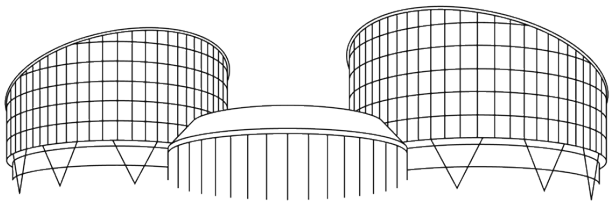

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER FIRST SECTION

CASE OF ŽUGIĆ v. CROATIA

(Application no. 3699/08)

JUDGMENT

STRASBOURG

31 May 2011

FINAL

31/08/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Žugić v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Anatoly Kovler, *President,*
Nina Vajić,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 3699/08) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Nikola Žugić ("the applicant"), on 8 January 2008.

2. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 28 May 2009 the President of the First Section decided to communicate the complaints concerning access to court, freedom of expression and lack of impartiality to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1925 and lives in Zagreb.

A. Civil proceedings

5. On 11 December 2000 the public utility company V.O., basing its case on unpaid bills for water supply services, instituted enforcement proceedings against the applicant in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking payment of the debt.

6. On 24 January 2001 the Court issued a writ of execution (*rješenje o ovrsi*) ordering the applicant to pay the amounts sought. However, since the applicant challenged the writ by objecting to it on 19 March 2001, the court set it aside. As a consequence, the enforcement proceedings were, pursuant to the relevant legislation, transformed into, and resumed as, regular civil proceedings.

7. The applicant, who has a formal education as a lawyer but is not an advocate, represented himself in the proceedings.

8. On 15 November 2005 judge J.G.F. of the Zagreb Municipal Court delivered a judgment ruling for the plaintiff.

9. On 27 December 2005 the applicant appealed against the first-instance judgment. Section 357 of the Civil Procedure Act provides that an appeal to a second-instance court has to be lodged through a first-instance court. Under section 358 of the same Act the first-instance court conducts a preliminary examination of the appeal and may declare it inadmissible if it finds that it does not meet certain procedural requirements, for example if it finds that it was lodged outside the statutory time-limit. It is, however, not authorised to decide on the merits of the appeal. Therefore, the applicant submitted his appeal intended for Zagreb County Court (*Županijski sud u Zagrebu*) to Zagreb Municipal Court. In his appeal he wrote, *inter alia*:

> "After twenty months of waiting ... on 15 November 2005 the second hearing was held, at which, in substance and without hearing [the parties] (apart from stating that the parties were present and that they maintained their positions) the impugned judgment was rendered.
>
> It is indicative to mention here that the judge, before dictating the operative provisions of the judgment, asked the defendant whether 'he would pay this' to which the defendant replied 'where did you get that idea?' ['*što Vam pada na pamet?* ']and asked whether she had examined the case file.... The judge angrily turned sideways in her chair and dictated the operative provisions of the judgment in the name of the Republic of Croatia to the typist, using a funny expression [*navodeći komičan izraz*] that the parties were asking for a reasoned judgment – as if in adversarial proceedings judgments without reasons or instruction on remedies available against them existed. Unfortunately, the court did not record these dialogues between the judge and the defendant in the minutes. What judicial professionalism this is! [*Kakva li je ovo sudačka profesionalnost!*]
>
> It is evident from the above-mentioned that in these proceedings no hearing was held in accordance with the law, which amounts to breaches of section 354 paragraph 2 subparagraphs 6 and 11 of the Civil Procedure Act. Apart from this, from the contested judgment or the transcripts of the hearings it cannot be discerned whether the court took any evidence ... for which reason the judgment could not be satisfactorily reasoned ...
>
> Instead of referring to the evidence taken and assessing its evidentiary value, the court immediately ... states on what basis it arrived at the contested findings, from which it is clear that it accepted all arguments of the plaintiff ..."

10. After it carried out the preliminary examination of the appeal, Zagreb Municipal Court forwarded it together with the case file to Zagreb County Court.

