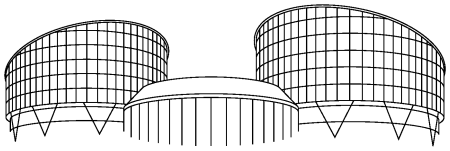

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SLAVA JURIŠIĆ v. CROATIA

(Application no. 79584/12)

JUDGMENT

STRASBOURG

8 February 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Slava Jurišić v. Croatia,

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

Kristina Pardalos, *President,*
Ksenija Turković,
Pauliine Koskelo, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 16 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 79584/12) 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, Ms Slava Jurišić ("the applicant"), on 14 November 2012.

2. The applicant was represented by Ms J. Špiranović, a lawyer practising in Slavonski Brod. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 24 March 2015 the complaint concerning the applicant's right to freedom of expression was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Slavonski Brod.

6. The applicant is a local political figure in Slavonski Brod. She was the head of administration for all kindergartens in Slavonski Brod, and during several local elections ran for mayor of that town. While the applicant held the position of head of administration for all kindergartens in Slavonski Brod, Z.B. sought and obtained employment in one of the kindergartens in Slavonski Brod as a teacher. One of the conditions for obtaining such employment was holding Croatian citizenship, and Z.B. presented a

certificate confirming such citizenship. At a certain point in time Z.B., as an employee of a kindergarten in Slavonski Brod, was a subordinate of the applicant. In February 2008 Z.B. was appointed head of administration for all kindergartens in Slavonski Brod.

7. On 23 October 2008 the applicant held a press conference entitled "All victims of the human resources policy of the mayor of Slavonski Brod, M.D.", where she alleged that the mayor of Slavonski Brod was involved in various irregularities in the employment of civil servants in local public institutions. The applicant thereby also alleged that the mayor had appointed Z.B. as the manager of a kindergarten run by the municipality even though she had used invalid documents and held only citizenship of the former Yugoslavia, and that together the mayor and Z.B. had denied a Croatian war veteran's daughter employment (see paragraph 11 below).

8. On 24 November 2008 Z.B. instituted a private prosecution against the applicant in the Slavonski Brod Municipal Court (*Općinski sud u Slavonskom Bordu*) on charges of defamation related to the above-mentioned statement.

9. During the proceedings the applicant contended that she had wanted to show all irregularities concerning the mayor's employment of local civil servants, and that she had learnt that Z.B. had requested Croatian citizenship only after she had been employed as manager of the kindergarten. The applicant also submitted that a councillor in the local assembly had provided her with certain documents concerning Z.B., including an annulled citizenship certificate.

10. On 21 May 2010 the Slavonski Brod Municipal Court acquitted the applicant on the grounds that the material obtained during the proceedings showed that Z.B. had been registered in 1985 in the register of births of Bosnia and Herzegovina, which at the time had been one of the former Yugoslav republics. She had been registered as a Croatian citizen on 13 October 2008, whereas she had lodged her application for employment at the kindergarten on 12 February 2008. In the circumstances, the Slavonski Brod Municipal Court considered that the applicant demonstrated the veracity of her statements.

11. On 23 May 2011, upon an appeal by Z.B., the Slavonski Brod County Court (*Županijski sud u Slavonskom Brodu*) quashed the first-instance judgment and ordered a retrial, on the grounds that not all of the relevant facts had been properly established.

12. After a retrial, on 26 January 2012 the Slavonski Brod Municipal Court found the applicant guilty of defamation for having said "[the mayor] appointed people who are using invalid documents to crucial positions, for example Z.B., who unfortunately still has citizenship of the former Yugoslavia" and "[the mayor], together with his manager [Z.B.], fired a girl on the pretence that, as the child of a [Croatian] war veteran, she had no right to preferential treatment with regard to employment". The applicant

was given a suspended sentence of sixty days' imprisonment with a probation period of one year. The Slavonski Brod Municipal Court held that it was a well-known fact that Yugoslavia no longer existed, and that therefore Z.B. could not have Yugoslav citizenship. Moreover, Z.B. had acquired Croatian citizenship in 1992, but her citizenship certificate had later been annulled in 2008 due to some administrative irregularities, and later she had been issued with a new certificate. The Slavonski Brod Municipal Court therefore held that the applicant had uttered untrue information concerning Z.B. in public, amounting to defamation. The applicant was also ordered to pay the costs of the proceedings in the amount of 8,250 Croatian kunas (HRK).

