is visible **because it cannot be said that she is inexperienced or incompetent when she assesses my behaviour**.' ... 'The accused B.D. is **lucky** that he found **understanding and protection in the judge**.' ... 'How **wisely cited** was the statement of my husband in the judgment and **its intention**' ... '**The judge again ruled with a certain intent against me**.' ... 'I am asking the Varaždin County Court to assign my appeal to the members of the panel who did not decide on the appeal of married couple D. on 17 February 2003 in the criminal proceedings no. K-475/00, and these are judges **Z.P., D.K. and M.O., because their protection of married couple D. and bias in delivering the judgment was obvious**. As I was present at the [hearing], **I witnessed that myself**.' ... '**Deliberate failure to record his statement**.'... '**It is not surprising that, because of certain judges, other citizens and I think the judiciary is corrupt**.'... 'it is no wonder that in our country the legal order does not function and that every day crime and violence are burgeoning.'

This [court] finds that the above-mentioned words [made bold for emphasis] from the private prosecutor's appeal are insulting in their content and contain insulting

allusions ... questioning the professional qualities of Judge M. of the Varaždin Municipal Court as well as the judges Z.P., D.K. and M.O. of the County Court, whose withdrawal the private prosecutor in fact requested in her appeal as [they were], in [her] view, obviously biased ...

In this [court's] view, the appeal of the private prosecutor is insulting and demeaning as a whole, which is particularly exemplified in the above-cited passages from her appeal, where [she] displays blatant arrogance towards the judges and judiciary in general. Her belittling attitude and desire to give lessons to everyone is apparent. She seeks to demean the judges, which is particularly exemplified when the private prosecutor dares to say that Judge M. was harassing her witnesses ... that the public was appalled by the way in which the judge conducted the proceedings, that the finding of the judge was regrettable but even more biased, that the judge should have known what investment is, that the judge was neither inexperienced nor incompetent when she assessed the behaviour of the private prosecutor towards the accused with bias. Therefore, in this [court's] view, there is no doubt that the private prosecutor in her appeal insults and belittles the court by the above-mentioned incriminations. This is the case especially since the above-mentioned allegations are not necessary for the elucidation of the arguments raised in the appeal, as the incriminations in question also contain insulting allusions concerning the professional qualities of Judge M. and other judges of this court, through which the private prosecutor objectively tarnishes the reputation of the court.

Having regard to the list of incriminations in the private prosecutor's appeal, by which she insults the judges and singles some [of them] out while expressing her opinions as regards the bias and corruption of certain judges and the judiciary as a whole, there is no doubt that this [court] was obliged, within the meaning of section 73(1) of the Criminal Procedure Act, to fine [her].

The above fine appears adequate given the incriminations in the appeal and their number and severity. The private prosecutor will be able to pay this fine ... even though she refused to indicate the amount of her pension. However, it is evident [from the case file] that she owns a flat, so her refusal to indicate the amount of her pension – which she is otherwise obliged [to do] – only shows her arrogance and demeaning attitude towards certain judges and the court as a whole.

This [court], however, [established] that her pension amounts to HRK 3,900, and took [it] into account when determining the amount of the fine. The court therefore considers that she will be able to pay the fine of HRK 5,000 within the six-month time-limit. [It is to be noted] that if the above fine is not paid in full or in part within [that] time-limit, it will be converted into an appropriate prison sentence on the basis of section 157 of the Criminal Procedure Act by applying the provisions of the Criminal Code, *mutatis mutandis*."

On 25 November 2005 the applicant lodged an appeal against that decision, arguing, *inter alia*, that the remarks made in her appeal of 3 October 2005 had been taken out of context and that their aim had not been to insult, but to undermine the lawfulness of the appealed first-instance judgment of 12 July 2005. By making those remarks she had been expressing her opinion and had had reason to believe that it was valid. However, she had been fined only because she had dared to doubt the

impartiality of Judge M. and to complain about judges who were considered to be infallible.

