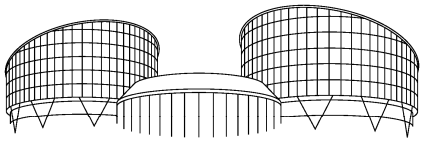

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MILISAVLJEVIĆ v. SERBIA

(Application no. 50123/06)

JUDGMENT

STRASBOURG

4 April 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Milisavljević v. Serbia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 50123/06) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Ms Ljiljana Milisavljević ("the applicant"), on 13 December 2006.

2. The applicant was represented by Mr C. Lister, a lawyer practising in London. The Serbian Government ("the Government") were represented by Mr S. Carić, their Agent at the time.

3. The applicant alleged that her conviction for "criminal insult" (*uvreda*) following the publication of a newspaper article written by her violated her right to freedom of expression.

4. On 21 September 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Ms Ljiljana Milisavljević, is a Serbian national who was born in 1966 and lives in Belgrade.

6. The applicant was a journalist employed at *Politika*, a major Serbian daily newspaper. In September 2003 she was requested by the editorial board to write an article about Ms Nataša Kandić.

7. Ms Nataša Kandić is a Serbian human rights activist primarily known for her activities in investigating crimes committed during the armed conflicts in the former Yugoslavia, including those crimes committed by Serbian regular and irregular forces. She was also recognised as one of the most vocal advocates for full cooperation of the Yugoslav and later Serbian authorities with the International Criminal Tribunal for the former Yugoslavia (hereinafter "the ICTY").

8. At the time relevant to this case, between 40% and 64% of the Serbian population considered the ICTY to be a major security threat to the Republic of Serbia.[1] Some 54% of the population was against cooperation with the ICTY, which would include arrests and transfers of Serbian suspects to this institution.[2] In 2003, the ICTY's assessment of Serbia's cooperation with that court was that it was "neither full nor proactive".[3] The level of cooperation was further negatively influenced by the assassination of the Serbian Prime Minister Dr Zoran Đinđić in March 2003, a major political figure open to full cooperation with the ICTY.[4] Ms Kandić herself came under attack by a significant portion of the Serbian political elite and general population. As a consequence, she was involved in several incidents.

9. The applicant's article on Ms Kandić appeared in *Politika* on 7 September 2003. The integral translation of the impugned article, titled "The Hague Investigator", reads as follows:

> "'Even my son blames me for protecting everybody but the Serbs', says the director of the Fund for Humanitarian Law.
>
> Ms Nataša Kandić, founder and Executive Director of the Humanitarian Law Centre for Serbia, Montenegro, and Kosovo and Metohija, a non-governmental organisation aimed at promoting human rights for minorities, last week, again, defended herself 'from the Serbian patriotism surge'.
>
> On the occasion of the International Day of the Disappeared commemoration, at the gathering of the Association of Families of Missing and Kidnapped Persons in Kosovo and Metohija organised in the centre of Belgrade, following a short argument she slapped one of the participants. After this incident the Belgrade police submitted a request for the initiation of prosecution proceedings against her, and the Association of Families of the Missing lodged a lawsuit, demanding that she pay 30,000,000 Serbian dinars (RSD) for the insult to the families of those kidnapped and killed.

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[1] See: "Public opinion in Serbia – Attitudes towards the ICTY" ("*Javno mnenje u Srbiji – Stavovi prema Haškom tribunalu*"), Belgrade Centre for Human Rights, CMRI, July 2003, p. 11, available in Serbian at: http://www.bgcentar.org.rs/istrazivanje-javnog-mnenja/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosudu-za-ratne-zlocine/.

[2] *Ibid*, p. 22.

[3] *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, UN Doc. S/2003/829, p. 53.

[4] *Ibid*.

Recently our media have also reported that this 'prominent advocate of human rights and democratic reform in Serbia' was awarded the annual Central European and Eurasian Law Initiative Award (CEELI) from the American Bar Association on 9 August during the ABA Annual Meeting luncheon in San Francisco. Former winners of this award were Petar Stoyanov from Bulgaria, Emil Constantinescu from Romania, Vaclav Havel from the Czech Republic, Stjepan Mesić from Croatia ...

It was also reported that at the beginning of May the American magazine *Time* published a list of thirty-six individuals dubbed the European heroes, among which was Nataša Kandić, too.

The Serbian campaigner for the truth on war crimes, a lonely voice of reason in Serbia or the Soros[5] mercenary, the one who was named by all the banished FRY[6] spies, has won many awards, including the Human Rights Watch Award, but none of them were awarded to her in Serbia.

