



Punishment of publisher for article which criticised a judge breached the right to freedom of expression

In today's **Chamber** judgment¹ in the case of [Narodni List D.D. v. Croatia](#) (application no. 2782/12) 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 the freedom of the press to criticise judges. The applicant, the publisher of a weekly magazine, complained about a domestic court decision finding that it had defamed a county court judge and ordering it to pay over 6,000 euros in damages. The decision referred to an article the applicant had published criticising the judge for going to a party despite a potential conflict of interest and for issuing an unjustified search warrant of its premises.

The Court found that, save in the case of gravely damaging and unfounded attacks, individuals could not be banned altogether from criticising the justice system. The article had covered a matter of public interest, namely the functioning of that system, and, although caustic, it had not been insulting. The way in which it had been written had not therefore been incompatible with the right to freedom of expression under the European Convention. Moreover, the award of damages was excessive which could, in the Court's view, discourage open discussion on matters of public concern.

Principal facts

The applicant, Narodni List D.D., is the publisher of a weekly magazine, *Narodni List*. Its office is based in Zadar (Croatia).

In 2008 *Narodni List* published an article criticising a judge at Zadar County Court. It said that he had recently attended a party to celebrate the launch of a newspaper by a controversial local businessman, despite a potential conflict of interest. It also recalled an incident two years earlier when the same judge had issued a warrant to search the applicant publisher's premises, following accusations by another judge that one of its photographers had taken unauthorised photos of her in front of a court building. The article referred to the search warrant as "illegal" and as resulting in "a herd of policemen raiding their premises". The headline was "Judge B. should be put in the pillory".

The judge in question brought a civil action against the publisher for defamation. In 2010 the domestic courts found that the article was offensive and that it had amounted to a gratuitous personal attack on the judge, which had breached his right to reputation and dignity.

The courts ordered the publisher to pay damages of 50,000 Croatian kunas (HRK) (some 6,870 euros).

Both its appeal to the Split County Court and a constitutional complaint were dismissed.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant publisher complained that the domestic court decisions finding that it had defamed a judge had not been justified and that the level of damages it had been ordered to pay had been excessive.

The application was lodged with the European Court of Human Rights on 28 December 2011.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Ksenija **Turković** (Croatia),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court reiterated that there was little scope under Article 10 for restricting debate on matters of public interest, as was the case for remarks on the functioning of the justice system. It therefore considered that the article, highlighting conduct perceived as unbecoming of a judge, namely going to a party organised by a controversial local businessman and issuing an unjustified search warrant, had concerned a matter of public interest.

It might sometimes be necessary to protect the judiciary against gravely damaging attacks that are essentially unfounded, given the importance of maintaining public confidence in the justice system and the fact that judges are prevented from reacting by their duty of discretion.

This did not mean though that individuals should be banned altogether from criticising the justice system, as long as the views they expressed had a sufficient factual basis, be they factual allegations or value judgments.

The domestic courts had found that the article had contained value judgments which were offensive, without examining whether they had had a sufficient factual basis. However, the Court found that the criticism in the sentences, “herd of policemen raided” and “should be put in the pillory”, although caustic, had not been insulting. Using a caustic tone in comments aimed at a judge was not in principle incompatible with the right to freedom of expression under the Convention.

Lastly, the Court found it difficult to accept that the injury to the judge’s reputation had been so serious as to justify awarding HRK 50,000. To put it in perspective, this sum constituted two thirds of what Croatian courts normally awarded for mental anguish caused by the wrongful death of a sibling. Such a big award could, in the Court’s view, discourage open discussion on matters of public concern.

The interference with the applicant publisher’s freedom of expression had therefore not been “necessary in a democratic society”, in violation of Article 10.

[Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay the applicant publisher 5,000 euros in respect of non-pecuniary damage.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

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

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)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.