11. On 3 April 2007 Judge M.P. at Zagreb County Court delivered a judgment dismissing the applicant's appeal and upholding the first-instance judgment.

12. On 24 July 2007 the applicant lodged a constitutional complaint against the second-instance judgment. On 21 January 2010 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared his constitutional complaint inadmissible. It found that even though the applicant relied in his constitutional complaint on the relevant Articles of the Constitution guaranteeing the right to a fair hearing and equality before the law, he had not substantiated his complaint by any constitutional law arguments but had merely repeated the arguments raised in the proceedings before the ordinary courts. Therefore, the Constitutional Court had been unable to examine the merits of his constitutional complaint.

B. Contempt of court proceedings

13. After it had completed the preliminary examination of the applicant's appeal of 27 December 2005 in the above proceedings, on 4 January 2006 Judge J.G.F. at Zagreb Municipal Court issued a decision whereby it fined the applicant 500 Croatian kunas (HRK) for contempt of court. The relevant part of the decision read as follows:

> "I. The defendant Nikola Žugić from Zagreb ... is hereby fined 500 [Croatian] kunas because in his appeal of 27 December 2005 he insulted the court by stating: 'It is indicative to mention here that the judge, before dictating the operative provisions of the judgment, asked the defendant whether 'he would pay this', to which the defendant replied 'where did you get that idea?' and asked whether she had examined the case file.... The judge angrily turned sideways in her chair and dictated the operative provisions of the judgment in the name of the Republic of Croatia to the typist, using a funny expression that the parties were asking for a reasoned judgment – as if in adversarial proceedings judgments without reasons or instruction on remedies available against them existed. Unfortunately, the court did not record these dialogues between the judge and the defendant in the minutes. What judicial professionalism this is!'
>
> ...
>
> In the appeal of 27 December 2005 the defendant, insulted the court by, *inter alia*, [using] the words quoted in the operative provisions of this decision.
>
> It would follow from the quoted text that during the main hearing the court communicated with the parties in an improper way, that the judge behaved improperly and that she does not know the law. All this constitutes contempt of court and the statements quoted exceed the limits of necessary respect for the court, even attempting to call into question the knowledge and expertise of the judge at issue, which is an

impermissible way for the parties to communicate with the court because it represents a direct insult to the judge as a person, implying that she is ignorant and incompetent to exercise the duty of a judge.

When imposing the fine the court took into account the fact that the defendant insulted not only the court as an institution, but also the judge as a person, on account of which he had to be fined pursuant to section 110 taken in conjunction with section 10 of the [Civil Procedure Act]."

14. On 16 January 2006 the applicant lodged an appeal against that decision arguing, *inter alia*, that his statements had been arbitrarily interpreted by the first-instance court, that they had not been insulting, and that he had not had any intention of insulting anyone.

15. By a decision of 3 April 2007 Judge M.P. at Zagreb County Court dismissed the applicant's appeal and upheld the first-instance decision. The relevant part of that decision read as follows:

"In this court's view, the finding of the first-instance court that in his appeal the defendant insulted the court by making the above statements is correct ... It is to be noted that by the statements made in the appeal the defendant demonstrated disrespect for the court, which undoubtedly represents an improper way for the parties to communicate with the court, and exceeds the limits of a civilised and fair relationship with the court as an institution of a society."

16. On 24 July 2007 the applicant lodged a constitutional complaint against the second-instance decision. On 25 October 2007 the Constitutional Court declared his constitutional complaint inadmissible on the ground that the contested decision did not concern the merits of the case and as such was not susceptible to constitutional review.

17. On 21 May 2008 the Zagreb Municipal Court of its own motion issued a writ of execution by garnishment of a part of the applicant's pension with a view to collecting the above fine. The applicant appealed and the proceedings are currently pending before the Zagreb County Court.