Nataša Kandić provokes stormy reactions wherever she appears. While the West lauds and praises her, in Serbia she is spoken about with contempt and accused of anti-Serbian politics. Most of all they blame her for never pursuing the crimes against Serbs but exclusively dealing with those committed by Serbs against other ethnicities.

Although she has been called a witch and a prostitute and is permanently under threat (this year she has also had to cancel her appearance at a local TV station owing to a bomb threat), she says: 'This is simply the part of this job. I don't think that they hate me, only my message'.

Nevertheless, she once made a public complaint: 'Even my son has accused me of protecting everybody except the Serbs.' Although later, she adds, she heard him defending her concern for the weak.

Nataša Kandić was born in 1946 in Topola, to her father Radoslav and mother Vera. In 1966 she went to study in Great Britain and upon her return she enrolled in the Faculty of Philosophy at the University of Belgrade. She participated in the 1968 student demonstrations. In the 1970s she started working in the Belgrade municipality of Palilula.

Afterwards she worked in the city trade union. During the mid-1990s she went to the Centre for Antiwar Action to work as a technical secretary, but before long she left it after a conflict with Ms Vesna Pešić[7]. With a group of like-minded people she founded the Humanitarian Law Centre at the beginning of 1993.

A year later, on the invitation of Ms Jeri Laber, the Helsinki Watch Executive Director, she left for New York. Upon discussion with top people at the Hague Tribunal[8], the Humanitarian Law Centre took charge of its work in respect of the so-called Serbian crimes against Muslims in Bosnia and Herzegovina, as well as violations and abuses of Muslim and Croatian minority rights in the FRY. That is how

[5] Mr George Soros is the founder and chairman of the Open Society Foundations.
[6] The Federal Republic of Yugoslavia was formed in 1992 from two former republics of the SFRY, namely Serbia and Montenegro. In 2003 it became the State Union of Serbia and Montenegro. Following the Montenegrin proclamation of independence, it was succeeded by Serbia in 2006.
[7] Ms Vesna Pešić is another prominent human-rights activist and a member of parliament.
[8] The International Criminal Tribunal for the former Yugoslavia was established in May 1993 by the United Nations in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina.

this organisation became the [ICTY] 'investigator'. Starting from the second half of the 1990s the Centre became involved in the Kosovo and Metohija issues.

During the NATO campaign[9] she frequently travelled the Belgrade-Kosovo and Metohija-Montenegro routes. Her email messages sent via the Internet to foreign friends and collaborators are the evidence of her time and work in Kosovo and Metohija.

With Lazar Stojanović[10], the *Plastični Isus* ('Plastic Jesus') director, she has a son Stefan, who lives in New York and is involved in graphic animation."

10. On 10 November 2003 Ms Kandić started a private prosecution against the applicant. She claimed that the entire piece had been written with the intent of belittling her in the eyes of the public, to present her as a traitor to Serbian interests and as a "paid servant of foreign interests and a prostitute who sells herself for money". She further claimed that the points introduced in the article were maliciously misrepresented, and that the article contained untruths and blatant insults. She explicitly refused to lodge any civil compensation claim within these proceedings.

11. The applicant, in her defence, stated that she was not expressing her own opinion of Ms Kandić, whom she did not intend to insult, and that she had written the entire article on the basis of the documentation of other magazines. She put the citations within quotation marks, but she omitted them when she was not literally citing but paraphrasing ("*ono što nije stavila pod navodnike predstavljaju navode koji nisu citati, već ih je prepričavala iz drugih listova*"). She provided details as to what phrases were taken from which articles and magazines, including from which article and magazine she had taken the phrase that Ms Kandić had been called a witch and a prostitute.

12. On 1 September 2005, after a remittal, the First Municipal Court (*Prvi opštinski sud*) in Belgrade found that the applicant had committed a criminal offence of insult when having stated for Ms Kandić "although she has been called a witch and a prostitute" and gave her a judicial warning. The court established that the impugned phrase had been indeed previously published in another article by another author in a different magazine. However, the applicant did not put it in quotation marks which meant that she agreed with it, thus expressing her opinion. The court concluded that there was therefore an intention to insult Ms Kandić. In view of no aggravating circumstances and a number of mitigating ones (the applicant had a clean record, was employed and of mature age (*u zrelom dobu*)), she was given a mere judicial warning (*sudska opomena*), on the grounds of Articles 41 and 59 of the General Criminal Code (see paragraph 18 below). No prison sentence or fines were imposed.

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[9] In 1999 NATO waged a bombing campaign against the Federal Republic of Yugoslavia.

