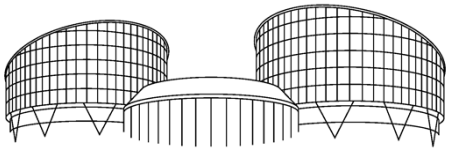

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MESIĆ v. CROATIA (No. 2)

(Application no. 45066/17)

JUDGMENT

Art 8 • Positive obligations • Private life • Dismissal of civil defamation action of a former President of Croatia about an article published on an Internet news portal suggesting his involvement in criminal activities during his term of office • Fair balance struck by domestic courts between competing Art 8 and Art 10 interests with regard to criteria laid down in the Court's case-law • Article concerned matter of public interest • Media's "watchdog" role assuming particular importance where investigative journalism was a guarantee that authorities could be held to account for their conduct

STRASBOURG

30 May 2023

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 Mesić v. Croatia (no. 2),

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having deliberated in private on 2 May 2023,

Having regard to:

the application (no. 45066/17) 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, Mr Stjepan Mesić ("the applicant"), on 20 June 2017;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning the right to respect for private life and to declare inadmissible the remainder of the application;

the parties' observations;

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

INTRODUCTION

1. The application concerns an article published on 17 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 involved in criminal activities in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria. The applicant 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 his private life guaranteed by Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1934 and lives in Pušća. He was the President of the Republic of Croatia between 19 February 2000 and 18 February 2010. He was represented by Mr Č. Prodanović, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

I. EVENTS GIVING RISE TO THE DISPUTE

A. Criminal proceedings in Finland

4. In 2013 the Finnish prosecuting authorities indicted three employees of the Finnish company Patria before Finnish courts, charging them with an aggravated form of the criminal offence of promising or giving a bribe, in relation to a procurement process for armoured vehicles for the Croatian army. The indictment suggested that one of the persons to whom the bribe had been offered or given was the applicant. On 28 June 2013 the Office of the Finnish Prosecutor General issued a press release written in English, the relevant part of which read as follows:

> "Former CEO and two other former employees of Patria Vehicles Oy, a subsidiary company of the Patria Group, will be facing charges of aggravated bribery in a case linked to the sale of Patria AMV-type armoured vehicles to the Republic of Croatia in 2007.
>
> ...
>
> The Finnish defendants are suspected to have participated in promising or giving bribes through intermediaries in exchange for actions of the President of the Republic of Croatia and [a] general manager of a Croatian State-owned company, who were considered to have leverage in the procurement procedure of the vehicles.
>
> The suspects are alleged to have promised and partly paid out bribes amounting to 5% of the selling price of the AMV-vehicles. In 2005 Patria Vehicles Oy offered AMV-vehicles to the Republic of Croatia at the price exceeding 350 million euros. In 2007 an agreement for purchase of a limited number of vehicles was concluded between Patria Vehicles Oy and the Republic of Croatia, Patria's share of the deal being more than 50 million euros.
>
> Afterwards Patria Vehicles Oy paid out 1.5 million euros, part of the alleged bribes, to an intermediary in Austria. Further money transfers in Austria raised suspicion of money laundering and corruption, and a joint investigation was launched by Finnish, Austrian and Croatian authorities.
>
> So far, the joint investigation has resulted in criminal charges in Finland, but still continues in Austria and Croatia.
>
> The Finnish prosecutors have filed an application for a summons at District Court of Kanta-Häme. The District Court is already hearing another case, where the same defendants are indicted for aggravated bribery. This case is connected to AMV-[vehicles] purchase between Patria Vehicles Oy and the Republic of Slovenia.
>
> All suspects have denied accusations against them.
>
> The trial documents remain classified until the first hearing of the case or until the District Court rules separately about the publicity of the documents."

5. In a judgment adopted on 16 February 2015, the Kanta-Häme District Court found the two accused employees of Patria guilty as charged and imposed a suspended sentence. Specifically, the court found them guilty of promising and giving a bribe to the director of a Croatian company which manufactured arms and vehicles (hereafter "the Croatian company") that had

been involved in the procurement procedure in question. The charges were dismissed in respect of the third accused.

6. As regards the applicant, the district court held:

> "In relation to lobbying, it must also be stated that the mere fact that Mesić was considered an important lobbying target does not in fact prove that he was promised or given a bribe.
>
> ...
>
> ... it has been proven that the [two] accused [who were convicted] promised 2% of the purchase price to [the director of the Croatian company]. On the other hand, [the identity of] the three VIPs mentioned in the documents who had each been promised 1% of the purchase price has not been established.
>
> ...
>
> Although Mesić's name appears in a number of messages ... the bribe given or promised to Mesić was not presented with enough evidence, from the point of view of the accusation."