On 22 December 2005 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant's appeal and upheld the first-instance decision. The Supreme Court's decision, which was served on the applicant on 3 April 2006 read, in its relevant part, as follows:

> "The [Varaždin County Court] correctly found that the private prosecutor Ljerka Kovač, in her appeal lodged against the judgment of the Varaždin Municipal Court of 12 July 2005, expressed disrespect for judicial office and thereby insulted the court.
>
> Namely, the fact is that by the remarks made in the appeal at issue, which are highlighted in the contested decision, the court is being insulted and belittled. [This is so] because those incriminating remarks were obviously not necessary for the elucidation of the grounds for the appeal. By their content [they] represent demeaning and insulting allusions and expressions, which groundlessly question the professional qualities of judges, insult the court as a whole, show arrogance in respect of judges and the judiciary in general and thereby objectively tarnish the reputation of the court.
>
> As the court is, on the basis of the mandatory statutory provision of section 73(1) of the Criminal Procedure Act, obliged to impose a fine when it finds that the conditions set forth in that provision have been met, the imposition of a fine on the private prosecutor – as a measure to secure [procedural] discipline of the parties – in order to prevent her possible such or similar behaviour in the future – was well-founded.
>
> Therefore, the private prosecutor's appeal in which she does not actually deny having made insulting remarks, is unfounded.
>
> Contrary to the arguments raised in the appeal, the amount of the imposed fine of HRK 5,000 [Croatian] kunas, which under section 73(1) of the Criminal Procedure Act, may be up to HRK 20,000, is appropriate to the number, gravity and severity of the insults, the income and the general behaviour of the private prosecutor so far, where regard should be had to the fact ... that the fine was ordered to be paid within six months."

On 9 May 2006 the applicant lodged a constitutional complaint under section 62 of the Constitutional Court Act against the Supreme Court's decision. On 26 June 2006 the Constitutional Court declared the applicant's constitutional complaint inadmissible and served its decision on her on 15 July 2006. It held that the impugned decision did not concern the merits of the case and, as such, was not susceptible to constitutional review.

The applicant paid the fine on 19 September 2006.

B. Relevant domestic law

1. The Constitutional Court Act

The relevant part of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu*

Republike Hrvatske, Official Gazette no. 99/1999 of 29 September 1999 – "the Constitutional Court Act"), as amended by the 2002 Amendments (*Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 29/2002 of 22 March 2002), which entered into force on 15 March 2002, reads as follows:

Section 62

"1. Any person may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a state authority, local or regional self-government, or a legal person vested with public authority, concerning his or her rights or obligations, or about a suspicion or an accusation of his or her having committed a criminal offence, has violated his or her human rights or fundamental freedoms, or right to local or regional self-government, guaranteed by the Constitution (hereinafter: constitutional rights)...

2. If another legal remedy is allowed against the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] are allowed, remedies shall be considered to have been exhausted only after the decision on these legal remedies has been given."

2. The Criminal Procedure Act

The Criminal Procedure Act of 1997 (*Zakon o kaznenom postupku*, Official Gazette of the Republic of Croatia nos. 110/1997, 27/1998 (corrigendum), 58/1999, 112/1999, 58/2002, 143/2002 (corrigendum), 62/2003 (consolidated text) and 115/2006), in its relevant part, provided as follows:

Section 73

"1. The court shall impose a fine of up to 20,000 [Croatian] kunas on defence counsel, a legal representative, legal guardian, injured party or private or subsidiary prosecutor, witness or expert who insults the court or another participant in the proceedings [either] orally or in his or her written submissions. The decision as regards the fine to be imposed shall be rendered by the investigating judge or the panel before which the insulting remark was made or, if such a remark was made in a written submission, the decision shall be rendered by the court which has to decide on that submission. An appeal lies against this decision. ...

2. The fine imposed pursuant to paragraph 1 of this section shall have no effect on the prosecution or the imposition of a [criminal] sanction for the criminal offence committed by the insult."

