SECOND SECTION

CASE OF BODROŽIĆ v. SERBIA

(Application no. 32550/05)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

10/12/2009

This judgment may be subject to editorial revision.

In the case of Bodrožić v. Serbia,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 32550/05), lodged with the Court against the State Union of Serbia and Montenegro under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Željko Bodrožić ("the applicant"), on 23 August 2005. From 3 June 2006, following Montenegro's declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

2. The applicant, who had been granted legal aid, was represented by Mr V. Lipovan, a lawyer practising in Kikinda. The Government of the State Union of Serbia and Montenegro and subsequently the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicant alleged that his right to freedom of expression and to a fair trial had been violated.

4. On 13 September 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Kikinda.

6. The applicant is a journalist and member of a political party. At the time of the impugned events, he was also the editor of the local weekly newspaper, *Kikindske*.

7. On 3 October 2003 the applicant published an article about a certain **historian**, J.P., entitled 'The Floor is Given to the Fascist' ('*Reč ima fašista'*). In his article the applicant wrote:

> "J.P., a **historian**, who during the 1980s and 1990s... used to write kilometres of various insults and defamation concerning the opponents of Milošević and his... regime, has again come to the centre of public attention thanks to... the journalist of Novi Sad TV..., who had invited him as a guest on the show 'Unbuttoned'. And J.P. would not have been himself (an idiot), if he had not used another opportunity to

express his fascist-oriented points of view. This is how he, on a national TV channel..., stated that Baranja was under Croatian occupation and that Slovaks, Romanians and above all Hungarians in Vojvodina were colonists... According to [J.] P., there are no Croats in Vojvodina..., whereas the Hungarians are mainly Slavs... because they have 'such nice Slavic faces'...

In these three weeks following the show, many NGOs and individuals, as well as a few political parties, uttered their opinions.... [They] requested the Radio Broadcasting Council, relying on point 6 of its recommendation which provides... that 'all broadcasters were under the obligation to respect... the provisions restraining hate speech', to take appropriate measures against the [national] TV...

The Minister of Culture and Media and other officials also reacted ...

The latest news indicates that the Radio Broadcasting Agency has been collecting relevant information about the show... Meanwhile, J.P. must be gloating because he has managed once again to launch his twisted attitudes into the public domain. Following the changes of 5 October, this professional 'long spitter' was... appointed head of the Serbian History Archive... until recently, when the Government discharged him. He was then granted the opportunity in some tabloids ... to [criticise] the existing Government and the "non-existent nations". 'Unbuttoned' was just the last episode of this activist... who will undoubtedly... contaminate our environment for a long time to come."

8. On 10 October 2003 J.P. instituted private criminal proceedings for insult against the applicant in the Kikinda Municipal Court.

9. At the hearing held on 17 November 2003, the applicant stated that "he did not wish to settle the matter with the private prosecutor [J.P.] because he was a member of the fascist movement in Serbia". On account of this statement, on 5 January 2004 J.P. instituted new private criminal proceedings for defamation against the applicant.

10. Territorial jurisdiction in the matter was subsequently transferred to the Zrenjanin Municipal Court, which decided to join the two cases.

11. The court scheduled a hearing for 15 April 2004, the summons for which was served on the applicant along with J.P.'s second criminal bill of indictment on 11 March 2004. The applicant did not attend the hearing.

12. The court scheduled the next hearing for 23 September 2004, for which the applicant received the summons on 24 June 2004. He again failed to appear in court.

13. The applicant submits that none of those court summons were served on him properly, since they had been sent to the address of the newspaper, where he was no longer employed. However, he appears to have personally signed acknowledgments of receipt forms for both summons.

14. At the next main hearing on 15 December 2004, the applicant was escorted to court by the police. His lawyer met him in the court building and made a request to the judge for a postponement of the hearing with a view to acquainting himself with the charges at issue.

15. The presiding judge granted the applicant and his lawyer 30 minutes to prepare the applicant's defence. After 20 minutes the applicant's lawyer stated that they were ready for the hearing.

