



## A lawyer's conviction for defamation of a judge was justified and did not infringe his freedom of expression

In today's **Chamber judgment**<sup>1</sup> in the case of [Peruzzi v. Italy](#) (application no. 39294/09) the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the criminal conviction of Mr Peruzzi, a lawyer, for having defamed an investigating judge (Judge X) in the context of proceedings regarding the division of an estate in which he had been acting for two clients. Mr Peruzzi sent a circular letter to Judge X and other judges of the Lucca District Court containing the text of a previous letter he had written to the Supreme Council of the Judiciary complaining of Judge X's conduct.

The Court found in particular that one of the two criticisms levelled against Judge X by the applicant had implied that the former had disregarded his ethical obligations as a judge or had even committed a criminal offence. However, Mr Peruzzi had not sought to establish the truth of his allegations of wrongful conduct. The Court considered that Mr Peruzzi's conviction could reasonably be considered "necessary in a democratic society" in order to protect the reputation of others and maintain the authority and impartiality of the judiciary.

The present case was to be distinguished from the case of *Nikula v. Finland*<sup>2</sup>, in which the criticisms regarding a prosecutor had been made in the context of judicial proceedings. The issue in the present case concerned remarks made by the lawyer **outside** the courtroom, as in the case of *Morice v. France*<sup>3</sup> (where they had been made in the media).

### Principal facts

The applicant, Piero Antonio Peruzzi, was born in 1946 and lives in Sant'Angelo In Campo (Lucca, Italy). He was a lawyer at the time of the events.

In September 2001 Mr Peruzzi wrote to the Supreme Council of the Judiciary complaining of the conduct of Judge X of the Lucca District Court. He subsequently sent a "circular letter" to several judges of the same court reproducing the content of the first letter, but without referring to Judge X by name. The first part of the circular letter gave details of the decisions adopted by the judge in question in the context of a set of inheritance proceedings, while the second part dealt with what Mr Peruzzi deemed to be unacceptable conduct on the part of judges, including "wilfully committing errors with malice or gross negligence or through lack of commitment".

Judge X lodged a complaint against Mr Peruzzi for defamation. Mr Peruzzi was further accused of insult, since Judge X had also received a copy of the circular letter. In a judgment of 3 February 2005

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](http://www.coe.int/t/dghl/monitoring/execution).

<sup>2</sup> [Chamber judgment](#) of 21 March 2002.

<sup>3</sup> [Grand Chamber judgment of 23 April 2015](#), in which the Court reiterated its case-law to the effect that a distinction had to be drawn depending on whether the lawyer was speaking inside or outside the courtroom. Remarks made in the courtroom remained there and thus warranted a high degree of tolerance to criticism. In other contexts lawyers had to avoid remarks amounting to a gratuitous personal attack without a direct connection to the facts of the case.

the Genoa District Court sentenced Mr Peruzzi to four months' imprisonment for defamation and insult. It considered that Mr Peruzzi had overstepped the limits of his right to criticise by alleging that Judge X had committed errors "wilfully"; this constituted a serious affront to the honour of the judge in question. In the view of the Genoa District Court, there was no doubt that Judge X had been the subject of the accusations contained in the circular letter.

Mr Peruzzi appealed. In a judgment of 12 March 2007 the Genoa Court of Appeal stated that, in the absence of a complaint, no prosecution could be brought for the offence of insult. The custodial sentence imposed on the applicant at first instance was replaced by a fine of 400 euros (EUR). The applicant was also ordered to pay 15,000 euros (EUR) to Judge X for non-pecuniary damage. In November 2008 the Court of Cassation dismissed an appeal on points of law lodged by Mr Peruzzi.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Peruzzi complained of his conviction for defamation.

The application was lodged with the European Court of Human Rights on 25 May 2009.

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

Päivi **Hirvelä** (Finland), *President*,  
Guido **Raimondi** (Italy),  
George **Nicolaou** (Cyprus),  
Ledi **Bianku** (Albania),  
Paul **Mahoney** (the United Kingdom),  
Krzysztof **Wojtyczek** (Poland),  
Yonko **Grozev** (Bulgaria),

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

### [Article 10 \(freedom of expression\)](#)

The Court noted at the outset that it could not accept Mr Peruzzi's argument that the criticisms contained in his circular letter had not been directed against Judge X, but against the Italian judicial system in general. The letter in question had contained whole passages taken from the letter Mr Peruzzi had written to the Supreme Council of the Judiciary complaining about Judge X's conduct, and had summarised the main points of the judicial dispute in the context of which, according to the applicant, Judge X had made unjust decisions. Although the second part of the letter had been written in the form of "general considerations" concerning conduct that was unacceptable for judges, it could not fail to be interpreted as criticism of the behaviour of Judge X, in view of the first part of the letter, which contained details of the decisions adopted in the inheritance proceedings.

The Court therefore sought to ascertain whether the complaints concerning Judge X had overstepped the limits of permissible criticism in a democratic society.

The first criticism of the judge made by Mr Peruzzi, namely that he had adopted unjust and arbitrary decisions, did not amount to excessive criticism since the remarks constituted value judgments – the truth of which, according to the Court's case-law, was not susceptible of proof – that had some factual basis, given that the applicant had represented one of the parties to the inheritance proceedings in question.

However, the second criticism, to the effect that the judge was “biased” and had committed errors “wilfully ... with malice or gross negligence or through lack of commitment”, implied that Judge X had disregarded his ethical obligations as a judge or had even committed a criminal offence (the adoption by a judge of a decision he or she knew to be erroneous could constitute an abuse of official authority). Mr Peruzzi had not produced any evidence demonstrating an element of malice in the decisions of which he complained. Furthermore, he had circulated the letter without awaiting the outcome of the case he had brought against Judge X before the Supreme Council of the Judiciary. The Court also noted that Mr Peruzzi’s criticisms had not been made at the hearing or in the course of the inheritance proceedings, and that the letter had been sent to Judge X and numerous judges of the Lucca District Court in a context unrelated to any step in the proceedings; this had been bound to undermine Judge X’s reputation and professional image. Lastly, the Court noted that the custodial sentence originally imposed on Mr Peruzzi had been replaced on appeal by a small fine of EUR 400. Similarly, the amount of compensation awarded to Judge X (EUR 15,000) could not be regarded as excessive.

The Court concluded that Mr Peruzzi’s conviction for the defamatory remarks made in his circular letter, and the penalty imposed on him, had not been disproportionate to the legitimate aims pursued and that the reasons given by the Italian courts had been relevant and sufficient to justify the measures. The interference with Mr Peruzzi’s right to freedom of expression could reasonably be considered “necessary in a democratic society” in order to protect the reputation of others and maintain the authority and impartiality of the judiciary within the meaning of Article 10 § 2. Accordingly, there had been no violation of that provision.

## Separate opinions

Judges Wojtyczek and Grozev expressed a joint dissenting opinion. This opinion is annexed to the judgment.

*The judgment is available only in French.*

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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.