Section 157

> "When a fine imposed in accordance with the provisions of this Act is not paid in full or in part within the fixed time-limit, the court may convert it into a prison sentence which shall be imposed by applying the provisions of the Criminal Code, *mutatis mutandis*."

3. The Criminal Code

Article 52 § 3 of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/97, with subsequent amendments) reads as follows:

> "A fine shall be converted into a prison sentence so that one daily income is converted into one day of imprisonment, where the maximum duration of imprisonment into which the fine was converted shall not exceed twelve months."

According to the practice of the domestic courts, before taking a decision to convert the fine into a prison sentence, a court has to summon and hear the person fined. An appeal always lies against such a decision (see, for example, the Supreme Court decision no. Kž 443/08-3 of 21 May 2008).

COMPLAINTS

1. The applicant complained under Articles 9 and 10 of the Convention about the fine imposed on her for contempt of court.

2. The applicant also complained under Article 6 § 1 of the Convention that the contempt of court proceedings against her had been unfair and about their outcome. In particular, she complained that the decision to fine her had been rendered by judges who considered that her remarks had been offensive to, *inter alia*, other judges of the same court.

THE LAW

A. Alleged violation of Article 10 of the Convention

The applicant complained under Articles 9 and 10 of the Convention that by fining her for the views she had expressed in her appeal of 3 October 2005, the domestic courts had infringed her freedom of thought and freedom of expression.

The Government contested this argument.

The Court notes that the situation complained of concerns the right to impart information and ideas, that is, the expression of opinion, which is protected by Article 10 of the Convention, and not the freedom of thought protected by Article 9. Therefore, this complaint falls to be examined solely under Article 10 of the Convention, which reads, as relevant, 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 ...
>
> 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 maintaining the authority and impartiality of the judiciary."

The Government disputed the admissibility of this complaint on two grounds. They argued that the applicant had failed to comply with the six-month rule, and that, in any event, this complaint was manifestly ill-founded.

Whether the complaint is manifestly ill-founded

(a) The arguments of the parties

(i) The Government

The Government admitted that the imposition of a fine for contempt of court amounted to an interference with the applicant's freedom of expression. However, they argued that the interference had been in accordance with the law, that it pursued a legitimate aim and had been necessary in a democratic society. The decision to fine the applicant had been based on section 73(1) of the Criminal Procedure Act and sought to maintain the authority of the judiciary.

The Government also considered that the interference had been proportionate to its aim for the following reasons.

Firstly, the interference complained of concerned a fine which had been imposed during criminal proceedings for contempt of court. Such fines were intended to discipline the parties and deter them from similar misconduct in the future. The proceedings had been conducted in compliance with all procedural guarantees safeguarding a fair trial. The applicant had had the opportunity to use a remedy against the decision to fine her, which she had availed herself of, and her appeal had been decided by the Supreme Court. In contrast to the *Kyprianou* case (*Kyprianou v. Cyprus* [GC], no. 73797/01, ECHR 2005-XIII), in which the applicant had been fined for contempt of court for an opinion expressed at the hearing, in the instant case the

applicant had been fined for having offended the court in her appeal, that is, after the events which had provoked her discontent had occurred.

Secondly, the applicant could have expressed her dissatisfaction with the way her case had been dealt with during the first-instance proceedings. For example, if she had believed that the first-instance judge had been biased, she could have requested her withdrawal. Instead, in her appeal she had questioned the professional qualities of the first-instance judge, as well as the moral integrity of certain judges of the second-instance court, by alluding to bias and corruption in the judiciary. It was evident that the applicant's right to express her disagreement with the first-instance decision, the manner in which the proceedings had been conducted, and the behaviour of the judge appointed to hear the case had not been restricted. The only issue in dispute was the manner in which the applicant had done so, that is, by inappropriate statements which, the Government maintained, were in contempt of court.

