



No violation of former President of Croatia's rights in online news article alleging his possible involvement in bribery

In today's **Chamber** judgment¹ in the case of [Mesić v. Croatia \(no. 2\)](#) (application no. 45066/17) the European Court of Human Rights held, by five votes to two, that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned an article published in February 2015 by an Internet news portal Dnevno.hr suggesting that the applicant, a former President of Croatia, had, during his term of office, been offered or taken bribes in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria. Mr Mesić complained that by dismissing his civil action for compensation, the domestic courts had failed to protect his reputation in violation of his right to respect for private life.

The Court noted that the article had not targeted Mr Mesić's private life but had referred to his conduct in the exercise of his official duties and, in reporting what had been stated in official documents, had not unambiguously stated that he had participated in criminal activities. In particular, it found that the Croatian courts had struck a fair balance between the former president's right to respect for his private life and the right of the news portal to freedom of expression.

Principal facts

The applicant, Stjepan Mesić, is a Croatian national who was the President of Croatia from 2000-10. He was born in 1934 and lives in Pušća (Croatia).

In 2013, in Finland, three former employees of the Finnish company Patria were indicted and charged with aggravated bribery in relation to a procurement process for armoured vehicles for the Croatian army. The indictment suggested that Mr Mesić was one of those who had been offered or given a bribe. On 16 February 2015, two of the former employees were found guilty by a District Court and were given a suspended sentence. (That judgment was overturned in February 2016 following an appeal).

The following day, a Croatian Internet news portal Dnevno.hr published an article about the case suggesting that the Croatian authorities should investigate Mr Mesić's role in the matter. The former President subsequently requested that the news portal publish a correction of three statements which he considered to be false and injurious:

- (i) "Stjepan Mesić received a bribe of 630,000 euros from people who have just been convicted of giving bribes";
- (ii) "in the meantime, [two] Patria managers ... who were directly charged in the indictment with giving bribes to Stjepan Mesić and the director of [the Croatian company] ... were sentenced to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

[terms of imprisonment of] one year and eight months for giving bribes for the sale of armoured vehicles to Croatia”;

(iii) “the joint investigation undoubtedly established that Mesić and [the director of the Croatian company] participated in criminal activities”.

He explained that he had not in any way been involved in the procurement procedure in question, that the persons convicted in Finland had not been found guilty of promising or giving bribes to him, and that he had not been offered or received a bribe. He also stated that no one had contacted him to verify the statements before the publication of the article.

The news portal refused to publish a correction and stood by the statements. The journalist submitted that the statements were not his own but originated in the Finnish indictment and the District Court’s judgment.

Mr Mesić brought civil proceedings against the news portal company for defamation, claiming that the statements were false and had breached his honour and reputation. His claim was dismissed, and he was ordered to pay the defendant HRK 3,750 (approximately EUR 490) for the costs of the proceedings. His subsequent appeal was dismissed, as was his further complaint before the Constitutional Court.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicant complained that by dismissing his civil action for compensation, the courts had failed to protect his reputation.

The application was lodged with the European Court of Human Rights on 20 June 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Pauliine Koskelo (Finland),
Frédéric Krenc (Belgium),
Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

The Court has already ruled that although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest.

The Court agreed that the statements portraying Mr Mesić as a criminal had been capable of seriously tarnishing his reputation and discrediting him in the public eye, thereby endangering his rights under Article 8 of the Convention. The main issue was whether the State had achieved a fair balance between Mr Mesić’s right to protection of reputation and the right of the news portal to freedom of expression. It noted that in examining the case, the national courts had paid attention to the relevant criteria laid down in the Court’s case-law for that balancing exercise. They had considered whether the article had contributed to a debate on a matter of public interest, how well known the applicant was, and the way in which the information had been obtained and how true it was.

The Court found that the article had undoubtedly concerned a matter of public interest, and the “watchdog” role of the media was particularly important in such a context, where investigative journalism meant that the authorities could be held to account. Also, the limits of acceptable criticism were wider as regards a politician than as regards a private individual. This applied even more so to Mr Mesić as he was not an ordinary politician but a head of State. Moreover, the article had not targeted his private life but had referred to his conduct in the exercise of his official duties.

The Court held that the domestic courts’ findings had to be viewed in the light of the fact that they had examined the article as a whole rather than simply reviewing the three statements in isolation. For the Court, the domestic court’s approach was justified, it being difficult to disassociate the three statements from the rest of the article.

The Court found that the journalist had only reported what was stated in official documents and had made it clear that the statement about Mr Mesić receiving a bribe of EUR 630,000 was not his own. The Court found nothing inaccurate in the statement that two people had been sentenced to terms of imprisonment for giving bribes for the sale of armoured vehicles to Croatia. As regards the third statement, the Court found that it could not be said, when taking the article as a whole, that the journalist had unambiguously stated that Mr Mesić had participated in criminal activities.

The Court concluded that the national courts had struck a fair balance between the former president’s right to respect for his private life and the right of the news portal to freedom of expression. There had therefore been no violation of Article 8 of the Convention.

Separate opinion

Judge Kūris expressed a partly dissenting opinion joined by Judge Ilievski. This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.