



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

THIRD SECTION

CASE OF BACKOVIĆ v. SERBIA (No. 2)

(Application no. 47600/17)

JUDGMENT

Art 10 • Freedom of expression • Imposition of a fine on a lawyer for contempt of court on account of statements made in his written objection to the first-instance court's decision dismissing his request for the enforcement of a judgment • Applicant accused judges of the enforcement court of abuse of office and his statements belittled that court as well as the experience, expertise and professional capacities of the judge sitting in his case • Effective judicial review of the imposition of the fine • Fine not excessive and had no consequences for the applicant's right to practise as a lawyer • Reasons adduced by domestic courts relevant and sufficient • Interference "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 April 2025

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 Backović v. Serbia (no. 2),

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseyinov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 47600/17) 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, Mr Čedomir Backović (“the applicant”), on 21 June 2017;

the decision to give notice to the Serbian Government (“the Government”) of the complaint concerning the applicant’s right to freedom of expression and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 11 March 2025,

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

INTRODUCTION

1. The present case concerns the applicant’s right to freedom of expression in court proceedings under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1956 and lives in Sombor. He is a lawyer by profession. The applicant was represented by Mr F. Backović, a lawyer practising in Surčin.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

5. On 13 October 2008, following an action brought by a certain S.K., the Sombor District Court (*Okružni sud*) acknowledged that the terms of office of the applicant and fifteen other persons as city councillors (*odbornik*) had ended.

6. On 29 September 2011 the Constitutional Court (*Ustavni sud*) found the Sombor District Court’s judgment to be in breach of the applicant’s and the other persons’ electoral rights and instructed the Administrative Court (*Upravni sud*) to amend it within thirty days.

7. On 18 November 2011 the Novi Sad Administrative Court amended the judgment in question and dismissed S.K.'s action.

8. On 27 January 2012 the applicant, on his own behalf and as a representative of six of the other individuals concerned, sought the enforcement of the Administrative Court's judgment, entailing, *inter alia*, an acknowledgment from the Municipality of Sombor that they were still city councillors.

9. On 21 February 2012 the Sombor Court of First Instance (*Osnovni sud*), in a single-judge procedure, dismissed the request, finding that the judgment of the Administrative Court was not an enforceable document (*ne predstavlja izvršnu ispravu*) within the meaning of Article 13 § 1 (2) of the Enforcement Procedure Act.

10. On 2 March 2012 the applicant lodged an objection (*prigovor*) against that decision. He submitted that the Court of First Instance had not applied, or had incorrectly applied, the relevant provisions of the Enforcement Procedure Act, and that some of its findings had no basis in that Act.

11. He also submitted the following:

“It is a kind of ‘pen-pushing’ (*šaltersko*) restrictive ‘interpretation’ of the Enforcement Procedure Act, which has no grounds either in the Constitution or in the laws. If [it] is the result of some kind of ‘experience’ or ‘practice’ of the court ... these are ‘pre-war’ experiences and practices which are both wrong and bad, and which have been declared wrong and bad by all relevant bodies, and which have therefore been changed at the legislative level and (should be) also in respect of staff (*u kadrovskom pogledu*).

In other words, the pen-pushing actions of the enforcement courts (*šaltersko delovanje izvršnih sudova*) – with catastrophic consequences for claimants' rights, for the length of proceedings and for legal certainty in respect of the parties and a State characterised by the rule of law (*pravnu državu*) as such – should be a thing of the past. Some kind of alleged experience and practice from a system which has been proved to be bad and to have catastrophic consequences is not an advantage – it is a huge shortcoming of the current exercise of a judicial function on the basis of new and essentially different laws.

...

On the contrary, the enforcement court should make every reasonable effort to enforce a judgment in which another court (and the parties) have invested years of effort and expense, even if the legal geniuses and legal giants (*gromade*) of the enforcement court consider that, in all their ingenuity, they could supposedly draft a much better judgment than their colleagues from another court – the judgment which has come to be enforced, and in which the enforcement court, from the pedestal of an absolute arbiter (abusing the lack of an effective legal remedy against its judgments), is looking for a needle in a haystack. Such an attitude absolutely reaches the level of abuse of an entrusted function.