Lastly, the Government noted that the maximum fine had not been imposed on the applicant, nor had criminal proceedings been instituted against her. Therefore, the fining of the applicant in the circumstances of the present case constituted the mildest form of interference with her freedom of expression. The fine imposed had been proportionate to the aim sought to be achieved (namely, maintaining the authority of the judiciary) and the severity of the applicant's misconduct. In this connection, the Government argued that the proportionality of a sanction was predominantly a matter falling within the margin of appreciation enjoyed by Contracting States. In addition, the domestic court had not enforced its decision immediately, but had allowed the applicant to pay the fine within six months. The payment could also have been made in equal monthly instalments. The applicant had paid the fine on 19 September 2006, that is, almost ten months after the decision imposing the fine had become final.

In the light of the foregoing, the Government considered that the interference in the present case had been "necessary in a democratic society" and therefore had not contravened Article 10 of the Convention. Accordingly, they invited the Court to declare the applicant's complaint inadmissible as manifestly ill-founded.

(ii) The applicant

The applicant first submitted that her actions should be viewed in the context of the special situation in which she had found herself. She, together with thirty-eight other citizens, had lost their life-savings totalling 5,000,000 German marks (DEM) in a fraud which had been organised by B.D. and his wife, and of which they had been found guilty and convicted in separate criminal proceedings before the Varaždin Municipal Court. As if it had not been sufficient that she had lost DEM 5,000, which she had never recovered, B.D. had also physically assaulted her, while expressing

arrogance and superiority and a belittling attitude towards her and other citizens who had entrusted him with their money. The applicant had therefore been in a special state of mental suffering and had expected that the Varaždin Municipal Court would, in the above criminal proceedings for bodily harm, sanction B.D. dilatory manoeuvres, afford her adequate legal protection and impose a suitable penalty on B.D. Seeing that the court had tolerated B.D.'s delaying tactics, had not protected the applicant as the victim and had eventually imposed a very lenient penalty of only thirty-five days' imprisonment, it was understandable that she had in her appeal of 3 October 2005 vehemently expressed her dissatisfaction with the first-instance judgment and the way the proceedings had been conducted.

The applicant further argued that the aim of her remarks had not been to insult Judge M. Rather, those remarks had been a means of expressing her discontent with the first-instance decision and the conduct of the trial, and had been aimed at demonstrating that the judge had been biased. Despite that, the Varaždin County Court and the Supreme Court had refused to consider her remarks in that context. In reply to the Government's argument that the applicant could have requested Judge M.'s withdrawal during the first-instance proceedings, she submitted that the judge's bias had only become obvious after she had read the first-instance judgment.

Lastly, the applicant averred that the fine imposed on her had been excessive. It had deeply affected her emotionally and financially. After having lost her life-savings owing to B.D.'s fraud and after having being beaten by him, the fine imposed on her for contempt of court had not only further worsened her bad financial situation but had also stirred in her profound feelings of injustice. The fine imposed on her greatly exceeded her monthly pension, which was her only source of income, and equalled, in fact, three months of her living expenses.

Having regard to the above, the applicant invited the Court to find that, by imposing on her the fine in question, the domestic courts had violated Article 10 of the Convention.

(b) The Court's assessment

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, *Kubli v. Switzerland* (dec.), no. 50364/99, 21 February 2002). 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, *Mariapori v. Finland*, no. 37751/07, § 62, 6 July 2010, and *Kyprianou*, cited above, § 174). The Court therefore considers that the fining of the applicant for contempt of court in the present case amounted to an interference with her freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

The Court further reiterates in this connection that this Article does not guarantee wholly unrestricted freedom of expression and that the exercise of this freedom carries with it "duties and responsibilities" (see, for example, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 58, 22 October 2009). As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, for example, *Skałka v. Poland*, no. 43425/98, § 32, 27 May 2003, and *Kubli*, cited above). In particular, the parties' freedom of expression in the courtroom is not unlimited and certain interests, such as the authority of the judiciary, are important enough to justify restrictions on this freedom (see *Mariapori*, loc. cit.).