16. The court held the main hearing and gave judgment that same day, finding the applicant guilty of insult for the published article and of defamation for the statement given at the court hearing of 17 November 2003. The court fined the applicant 15,000 Serbian dinars (RSD, approximately 162 euros (EUR)), and ordered him to pay J.P. another RSD 20,700 (approximately EUR 225) in respect of the costs of the proceedings.

17. In its judgment the Zrenjanin Municipal Court held, *inter alia*, that describing someone as a "fascist" was offensive, given the historical connotations of that expression "representing tragedy and evil". The court rejected the applicant's argument that he was merely expressing his own political views, since forming fascist political parties or movements was illegal under domestic law. The applicant had consequently failed to respect the human dignity of J.P. If he had felt personally offended by any of J.P.'s statements made

on the television programme or elsewhere, the applicant should have sought appropriate judicial relief.

18. On an appeal by the applicant, on 9 March 2005 the Zrenjanin District Court upheld the first-instance judgment. The court concluded that J.P.'s statements were a product of his expert findings as a **historian**. Since the word "fascism" meant the extinction of people based on their nationality and/or religion, this had clearly not been the object of J.P.'s statements. The applicant's article had thus the sole aim of insulting J.P. by using this term and additionally calling him "an idiot".

19. The second-instance court further found the applicant's allegations of improper summoning and an inability to prepare his defence ill-founded, establishing that he had been duly summoned twice but had failed to appear in court. Moreover, at the hearing on 15 December 2004 the applicant and his lawyer had been given the opportunity to consult and prepare his defence, and they had stated after 20 minutes that they were ready for the hearing.

20. It appears that J.P. instituted another set of proceedings against the applicant – a civil claim for compensation for non-pecuniary damage – and that the domestic courts ordered the applicant to pay him compensation in the sum of RSD 50,000 (approximately EUR 540). However, the applicant did not include these proceedings in his complaints raised before the Court.

II. RELEVANT DOMESTIC LAW

21. The relevant provisions of the Criminal Code of the Republic of Serbia (*Krivični zakon Republike Srbije*; published in the Official Gazette of the Republic of Serbia - OG RS - nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, 16/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03) provide as follows:

Article 92 (1)

"Whoever, in relation to another, asserts or disseminates a falsehood which can damage his [or her] honour or reputation shall be fined or punished by imprisonment not exceeding six months."

Article 93

"1. Whoever insults another shall be fined or punished by imprisonment not exceeding three months.

2. Whoever commits an act described in [the above] paragraph ... through the press ... or at a public meeting shall be fined or punished by imprisonment not exceeding six months."

Article 96

"1. ... [no one] ... shall ... be punished for insulting another person if he [or she] so does in a scientific, literary or artistic work, a serious critique, in the performance of his [or her] official duties, his [or her] journalistic profession, as part of a political or other social activity or in defence of a right or of a justified interest, if from the manner of his [or her] expression or other circumstances it transpires that there was no [underlying] intent to disparage.

2. In situations referred to above, ... [the defendant] ... shall not be punished for claiming or disseminating claims that another person has committed a criminal offence prosecuted *ex officio*, even though there is no final judgment to that effect ... , if he [or she] proves that there were reasonable grounds to believe in the veracity of ... [those claims] ..."

22. The relevant provisions of the General Criminal Code (*Osnovni krivični zakon*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90, the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 35/92, 37/93, 24/94, 61/01 and OG RS no. 39/03) provide as follows:

Article 39

"...3. If the fine cannot be collected, the court shall order a day of imprisonment for each 200 dinars of the fine, providing that the overall term of imprisonment does not exceed six months.

4. If the convicted person pays only a part of the fine [imposed], the rest shall ... be converted into imprisonment, and if the convicted person [subsequently] pays the remainder of the fine, his imprisonment shall be discontinued."

23. The relevant provisions of the Criminal Procedure Code (*Zakonik o krivičnom postupku*, published in OG FRY nos. 70/01, 68/02 and 58/04) provide as follows:

Article 160

"Documents which need to be served in person pursuant to the provisions of this Code shall be served directly on the addressee. If the person to be served cannot be reached at the place where the service is to be effected, the process server shall inquire when and where that person can be found and leave with one of the persons stated in Article 161 of this Code a written notice inviting the recipient to be in his flat or place of work on a specified date and hour for the purpose of receiving the document. If even after this the server of process does not find the addressee, he shall act in accordance with section 161 (1) of this Code and it shall be deemed that by such acts the document is served."