II. RELEVANT DOMESTIC LAW

A. The Constitutional Court Act

18. The relevant part of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 99/1999 of 29 September 1999 – "the Constitutional Court Act"), as amended by the 2002 Amendments (*Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 29/2002 of 22 March 2002), which entered into force on 15 March 2002, reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a state authority, local or regional government, or a legal person invested with public authority, on his or her rights or obligations, or as regards suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms, or the right to local or regional government, guaranteed by the Constitution ('constitutional right')...

2. If another legal remedy is available in respect of the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] is available, remedies shall be considered exhausted only after a decision on these legal remedies has been given."

B. The Civil Procedure Act

19. The relevant part of the 1977 Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991 and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 112/1999, 117/2003 and 84/2008 – "the Civil Procedure Act"), as in force at the relevant time, read as follows:

Section 10

"1. ...

2. Unless otherwise provided by this Act, the court shall fine a natural person between 500 and 10,000 [Croatian] kunas, or a legal entity between 2,500 and 50,000 [Croatian] kunas, if they commit a serious abuse of the rights they have in the proceedings.

3. The fine referred to in paragraph (2) of this section may be imposed on a party and an intervener, as well as on their representative if he or she is responsible for the abuse of rights.

4. The fine shall be imposed by the first-instance court. Outside the main hearing the fine shall be imposed by a single judge or the presiding judge.

5. ...

6. ...

7. The imposed fine shall be collected automatically [*ex officio*] as a pecuniary debt in accordance with the rules of enforcement procedure."

Section 110

"1. The first-instance court shall fine a natural person between 500 and 5,000 [Croatian] kunas, or a legal person between 2,000 and 20,000 [Croatian] kunas, if in his, her or its submission they have insulted the court, a party or other participant in the proceedings. The fine may also be imposed on a representative of a party or an intervener if he or she is responsible for insulting the court.

2. Provisions of section 10 of this Act shall apply *mutatis mutandis* to cases referred to in paragraph (1) of this section.

3. Provisions of preceding paragraphs of this section shall apply in all cases where the court imposes a fine pursuant to the provisions of this Act, unless otherwise expressly provided for particular cases."

C. The 2008 Amendments to the 1977 Civil Procedure Act

20. The 2008 Amendments to the 1977 Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Official Gazette no. 84/2008 and 123/2008 (corrigendum), which entered into force on 1 October 2008, amended, *inter alia*, paragraph 7 and added five new paragraphs (8 to 12) to section 10 of the 1977 Civil Procedure Act. The relevant part of the amended section 10 reads as follows:

"(7) If the person fined ... does not pay the fine within the fixed time-limit ... the court shall ... inform the [Tax Administration] of the unpaid fine with a view to collecting the fine [through tax enforcement proceedings] ...

...

(12)... If within a year of service of ... a decision referred to in paragraph 2 of this section [the Tax Administration] does not succeed in collecting the fine, [it] shall inform ... the court [thereof], whereupon the fine shall be converted into a prison sentence in accordance with the rules of criminal law on converting fines into prison sentences, on which the court that imposed the fine shall issue a decision ...."

21. Section 52(1) of the 2008 Amendments provided that they were applicable to all pending proceedings unless otherwise provided in that section.

D. The Criminal Code

22. Article 52(3) of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/97 with subsequent amendments) reads as follows:

"A fine shall be converted into a prison sentence so that one [average] daily income is converted into one day of imprisonment, where the maximum duration of imprisonment into which the fine was converted shall not exceed twelve months."

23. According to the practice of domestic courts, before taking a decision to convert the fine into a prison sentence a court has to summon and hear the person fined. An appeal always lies against such a decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant complained that the imposition of a fine for contempt of court, which he considered unjustified in the circumstances, had violated his freedom of expression. He relied on Article 10 of the Convention, which in its relevant part reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for maintaining the authority and impartiality of the judiciary."

25. The Government contested that argument.

A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The arguments of the parties

(a) The Government

27. The Government admitted that imposing a fine for contempt of court amounted to an interference with the applicant's freedom of speech. However, they argued that the interference had been in accordance with the law, pursued a legitimate aim and had been necessary in a democratic

society. The decision to fine the applicant had been based on section 110 of the Civil Procedure Act and sought to maintain the authority of the judiciary.

