



Statements made in defence in the courtroom deserve heightened protection under the Convention

In today's **Chamber** judgment¹ in the case of [Miljević v. Croatia](#) (application no. 68317/13) 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 applicant's conviction for defamation following statements he had made in his defence in another set of proceedings against him for war crimes. In particular, in his closing arguments, he had accused a retired colonel in the Croatian army, a third party who had no role in the war crime proceedings, of witness tampering.

The Court found in particular that the domestic courts had failed to strike a fair balance between the applicant's freedom of expression in the context of his right to defend himself, on the one hand, and the colonel's right to the protection of his reputation, on the other.

In particular, the applicant's statements had not been malicious and had been sufficiently linked to his case, while the colonel should have been more tolerant of criticism given that he had entered the public arena by attending hearings on the applicant's case and by his high profile activities in uncovering war crimes.

The Court emphasised that priority should be given to an accused who wished to speak freely in his defence without fear of being sued for defamation, as long as it did not result in a false suspicion of punishable behaviour against a participant in the proceedings or a third party. That had not been the case here, as the applicant's accusations had not led to any criminal investigation against the colonel.

Principal facts

The applicant, Rade Miljević, is a Croatian national who was born in 1944 and lives in Glina (Croatia).

Mr Miljević was indicted in 2006 on suspicion of having participated in the killing of four detained civilians who had been taken from Glina prison in 1991 and executed. The incident was widely covered by the media in Croatia, in particular via a television show called *Istraga* (Investigation).

In his closing arguments, the applicant alleged that his prosecution had been politically motivated and instigated by I.P., a retired colonel in the Croatian army well-known for his activities in uncovering crimes committed against Croats during the 1991-1995 war. He essentially alleged that I.P. had been involved in witness tampering during the proceedings and had orchestrated a virulent media campaign against him.

Mr Miljević was ultimately acquitted in 2012. The courts found that he had taken the four detained civilians from Glina Prison, but that there was no proof that he had been involved in or could have known about their execution.

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.

In the meantime, the retired colonel brought proceedings against the applicant for defamation. The Municipal Court found him guilty in 2012, considering that the statements he had made during his closing arguments had amounted to a gratuitous and unsubstantiated attack on the colonel. The court found that the applicant had made the statements to cause damage to the colonel's reputation, and not to defend himself in the war crime proceedings.

The applicant's conviction was upheld on appeal by the County Court in 2013, while his constitutional complaint was also dismissed. The applicant was ordered to pay a fine of 1,000 Croatian kunas (HRK – approximately 130 Euros) and I.P.'s legal representation.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Mr Miljević alleged that his conviction for defamation had been unjustified and unfair.

The application was lodged with the European Court of Human Rights on 24 October 2013.

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

Krzysztof **Wojtyczek** (Poland), *President*,
Ksenija **Turković** (Croatia),
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Pere **Pastor Vilanova** (Andorra),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

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

Decision of the Court

The Court emphasised that priority should be given to an accused who wished to speak freely in his defence without fear of being sued for defamation, as long as his or her statements did not amount to malicious accusations against a participant in the proceedings or a third party.

In the applicant's case, it found that the domestic authorities had failed to take into consideration the heightened level of protection that his statements had deserved as part of his defence in a criminal trial. Although his statements had been excessive, they had not been malicious and, calling into question the credibility of the witness evidence and the overall background of the prosecution against him, had been sufficiently linked to his case.

Nor had the courts sufficiently appreciated the fact that colonel I.P. had been seen attending the hearings on the applicant's case and had himself accepted that he had met some of the witnesses.

The Court also took into account the objectively limited consequences of the applicant's accusations for the colonel as he had never been investigated for witness tampering.

Moreover, although there was no reason to call into question the domestic courts' findings that the colonel had been distressed by the applicant's statements, he should have shown a wider level of tolerance of the criticism directed towards him given that he had voluntarily entered the public scene by attending the hearings on the applicant's case and by his activities in uncovering war crimes, which had included advising the editors of the *Istraga* television show.

Lastly, the Court pointed out that restraint was required when resorting to criminal proceedings in matters concerning the defence's freedom of expression in the courtroom and that such a restriction could only be accepted as necessary in a democratic society in exceptional circumstances.

It therefore concluded that the domestic courts had failed to strike a fair balance between the applicant's freedom of expression in the context of his right to defend himself, on the one hand, and the colonel's right to the protection of his reputation, on the other.

There had accordingly been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court found that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Separate opinion

Judge Pastor Vilanova expressed a concurring opinion, which is annexed to the judgment.

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.