Article 161

"1. A document which does not have to be served in person pursuant to the provisions of this Code shall also be served in person, but if the addressee is not found at his flat or place of work the documents can be served on any adult member of his household who is obliged to receive it. If no members of the addressee's household are found in the flat, the document may be served on the housekeeper or a neighbour, if they accept it. If the service is attempted at the addressee's place of work and he cannot be found there, service can be effected on a person authorised to receive mail therein, who is obliged to receive the document, or to any other employee, if he is willing to accept the service.

2. If it is established that the recipient is absent and that the persons from paragraph 1 of this section are unable to deliver the document to him in due time, it shall be returned with a notice containing information on the recipient's whereabouts."

Article 162 (1)

"The summons... for the main hearing shall be served on the defendant in person."

24. Article 419 provides, *inter alia*, that the competent public prosecutor "may" (*može*) file a Request for the Protection of Legality (*zahtev za zaštitu zakonitosti*) against a "final judicial decision", on behalf of or against the defendant, if the relevant substantive and/or procedural "law has been breached" (*ako je povređen zakon*).

25. On the basis of the above request, under Articles 420, 425 and 426, the Supreme Court may uphold the conviction at issue or reverse it. It may also quash the impugned judgment in its entirety, or in part, and order a retrial before the lower courts. If the Supreme Court finds, however, that there has been a violation of the law in favour of the defendant, it may declare this but leave the final judgment standing.

26. Under sections 199 and 200 of the Obligations Act (*Zakon o obligacionim odnosima*; published in OG SFRY nos. 29/78, 39/85, 45/89 and 57/89, as well as in OG FRY no. 31/93), *inter alia*, anyone who has suffered mental anguish as a consequence of a breach of his or her honour or reputation may, depending on its duration and intensity, sue for financial compensation before the civil courts and, in addition, request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

27. Section 13 of the Civil Procedure Act 2004 (*Zakon o parničnom postupku*; published in OG RS no. 125/04) provides that a civil court is bound by a final decision of a criminal court in respect of whether a crime has been committed, as well as the criminal liability of the person convicted.

28. The relevant provisions concerning the Court of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicant complained that his criminal conviction had violated his right to freedom of expression as provided in Article 10 of the Convention, which reads in its relevant part 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. ...
>
> 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 ... for the protection of the reputation or rights of others ..."

A. Admissibility

30. The Government submitted that the applicant had not exhausted all available and effective domestic remedies. In the first place, as regards the criminal proceedings, he had failed to urge the public prosecutor to lodge a request for the protection of legality (an "RPL") on his behalf (see paragraphs 24 and 25 above). Secondly, he could have brought a civil action for damages under sections 199 and 200 of the Obligations Act if he deemed that one of his personality rights had been violated (see paragraph 26 above). In this connection the Government provided the example of a final judgment where a domestic court had applied Articles 5 and 8 of the Convention, taken together with Article 200 of the Obligations Act, granting the plaintiff's civil compensation claim in a matter involving unlawful surveillance, arrest and detention. Thirdly, the applicant could have instituted criminal proceedings against J.P. if he had considered any of his statements insulting, and lastly he could have made use of the complaint procedure before the Court of Serbia and Montenegro (see paragraph 28 above).

31. The applicant maintained that all of the above-mentioned remedies were ineffective.

32. The Court reiterates that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, inter alia, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11–12, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87-88, § 38). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government has in fact been exercised, or is for some reason inadequate and ineffective in the particular circumstances of the case, or that there exist special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

33. Finally, the Court reiterates that an effective domestic remedy must form part of the normal process of redress and cannot be of a discretionary character. The applicant must

therefore be able to initiate proceedings directly, without having to rely on the benevolence of a public official ((see *Lepojić v. Serbia*, no. 13909/05, § 54, 6 November 2007).

34. Turning to the present case, the Court finds that it was only the public prosecutor who could have lodged an RPL on behalf of the applicant. Moreover, the former had full discretion whether or not to do so. While the applicant could have requested such an action, he certainly had no *right* under law to make use of this remedy personally (see paragraph 24 above). An RPL was thus ineffective as understood by Article 35 § 1 of the Convention.