28. The Government also considered that the interference had been proportionate to its aim for the following reasons.

29. They first emphasised that courts were institutions with the purpose of settling disputes in a civilised manner. This required that all parties behaved appropriately in proceedings, especially in their communication with one another, and that they respected the institution of the court. Also, a general principle of civil proceedings was that parties needed to use their rights in the proceedings conscientiously, that is, without abuse.

30. The Government further stressed that the applicant in the present case was a lawyer, of whom it was expected, having regard to his profession and experience, that he would be familiar with the rules of conduct in communication with the court.

31. The Government then argued that the present case was considerably different from the *Kyprianou* case (see *Kyprianou v. Cyprus*, no. 73797/01, § 31, 27 January 2004). In that case, the applicant had committed contempt of court at the hearing, immediately after the events which provoked his anger and discontent had taken place, and therefore his reaction had been emotional. In the instant case, the applicant had expressed his discontent in writing, that is after the events which had provoked his discontent had occurred.

32. The Government submitted that the applicant could have responded in a different manner to express his dissatisfaction. For example, he could have asked for his remarks to be recorded in the minutes of the hearing, or that the judge appointed to hear the case be replaced. Moreover, the applicant, as a lawyer, could have presented his arguments set out in his appeal, as well as his discontent, in an appropriate and professional manner. It was evident that the applicant's right to express his disagreement with the court decisions, the manner in which the proceedings had been conducted, and the conduct of the judge appointed to hear the case had not been restricted. The only issue in dispute was the manner in which the applicant had done so, that is, by inappropriate communication in contempt of court.

33. Furthermore, the Government noted, the applicant had been entitled to appeal against the decision by which he had been fined. As opposed to the *Kyprianou* case, the applicant's appeal postponed the enforcement.

34. Lastly, the Government averred that there was a significant difference compared to the *Kyprianou* case where, in spite of less severe alternatives, the applicant had received a prison sentence, which the Court assessed as disproportional. However, in the present case the applicant had received the lowest fine prescribed for the contempt of court.

35. In the light of the foregoing, the Government considered that the interference in the present case had been "necessary in a democratic society" and therefore had not contravened Article 10 of the Convention.

(b) The applicant

36. The applicant first cited the old Latin proverb which says it is unbecoming to a judge to be angry (*Iudicem irasci dedecet* or *Irasci iudicem non decet*).

37. He further submitted that his remarks had not been insulting, and that he had not had any intention of insulting either Judge J.G.F. or the court as an institution. Rather, his statements had been arbitrarily interpreted by the domestic courts. In particular, he had never said, as implied by the first-instance court, that Judge J.G.F. was incompetent or did not know the law.

38. In his view he had been fined for speaking the truth, which had been his duty as a party to court proceedings. He also submitted that Judge J.G.F. was in no way liable for humiliating and disparaging him throughout the proceedings, whereas he had received a hefty fine for the slightest criticism of her work.

39. Furthermore, in the applicant's view, the judge who had felt personally offended by his remarks had fined him for contempt of court even though it had been clear that he had only criticised her performance in a particular case and not the court as an institution.

2. The Court's assessment

40. The Court reiterates that Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, for example, *Kubli v. Switzerland* (dec.), no. 50364/99, 21 February 2002). Furthermore, freedom of expression protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see, for example, *Mariapori v. Finland*, no. 37751/07, § 62, 6 July 2010; *Kyprianou*, cited above, § 174). The Court therefore considers that fining the applicant for contempt of court in the present case amounted to an interference with his freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

41. The Court further reiterates in this connection that this Article does not guarantee wholly unrestricted freedom of expression and that the exercise of this freedom carries with it "duties and responsibilities" (see, for example, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 58, 22 October 2009). As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, for example, *Skałka v. Poland*, no. 43425/98, § 32, 27 May 2003, and *Kubli*, cited above). In

particular, the parties' freedom of expression in the courtroom is not unlimited and certain interests, such as the authority of the judiciary, are important enough to justify restrictions on this freedom (see *Mariapori*, loc. cit.).