13. The applicant appealed, and on 30 May 2012 the Slavonski Brod County Court dismissed her appeal, upholding the first-instance judgment.

14. The applicant then lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), complaining, *inter alia*, that her freedom of expression had been violated by the judgments of the lower courts.

15. On 26 September 2012 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded.

16. The decision of the Constitutional Court was served on the applicant's representative on 11 October 2012.

II. INTERNATIONAL LAW

17. On 4 October 2007 the Parliamentary Assembly of the Council of Europe adopted Resolution 1577 (2007), "Towards decriminalisation of defamation", in which it urged those member States which still allowed prison sentences for defamation, even if those sentences were not actually imposed, to abolish them without delay.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained that her freedom of expression had been violated by her criminal conviction for defamation. She relied on 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

19. The Court notes that this complaint 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' arguments

20. The applicant argued that the national courts had wrongly established that her statements had not been truthful, since the documents on Z.B.'s citizenship showed that the initial certificate of citizenship which Z.B. had presented when seeking employment at a kindergarten in Salvonski Brod had later been annulled. The documents also showed that Z.B. had only sought to be entered into the register of Croatian citizenship in 2008, and had only obtained Croatian citizenship on 13 October 2008, whereas she had been employed as head of a kindergarten from February 2008 onwards. Therefore, the applicant's statement that Z.B. had obtained her employment on the basis of invalid documents had been correct, since one of the conditions for such employment had been holding Croatian citizenship. The applicant had made her statements on the basis of the documents at her disposal, and had had no reason to doubt them.

21. The applicant also contended that her only aim had been to criticise the public administration and point out their incorrect practices, which was also her right, and all her statements had been made in the public interest. The title of the press conference she had held (see paragraph 6 above) indicated that the target of her criticism had been the mayor of Slavonski Brod and his policies. As a local public figure since the 1990s, the applicant had continuously expressed constructive critical opinions on public authorities.

22. The Government accepted that the applicant's conviction had amounted to an interference with her right to freedom of expression. They contended that the interference was based on the Criminal Code, which proscribed defamation, and that the conviction had pursued a legitimate aim – the protection of the reputation and rights of others. The impugned

statement was factual, and its veracity could have been tested. The national courts had found that the statement had not been truthful, since Z.B. held Croatian citizenship and fulfilled all the conditions for being the head of a kindergarten, and that the applicant had not made an effort to verify her allegations. In a Croatian context, labelling someone a Yugoslav citizen was defamatory, since the army of the former Yugoslavia had carried out an armed offensive against Croatia. Given that the area at issue, Slavonia, had been particularly seriously affected by the armed conflict, and that the applicant's statement had been aired by a local radio station, it had had a significant defamatory effect.

23. The Government further stressed that the applicant had not been punished for her public criticism of the mayor of Slavonski Brod, but only for having made untrue statements about Z.B. As Z.B.'s former boss, the applicant had had ample opportunity to verify whether Z.B. held Croatian citizenship or not, but had not done so, which indicated that the applicant had not acted in good faith.

24. As to the sanction imposed, the Government contended that it had been proportionate to the aim sought, since it had been a suspended sentence of only sixty days. The probation period had been set at one year, and the only condition had been that the applicant refrain from committing further criminal offences.

2. The Court's assessment

(a) Whether there was an interference

25. It was not disputed that the applicant's conviction by the national courts following her statements about Z.B. at a press conference amounted to "interference" with her right to freedom of expression.

26. Such interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph, and whether it was "necessary in a democratic society" in order to achieve those aims (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 85, ECHR 2004-XI).

(b) Whether it was prescribed by law and pursued a legitimate aim

27. It is undisputed that the judgment of the national court convicting the applicant of defamation was based on the relevant provisions of the Criminal Code, whose accessibility and foreseeability have not been contested, and that it pursued a legitimate aim, the "protection of the rights and freedoms of others", and more particularly, the reputation of Z.B.

28. The parties' views differed as to whether the interference in question had been "necessary in a democratic society". The Court must therefore

determine whether this requirement, as set out in the second paragraph of Article 10, was satisfied in the instant case.

