



No violation of former President of Croatia's rights in case against him for defamation of a lawyer

In today's Chamber judgment¹ in the case of [Mesić v. Croatia](#) (application no. 19362/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights, and

a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention.

The case concerned civil proceedings for defamation in which the applicant – a former President of Croatia – had been ordered by the Croatian courts to pay the equivalent of 6,660 euros (EUR) to a specialist lawyer of Croatian origin practising in France, for having tarnished his reputation.

The Court found in particular that the statement made by Mr Mesić had not only been detrimental to the lawyer's reputation but had also been capable of having a "chilling", dissuasive effect on the exercise of his professional duties. Therefore, the awarding of damages had been an appropriate sanction to neutralise that effect and proportionate to the aim of protecting the lawyer's reputation. Nevertheless, the Court concluded that the length of the proceedings had been excessive and had failed to meet the "reasonable time" requirement.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Stjepan Mesić, is a Croatian national who was the President of Croatia from 2000-10. He was born in 1934 and lives in Pušća (Croatia).

In 2006 Ivan Jurašinić, a Croatian lawyer who was practicing in Angers (France) at the time, lodged a criminal complaint on behalf of one of his clients against 11 Croatian nationals, including Mr Mesić, in respect of two counts of attempted murder and one count of attempted extortion by a criminal organisation. Mr Mesić was accused as being an accomplice. One of the 11 was an alleged well-known mafia boss. According to Mr Jurašinić's client, the latter had financed Mr Mesić's election campaign in 2000.

Articles connecting the then President's name to the criminal complaint appeared on the websites of two daily newspapers in Croatia, referring to him as a "sort of political patron of the person who ordered the murder." However, the exact content of the criminal complaint was not known to the media. In both articles it was stated that journalists had contacted Mr Jurašinić by phone and that he had confirmed that the complaint had indeed been lodged, but that he was not allowed to go into details under French law.

The then President, when asked to comment by journalists at a televised press conference, stated that, when next in Zagreb, Mr Jurašinić should go to a certain psychiatric hospital where he and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

others like him could receive effective treatment. The statement was reported on the President of Croatia's official website and by various media outlets.

Mr Jurašinić then instituted civil proceedings for defamation in Croatia, complaining that Mr Mesić had used his position as President of Croatia and the related media attention to sully his honour and reputation and damage his professional and moral credibility. Mr. Mesić held that his statement had not been offensive but had been a figure of speech (a "personified metaphor") in an attempt at irony in response to the unfounded and severe accusations made against him. Mr Mesić was eventually ordered to pay Mr Jurašinić HRK 50,000 (EUR 6,660 at the time) for having tarnished his reputation.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Mesić complained that the judgment ordering him to pay damages for the harm to Mr Jurašinić's reputation had constituted a violation of his freedom of expression. He also complained that the length of the civil proceedings had been incompatible with Article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention.

The application was lodged with the European Court of Human Rights on 19 April 2018.

Third-party interventions were received from Mr Jurašinić, the National Bar Council and the Paris Bar Association.

Judgment was given by a Chamber of seven judges, composed as follows:

Péter **Paczolay** (Hungary), *President*,
Ksenija **Turković** (Croatia),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Gilberto **Felici** (San Marino),
Lorraine **Schembri Orland** (Malta),
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 10

The Court reiterated that only an offensive statement amounting to blatant denigration, with the sole intent to insult, was not protected under Article 10 of the Convention. Taking into account the circumstances in which the statement had been made, the Court found that the President of Croatia had been trying to defend himself and his intention had not solely been to insult Mr Jurašinić. In that light, the Court found that that domestic court's judgment had interfered with Mr Mesić's right to freedom of expression. However, it noted that the interference had had a legal basis in domestic law as it had been based on the relevant provisions of the Obligations Act and had also pursued a legitimate aim in that it had been intended to protect Mr Jurašinić's reputation.

As to whether that interference had been "necessary in a democratic society", the Court noted that when Mr Mesić had remarked that Mr Jurašinić needed psychiatric treatment, he had been the State President, and his comment had been widely reported by various media outlets. Therefore, regardless of whether that statement should have been understood literally (as the domestic courts held) or metaphorically (as Mr Mesić submitted), the Court accepted that it had not only been capable of tarnishing Mr Jurašinić's reputation, but also of being detrimental to him in both his

professional and social life. Accordingly, the Court found that Mr Jurašinić's rights under Article 8 of the Convention came into play.

Since the domestic courts had not applied the criteria laid down in the Court's case-law for balancing freedom of expression with the right to reputation, the Court had to carry out the required balancing exercise itself. In so doing, the Court considered that Mr Jurašinić had not been a public figure before news about the criminal complaint had been reported by the Croatian media; nor had he made any public statement regarding the President. As the allegation that had provoked Mr Mesić's statement had not been made publicly, nor had it been intended for a public readership, his situation could not be compared to that of persons who voluntarily expose themselves to public scrutiny by virtue of their role as politicians, public figures or participants in a public debate on a matter of public interest, and for whom wider limits of criticism are acceptable.

At the same time, in the Court's view, the alleged involvement of a State President in an attempted murder and/or his possible links with organised crime is undoubtedly a matter of public interest. Mr Mesić had had a right to reply to such an accusation and to defend himself, which he had done first by making certain factual statements denying any connection with the person associated with organised crime. Nevertheless, he had gone a step further and had attempted to discredit Mr Jurašinić as a person to be trusted by making an offensive statement using belittling and impertinent terms, which had not been necessary. By personally insulting Mr Jurašinić, he had made no contribution to a debate on a matter of public interest and had gone beyond the limits of acceptable criticism. The Court considered that high-ranking State officials attacking the reputation of lawyers and making them objects of derision with a view to isolating them and damaging their credibility was often as effective as a threat in preventing lawyers from exercising their professional duties.

Lastly, the Court was mindful of the fact that Mr Jurašinić had been bound by the secrecy of criminal investigation in France, which meant that he had not been able to refute that the accusations made in the criminal complaint were not absurd as Mr Mesić's comment had suggested and placed him at a disadvantage when compared to the applicant, a powerful public figure who, because of his role as a State President, enjoyed great media attention. Mr Mesić's statement had not only been detrimental to Mr Jurašinić's reputation but had also been capable of having a "chilling", dissuasive effect on his exercise of his professional duties as a lawyer. Therefore, the awarding of damages had been an appropriate sanction to neutralise that chilling effect and proportionate to the legitimate aim of protecting Mr Jurašinić's reputation.

The Court concluded that the interference with Mr Mesić's freedom of expression had been "necessary in a democratic society". There had accordingly been no violation of Article 10 of the Convention.

Article 6 § 1

Mr Mesić complained of the overall length of the civil proceedings, placing particular emphasis on the length of the proceedings before the County Court

The Court rejected Mr Mesić's complaint in so far as it concerned the period before 13 March 2013 as he had not exhausted the domestic remedy that existed at the time. The Court therefore only examined the period after that date which had lasted four years and seven months. Having examined all the material, the Court considered that the Government had not put forward any fact or argument capable of justifying the length of the civil proceedings. It therefore concluded that the length of the proceedings had been excessive and had failed to meet the "reasonable time" requirement. There had accordingly been a violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Croatia was to pay Mr Mesić 2,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Jane Swift (tel : + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Neil Connolly (tel : + 33 3 90 21 48 05)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.