



Proceedings to dismiss a judge of the Constitutional Court of Bosnia and Herzegovina were fair and did not interfere with his freedom of expression

In its decision in the case of [Simić v. Bosnia and Herzegovina](#) (application no. 75255/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Mr Simić's removal from office as a judge of the Constitutional Court. Relying in particular on Article 6 § 1 (right to a fair trial) and Article 10 (freedom of expression), Mr Simić alleged in particular that the proceedings to dismiss him had been unfair and that he had been removed from office because of statements he had made in public via the media criticising the Constitutional Court.

The Court found that Mr Simić had had the opportunity to present his case in proceedings before the Constitutional Court, both in written and in oral submissions, and to inspect as well as to comment on all the relevant documents, as required in fair and adversarial proceedings. It could not moreover accept his complaint that there had been no public hearing on his case as he had at no point during the proceedings requested that the sessions be held in public.

Furthermore, the Court concluded that Mr Simić had been removed from office for damaging the authority of the Constitutional Court and the reputation of a judge. The reasons for Mr Simić's dismissal had therefore been motivated by behaviour considered incompatible with judicial office, namely his having written a letter to a senior politician which lacked independence and impartiality, and not because of his publicly expressed views via the media.

Principal facts

The applicant, Krstan Simić, is a national of Bosnia and Herzegovina who was born in 1948 and lives in Banja Luka. Mr Simić was elected judge of the Constitutional Court of Bosnia and Herzegovina in June 2007. Prior to taking this office, Mr Simić was a member of the National Assembly of the Republika Srpska and the vice-president of a political party (the Alliance of Independent Social Democrats, "SNSD").

In November 2009 a local non-governmental organisation informed the Constitutional Court of a letter which had been written in May 2009 by Mr Simić and sent to the president of the SNSD and the then prime minister of the Republika Srpska. In the letter Mr Simić discussed the work of the Constitutional Court and made comments about the work of an employee of the Republika Srpska Government.

Between 31 December 2009 and 8 January 2010, Mr Simić also gave media interviews in which he criticised the Constitutional Court, accusing it of corruption and letting crime and politics interfere with its work. He also held a press conference at which he discussed certain cases and commented on the impartiality of the Court.

Proceedings for Mr Simić's removal from office were brought before the Constitutional Court. Before the proceedings commenced, on 3 December 2009, he was invited by the Constitutional Court to submit a written statement concerning his letter. At a plenary session held in March 2010, he also appeared before the court, confirming that he was the author of the letter and submitting his arguments to the judges. The session was adjourned to give him enough time to inspect the case-file and to appoint a legal representative. He was also invited to submit another written statement.

However, he did not use his right to examine the documents and failed to appear at the resumed session or to appoint a legal representative. The resumed session was held in May 2010, and it was decided unanimously to remove him from office for damaging the reputation of both the Constitutional Court as well as of a judge. The Constitutional Court also found that he had consciously ignored the restraint necessary for a judge when exercising his/her freedom of expression and had thus seriously undermined both the authority of the Constitutional Court as well as public confidence in the judiciary as a whole.

Mr Simić then initiated proceedings before the State Court of Bosnia and Herzegovina seeking to annul the Constitutional Court's decision of May 2010. The State Court dismissed this request, finding that it lacked jurisdiction to examine the case. This decision was ultimately upheld by the Appeals Chamber of the State Court in January 2011.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Mr Simić alleged that the proceedings before the Constitutional Court to remove him from office had been unfair, notably because he had not been given an adequate opportunity to present his case and because there had been no public hearing on his case. Further relying on Article 10 (freedom of expression), he alleged that he had been removed from office because of his public statements. Lastly, he alleged under Article 13 (right to an effective remedy) that there had been no effective remedy for his complaints.

The decision was given by a Chamber of seven, composed as follows:

Angelika **Nußberger** (Germany), *President*,
 Erik **Møse** (Norway),
 Khanlar **Hajiyev** (Azerbaijan),
 Ganna **Yudkivska** (Ukraine),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Yonko **Grozev** (Bulgaria),
 Carlo **Ranzoni** (Liechtenstein), *Judges*,

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 (fairness of the proceedings)

The Court could not accept Mr Simić's argument that the proceedings had been unfair because he had not been given an opportunity to present his case. On the contrary, he had had the opportunity to present his case before the Constitutional Court, both in written and in oral submissions. He had also been given enough time to inspect the case-file and to appoint a legal representative, but failed to do so. Therefore, he had had the possibility to have knowledge of and comment on all the relevant documents with a view to influencing the Constitutional Court's decision, as required in adversarial proceedings,

As regards Mr Simić's complaint about the lack of a public hearing in his case, the Court noted that he had been heard in person at the plenary session in March 2010 but had failed to request that that hearing be held in public. There was moreover no evidence to show that he had made such a request at any stage of the proceedings. Therefore it could be reasonably considered that Mr Simić had waived his right to a public hearing.

Consequently, the Court concluded that Mr Simić's complaints under Article 6 § 1 were manifestly ill-founded and had to be rejected as inadmissible.

Article 10 (freedom of expression)

The Court first noted that Mr Simić had given interviews to the media in which he had criticised the Constitutional Court and had held an unauthorised press conference, pending his submission of a written statement to the Constitutional Court about his letter of May 2009.

Moreover, Mr Simić had been removed from office for damaging the authority of the Constitutional Court and the reputation of a judge. The decision had therefore essentially related to his ability to exercise his functions and not to his publicly expressed views. Indeed, the reasons for his removal from office had been his letter of May 2009 which had undoubtedly raised suspicions as to his impartiality and independence, and the behaviour incompatible with the role of a judge.

The Court therefore concluded that Mr Simić's complaint under Article 10 was manifestly ill-founded and had to be rejected as inadmissible.

Article 13 (effective remedy)

The Court noted that the application of Article 13 was implicitly restricted where, as in Mr Simić's case, an applicant alleges a violation of rights under the European Convention by the final judicial authority of the domestic legal system. It therefore also concluded that this complaint was manifestly ill-founded and rejected it 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.