... the finding of the first-instance court [in respect of the Administrative Court and its judgment] is supreme nonsense, which simply is not worth any further comment. Whether it was written out of malice ... or owing to a lack of knowledge, such a decision and its reasoning are incompatible with the actions of a professional judiciary in a State characterised by the rule of law that Serbia professes to be.

Challenging both the status and the expertise of the Administrative Court (bearing in mind where it comes from) would be ... funny if it were not sad. ...”

12. On 7 March 2012 the Court of First Instance, by the same single judge as in the decision of 21 February 2012 (see paragraph 9 above), fined the applicant 100,000 Serbian dinars ((RSD) – approximately 910 euros (EUR) at the time) for contempt of court. The court found:

“In his objection [the applicant] insulted the court, the enforcement judges and the judge who had given the disputed decision, by submitting that a ‘pen-pushing restrictive interpretation [had] no grounds either in the Constitution or in the laws’, that ‘the pen-pushing actions of the enforcement courts [had] catastrophic consequences for claimants’ rights ... and for legal certainty in respect of the parties and should be a thing of the past’, that ‘some kind of alleged experience and practice from a system which [had] been proved to be bad and to have catastrophic consequences [was] not an advantage – it [was] a huge shortcoming of the current exercise of a judicial function’, that ‘the enforcement courts should make every reasonable effort to enforce a judgment even if the legal geniuses and legal giants of the enforcement court consider[ed] that they could supposedly draft a much better judgment’ and so on.

The content of the objection was aimed at insulting the court, the enforcement judges and the judge sitting in the case, and for that reason the claimants’ representative is fined, pursuant to Articles 33 and 51 of the Enforcement Procedure Act. When deciding on the amount of the fine, the court has taken into account the harshness of the insults, as well as the fact that they had been made by a representative who is a practising lawyer.”

13. On 12 March 2012 the applicant lodged an objection and referred to his freedom of expression and the Court’s case-law, more specifically to *De Haes and Gijssels v. Belgium* (24 February 1997, *Reports of Judgments and Decisions* 1997-I); *Dalban v. Romania* ([GC], no. 28114/95, ECHR 1999-VI); *Krasulya v. Russia* (no. 12365/03, 22 February 2007); *Lepojić v. Serbia* (no. 13909/05, 6 November 2007); and *Filipović v. Serbia* (no. 27935/05, 20 November 2007). He maintained that there had been no intention to insult, nor had there been any insult. He submitted that the objection for which he had been fined had not referred to any personal characteristic of the judge in question or her private life. It had only commented, and deservedly sharply, “on (a lack of) quality” in the exercise of judicial functions concerning a specific court decision. He maintained that the topic had been allowed and necessary, namely the “(un)lawfulness of the decision, the (non-)application of the Enforcement Procedure Act and the (un)professional application of the law by the judge”. He also submitted that judges in Serbia should distinguish between making a false claim, which was a necessary element of an insult, and making a value judgment.

14. On 4 September 2012 the Sombor Court of First Instance (Apatin unit) partly overturned the disputed decision by reducing the fine to RSD 50,000 (approximately EUR 425 at the time). It upheld the remaining findings set out in the decision, notably that the submissions made by the applicant had amounted to insulting the court as a State body and the judge in question, as

they had denied the expertise of and humiliated both the courts and the judge, thereby distorting the reputation of the courts. It further held that it had been clear from the applicant's objection that he had not been challenging the first-instance decision, but had spoken of the unprofessionalism, lack of knowledge and lack of dignity of the court and the judge, thereby undoubtedly intending to belittle the court. The court held that freedom of expression did not include the intention to insult courts and judges sitting in particular cases, and that insulting the court could not be allowed under the guise of freedom of expression.

15. On 28 December 2012 the applicant lodged a constitutional appeal with the Constitutional Court. He complained, *inter alia*, that his freedom of expression had been violated and repeated his earlier submissions (see paragraph 13 above). He also referred to a number of domestic judgments in which various expressions had been found not to amount to an insult, and maintained that his submissions had not even been close to such expressions. He also complained of the court's lack of impartiality in the context of Article 6 of the Convention, in that the same judge who had felt insulted had fined him on that account.