[10] Mr Lazar Stojanović is a film director. He spent three years in prison because of his film, *Plastic Jesus*, made in 1971. The film was publicly screened for the first time in 1990.

13. On an unspecified date thereafter the applicant appealed. She reiterated that the impugned words were not her own opinion, but an opinion of another author. The fact that she wrote also on the negative attitudes towards the private prosecutor and her work could not and must not make her, the applicant, criminally liable. She also submitted that such an attitude towards the freedom of press could have long-reaching consequences.

14. On 5 July 2006 the Belgrade District Court (*Okružni sud*) upheld the first-instance decision endorsing the reasons given therein.

15. In separate proceedings, on 2 October 2006 the Belgrade First Municipal Court ordered the applicant to pay Ms Kandić RSD 33,125 (around 386 euros (EUR)) in respect of costs and expenses. The applicant did not appeal against that decision.

16. The applicant submitted in her observations that she had been later discharged from *Politika* and that "her conviction [...] appear[ed] to have been the cause [thereof]".

II. RELEVANT DOMESTIC LAW

17. The Criminal Code of the Socialist Republic of Serbia 1977 (*Krivični zakon*, published in Official Gazette of the Socialist Republic of Serbia nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, Official Gazette of the Republic of Serbia nos. 16/90, 21/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03) was in force from 1 July 1977 until 1 January 2006. It read, in so far as relevant, as follows:

Article 93 §§ 1 and 2

"1. A person who insults another shall be fined or punished with imprisonment of up to three months.

2. If the act described in paragraph 1 above is committed through the press ... the offender shall be fined or punished with imprisonment of up to six months."

Article 96 § 1

"No one shall be punished for insulting another person if this has been done in ... the discharge of journalistic duties ... if there was no intention to defame."

18. The General Criminal Code 1977 (*Osnovni krivični zakon*; published in Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90, in Official Gazette of the Federal Republic of Yugoslavia nos. 35/92, 16/93, 31/93, 37/93, 24/94 and 61/2001, and in Official Gazette of the Republic of Serbia no. 39/03) was in force from 1 July 1977 until 1 January 2006. It read, in so far as relevant, as follows:

Article 41

"1. The court shall impose a punishment within the statutory limits for a particular offence, bearing in mind the purpose of punishment and taking into account all [...] mitigating and aggravating circumstances, and in particular: the degree of criminal liability, the motives for which the criminal offence was committed, the degree of endangering or violating the protected good, circumstances in which the offence was committed, previous life of the perpetrator, his/her personal circumstances and his/her behaviour afterwards, as well as other circumstances relating to the perpetrator's life."

Article 42

"The court can impose a sanction below the statutory one:

[...]

2) when it finds that there are especially mitigating circumstances indicating that the purpose of sanctioning can be achieved even with a milder sanction."

Article 59 §§ 1 and 4

"1. A judicial warning can be given for those criminal offences for which one can be fined or imprisoned up to one year, when they were committed under such mitigating circumstances making them particularly minor.

[...]

4. When deciding whether to give a judicial warning the court shall, bearing in mind the purpose of the judicial warning, take into account in particular the personality of the perpetrator, his/her previous life, his/her behaviour after having committed the offence, the degree of criminal liability and other circumstances under which the offence was committed."

19. A person who was issued a judicial warning is considered an offender and therefore he or she could be considered a repeated offender (*povratnik*) should he or she commit another criminal offence[11].

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant complained that her conviction for criminal insult violated her right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to ... impart information and ideas without interference by public authority ...

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

[11] See the Commentary of the Criminal Code of Federal Republic of Yugoslavia by dr Ljubiša Lazarević, published by *Savremena Administracija* in 1999.

prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ...”

21. The Government contested that argument.

A. Admissibility

22. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' submissions

(a) The applicant

23. The applicant maintained that her conviction for criminal insult because of the article she had written and published in *Politika* on 7 September 2003 had been a clear interference with her right of freedom of expression guaranteed by Article 10 of the Convention. She accepted that it was “in accordance with law” as required by Article 10 § 2 of the Convention, and that it had pursued the legitimate aim of protecting the rights of others. However, she maintained that her criminal conviction, although it had entailed a judicial warning, had been disproportionate under the circumstances of the case, in particular since it had caused her later dismissal from *Politika*, and represented a threat and warning to all Serbian journalists.