35. As to the possibility of lodging a civil action in damages against a final criminal conviction, the Government were unable to cite any domestic jurisprudence where a claim based on the relevant provisions of the Obligations Act had been used successfully in a case such as the applicant's. In the Court's view, it appears contradictory to the social purpose of criminal sanctions that a convicted person may institute civil proceedings against the State with a view to overturning a final criminal conviction and obtaining damages suffered as a consequence thereof. This remedy therefore lacks any prospect of success.

36. Further, the Court fails to see how instituting criminal proceedings against J.P. could have been an effective remedy in respect of the applicant's criminal conviction and the alleged breach of his rights. In any event, having exhausted all remedies in the criminal proceedings brought against him, the applicant could not have reasonably been expected to embark upon yet another avenue of unlikely redress (see, *mutatis mutandis*, *Filipović v. Serbia*, no. 27935/05, § 44, 20 November 2007).

37. Lastly, concerning the Government's submission that the applicant should have lodged a complaint with the Court of Serbia and Montenegro, the Court reiterates that it has already held that this particular remedy was unavailable until 15 July 2005 and, moreover, remained ineffective until the break-up of the State Union of Serbia and Montenegro (see *Matijašević v. Serbia*, no. 23037/04, §§ 34-37, ECHR 2006-...). The Court sees no reason to depart from this finding in the present case.

38. In view of the above, the Court finds that the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. Accordingly, the Government's objection must be dismissed.

39. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

40. The Government maintained that the terms "idiot" and "fascist" were objectively defamatory and, in respect of J.P., also untrue because he had never been "a member of the fascist movement in Serbia" since such a group had never existed. Further, the applicant's article had not been written in good faith, since its main purpose was to demean J.P. and instil in the public an intense feeling of repulsion towards him. Whilst J.P.'s opinions and statements made during the interview, and in his book entitled "Vojvodina's autonomy – the Serbian people's nightmare" ("*Autonomija Vojvodine – košmar srpskog naroda"*), had indeed given rise to harsh public reactions, the Government nonetheless argued that the applicant had failed to respect journalistic ethics in criticising him in this manner.

41. The Government further submitted that J.P., as a person who did not hold a public position, required a higher level of protection from exposure to criticism from journalists. The applicant's allegations were simply statements, which were in no way supported by truth.

42. Finally, the Government considered the sentence imposed on the applicant to have been negligible and therefore proportionate to the legitimate aim sought to be achieved.

43. The applicant contested the Government's views. He reiterated that J.P.'s statements were harmful to Vojvodina's multinational society and that, as a journalist, he had felt obliged to react to them publicly. Since J.P. had stated his views on public television, the applicant disagreed that instituting private court proceedings, as suggested by the Government, would have constituted a sufficient response to those statements.

2. The Court's assessment

(a) "Prescribed by law"

44. It was not disputed that the applicant's conviction for defamation and insult amounted to an "interference" with his right to freedom of expression and that it was "prescribed by law" under Articles 92 and 93 of the Criminal Code as worded at the material time (see paragraph 21 above).

(b) "Legitimate aim"

45. It is also common ground that the said interference pursued the legitimate aim of the protection of the rights of others, namely the reputation of J.P. What remains to be established is whether the interference was "necessary in a democratic society".

(c) Necessary in a democratic society"

α. General principles

46. As the Court has often observed, freedom of expression enshrined in Article 10 constitutes one of the essential foundations of a democratic society. Subject to paragraph 2, it is applicable not only to "information" or "ideas" which are favourably received or regarded as inoffensive, but also to those which offend, shock or disturb (see, among many other authorities, *Lepojić v. Serbia*, cited above, § 73; *Filipović v. Serbia*, cited above, § 53). It comprises, among other things, the right to impart, in good faith, information on matters of public interest even where the publication in question involves untrue and damaging statements about private individuals (see *Lepojić v. Serbia*, cited above, § 74).

47. The Court emphasises the essential function fulfilled by the press in a democratic society. Although the press must not overstep certain bounds, particularly in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Dalban v. Romania* [GC], no. 28114/95, § 49, ECHR 1999-VI).