16. On 12 May 2014 the applicant paid the fine.

17. On 29 December 2016 the Constitutional Court rejected (*odbacuje se*) the applicant's constitutional appeal. The relevant part of the decision stated the following:

“The Constitutional Court ... indicates that freedom of expression is an accepted foundation of every democratic society, but that, in accordance with Article 46 of the Constitution, it can be restricted if this is necessary for, *inter alia*, the protection of the rights and reputation of others, which is something that the courts take into account in each case. In view of that and given the contents of the constitutional appeal, the Constitutional Court considers that the courts [dealing with the applicant's case] gave clear, sufficient and constitutionally acceptable reasoning for their decisions, which was neither unconsidered (*proizvoljna*) or arbitrary nor were the arguments [contained] in the [applicant's] constitutional appeal [capable of] casting any doubt in that regard.”

18. Between 24 August 2012 and a later unspecified date the applicant served as an Assistant Minister of Justice of Serbia.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Serbia (*Ustav Republike Srbije*; published in the Official Gazette of the Republic of Serbia (“OG RS”) – no. 98/2006)

19. Article 46 of the Constitution guarantees the right to freedom of thought and expression, and the freedom to seek, receive and impart information and ideas. It also provides that freedom of expression may be

subject to restrictions if that is necessary for maintaining the authority and impartiality of the judiciary.

B. Enforcement Procedure Act (*Zakon o izvršenju i obezbeđenju*, published in OG RS nos. 31/11, 99/11, 109/13, 55/14 and 139/14)

20. Article 33 of this Act, in so far as relevant, provides that a court will fine a party, participant or any other person who, by his or her conduct, offends the court. The fine will be imposed in the manner and under the conditions provided for by Article 51 of the Act.

21. Article 51 provides, *inter alia*, that a fine imposed on a physical person can be between RSD 10,000 and RSD 200,000. It sets out further details relevant to the imposition and payment of fines and the lodging of objections against them.

II. DOMESTIC LEGAL PRACTICE

22. Between 26 November 2015 and 16 June 2022 the Constitutional Court delivered at least seven judgments relating to the right to freedom of expression. One of those judgments concerned the freedom of expression of a lawyer when addressing a court, and the Constitutional Court dismissed a constitutional appeal in that case. In six other cases, which did not concern the freedom of expression of lawyers when addressing a court, the Constitutional Court found a violation of the right to freedom of expression.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant complained that the very imposition of the fine had amounted to a violation of his 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 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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

24. The Government submitted that the application was manifestly ill-founded. They did not dispute that the fine imposed on the applicant had amounted to an interference with his right to freedom of expression, but they maintained that it had been in accordance with the law, had pursued a legitimate aim, to which it had been proportionate, and had been necessary in a democratic society.

25. The applicant contested the Government's submission.

26. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

27. The applicant contested that his submissions to the domestic courts had been insulting, and maintained that they had been mere value judgments focused on the "improper conduct" of the proceedings in question by the enforcement judge. He submitted that he had simply expressed his opinion that the judiciary had functioned badly in the past and that it should function better in the future. He maintained that the reasoning of the domestic courts had been insufficient and contradictory, and that the criteria of being "necessary in a democratic society" had not been met. He lastly pointed out that the decision to fine him had been given by the same judge who had felt insulted by his submissions (see paragraph 12 above).

(b) The Government

28. The Government maintained that the interference in issue had been in accordance with the law, had pursued a legitimate aim, to which it had been proportionate, and had been necessary in a democratic society. They submitted that on the basis of its rich case-law in respect of freedom of expression in court proceedings (see paragraph 22 above), the Constitutional Court had also found that the applicant's right to freedom of expression had not been violated.

29. The Government submitted that the applicant's objection had contained numerous insults towards the court and judges, offending their character and intelligence, and disparaging their legal experience, knowledge and work. They maintained that the applicant's tone had been cynical and sarcastic, and his words threatening, which the applicant had not denied. They averred that the applicant's statement that the judges in question should be replaced, thereby implying that they should lose their jobs, had been

especially worrying given the applicant's political positions at the time – a city councillor for the Municipality of Sombor and later an Assistant Minister of Justice (see paragraph 18 above). Such a statement had had an especially detrimental effect on the authority and impartiality of the courts and had amounted to an attack on the impartiality of the judicial function.