The Court finds in this regard that in the present case the interference with the applicant's freedom of expression was prescribed by law, in particular section 73(1) of the Criminal Procedure Act, and that it pursued a legitimate aim of maintaining the authority of the judiciary within the meaning of Article 10 § 2 of the Convention. Therefore, the question for the Court to decide is whether that interference was "necessary in a democratic society". In so doing the Court must ascertain whether on the facts of the case 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.

The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Kyprianou*, cited above, § 170, and *Skałka*, cited above, § 33).

In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see, for example, *Nikula v. Finland*, no. 31611/96, § 44, ECHR 2002-II, and *Skałka*, cited above, § 35).

The phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes relative thereto; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function (see *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 55, Series A no. 30). The work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed by the rule of law, needs to enjoy public confidence. It should therefore be protected against unfounded attacks. However, the courts, as with all other public institutions, are not immune from criticism and scrutiny (see *Skałka*, cited above, § 34). Therefore, while parties are certainly entitled to comment on the administration of justice in order to protect their rights, their criticism must not overstep certain bounds (see *Saday v. Turkey*, no. 32458/96, § 43, 30 March 2006). In particular, a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention (see *Skałka*, loc.cit).

In the present case, in its decision of 8 November 2005 the Varaždin County Court found that the statements that the applicant had made in her appeal of 3 October 2005 were insulting to Judge M., three judges of the Varaždin County Court and the court as an institution. This finding was endorsed by the Supreme Court in its decision of 22 December 2005.

The Court sees no reason to hold otherwise as the present case, where the applicant stated, *inter alia*, that Judge M. had been giving vent to her instincts and harassing her witnesses, can be compared with those in which the Convention organs found that the applicants' statements had been insulting (see, for example, *Saday*, cited above, in which the accused described the Turkish judiciary as "torturers in robes"; *W.R. v. Austria*, no. 26602/95, Commission decision of 30 June 1997, in which counsel had described the opinion of a judge as "ridiculous", and *Mahler v. Germany*, no. 29045/95, Commission decision of 14 January 1998, where counsel had asserted that the prosecutor had drafted the bill of indictment "in a state of complete intoxication"). In the instant case the impugned statements, framed in belittling and impertinent terms, were not only a criticism of the first-instance judgment of 12 July 2005 and the way in which Judge M. had conducted the proceedings, but further, as found by the domestic courts, contained open accusations of bias and corruption as well as insinuations questioning her professional qualities. There is nothing to suggest that the applicant could not have raised the substance of her criticisms without using the impugned language (see *A. v. Finland* (dec.), no. 44998/98, 8 January 2004).

Furthermore, in assessing the proportionality of the interference, the nature and the severity of the sanction imposed are also factors to be taken into account (see, for example, *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006, and *Kwiecień v. Poland*, no. 51744/99, § 56, ECHR 2007-I). In this connection, the Court notes that the applicant in the present case was fined HRK 5,000, that is, one quarter of the maximum penalty under section 73(1) of the Criminal Procedure Act. The Court considers that this amount does not, in the specific circumstances of the case, appear excessive having regard to the nature of the applicant's remarks and the fact that she was ordered to pay the fine within a period of six months.

In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of their decisions were "relevant and sufficient" and that the fine imposed on the applicant was not disproportionate to the legitimate aim pursued, namely, maintaining the authority of the judiciary. Therefore, the interference with the applicant's freedom of expression was "necessary in a democratic society".

It follows that this complaint is inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4 thereof.

In view of this conclusion the Court does not find it necessary to examine separately the Government's remaining inadmissibility objection based on non-compliance with the six-month rule.