42. The Court finds in this regard that in the present case the interference with the applicant's freedom of expression was prescribed by law, in particular section 110(1) of the Civil Procedure Act, and that it pursued a legitimate aim of maintaining the authority of the judiciary within the meaning of Article 10 § 2 of the Convention. Therefore, the only question for the Court to determine is whether that interference was "necessary in a democratic society". In so doing the Court must ascertain whether on the facts of the case a fair balance was struck between, on the one hand, the need to protect the authority of the judiciary and, on the other hand, the protection of the applicant's freedom of expression.

43. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Kyprianou*, cited above, § 170; and *Skałka*, cited above, § 33, 27 May 2003).

44. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see, for example, *Nikula v. Finland*, no. 31611/96, § 44, ECHR 2002-II, and *Skałka*, cited above, § 35).

45. The phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes relative thereto; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function (see *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 55, Series A no. 30). The work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed by the rule of law,

needs to enjoy public confidence. It should therefore be protected against unfounded attacks. However, the courts, as with all other public institutions, are not immune from criticism and scrutiny (see *Skałka*, cited above, § 34). Therefore, while parties are certainly entitled to comment on the administration of justice in order to protect their rights, their criticism must not overstep certain bounds (see *Saday v. Turkey*, no. 32458/96, § 43, 30 March 2006). In particular, a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention (see *Skałka*, loc.cit).

46. In the present case, in its decision of 4 January 2006 the Zagreb Municipal Court found that the applicant's statements made in his appeal of 27 December 2005 were insulting both to the Judge J.G.F. and the court as an institution (see paragraph 13 above). This finding was endorsed by the Zagreb County Court in its decision of 3 April 2007 (see paragraph 15 above).

47. The Court sees no reason to hold otherwise as the present case can be compared to those in which the Convention organs found that the applicants' statements had been insulting (see, for example, *Saday*, cited above, in which the accused described the Turkish judiciary as "torturers in robes"; *W.R. v. Austria*, no. 26602/95, Commission decision of 30 June 1997, in which counsel had described the opinion of a judge as "ridiculous"; and *Mahler v. Germany*, no. 29045/95, Commission decision of 14 January 1998, where counsel had asserted that the prosecutor had drafted the bill of indictment "in a state of complete intoxication"). In the instant case the impugned statements, framed in belittling and impertinent terms, were not only a criticism of the first-instance judgment of 15 November 2005 and the way Judge J.G.F. had conducted the proceedings, but also, as found by the domestic courts, implied that she was ignorant and incompetent. There is nothing to suggest that the applicant could not have raised the substance of his criticism without using the impugned language (see *A. v. Finland* (dec.), no. 44998/98, 8 January 2004).

48. Furthermore, in assessing the proportionality of the interference, the nature and severity of the sanction imposed are also factors to be taken into account (see, for example, *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006; and *Kwiecień v. Poland*, no. 51744/99, § 56, ECHR 2007-I). In this respect, the Court notes that the applicant in the present case was fined HRK 500, that is, the minimum penalty under section 110(1) of the Civil Procedure Act (see paragraphs 13 and 19 above).

49. In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of their decisions were "relevant and sufficient" and that the fine imposed on the applicant was not disproportionate to the legitimate aim pursued, namely, maintaining the

authority of the judiciary. Therefore, the interference with the applicant's freedom of expression was "necessary in a democratic society".

There has accordingly been no violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO COURT

50. The applicant further complained that his right of access to court had been breached in that the Constitutional Court had never decided on his (first) constitutional complaint (see paragraph 12 above) lodged in the above civil proceedings on 24 July 2007 against the Zagreb County Court judgment of 3 April 2007. He relied on Article 6 § 1 of the Convention, which in its relevant part reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [an] impartial tribunal established by law."