(c) Whether the interference was necessary in a democratic society

(i) General principles

29. The relevant general principles are set out in *Cumpănă and Mazăre* (cited above, see §§ 88-91)

(ii) Application of those principles to the present case

30. The Court notes at the outset that the statement for which the applicant was punished was a statement of fact and not a value judgment, since it concerned verifiable facts, namely an assertion that Z.B. had used invalid documents and held citizenship of the former Yugoslavia. Leaving aside the issue of whether the latter part of that statement, namely that Z.B. held citizenship of the former Yugoslavia, may be seen as defamatory, the Court is satisfied that the first part of the applicant's statement, namely that Z.B. had used invalid documents in order to procure publicly-funded employment, could have been seen as tarnishing Z.B.'s reputation.

31. The Court further notes that the applicant made the impugned statement in her role as a local politician, in the context of criticising the allegedly improper practices of another local politician, in a press conference. Given that the applicant was a public figure in her local community, it could be accepted that her role involved a moral duty to alert the public of possible irregularities in the conduct of public officials. Therefore, the matter concerned was undoubtedly of public interest.

32. However, in the particular circumstances of the present case, the Court considers that it does not have to further address the issues of whether the domestic authorities were entitled to consider it necessary to restrict the exercise of the applicant's right to freedom of expression, and whether the applicant's conviction for insult and defamation accordingly met a "pressing social need" (see *Cumpănă and Mazăre*, cited above, § 110), since, even assuming that this was so, the Court considers that the crucial aspect of the instant case is whether the interference in issue was proportionate to the legitimate aim pursued, in view of the sanctions imposed (ibid.).

33. The nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with freedom of expression guaranteed by Article 10. The Court must also exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade individuals from taking part in the discussion of matters of legitimate public concern.

34. In the instant case, besides being ordered to pay the costs of the proceedings, the applicant was given a suspended sentence of sixty days' imprisonment. Even though it was a suspended sentence, the applicant

nevertheless faced the threat of imprisonment (compare *Dalban v. Romania* [GC], no. 28114/95, § 52, ECHR 1999-VI; and contrast *Bédat v. Switzerland* [GC], no. 56925/08, § 81, ECHR 2016). Although the Contracting States are permitted, or even obliged, by their positive obligations under Article 8 of the Convention to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputations, they must not do so in a manner that unduly deters individuals from pointing out the apparent or suspected misuse of public power (see, *mutatis mutandis*, *Cumpănă and Mazăre*, cited above, § 113).

35. The chilling effect that the fear of such sanctions has on the exercise of freedom of expression is evident. This effect, which works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed on the present applicant, who, as a local politician was undeniably entitled to bring to the attention of the public the matter of the alleged misuse of power by a local mayor.

36. Although sentencing is in principle a matter for the national courts, the Court considers that, in the circumstances of the present case, and taking into account that the applicant was a public figure in her local community, and that the statement for which she was punished had been made in the context of political life in Croatia, the imposition of a prison sentence, albeit suspended, would only in exceptional circumstances be compatible with her freedom of expression as guaranteed by Article 10 of the Convention, and notably where other fundamental rights have been seriously impaired. For example, such a sentence might be compatible in relation to hate speech or incitement to or glorification of violence, neither of which was a feature of this case (see *Feridun Yazar v. Turkey*, no. 42713/98, § 27, 23 September 2004; and contrast *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV).

37. The circumstances of the instant case – defamation of an individual in the context of a political debate on a matter of legitimate public interest – present no convincing justification for the imposition of a prison sentence. Such a sanction, by its very nature, will inevitably have a chilling effect, and the fact that a suspended sentence was imposed which the applicant did not have to serve does not alter that conclusion, since her conviction was maintained (see, *mutatis mutandis*, *Cumpănă and Mazăre*, cited above, § 116, and *Erdoğdu and İnce v. Turkey* [GC], nos. 25067/94 and 25068/94, § 53, ECHR 1999-IV; contrast also with cases in which neither a matter of political debate nor freedom of the press was at stake, such as *Lešník v. Slovakia*, no. 35640/97, § 63, ECHR 2003-IV, and *Vejdeland v. Sweden*, no. 1813/07, §§ 58 and 59, 9 February 2012). In this regard, the Court also reiterates the Resolution of the Council of Europe, calling on the member States which still allow prison sentences for defamation, even if such

sentences are not actually imposed, to abolish them without delay (see paragraph 17 above).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government deemed the sum claimed excessive and unfounded.

42. The Court awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant also claimed EUR 10,100 for costs and expenses incurred before the domestic courts and before the Court.

44. The Government deemed the sums claimed excessive and unsubstantiated.

45. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

46. 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, the following amounts, to be converted into Croatian kunas (HRK) at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand 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 8 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Kristina Pardalos
Deputy Registrar	President