30. The Government also maintained that the applicant's assertion that the actions and findings of the court had "absolutely reached the level of abuse of office" had amounted to a direct accusation of criminal responsibility on the part of the judge in question, which had been made without any evidence in that regard, making it a gratuitous personal attack.

31. The Government submitted that the applicant, as the legal representative of several individuals, including himself, had had special duties when addressing the court and the judges, and that his freedom of expression in that regard had been more limited than it would have been for an ordinary party to the proceedings.

2. The Court's assessment

(a) Existence of an interference

32. It is undisputed by the Government that the imposition of the fine on the applicant for the submissions he made in his objection to the domestic court constituted an interference with his freedom of expression guaranteed by Article 10 § 1. The Court sees no reason to hold otherwise.

(b) Justification of the interference

33. The interference would contravene Article 10 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in Article 10 § 2 and was "necessary in a democratic society" for achieving such an aim or aims (see *Lešnik v. Slovakia*, no. 35640/97, § 42, ECHR 2003-IV).

(i) "Prescribed by law"

34. The Court notes that the interference in question had a legal basis, namely Article 46 of the Constitution (see paragraphs 17 and 19 above), and Articles 33 and 51 of the Enforcement Procedure Act (see paragraphs 12, and 20-21 above). Accordingly, the interference was prescribed by law within the meaning of Article 10 § 2 of the Convention.

(ii) Legitimate aim

35. The Court notes that the fine imposed on the applicant on account of his submissions relating to the judge sitting in the domestic court and the domestic courts themselves pursued the legitimate aim of maintaining the

authority of the judiciary within the meaning of Article 10 § 2 of the Convention (see *Žugić v. Croatia*, no. 3699/08, § 42, 31 May 2011).

(iii) “Necessary in a democratic society”

(α) Relevant principles

36. The general principles concerning the question whether a given interference is “necessary in a democratic society” are well established in the Court’s case-law and can be summed up as follows (see, among many other authorities, *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 196-97, ECHR 2015 (extracts); *Delfi AS v. Estonia* [GC], no. 64569/09, § 131, ECHR 2015; and *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 177, 5 April 2022):

“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it 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. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of 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 given 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.

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim 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 relied on an acceptable assessment of the relevant facts ...”

37. The general principles for assessing the necessity of an interference with the exercise of freedom of expression in contempt-of-court cases were restated in *Radobuljac v. Croatia* (no. 51000/11, §§ 56-61, 28 June 2016). In particular, the special role of lawyers, which is crucial for the effective functioning of the fair administration of justice, gives them a certain latitude regarding arguments used in court as they have the duty to defend their clients’ interests zealously (ibid. §§ 60-61). The Court also reiterates that a

lawyer's freedom of expression in the courtroom is not unlimited and that certain interests, such as the authority of the judiciary, are important enough to justify restrictions on that right (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 174, ECHR 2005-XIII, and *Radobuljac*, cited above, § 58 *in fine*). The courts should be protected against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (see *Morice v. France* [GC], no. 29369/10, § 128, ECHR 2015; see also *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313, and *Radobuljac*, cited above, § 54). 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 (*ibid.*, § 61 *in fine*; see, also, *Skalka v. Poland*, no. 43425/98, §§ 39-42, 27 May 2003, and *Kincses v. Hungary*, no. 66232/10, § 33, 27 January 2015). In distinguishing between the two, remarks must be seen in the light of the case as a whole, including their content and the context in which they were made (see *Pisanski v. Croatia*, no. 28794/18, § 69 *in fine*, 4 June 2024).