51. The Government submitted that the Constitutional Court had given its decision on the applicant's constitutional complaint on 21 January 2010, and provided a copy thereof.

52. The applicant did not contest the Government's submissions.

53. In the light of the evidence submitted by the Government confirming that the Constitutional Court did eventually decide on the applicant's constitutional complaint, and given that the applicant did not dispute their submissions nor reformulate his complaint, the Court considers that this complaint is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF IMPARTIALITY

54. The applicant further complained, also under Article 6 § 1 of the Convention, that Zagreb Municipal Court lacked impartiality because the same judge who had felt personally offended by remarks made in his appeal of 27 December 2005 had fined him for contempt of court.

55. The Government contested that argument.

A. Admissibility

56. The Government disputed the admissibility of this complaint, arguing that Article 6 § 1 of the Convention was not applicable to the contempt of court proceedings against the applicant.

1. The arguments of the parties

57. The Government argued that Article 6 was not applicable in this case, neither under its "civil law" head nor under its "criminal law" head.

58. In their view, fining the applicant for contempt of court did not give rise to a "dispute" over, nor did it involve determination of, his civil rights or obligations.

59. Likewise, the case did not fall under the "criminal head" of Article 6 either. Relying on the Court's case law, in particular the judgments in the *Ravnsborg* and *Putz* cases (see *Ravnsborg v. Sweden*, 23 March 1994, Series A no. 283-B, and *Putz v. Austria*, 22 February 1996, *Reports of Judgments and Decisions* 1996-I), the Government averred that the measures ordered by courts under the rules sanctioning disorderly conduct in court proceedings did not fall under Article 6 of the Convention, since they were akin to exercise of disciplinary powers.

60. In particular the Government submitted that the applicant's case did not meet any of the criteria developed by the Court in cases of contempt of court, namely, the legal classification of the offence in domestic law, the nature of the offence, and the nature and severity of the penalty. Firstly, imposing a fine for contempt of court was prescribed by the Civil Procedure Act and was possible exclusively within the context of civil proceedings. This fine was not correlated with the fines imposed under the Criminal Code. Secondly, the contempt of court, for which the applicant was fined, did not constitute a criminal offence under Croatian law, nor was the perpetrator's guilt being determined according to the criteria of criminal law. Also, the purpose of imposing a fine for contempt of court was not the same as the purpose of imposing sanctions under the Criminal Code, because it was a disciplinary measure against disorderly conduct in court proceedings. Thirdly, the law stipulated that the fine imposed on the applicant could range from HRK 500 to HRK 5,000. The applicant had been fined with the lowest possible fine of HRK 500. The fine was to be enforced in accordance with the provisions of the Enforcement Act, and the possibility of converting the fine into a prison sentence was not provided. This sanction was not being entered into any records, and the applicant, apart from paying the fine, had not suffered any other consequences.

61. Having regard to the above-mentioned, the Government considered that Article 6 was not applicable in the present case.

62. The applicant did not make any specific comments on this issue. However, it follows from his submissions that he considered Article 6 to be applicable.

2. The Court's assessment

63. The Court considers that it first has to examine whether the fine for contempt of court imposed on the applicant by the Zagreb Municipal Court

amounted to a determination of any of the applicant's civil rights or obligations. It reiterates in this connection that such fines aim to ensure the proper administration of justice and therefore have the characteristics of a sanction not involving the determination of civil rights or obligations (see *Veriter v. France*, no. 25308/94, Commission decision of 2 September 1996, Decisions and Reports (DR) 86-B, pp. 96 and 101-103).

