



## Fine for contempt of court for telling a joke violated lawyer's freedom of expression

In today's **Committee** judgment in the case of [Simić v. Bosnia and Herzegovina](#) (application no. 39764/20) 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 a joke that the applicant, a lawyer, told in court to illustrate his criticism of the proceedings in which he was representing a client. As a result, he was fined for contempt of court.

The Court found in particular that the domestic courts had failed to give sufficient weight to the context in which the joke and critical remarks had been made and had not provided relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression. In particular, the applicant's joke, made only in the courtroom and not to the media, had been meant as a criticism of the way in which the rules of evidence had been applied in the case he was defending and had not been intended to insult the members of court.

The judgment is final.

### Principal facts

The applicant, Mirko Simić, is a national of Bosnia and Herzegovina who lives in Brčko (Bosnia and Herzegovina). He is a lawyer.

While appealing against civil proceedings on behalf of one of his clients in 2017, Mr Simić told a joke about a professor who expected his students to provide not only the number but also the names of the victims of the bombing of Hiroshima, and likened the way the second-instance court treated him to the way in which those students had been treated by their professor.

Considering Mr Simić's remarks to have been insulting, the third-instance court subsequently fined Mr Simić 1,000 convertible marks (approximately 510 euros) for contempt of court.

The decision was upheld upon appeal.

### Complaints, procedure and composition of the Court

Relying on Article 10 of the European Convention, the applicant complained that his freedom of expression had not been respected.

The application was lodged with the European Court of Human Rights on 30 July 2020.

Judgment was given by a Committee of three judges, composed as follows:

Tim Eicke (the United Kingdom), *President*,  
Faris Vehabović (Bosnia and Herzegovina),  
Pere Pastor Vilanova (Andorra),  
and also Ilse Freiwirth, *Deputy Section Registrar*.

### Decision of the Court

The parties agreed that Mr Simić's punishment for contempt of court had amounted to an interference with his right to freedom of expression, but that there had been legal grounds for it,

and it had been intended as a way of maintaining the authority of the judiciary. However, in order to determine whether the interference had been “proportionate” and whether the reasons for it had been “relevant and sufficient”, the Court looked at it in the light of the case as a whole, including the content of the remarks and the context in which they had been made.

The Court noted that the critical remarks, which had been regarded as insulting by the domestic courts, had been made by Mr Simić in the context of judicial proceedings where he was defending his client’s rights. The remarks had been made in a courtroom and not in the media, meaning that the general public had not been aware of them.

Moreover, the Court did not find that Mr Simić’s remarks had amounted to a gratuitous personal attack with the sole intent to insult the members of the court. They had been aimed at the manner in which the second-instance court had applied the rules of evidence in his client’s case. While it was true that the tone of the remarks had been caustic, or even sarcastic, the use of such a tone in remarks about judges has already been regarded as in keeping with freedom of speech.

Although the Court agreed that it was important that lawyers behaved in a discreet, honest and dignified way in order for members of the public to have confidence in the administration of justice, it also took into account that they had to be able to represent their clients effectively. It considered that the domestic courts had failed to give sufficient weight to the context in which the remarks had been made and had not provided relevant and sufficient reasons to justify the punishment. Finding that the domestic courts had not based their decisions on an acceptable assessment of the relevant facts, the Court concluded that the interference with the applicant’s right to freedom of expression had not been “necessary in a democratic society”. There had therefore been a violation of Article 10 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Bosnia and Herzegovina was to pay the applicant 510 euros (EUR) in respect of pecuniary damage, EUR 4,500 in respect of non-pecuniary damage and EUR 2,550 in respect of costs and expenses.

*The judgment is available only in English.*

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