24. She also submitted that the article had been balanced and, in fact, “overwhelmingly favourable” towards Ms Kandić, and that it had been clear from the context that the impugned words had only been reporting of other people's opinions about her and had been taken from another magazine. In this regard, she averred that Ms Kandić did not file a criminal action against the journalists of other magazines who had initially published the impugned words, notably Serbian *Danas* and the American *Time*, even though they published them without the quotation marks too. In this regard the applicant submitted that the journalists should not be penalised for failing to place quotation marks around words and ideas that come from others, and relied on *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III. The applicant also maintained that Ms Kandić was a well-known political activist and, therefore, a public figure, and that the article had been written within the public debate about Ms Kandić and her role in the investigation and prosecution of high-ranking Serbian politicians and military officers for international crimes before the ICTY.

(b) The Government

25. The Government did not dispute that the applicant's conviction for insult had presented an interference with her right of freedom of expression. They further maintained that this interference had been in accordance with the law, specifically Article 93 of the Criminal Code, that it had pursued the legitimate aim of protecting the reputation of Ms Kandić, who was undoubtedly a well-known public figure, and that it had been proportionate to the aim pursued, considering that no prison sentence or fine had been imposed on the applicant.

26. They argued that the words "witch" and "prostitute", for the use of which the applicant had been convicted, are of inherently insulting nature and that the context of the entire article clearly showed the applicant's intent to insult Ms Kandić. The government accepted that these words had already been used by another journalist to describe attitudes towards Ms Kandić, but in an entirely different context. They further argued that all the positive aspects of Ms Kandić's career referred to in the article had been maliciously and ironically presented. With regard to that, they maintained that the very title of the article had given a negative view of Ms Kandić, marking her as a servant of the ICTY, an institution which had been very unpopular in Serbian society; that positive characteristics of Ms Kandić had been put in quotation marks while abusive allegations had not been; that the significance of Ms Kandić's accomplishments had been deliberately diminished by connecting them to extremely unpopular personalities in Serbia; and that the details about her family life, specifically the attitude of Ms Kandić's son towards her work, had been taken out of context and misrepresented.

2. The Court's assessment

(a) Whether there has been interference

27. It is not disputed between the parties that the applicant's conviction amounted to "interference by public authority" with her right to freedom of expression. Such interference will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve those aims.

(b) "Prescribed by law"

28. The Court notes that the statutory basis for the applicant's conviction was Article 93 § 2 of the Criminal Code. The Court holds that this provision was both adequately accessible and foreseeable, that is to say it was formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his or her conduct (see, among many

other authorities, *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30). The Court, therefore, concludes that the interference at issue was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(c) Legitimate aim

29. The Court notes that it is not disputed between the parties that the interference pursued one of the aims enumerated in Article 10 § 2, namely the "protection of the reputation or rights of others".

(d) "Necessary in a democratic society"

(i) General principles

30. The relevant principles in this regard are set out in details in, for example, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-95, 7 February 2012.

31. In particular, the Court's task, in exercising its supervisory jurisdiction, is to look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued".

32. When examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Hachette Filipacchi Associés v. France*, no. 71111/01, § 43, 14 June 2007, and *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011).

33. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 57, ECHR 2011). The relevant criteria in this regard are: (a) the contribution made by the article to a debate of general interest; (b) how well known is the person concerned and what is the subject of the report; (c) the conduct of the person concerned prior to publication of the article; (d) method of obtaining the information and its veracity; (e) content, form and consequences of the publication; and (f) severity of the sanction imposed (see *Axel Springer AG*, cited above, §§ 89-95, 7 February 2012).

34. The Court also reiterates that a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005, and *Petrenco v. Moldova*, no. 20928/05, § 55, 30 March 2010) in respect of whom limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a particularly high degree of tolerance (see *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 25, 13 January 2009, and *Kuliś v. Poland*, no. 15601/02, § 47, 18 March 2008).

(ii) Application of these principles

35. The Court firstly notes that the article was written in the context of an ongoing and at the time heated public debate on the Republic of Serbia's cooperation with the ICTY – a subject of great importance for Serbian society. At the time the article was published there was a high degree of animosity towards Ms Kandić from a large part of the Serbian public because of her efforts to secure the Serbian authorities' full cooperation with the ICTY and her activities related to the investigation of crimes committed by Serbian forces during the armed conflicts in the former Yugoslavia. The applicant's statements were therefore made in the context of a debate on matters of public interest.

36. The Court further observes that the applicant is a journalist and in that capacity her task was to write an article about Ms Kandić, a well-known human rights activist and undeniably a public figure. In so doing, she wrote, *inter alia*, that Ms Kandić "[had] been called a witch and a prostitute". The domestic court's held that by failing to put these words in quotation marks she had tacitly endorsed them as her own and convicted her for insult.