64. The next question is whether the fine for contempt of court imposed on the applicant constituted the determination of a criminal charge against him. The Court reiterates that the question whether the criminal head of Article 6 applies to the contempt of court proceedings has to be assessed in the light of three alternative criteria laid down by the Court in the *Engel* case (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22): (a) the classification of the offence under the domestic law, (b) the nature of the offence and (c) the nature and degree of severity of the penalty that the person concerned risks incurring (see *Ravnsborg,* cited above*,* § 30; *Putz,* cited above*,* § 31; *T. v. Austria*, no. 27783/95, § 61, ECHR 2000-XI; *Kubli*, cited above; *Jurík v. Slovakia* (dec.), no. 50237/99, 18 March 2003; *Kyprianou*, cited above, § 31; *Zaicevs v. Latvia*, no. 65022/01, § 31, ECHR 2007-IX (extracts); and *Veriter*, cited above).

65. As to the legal classification of the offence under the domestic law, the Court notes that the behaviour for which a fine was imposed on the applicant is not formally classified as a criminal offence under Croatian law. This follows from the fact that the fine imposed on the applicant was based on section 110(1) of the Civil Procedure Act, and not on provisions of the Criminal Code, that such a fine is not entered in the criminal record and that its amount does not depend on income as in criminal law (see, *mutatis mutandis*, *Ravnsborg*, cited above, § 33; *Putz*, cited above, § 32; *Kubli*, cited above; *R.T. v. Austria*, no. 27783/95, Commission's report of 8 September 1999, unreported, § 78; and *Veriter*, cited above, pp. 101-102).

66. As to the nature of the offence in question, the Court reiterates that rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of legal systems of the Contracting States. Such rules and sanctions derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence. The kind of proscribed conduct for which the applicant in the present case was fined in principle falls outside the ambit of Article 6 of the Convention. The courts may need to respond to such conduct even if it is neither necessary nor practicable to bring a criminal charge against the person concerned (see *Ravnsborg*, cited above, § 34; *Putz*, cited above, § 33; *Kubli*, cited above; *Jurík*, cited above; *R.T. v. Austria*, cited above, § 79; and *Veriter*, cited above, p. 102). The Court

sees no reason for assessing the fine imposed on the applicant in a different manner.

67. As to the nature and severity of the penalty, the Court first reiterates that notwithstanding the non-criminal character of the proscribed misconduct, the nature and degree of severity of the penalty that the person concerned risked incurring may bring the matter into the category of "criminal" matters (see *Ravnsborg*, cited above, § 35; *Putz*, cited above, § 34; *Kubli*, cited above; *Balyuk v. Ukraine* (dec.), no. 17696/02, 6 September 2005; and *Veriter*, cited above, p. 102).

68. The applicant in the present case was fined HRK 500, the minimum penalty, whereas the maximum penalty which he risked incurring under section 110(1) of the Civil Procedure Act amounted to HRK 5,000 (see paragraph 19 above). In the Court's view, neither the relatively small fine imposed nor the possible amount of the fine attain a level that would make it a "criminal" sanction (see, *mutatis mutandis*, *Ravnsborg*, loc. cit., § 35; *Kubli*, cited above). As already noted above (see paragraph 65), unlike ordinary fines, the one at issue is not entered in the criminal record (see, *mutatis mutandis*, *Ravnsborg*, loc. cit., § 35; *Putz*, cited above, § 37; *Kubli*, cited above; and *Veriter*, cited above, p. 102). Furthermore, section 10(7) of the Civil Procedure Act, as in force at the relevant time, did not provide for the possibility of converting a fine imposed under section 110(1) of the same Act into a prison term (see paragraph 19 above, and *mutatis mutandis*, *Jurík*, cited above; and *Veriter*, cited above, p. 102). This possibility was introduced with the entry into force of the 2008 Amendments to the Civil Procedure Act on 1 October 2008 (see paragraph 20 above). However, even then the fine was not convertible into imprisonment on default (see, *mutatis mutandis*, *Balyuk*, cited above) since it could be converted into a prison sentence only in limited circumstances, namely if the fine was not paid and the Tax Authority could not collect it in tax enforcement proceedings (see paragraph 20 above, and *mutatis mutandis*, *Putz*, cited above, § 37, and *Kubli*, cited above). In this connection the Court notes that in the applicant's case it is most unlikely that the conditions for converting the fine into a prison sentence would ever materialise, because the authorities, with a view to collecting the fine, issued a writ of execution by garnishment of a part of the applicant's pension (see paragraph 17 above), that is, a stable source of income certainly sufficient to cover the amount of the fine. Lastly, according to the practice of domestic courts, a decision to convert the fine into a prison sentence could only be taken after hearing the applicant who would also have the right to appeal against such a decision (see paragraph 23 above, and *Ravnsborg*, cited above, § 35; see also, by converse implication, *T. v. Austria*, cited above, § 66).