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

The applicant further complained that the contempt of court proceedings against her had been unfair and about the outcome of those proceedings. In particular, she complained that the Varaždin County Court had lacked impartiality because the decision to fine her had been delivered by judges who had considered her remarks to be insulting to other judges of the same court. She relied on Article 6 § 1 of the Convention, which reads, as relevant, as follows:

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

The Government disputed the admissibility of this complaint on four grounds. They argued that Article 6 § 1 of the Convention was not applicable to the contempt of court proceedings against the applicant; that she had failed to exhaust all available domestic remedies and to comply with the six-month rule; and that, in any event, this complaint was manifestly ill-founded.

Applicability

(a) The arguments of the parties

The Government argued that Article 6 under its "criminal" head was not applicable in this case. Relying on the Court's case law, in particular its judgments in the *Ravnsborg* and *Putz* cases (*Ravnsborg v. Sweden*, 23 March 1994, Series A no. 283-B, and *Putz v. Austria*, 22 February 1996, *Reports of Judgments and Decisions* 1996-I), the Government averred that the measures that had been ordered by the domestic courts under the rules sanctioning disorderly conduct in court proceedings did not fall under Article 6 of the Convention, since they were akin to the exercise of disciplinary powers.

In particular the Government submitted that the applicant's case did not meet any of the criteria developed by the Court in cases concerning contempt of court, namely, the legal classification of the offence under domestic law, the nature of the offence, and the nature and severity of the penalty.

Firstly, the imposition of a fine for contempt of court was prescribed by the Criminal Procedure Act, with the sole intention of maintaining the procedural discipline of the parties in criminal proceedings.

Secondly, the contempt of court, for which the applicant had been fined, did not constitute a criminal offence under Croatian law, nor was the perpetrator's guilt determined according to the criteria provided under criminal law. Moreover, the purpose of the imposition of a fine for contempt of court was not the same as the purpose of the imposition of sanctions under the Criminal Code, because the former was a disciplinary measure against disorderly conduct in court proceedings.

Thirdly, the applicant had not risked deprivation of liberty or being fined for a criminal offence. She had not been fined with the maximum fine and the fine that had been imposed had been proportionate to her misconduct. A fine imposed under section 73 of the Criminal Procedure Act could be converted into a prison sentence only if it could not be collected from the perpetrator. In contrast to a fine imposed for a criminal offence, the conversion of a fine imposed under section 73 of the Criminal Procedure Act was not automatic, but was subject to review by a court. That sanction would not be entered into any criminal records, and the applicant, apart from the paying of the fine, had not suffered any other consequences.

Having regard to the foregoing, the Government considered that Article 6 was not applicable in the present case.

The applicant did not make any specific comments on this issue. However, it follows from her submissions that she considered Article 6 to be applicable.

(b) The Court's assessment

The Court considers that it has to examine whether the fine for contempt of court imposed on the applicant by the Varaždin County Court constituted the determination of a criminal charge against her. The Court reiterates that the question whether the criminal head of Article 6 applies to contempt of court proceedings has to be assessed in the light of the three alternative criteria laid down by the Court in the *Engel* case (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22): (a) the classification of the offence under the domestic law, (b) the nature of the offence and (c) the nature and degree of severity of the penalty that the person concerned risks incurring (see *Ravnsborg,* cited above*,* § 30; *Putz,* cited above*,* § 31; *T. v. Austria*, no. 27783/95, § 61, ECHR 2000-XI; *Kubli*, cited above; *Jurík v. Slovakia* (dec.), no. 50237/99, 18 March 2003; *Kyprianou*, cited above, § 31; *Zaicevs v. Latvia*, no. 65022/01, § 31, ECHR 2007-IX (extracts), and *Veriter v. France*, no. 25308/94, Commission decision of 2 September 1996, Decisions and Reports (DR) 86-B, pp. 96 and 101-03).

