



Politician held responsible in defamation proceedings for statements wrongly attributed to him

In today's Chamber judgment in the case of [Stojanović v. Croatia](#) (application no. 23160/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned defamation proceedings brought by the Croatian Minister of Health against Mr Stojanović following the publication of two articles in 1997 reproducing critical statements attributed to the latter – which he denied having made – resulting in Mr Stojanović being ordered to pay damages to the minister.

The Court rejected an objection by the Croatian Government to the effect that Article 10 was not applicable. It underlined that the extent of liability in defamation must not go beyond a person's own words, and that an individual may not be held responsible for statements or allegations made by others.

Principal facts

The applicant, Josip Stojanović, is a Croatian national who was born in 1940 and lives in Zagreb.

In April 1997, a weekly magazine published two articles in which Mr Stojanović was quoted. One of them included an interview with him, in which he criticised a politician who was the Minister of Health at the time and who was a member of the same political party as Mr Stojanović. The title of the article referred to the minister's actions as "machinations". The other article reproduced a telephone conversation between Mr Stojanović and the party's general secretary, in which the latter had allegedly asked Mr Stojanović to retract some statements he had previously made in an interview and to refrain from further public criticism of the minister. According to the article, Mr Stojanović had stated that it was kept secret from the public that the minister sat on ten supervisory boards and was receiving a high remuneration on that account. In that conversation Mr Stojanović had also allegedly accused the minister of threatening him that Mr Stojanović would not become a professor "as long as I am the Minister".

The minister brought a civil action for defamation against the publishing company and against Mr Stojanović, arguing, in particular, that the title of the first article, which referred to his actions as "machinations", and the two statements Mr Stojanović made during the telephone conversation in question, had harmed his reputation. In May 2003, the Zagreb Municipal Court ordered Mr Stojanović to pay damages to the minister. It found that the use of the word "machinations" to describe the minister's actions and the statements allegedly made in the telephone conversation were harmful to his dignity, honour and reputation. According to the court, it was irrelevant if Mr Stojanović had actually used the word in question in the interview, as during the court hearing he has stated that he agreed with the title of the article. Furthermore, even if the author of the second

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

article had made up the content of the telephone conversation, Mr Stojanović was not freed from liability, as he could have been expected to expose as inaccurate the defamatory statements and he could have asked the magazine to publish his denial. The judgment was eventually upheld in June 2008, when the Constitutional Court dismissed Mr Stojanović's constitutional complaint.

Complaints, procedure and composition of the Court

Mr Stojanović complained in particular that the Croatian courts violated his rights under Article 10 (freedom of expression) by ordering him to pay damages for tarnishing the minister's reputation. He alleged that he had never used the word "machinations" to describe the minister's actions, that he had not authorised the publication of the content of the telephone conversation, and that the second article did not accurately reflect the content of that conversation.

The application was lodged with the European Court of Human Rights on 1 March 2009.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also *Søren Nielsen*, *Section Registrar*.

Decision of the Court

Article 10

Deciding on the admissibility of the complaint, the Court rejected an objection by the Croatian Government to the effect that Article 10 was not applicable. It underlined that the extent of liability in defamation must not go beyond a person's own words, and that an individual may not be held responsible for statements or allegations made by others, be it an editor or journalists. Mr Stojanović could rely on the protection of Article 10, since he argued that, by attributing to him statements he had never made and ordering him to pay damages for those statements, the Croatian courts had indirectly stifled the exercise of his freedom of expression. That was so because, if his argument proved to be correct, the damages he had been ordered to pay would be likely to discourage him from making criticisms of that kind in future. The Court therefore declared the complaint admissible.

The Court considered that that the Croatian courts' decisions constituted an interference with Mr Stojanović's right to freedom of expression. It further accepted that the interference had been prescribed by law and had pursued a legitimate aim, namely to protect the reputation or rights of others, for the purpose of Article 10.

As regards the question of whether the interference was necessary in a democratic society for the purpose of Article 10, the Court considered both articles separately. Concerning the first article, the Court found it difficult to sustain – as the Croatian courts had concluded – that Mr Stojanović was liable for harming the minister's reputation even though he had not used the word "machinations" and it was clear that the title of the article had been phrased by a journalist. It was true that under certain circumstances reiterating libellous statements in a courtroom might give rise to a separate action for defamation. However, in Mr Stojanović's case the cause of action were his alleged

statements to the media, not those he made during the court hearing. In the circumstances of the case, any liability for the words in the title of the article could only be imputed to the editor-in-chief of the magazine.

As regards the second article, the Court separately considered the alleged statements in question. In his testimony before the first-instance court, Mr Stojanović had admitted that during the telephone conversation in question he had referred to a membership of about ten supervisory boards and receiving remuneration on that account. While he had not mentioned the minister's name, he had admitted to having mentioned the Minister of Health in that context. The Court therefore found that the Croatian courts had been entitled to consider that Mr Stojanović had indeed made such a statement in the telephone conversation with the party's general secretary. The Court further agreed with the Croatian courts that it was a factual statement, which had proved incorrect, and that it was defamatory, as it insinuated that the minister had unduly benefited financially from his position. The Court thus considered that the Croatian courts had given relevant and sufficient reasons for the interference with Mr Stojanović's freedom of expression.

Concerning the second statement allegedly made during the telephone conversation, the Court found cogent elements leading it to depart from the factual finding of the Croatian courts. While Mr Stojanović had testified that he had indeed mentioned the minister's threats that Mr Stojanović would never become a professor, he had denied having quoted the phrase "as long as I am the Minister", as had been reported in the article. His interlocutor – the party's general secretary – and three other witnesses had been unable to confirm that he had used that phrase. The Croatian courts' finding had been exclusively based on the testimony of the journalist, whose credibility was questionable, as he clearly had an interest in proving that what he had published was accurate. The finding was therefore not based on an acceptable assessment of the relevant facts. As a consequence, the Croatian courts had mistakenly qualified what Mr Stojanović had said as a factual statement, rather than as a value judgment, the veracity of which was not susceptible of proof. Furthermore, the Croatian Government had not furnished evidence of any legal provision requiring defendants in defamation cases to deny or retract defamatory statements in order to be exempted from liability.

The Court concluded that the interference with Mr Stojanović's freedom of expression had not been justified as regards the title of the first article and his alleged statement that the minister had threatened him that he would not become a professor. There had accordingly been a violation of Article 10.

Just satisfaction (Article 41)

The court held that Croatia was to pay the applicant 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 5,600 in respect of costs and expenses.

The judgment is available only in English.

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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.