69. Having regard to these factors in the light of the disciplinary nature of the offence (see paragraph 66 above), the Court considers that the penalty the applicant risked incurring was not sufficiently severe to bring the

"criminal head" of Article 6 § 1 of the Convention into play (see, *mutatis mutandis*, *Brown v. the United Kingdom* (dec.), no. 38644/97, 24 November 1998).

70. In view of all the above considerations, the Court finds that the proceedings leading to the imposition of the above fine on the applicant concerned neither determination of "civil rights or obligations" nor "criminal charge" within the meaning of Article 6 § 1 of the Convention. Accordingly, the guarantees of that provision do not extend to those proceedings.

71. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72. Lastly, the applicant complained under Articles 6 § 1 and 14 of the Convention about the outcome of the above civil proceedings and that they had been unfair. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

73. As regards the applicant's complaint under Article 6 § 1 of the Convention, the Court notes that he complained about the outcome of the proceedings, which, unless it was arbitrary, the Court is unable to examine under that Article. Moreover, there is no evidence to suggest that the courts lacked impartiality or that the proceedings were otherwise unfair. In the light of all the material in its possession, the Court considers that in the present case the applicant was able to submit his arguments before courts which offered the guarantees set forth in Article 6 § 1 of the Convention and which addressed those arguments in decisions that were duly reasoned and not arbitrary.

74. As regards the applicant's complaint under Article 14 of the Convention, the Court considers that it is wholly unsubstantiated.

75. It follows that these complaints are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning freedom of expression admissible and the remainder of the application inadmissible;

2. *Holds* by four votes to three that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 31 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Anatoly Kovler
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Spielmann, joined by Judges Hajiyev and Nicolaou is annexed to this judgment.

A.K.
S.N.

DISSENTING OPINION OF JUDGE SPIELMANN, JOINED BY JUDGES HAJIYEV AND NICOLAOU

I am unable to agree with the majority view that there has been no violation of Article 10 of the Convention.

This is a rather unusual case in that the alleged contempt of court stems from the wording of a procedural document.

In my view, nothing in the wording of the appeal went beyond the acceptable limits.

Admittedly, the exercise of the right to freedom of expression may be subject to limitations necessary for maintaining the authority of the judiciary. The case-law cited in paragraph 47 concerns instances where applicants' statements have undoubtedly been grossly insulting. Judges in those cases had been described as "torturers in robes" and as "ridiculous", and a prosecutor as having acted "in a state of complete intoxication." It goes without saying that such statements cannot and should not be protected by Article 10 of the Convention.

In the case at hand, the applicant only described, albeit in strong words, what had happened during the hearing. His misgivings concerning the judge's attitude during the hearing were part and parcel of his grounds of appeal and were characterised in legal terms under section 354, paragraph 2, subparagraphs 6 and 11, of the Civil Procedure Act.

In paragraph 42 of the judgment, the Court duly reiterates that it "must ascertain whether on the facts of the case a fair balance was struck between, on the one hand, the need to protect the authority of the judiciary and, on the other hand, the protection of the applicant's freedom of expression". The Court rightly adds in paragraph 44:

> "In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made ....[T]he Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an *acceptable assessment of the relevant facts*" (emphasis added).

I disagree with the assessment of the facts.

The applicant's statements in his appeal fell short of being insulting and hence the reasons given by the domestic courts in support of their decisions were, in my view, not "relevant and sufficient".