7. Following an appeal, by a judgment of 17 February 2016, the Turku Court of Appeal overturned the first-instance judgment and acquitted the accused. It found no proof that they had promised any bribe to the director of the Croatian company, or that they had been aware of any such promises made by someone else. The applicant was not mentioned in the Turku Court of Appeal's decision. The prosecution decided not to appeal to the Supreme Court.

B. Events in Croatia

8. Meanwhile, a day after the adoption of the Kanta-Häme District Court's judgment (see paragraph 5 above), the president of Transparency International Croatia gave the following statement to the media regarding the findings of the Finnish court:

> "These are very serious accusations that deeply compromise not only Croatia, but also all those [public officials] who exercise their office honestly and transparently, guided above all by public and not individual interests.
>
> It is never too late to investigate such serious misconduct. In the interest of protecting Croatian national interests and honour, we need to investigate where that money really ended up, if not in Croatia, we need to find it.
>
> Given that the investigation mentioned prominent individuals who [were] high-ranking government [officials] at the time, a serious approach is even more necessary. It should be in [all] of their interests to really show that they did not misappropriate that money.
>
> No citizen should be above the law. The sense of responsibility of those who hold public office is the basis for creating trust in politicians and political institutions. The authorities responsible for sanctioning unacceptable conduct, primarily the State Attorney's Office and USKOK [the Croatian Office for the Prevention of Organised

Crime], must perform their work professionally, regardless of the individuals involved."

1. The impugned article

9. On 17 February 2015, that is, one day after the adoption of the first-instance judgment in Finland (see paragraph 5 above), a Croatian Internet news portal Dnevno.hr published an article about the Patria case and the above-mentioned criminal proceedings in Finland. The article suggested that the Finnish indictment accusing two Patria employees of promising or giving a bribe to the applicant and the director of the Croatian company, and the fact that the accused had been found guilty as charged, required the Croatian prosecuting authorities, namely the Office for the Prevention of Organised Crime (hereafter "USKOK"), to investigate the applicant's role in the matter and bring charges against him.

10. In the introductory part of the article, the author stated that in May 2014 he had had a telephone conversation with the Finnish Prosecutor General, who had confirmed that he had sent certain documents concerning the investigation conducted in Finland to the Croatian prosecuting authorities. Above the article there was an extract from a document written in Finnish, presumably an indictment, in which the applicant's name was mentioned several times.

11. The relevant part of the article read as follows:

"*As the Finnish Prosecutor [General] ... personally confirmed to me in a telephone conversation last May, they sent the documents to USKOK. They [also] sent them to us, and [those documents] clearly state that Stjepan Mesić received a bribe of 630,000 euros from people who have just been convicted of giving bribes.*

Therefore, the statement of USKOK, which states that 'no data, facts or evidence were obtained which would have given rise to a reasonable suspicion that officials or persons in positions of responsibility in Croatia [had] demanded or received bribes in connection with the business relationship with the Finnish company Patria' is an ordinary lie. If we received this information, and if [the Finnish Prosecutor General] personally confirmed to us by phone that [USKOK] had – at their own request! – had [the information] sent to them as well, and not only the [information] we have, but much more comprehensive [information], then someone must [stand trial]. Either Mesić and [the former Principal State Attorney of Croatia] are lying, as well as [the current Principal State Attorney of Croatia], who was then the director of USKOK, or [the Finnish Prosecutor General] is lying and the Finnish judiciary ... convicts innocent people! Because it is not possible to give a bribe without someone receiving it.

[The Finnish Prosecutor General] didn't say that only to us. He said the same ... to the journalists of *Globus*. I quote:

'Yes, former President Stjepan Mesić and a former director of [the Croatian company] are suspected of taking bribes from three managers of Patria'. That was in January 2013. 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] through Austrian intermediaries were sentenced to [terms of imprisonment of] one year and eight months for giving bribes for the sale of armoured vehicles to Croatia ...

[In reply to] our question about whether Stjepan Mesić's name was mentioned ... in the indictment, and [our comment] that Mesić was asking for an apology ... for that, [the Finnish Prosecutor General] told us ... 'It is true that it is mentioned. *If someone gave a bribe, it is clear that someone on the other side received it*. We believe that part of that money was promised to Stipe Mesić, *that he was the recipient of the bribe, but, I repeat, he has not been charged in Finland. The indictment against him should be lodged by the Croatian side*. We forwarded them the [relevant] information and documents', he told us.

...

Regarding the accusation, Mesić said 'I don't know who handled the money in Patria, I don't know the managers and I don't know who they gave the money to. All this is possible, but it has nothing to do with Croatia, that is, nothing to do with the President of the Republic, because the President is the supreme commander and has nothing to do with the procurement of any equipment or arms. The Ministry of Defence is in charge of that. There isn't a single reason to accuse me of anything here. But there are [people] in Croatia who would like to [implicate] me ...'

