



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

FOURTH SECTION

CASE OF SIMIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 39764/20)

JUDGMENT

STRASBOURG

17 May 2022

This judgment is final but it may be subject to editorial revision.

In the case of Simić v. Bosnia and Herzegovina,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President*,

Faris Vehabović,

Pere Pastor Vilanova, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 39764/20) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 30 July 2020 by a national of Bosnia and Herzegovina, Mr Mirko Simić, who lives in Brčko (“the applicant”) and who was represented by Mr A. Ramić, a lawyer practising in Brčko;

the decision to give notice of the application to the Government of Bosnia and Herzegovina (“the Government”), represented by their Acting Agent, Ms J. Cvijetić;

the parties’ observations.

Having deliberated in private on 26 April 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicant represented the plaintiff in civil proceedings concerning damages. The civil courts upheld the plaintiff’s claim in part. In his appeal on the points of law, the applicant told a joke about a professor who expected his students to provide the names, and not only the number, of the victims of the bombing of Hiroshima, and stated that the second-instance court had treated him like the professor treated his students in that joke. On 22 November 2017 the Brčko District Court of Appeal, acting as the third-instance court, rejected the appeal on the points of law. Furthermore, on 20 December 2017 the same court fined the applicant 1,000 convertible marks (approximately 510 euros) for contempt of court. It considered the applicant’s remarks to be insulting. On 26 March 2018 and 26 March 2020, the Brčko District Court of Appeal, in another formation, and the Constitutional Court, respectively, upheld the decision of 20 December 2017. They relied on *Žugić v. Croatia* (no. 3699/08, 31 May 2011), in which the Court found no violation of Article 10 of the Convention. The applicant paid the fine in 2018.

THE COURT’S ASSESSMENT

2. The applicant complained under Article 10 of the Convention because he had been fined for contempt of court.

3. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

4. The parties agree that the applicant's punishment for contempt of court amounted to an interference with his right to freedom of expression, that the interference was prescribed by law and that it pursued the legitimate aim of maintaining the authority of the judiciary. It remains therefore to be examined whether the interference was "necessary in a democratic society" within the meaning of Article 10 of the Convention. The general principles for assessing the necessity of an interference with the exercise of freedom of expression in this particular context were restated in *Radobuljac v. Croatia* (no. 51000/11, §§ 56-61, 28 June 2016). Notably, 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 their decisions on an acceptable assessment of the relevant facts.

5. The Court first notes that the critical remarks, which were regarded as insulting by the domestic courts, were made by the applicant in the context of judicial proceedings. In other words, they were made in a forum where his client's rights were naturally to be vigorously defended (see *Radobuljac*, cited above, § 62, and other authorities cited therein). Moreover, the remarks were conveyed in an appeal, as opposed to criticism of a judge voiced in, for instance, the media (see *Morice v. France* [GC], no. 29369/10, §§ 136-38, ECHR 2015). Thus, the general public were not aware of them. The domestic courts, in their examination of the case, failed to give sufficient weight to the context in which the remarks had been made.

6. What is more, the Court is not convinced that the applicant's remarks, contrary to what has been argued by the Government, could be interpreted as gratuitous personal attacks with the sole intent to insult a court, or members of a court (see *Čeferin v. Slovenia*, no. 40975/08, § 59, 16 January 2018, and contrast *Žugić*, cited above, § 47). Indeed, his comments were aimed at the manner in which the second-instance court had applied the rules of evidence in his client's case. While it is true that the tone of the impugned remarks was caustic, or even sarcastic, the use of such a tone in remarks about judges has been regarded as compatible with Article 10 (see *Morice*, cited above, § 139).

7. The Court agrees with the Government and the Constitutional Court of Bosnia and Herzegovina that lawyers, as independent professionals, play a key role in ensuring that the courts enjoy public confidence. That special role of lawyers in the administration of justice entails a number of duties; notably,

their professional conduct must be discreet, honest and dignified (see *Morice*, cited above, § 133). However, for members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation (*ibid.*, § 132).

8. The above elements lead the Court to conclude that the reasons adduced by the domestic courts to justify the interference with the applicant's right to freedom of expression were not "relevant and sufficient". The Court is mindful of the fundamentally subsidiary role of the Convention system (see, for instance, *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). However, bearing in mind the failure of the domestic courts to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have applied standards that were "in conformity with the principles embodied in Article 10" or to have "based their decisions on an acceptable assessment of the relevant facts". The Court accordingly concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

9. This finding makes it unnecessary for the Court to examine whether the amount of the fine in the present case was proportionate to the aim pursued.

10. There has therefore been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. With regard to pecuniary damage, the applicant claimed 510 euros (EUR) corresponding to the fine he had been ordered to pay for contempt of court (see paragraph 1 above). He also claimed EUR 4,500 in respect of non-pecuniary damage and EUR 2,550 in respect of costs and expenses incurred before the Constitutional Court and this Court.

12. The Government contested the applicant's claims.

13. The Court has found that the imposition of the fine on the applicant for contempt of court was in breach of Article 10 of the Convention. Therefore, there is a sufficient causal link between the alleged pecuniary damage and the violation found. The Court therefore accepts the applicant's claim in respect of pecuniary damage in the amount of the fine. Accordingly, it awards him EUR 510 under this head, plus any tax that may be chargeable. As concerns non-pecuniary damage, the Court awards the amount claimed by the applicant plus any tax that may be chargeable. Lastly, having regard to the documents in its possession, the Court considers it reasonable to award the full amount claimed by the applicant in respect of costs and expenses, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 510 (five hundred and ten euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 2,550 (two thousand five hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 17 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Tim Eicke
President