(β) Application of those principles to the present case

38. Turning to the present case, the Court notes that the interference with the applicant's freedom of expression resulted from the domestic courts' imposition of a fine on him for the submissions he had made in his objection to the decision of the Sombor Court of First Instance of 21 February 2012 dismissing his enforcement request (see paragraphs 8, 9 and 12 above). It also notes that the applicant acted as the legal representative of several other persons in election-related proceedings, and that his objection was prepared in that capacity. That means that, as opposed to criticism voiced in, for instance, the media, the applicant's remarks were made in the context of internal communication between him as a lawyer and the court, of which the general public was not aware (see *Radobuljac*, § 62, and *Pisanski*, § 70, both cited above).

39. The Court further notes that in its decision of 7 March 2012 the domestic court found that the applicant's statements made in his objection had been aimed at insulting the court, the enforcement judges and the judge sitting in the case (see paragraph 12 above). That finding was endorsed by the second-instance panel of the same court in its decision of 4 September 2012. The panel also found that it was clear from the applicant's objections that he had not been challenging the first-instance decision, but rather had spoken of the unprofessionalism, lack of knowledge and lack of dignity of the court and the judge, thereby undoubtedly intending to belittle the court. The court further examined the applicant's right to freedom of expression and found that it did not include insulting the courts and judges sitting in particular cases (see paragraph 14 above). The Constitutional Court also examined the

applicant's constitutional appeal and the disputed decisions taking into account the right to freedom of expression (see paragraph 17 above).

40. The Court notes that the applicant in the present case described the impugned interpretation of the Enforcement Procedure Act as "pen-pushing" which had "catastrophic consequences", labelling the experience and practice from which it might have originated as wrong and bad, and implying that the staff applying such a practice should be replaced. He ridiculed the professionalism of the judges of the enforcement court by calling them "legal geniuses" and "legal giants", and by referring to their "ingenuity", and maintained that their conduct had amounted to an abuse of an entrusted function. He submitted that the impugned decision was "a supreme nonsense", which had been a result of either a malice or ignorance, and that in any event it had been unprofessional (see paragraph 11 above). The Court observes that the impugned decision was delivered in a single-judge procedure (see paragraph 9 above) and that the applicant's remarks therefore had a personal aspect, that is they could be construed as being directed solely at the judge sitting in his case.

41. The Court notes that the present case bears similarities to *A. v. Finland* ((dec.), no. 44998/98, 8 January 2004), where the applicant had been issued with a warning for his statements of a disparaging nature submitted in a written appeal concerning the presiding judge; *Žugić* (cited above), where the applicant's notice of appeal had used language implying that the judge as a person was arrogant and incompetent to perform the duty of a judge; and *Kincses* (cited above), where the applicant, in his notice of appeal, had called into question the professional competence of the sitting judge. The Court further notes that it can also be distinguished from *Lutgen v. Luxembourg* (no. 36681/23, §§ 8 and 69, 16 May 2024) and *Radobuljac* (cited above, §§ 10 and 66) where the Court held that a lawyer's assertion that a judge's conduct in the proceedings had been "absolutely unacceptable", coupled in the latter case with the statement that the hearings held had been "devoid of substance", could not be characterized as insulting within the meaning of Article 10 of the Convention.

42. The Court notes that the applicant's statements in the present case, framed in belittling and impertinent terms, did not merely criticise the reasoning of the decision of 21 February 2012 and the way the judge sitting in the case had conducted the proceedings, but also, as found by the domestic courts, amounted to belittling the court and the experience, expertise and professional capacities of the judge sitting in the case and implied that she was ignorant and incompetent (see, *Žugić*, cited above, § 47; contrast *Radobuljac*, § 66, and *Pisanski*, § 71, both cited above). They also accused judges of the court of abuse of office, describing the findings of the court as "nonsense" and "sad" (see paragraph 11 above). There is nothing to suggest that the applicant could not have raised his objection to the reasoning in the disputed decision without using such language, as he did in part of his

objection (see paragraph 10 above; see, also, *Žugić*, § 47 *in fine*, and *Kincses*, § 40, both cited above). Having regard to the remarks themselves, the Court does not find the assessment of the domestic courts unreasonable, which are, in any event, better placed to understand and appreciate the language used.