37. While the impugned words are offensive the Court considers that it is clear from the formulation of the sentence that this is how Ms Kandić was perceived by others, not by the applicant herself. In addition, the applicant claimed before the domestic courts that the impugned words had been taken from another article written by another journalist and published in another magazine, which was indeed established as such in the domestic proceedings and acknowledged by the Government (see paragraphs 12 and 26 above). Therefore, it is evident, even without the quotation marks, that this was not the applicant's personal opinion of Ms Kandić, but that she was merely transmitting how Ms Kandić was perceived by others. The Court has already held that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (see *Thoma*, cited above, §§ 63-65). The Court

does not consider that the sheer absence of quotation marks alone can be regarded as "particularly cogent reasons" capable of justifying the imposition of a penalty on the journalist (see, *mutatis mutandis*, *Thoma*, cited above, § 64).

38. Furthermore, the domestic courts failed to make any balancing exercise whatsoever between Ms Kandić's reputation and the applicant's freedom of expression and her duty, as a journalist, to impart information of general interest. They also made no reference to the overall context of the text and the circumstances under which it was written but their findings were rather limited to the fact that the impugned words were not put in the quotation marks. Such terse and undeveloped reasoning is, in the Court's view, in itself problematic as it rendered any defence raised by the applicant devoid of any practical effect.

39. The Court cannot accept the Government's argument that the applicant, through insinuations and diminution of facts, aimed to depict Ms Kandić in a negative light. The applicant made it clear in her article that the opinions on Ms Kandić were divided, offering both positive and negative aspects thereon. The article also reported that Ms Kandić had received many awards, some of them prestigious, as well as that she was campaigner for the truth on war crimes and a lonely voice of reason in Serbia, which was also written without the quotation marks, contrary to the Government's submission.

40. In particular, the Court does not consider that the impugned words can be understood as a gratuitous personal attack on, or insult to Ms Kandić. They did not refer to her private or family life, but to how she was perceived professionally. Ms Kandić, as a human rights activist, was a public figure, as acknowledged by the Government. That being so, the Court considers that she inevitably and knowingly exposed herself to public scrutiny and should therefore have displayed a greater degree of tolerance than an ordinary private individual.

41. The Court finally reiterates that the nature and the severity of the sanction imposed are the factors to be taken into account when assessing the proportionality of the interference (see, for instance, *Chauvy and Others v. France*, no. 64915/01, § 78, ECHR 2004-VI). In the present case, the domestic courts found that the applicant had committed a criminal offence of insult and issued against her a judicial warning, which could be considered an aggravating circumstance, should she commit another criminal offence (see paragraph 19 above). The Court cannot accept the Government's argument that the applicant's sentence was lenient. In the Court's view, what matters is not that the applicant was issued a judicial warning "only", but that she was convicted for an insult at all (see *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 36, ECHR 2000-X). Irrespective of the severity of the penalty which is liable to be imposed, a recourse to the criminal prosecution of journalists for purported insults, with

the attendant risk of a criminal conviction and a criminal penalty, for criticising a public figure in a manner which can be regarded as personally insulting, is likely to deter journalists from contributing to the public discussion of issues affecting the life of the community (see paragraph 19 above; see, also, *Bodrožić and Vujin v. Serbia*, no. 38435/05, § 39, 23 June 2009, and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 65, 22 November 2016 (not yet final)).

42. The foregoing considerations are sufficient to enable the Court to conclude that the national authorities' reaction to the applicant's article and in particular to the impugned words was disproportionate to the legitimate aim pursued, and was therefore not necessary in a democratic society, within the meaning of Article 10 § 2 of the Convention.

43. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

45. The applicant claimed 20,000 euros (EUR) in total in respect of pecuniary and non-pecuniary damage, submitting that her conviction was a factor which led to her later discharge from *Politika*.

46. The Government contested the applicant's claim as excessive and unfounded. They submitted, in particular, that the applicant had offered no evidence that she had been indeed discharged and even if that had been the case, that the said conviction was related to it in any way.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, in particular in view of the fact that the applicant failed to submit any proof that she had been indeed dismissed and, if so, that it was due to the conviction; it therefore rejects this claim. In respect of non-pecuniary damage the Court awards the applicant EUR 500.

B. Costs and expenses

48. The applicant claimed the costs and expenses incurred before the domestic courts, which amount corresponded to EUR 386 at the time (see paragraph 15 above).

49. The Government contested this claim.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 386 for costs and expenses in the domestic proceedings.

C. Default interest

51. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 386 (three hundred and eighty six 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President