48. It is in the first place for the national authorities to assess whether there is a "pressing social need" for a restriction on freedom of expression and, in making that assessment, they enjoy a certain margin of appreciation (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-...). In cases concerning the press, the State's margin of appreciation is circumscribed by the interest of a democratic society in ensuring and maintaining a free press. The Court's task in exercising its supervisory function 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" (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52; *Jerusalem v. Austria*, no. 26958/95, § 33, ECHR 2001-II).

β. Application to the present case

49. In the instant case, the applicant's conviction was based on the expressions he used to describe J.P. - "an idiot", "a fascist" and "a member of the fascist movement". Bearing in

mind the difference between insult and defamation as two distinct criminal acts in respect of which the applicant had been found guilty, the Court shall nonetheless consider the case as a whole, given that the facts and the nature of the expressions used call for such an examination.

50. The Government argued in the first place that the applicant's expressions were statements of fact, which were untrue because in Serbia it would be unlawful to create a fascist movement. The domestic courts appear to have also based their conclusions to a large extent on this argument. The Court reiterates at this point that it has constant case-law distinguishing facts from value judgments, the latter not being as such susceptible of proof (see, for example, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 46; *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 63, Series A no. 204). The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it (see *Jerusalem v. Austria*, cited above, § 43).

51. As a preliminary remark, the Court observes that in previous cases it has found the generally offensive expressions "idiot" and "fascist" to be acceptable criticism in certain circumstances (see *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV; *Feldek v. Slovakia*, no. 29032/95, ECHR 2001-VIII). However, it must examine the specific circumstances of the present case as a whole in order to establish whether the applicant's criminal conviction on the basis of those expressions was proportionate to the legitimate aim it had pursued.

52. The applicant's statements must be seen in context. The applicant had reacted to certain controversial statements made by J.P. on public television concerning the existence and the history of national minorities in Vojvodina, a multi-ethnic region, 35% of whose population was non-Serbian, according to the 2002 census. This large minority was made up mostly of Hungarians, but also of Slovaks, Croats and others. In that interview, J.P. stated, *inter alia*, that "all Hungarians in Vojvodina were colonists" and that "there were no Croats in that region". Even though J.P. in no way relied on fascism as defined by the Serbian courts (see paragraph 18 above), it is understandable why the applicant, who himself had different political views, might have interpreted J.P.'s statements as implying a certain degree of intolerance towards national minorities. The fact that he considered it his duty as a journalist to react to such statements publicly is also understandable. Further, the Court considers that calling someone a fascist, a Nazi or a communist cannot in itself be identified with a factual statement of that person's party affiliation (see, *mutatis mutandis*, *Feldek v. Slovakia*, cited above, § 86).

53. In view of the above, the Court finds that the expressions used by the applicant cannot but be interpreted as value judgments, the veracity of which is not susceptible of proof. Such value judgments may be excessive in the absence of any factual basis but, in the light of the aforementioned elements, that does not appear to have been the case in the present application.

54. The Court further observes that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. However, even private individuals lay themselves open to public scrutiny when they enter the arena of public debate (see *Jerusalem v. Austria*, cited above, §§ 38-39). In the instant case the Court observes that J.P. appears to have been a well-known public figure, who had even at one point held public office (see paragraph 7 above). In any event, having published a book on a subject of wide public interest and having appeared on local television, he must have been aware that he might be exposed to harsh criticism by a large audience. He was therefore obliged to display a greater degree of

tolerance in this context (see, *mutatis mutandis*, *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports* 1997-IV, § 31-33).

55. Pursuant to the Court's longstanding practice, there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 46, ECHR 1999-VIII). In this connection, the Court observes that the discussion in the present case was clearly one of great public interest and the object of an ongoing political debate. This is supported by the fact that not only the applicant, but also many non-governmental organisations, political parties and some prominent public figures, also reacted to J.P.'s controversial television interview and the statements he made on that occasion.