43. The Court reiterates that the fairness of the proceedings, the procedural guarantees afforded and the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Kyprianou*, cited above, § 171 *in fine*, and the authorities cited therein). The absence of an effective judicial review may support the finding of a violation of Article 10 (see *Saygılı and Seyman v. Turkey*, no. 51041/99, §§ 24-25, 27 June 2006, and *Baka v. Hungary* [GC], no. 20261/12, § 161, 23 June 2016).

44. Quite apart from the fact that the applicant raised the complaint in respect of the fairness of proceedings before the Constitutional Court in the context of Article 6 of the Convention (see paragraph 15 above), and not in the context of Article 10 as he did before the Court, the Court notes that, while the decision to fine the applicant was indeed made by the same judge who had felt personally offended by the applicant's remarks, there was an effective judicial review of the decision imposing the fine on him for contempt of court (contrast *Saygılı and Seyman*, cited above, § 25). The applicant could and did challenge that decision, which was then upheld by other judges in a second-instance panel, the reasoning of which was ultimately accepted by the Constitutional Court as well (see paragraphs 14 and 17 above).

45. The Court lastly notes that the applicant was fined RSD 50,000 (approximately EUR 425 at the time). The fine was at the lower end of the applicable scale set out in Article 51 of the Enforcement Procedure Act (see paragraph 21 above; see also, *mutatis mutandis*, *Lešnik*, cited above, § 63) and had no consequences for the applicant's right to practise his profession (see, *mutatis mutandis*, *Kincses*, cited above, § 42). The present case can thus be distinguished from *Nikula v. Finland* (no. 31611/96, ECHR 2002-II) and *Skalka* (cited above), in which criminal sanctions, a lenient one and a heavy prison sentence respectively, were imposed on the applicants (see, *mutatis mutandis*, *Kincses*, cited above, § 42), or from *Pais Pires de Lima v. Portugal* (no. 70465/12, § 67, 12 February 2019), in which the applicant was ordered to pay the judge in question EUR 50,000 in compensation. The Court, therefore, does not consider the fine in question excessive (see *Kincses*, cited above, §§ 9 and 42).

46. In view of the above, and taking into account that the national authorities are better placed than the Court to understand and appreciate the applicant's expressions and have a certain margin of appreciation in such matters, the Court considers that the reasons adduced by the domestic courts in support of their decisions were "relevant and sufficient" to justify the interference and that the fine imposed on the applicant was not

disproportionate to the legitimate aim pursued, namely maintaining the authority of the judiciary. The interference with the applicant's freedom of expression can thus reasonably be considered "necessary in a democratic society".

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 8 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Hüseyinov and Pavli is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES HÜSEYNOV AND PAVLI

1. We have respectfully dissented from the majority conclusion that there has been no violation of Article 10 of the Convention in the present case. In our view, the applicant's comments, while strongly worded and at times sarcastic, did not cross the boundaries of permissible criticism for a lawyer acting in defence of the legal interests of his clients. The comments at stake were included in a formal appeal to a higher court and were therefore not meant for general public consumption. Despite the acerbic language used, the critique was aimed essentially at the legal validity of the lower court's judgment, did not amount to a gratuitous personal attack and could not be taken to have had the sole intent of insulting the judge concerned. It appears that the domestic courts, in their examination of the case, failed to properly assess the applicant's remarks within the context in which they had been made.

2. It is also relevant that the applicant was not only a lawyer who was representing himself and others in the proceedings at hand, but also a local government official who had been unable to exercise his functions for an extended period, despite having obtained favourable rulings by the Constitutional Court and a court of appeal. These rulings had remained unenforced by the national legal system for several additional months. The above circumstances must have caused the applicant and his clients some understandable frustration.

3. The majority appear to have relied on a line of somewhat dated case-law to support their holding of no violation. In our view, and considering the facts of the case as a whole, a finding of a violation of Article 10 would have been more consistent with the Court's recent case-law on contempt of court in relation to statements made by lawyers in formal procedural submissions (see, in particular, *Radobuljac v. Croatia*, no. 51000/11, 28 June 2016; *Ceferin v. Slovenia*, no. 40975/08, 16 January 2018; *Lutgen v. Luxembourg*, no. 36681/23, 16 May 2024; and *Pisanski v. Croatia*, no. 28794/18, 4 June 2024).