As to the legal classification of the offence under the domestic law, the Court notes that the behaviour for which a fine was imposed on the applicant is not formally classified as a criminal offence under Croatian law. This follows from the fact that the fine imposed on the applicant was based on section 73(1) of the Criminal Procedure Act, and not on provisions of the Criminal Code, that such a fine is not entered in any criminal record and that its amount does not depend on income as is the case under criminal law (see, *mutatis mutandis*, *Ravnsborg*, cited above, § 33; *Putz*, cited above, § 32; *Kubli*, cited above; *R.T. v. Austria*, no. 27783/95, Commission's report of 8 September 1999, unreported, § 78, and *Veriter*, cited above, pp. 101-02).

As to the nature of the offence in question, the Court reiterates that rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of the legal systems of the Contracting States. Such rules and sanctions derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for the commission of a criminal offence. The kind of proscribed conduct for which the applicant in the present case was fined in principle falls outside the ambit of Article 6 of the Convention. The courts may need to respond to such conduct even if it is neither necessary nor practicable to bring a criminal charge against the person concerned (see *Ravnsborg*, cited above, § 34; *Putz*, cited above, § 33; *Kubli*, cited above; *Jurík*, cited above; *R.T. v. Austria*, cited above, § 79, and *Veriter*, cited above, p. 102). The Court sees no reason to assess the fine imposed on the applicant in a different manner.

As to the nature and severity of the penalty, the Court first reiterates that notwithstanding the non-criminal character of the proscribed misconduct,

the nature and degree of severity of the penalty that the person concerned risked incurring may bring the matter into the category of "criminal" matters (see *Ravnsborg*, cited above, § 35; *Putz*, cited above, § 34; *Kubli*, cited above; *Balyuk v. Ukraine* (dec.), no. 17696/02, 6 September 2005, and *Veriter*, cited above, p. 102).

The applicant in the present case was fined HRK 5,000, whereas the maximum penalty which she risked incurring under section 73(1) of the Criminal Procedure Act amounted to HRK 20,000. In the Court's view, neither the fine imposed nor the possible maximum amount of the fine attained a level that would make it a "criminal" sanction (see, *mutatis mutandis*, *Ravnsborg*, loc. cit., and *Kubli*, cited above). As already noted above, unlike ordinary fines, the one at issue is not entered in any criminal record (see, *mutatis mutandis*, *Ravnsborg*, loc. cit.; *Putz*, cited above, § 37; *Kubli*, cited above, and *Veriter*, cited above, p. 102). Furthermore, while it is true that under section 157 of the Criminal Procedure Act the fine was convertible into a prison sentence, such a possibility does not in itself render a penalty severe enough to trigger applicability of Article 6 under its "criminal head". What is important is that the fine the applicant was ordered to pay in the present case was not convertible into imprisonment on default (see, *mutatis mutandis*, *Balyuk*, cited above) since it could be converted into a prison sentence only in limited circumstances, namely, if the fine had not been paid (see above, and *mutatis mutandis*, *Putz*, cited above, § 37, and *Kubli*, cited above). What is more, according to the practice of the domestic courts, a decision to convert the fine into a prison sentence could only have been taken after hearing the applicant, who would also have had the right to appeal against such a decision (see *Ravnsborg*, loc. cit., and also, by converse implication, *T. v. Austria*, cited above, § 66). Lastly, the Court notes that the domestic courts allowed the applicant to pay the fine within six months and that, even though she paid it almost ten months after the decision imposing the fine had become final, those courts never considered converting the fine into a prison sentence.

Having regard to these factors and in the light of the disciplinary nature of the offence, the Court considers that the penalty which the applicant risked incurring was not sufficiently severe to bring the "criminal head" of Article 6 § 1 of the Convention into play (see, *mutatis mutandis*, *Brown v. the United Kingdom* (dec.), no. 38644/97, 24 November 1998).

In view of all the above considerations, the Court finds that the proceedings leading to the imposition of the above fine on the applicant did not concern the determination of a "criminal charge" within the meaning of Article 6 § 1 of the Convention. Accordingly, the guarantees of that provision do not extend to those proceedings.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

In view of this conclusion the Court does not find it necessary to examine separately the Government's remaining inadmissibility objections.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Anatoly Kovler
President