56. It is true that in criticising J.P. the applicant used harsh words which, particularly when pronounced in public, may often be considered offensive. However, his statements were given as a reaction to a provocative interview and in the context of a free debate on an issue of general interest for the democratic development of his region and the country as a whole. Their content did not in any way aim at stirring up violence (see, *a contrario*, *Lindon, Otchakovsky-Laurens and July*, cited above, § 57). Moreover, Article 10 protects not only "information" or "ideas" that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb (see, among many other authorities, *Castells v. Spain*, 23 April 1992, § 42, Series A no. 236, and *Vogt*,cited above, § 52).

57. As to the reasons given by the domestic authorities when convicting the applicant, the Court observes that they limited their analysis to the fact that the forming of fascist movements in Serbia was prohibited by law and that the applicant's statements were therefore untrue. However, in adopting a narrow definition of what could be considered acceptable criticism, the domestic courts did not embark on an analysis of whether the applicant's statements could have been value judgments not susceptible of proof (see *Grinberg v. Russia*, no. 23472/03, § 28-30, 21 July 2005). They also failed to carry out an adequate proportionality analysis to assess the context in which the expressions had been used and their factual basis. Consequently, the Court concludes that the reasons adduced by the domestic courts cannot be regarded as "relevant and sufficient" to justify the interference at issue.

58. Lastly, the Court reiterates that when assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Cumpănă and Mazăre v. Romania*, no. 33348/96, 17 December 2004, §§ 111-124; *Sokołowski v. Poland*, no. 75955/01, § 51, 29 March 2005). In the instant case, regard must be had to the fact that not only was the applicant subject to a criminal conviction, but the fine imposed on him could, in case of default, be replaced by 75 days' imprisonment (see paragraph 22 above).

59. The foregoing considerations are sufficient to enable the Court to conclude that the criminal proceedings in the particular circumstances of the instant case resulted in a breach of the applicant's right to freedom of expression.

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

II.. ALLEGED VIOLATION OF ARTICLE 6 § 3 (b) OF THE CONVENTION

60. The applicant complained that he had not been afforded enough time to prepare his defence in the criminal proceedings. He relied on Article 6 § 3 (b) of the Convention, which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (b) to have adequate time and facilities for the preparation of his defence..."

Admissibility

61. The Government contested this argument. They submitted acknowledgments of receipt signed by the applicant for the hearings scheduled for 15 April and 23 September 2004, which he did not attend. They claimed that the applicant had been aware of the content of both private bills of indictment, because he had obtained the first one at the hearing held on 17 November 2003, while the second one had been served on him with the court summons on 15 April 2004. Furthermore, at the hearing held on 15 December 2004 the applicant was granted 30 minutes to consult with his lawyer and prepare his defence, but the lawyer stated that they were ready after only 20 minutes. The Government submitted that the court might have granted a further adjournment of the hearing had the applicant's lawyer requested it.

62. The applicant generally disagreed with these arguments, claiming that the service of the two court summons had been irregular, because it had occurred at his former place of employment.

63. The Court recalls that the "rights of defence", of which Article 6 § 3 gives a non-exhaustive list, have been instituted, above all, to establish equality, as far as possible, between the prosecution and the defence. Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court, and thus to influence the outcome of the proceedings. The provision is violated only if this is made impossible (see *Mayzit v. Russia*, no. 63378/00, §§ 78-79, 20 January 2005).

64. Turning to the present case, the Court observes that the applicant was duly informed about the charges against him in November 2003 and March 2004 respectively. He was at all times thereafter able to communicate freely with his lawyer with a view to preparing his defence prior to the hearing and the first-instance judgment of 15 December 2004.

65. The applicant complained in particular that he had been escorted by the police to the last mentioned hearing and was given only a limited time to consult his lawyer. However, given the above elements, as well as the fact that his lawyer declared his readiness to proceed before the expiry of the allotted time, the Court considers that the applicant was given sufficient time to prepare his defence.

66. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

69. The Government contested this claim.

70. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration resulting from the proceedings against him. Making its assessment on an equitable basis, the Court awards the applicant EUR 500, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant, who had been granted legal aid, made no further claims in respect of costs and expenses incurred before the Court. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning freedom of expression admissible and the remainder of the application inadmissible;

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, EUR 500 (five hundred euros) in respect of non-pecuniary damage, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Françoise Tulkens
Deputy Registrar President

BODROŽIĆ v. SERBIA JUDGMENT