



ECHR rejects case concerning lawyer's conviction for insulting posts on Internet

In its decision in the case of [Smajić v. Bosnia and Herzegovina](#) (application no. 48657/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Mr Smajić's conviction for making a number of posts in 2010 on an Internet forum describing military action which could be undertaken against Serb villages in the Brčko District in the event of another war. He alleged that he had been convicted for expressing his opinion on a matter of public concern, in breach of **Article 10 (freedom of expression)**. He also made two complaints under **Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing)** with regard to the fairness of the proceedings brought against him.

The Court found that the domestic courts had examined Mr Smajić's case with care, giving sufficient justification for his conviction, namely that he had used highly insulting expressions towards Serbs, thus touching upon the very sensitive matter of ethnic relations in post-conflict Bosnian society. Furthermore, the Court did not see any reason to disagree with the domestic courts' dismissal of Mr Smajić's complaints about the fairness of the proceedings against him. The application of the domestic law had neither been arbitrary nor unreasonable and Mr Smajić, who was a lawyer himself, had unequivocally waived his right to legal assistance during his initial questioning in the case.

Principal facts

The applicant, Abedin Smajić, is a citizen of Bosnia and Herzegovina who was born in 1984 and lives in the Brčko District (Bosnia and Herzegovina). He is a lawyer.

Following posts on the Internet, Mr Smajić was found guilty in 2012 of inciting national, racial and religious hatred, discord or intolerance and given a one-year, suspended prison sentence. His personal computer and laptop were also seized.

The lower courts notably found certain expressions he had used highly insulting to members of an ethnic group, in particular "stinking Christmas", "get rid of the danger behind our backs", "the city centre should then be slowly cleansed" and "Serbs who come from different shitholes". They concluded that the content of these posts, even if hypothetical, did not constitute the expression of free thought on topical matters of general interest, as argued by Mr Smajić, but rather a highly inappropriate form of dialogue advocating a certain kind of behaviour towards an ethnic group.

The Constitutional Court ultimately endorsed this reasoning in 2016, rejecting Mr Smajić's appeal as manifestly ill-founded. It also rejected as manifestly ill-founded his two complaints about the fairness of the proceedings against him, namely an alleged lack of access to a lawyer during his initial questioning in 2010 and the national courts' arbitrary application of the relevant domestic law. As to the first complaint, it concluded that overall Mr Smajić's right to legal assistance had not been restricted. In particular he had been informed of his rights, having signed a form stating that he did not require legal assistance, and his questioning had not resulted in any specific incriminating evidence against him. As concerned the second complaint, it held that the lower courts had correctly applied both the procedural and substantive law and had given well-reasoned and detailed decisions.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 July 2016.

Mr Smajić made two complaints under Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing). In the first, he complained that he had been denied access to a lawyer after his arrest and during his initial questioning in 2010. He said that his lawyer had telephoned the police station where he was being held but had been told that he was not there. In the second, he complained that the national courts had arbitrarily applied the relevant domestic law. Lastly, he alleged that he had been convicted for expressing his opinion on a matter of public concern, in breach of Article 10 (freedom of expression).

The decision was given by a Committee of three, composed as follows:

Carlo **Ranzoni** (Liechtenstein), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Péter **Paczolay** (Hungary), *Judges*,

and also Andrea **Tamietti**, *Deputy Section Registrar*.

Decision of the Court

Article 6 (right to a fair trial)

Overall, the Court did not see any reason to disagree with the domestic courts' findings as concerned Mr Smajić's complaints about the fairness of the proceedings. In particular, the application of the domestic law had been neither arbitrary nor unreasonable.

As to his further allegation that his lawyer had telephoned the police station where he was being held but had been told that he was not there, the Court noted that, according to the case file, Mr Smajić had not asked for his lawyer or indeed any other lawyer to be present at the questioning. In those circumstances, Mr Smajić, who was a lawyer himself, had unequivocally waived his right to legal assistance.

It followed that both complaints about the proceedings' fairness were manifestly ill-founded and had to be rejected as inadmissible.

Article 10 (freedom of expression)

The domestic courts had examined Mr Smajić's case with care as concerned his complaint about a breach of his freedom of expression. Their decisions had been in conformity with the principles under Article 10, giving relevant and sufficient reasons for his conviction. It noted in particular that the content of Mr Smajić's posts, even if written in hypothetical form, had touched upon the very sensitive matter of ethnic relations in post-conflict Bosnian society. Furthermore, the penalties imposed on him, namely a suspended sentence and a seized computer and laptop, had not been excessive.

Therefore, the interference with Mr Smajić's right to freedom of expression, which had been prescribed by law and had pursued the legitimate aim of protecting the reputation and rights of others, did not disclose any appearance of a violation of Article 10 of the European Convention. This complaint was therefore also manifestly ill-founded and rejected as inadmissible.

The decision 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.