Let's recall that Mesić firstly denied that his name was even mentioned in the indictment, and later, when faced with the facts, said that everyone (except him) was lying and that [because] someone in Patria had embezzled the money, ... they were accusing him. It is interesting that when we ... pointed out to him that we had an indictment in which his name was expressly mentioned, he said that he did not believe anything we were saying ... '... such accusations come from media [sources] like yours, I don't believe anything you say anyway, and I won't deny anything you write', he told us.

This whole [mess] is based on two things. The first is that Mesić and the others claim that they are not and cannot be guilty, because the Finns did not even bring charges against them. 'We are not even accused', they say. The truth is that they are not and will not be, simply because they are not Finnish citizens [and] they have not committed any criminal offence in Finland, and, most importantly, in 2010 Finland, Austria and Croatia signed an international agreement on an international investigation team for the Patria case, *in accordance with which the [prosecuting authorities] of each country [are] obliged to prosecute [their respective] citizens whom the joint investigation finds have participated in the criminal activities in the Patria case*.

Therefore, emphasising that 'the Finns did not even accuse them' is pointless, because that is not their job, nor are they allowed to do so. The joint investigation undoubtedly established that Mesić and [the director of the Croatian company] participated in criminal activities, and therefore [the current and former Principal State Attorneys of Croatia], by systematically ignoring and not investigating the case, and by not lodging an indictment, are committing a criminal offence and violating an international agreement.

...

The second thing the accused point out is that the Finnish court did not prove that they were the ones who had received the bribe, which [the Finnish Prosecutor General] also confirmed. 'It was proven in court that one and a half million euros in bribes (out of a total of 3.7 million) was intended for the director of [the Croatian company]. The Finnish duo paid a bribe to [an] Austrian intermediary ..., who handed it over to another intermediary ... who kept part of the money. We reconstructed the agreement from the documents and messages they sent to each other, but beyond [the second intermediary] we could no longer follow the flow of money, and we have no evidence that [the director

> of the Croatian company] received any money' [the Finnish Prosecutor General] told the [daily newspaper] *Večernji List*. But the indictment also clearly describes [the second intermediary's] meeting with Mesić and [a] former Prime Minister, after which he informed Patria's managers that their support had been secured.
>
> The Finnish court obviously did not prove that, nor did it try to prove it at all, because it does not concern them – and it does not concern them because they did not even put Mesić on trial, and therefore they did not even have to prove anything about him. This, of course, does not mean that Mesić is not guilty, as he and the USKOK claim. But it means that the Croatian judiciary is obliged to try to prove that part of the indictment! However, Mesić will continue to manipulate [by using] this [and] by saying that no one has been accusing him of anything and that therefore he cannot even be guilty, and that his guilt has not been proven in Finland. He just forgets to mention that no one is investigating him, and no one is proving anything because the Croatian judiciary ... is a branch of [the former Yugoslav secret service]. That is why it will not be enough to put just Mesić on trial, but also those in the judiciary who have been protecting him ... for years." (original emphasis)

2. The applicant's request for correction

12. On 18 March 2015 the applicant requested, through an advocate, that the news portal Dnevno.hr publish a correction of the following three statements in the impugned article (see paragraph 11 above) which he considered to be false and injurious to his honour and reputation:

(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 [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".

13. The applicant 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 (see paragraph 5 above), and that he had not been promised a bribe or received any. He also stated that no one had contacted him to verify the statements in question before the publication of the article.

14. On 19 March 2015 the news portal Dnevno.hr replied that it would not publish a correction because it stood by the impugned statements. In an attachment to its reply, the news portal also enclosed a statement by the journalist who was the author of the article.

15. In that statement, the journalist submitted that the first of the impugned statements, which had been taken out of context by the applicant, was not his own, but a statement from the Finnish indictment which had resulted in the conviction for giving bribes. The accuracy of the second statement was evident from the indictment and the Kanta-Häme District

Court's judgment (see paragraphs 5-6 above). The accuracy of the third statement was indicated by the fact that the applicant's name was mentioned in the Finnish indictment, which had been the result of the joint investigation and had resulted in the convictions of the intermediaries and those who had given bribes.

16. The journalist also emphasised that the article had not contradicted the finding in the Finnish judgment that the two employees of Patria had not been found guilty of promising or giving bribes to the applicant (see paragraph 5 above). However, that was irrelevant because they had given the bribes to the two Austrian intermediaries, whose task had been to forward that money to the applicant and the director of the Croatian company involved in the procurement. The journalist claimed that, according to the Finnish judgment, those intermediaries had then reported back that the applicant's and the director's support had been secured. In this regard, the journalist also referred to the statement of Transparency International Croatia (see paragraph 8 above).

17. Lastly, the journalist pointed out that the fact that the applicant had not been indicted – whereas in all other States involved in the Patria case, indictments had been lodged and had resulted in intermediaries and those who had given and received bribes being convicted – was not proof of the applicant's innocence, but only fuelled public suspicion that the prosecuting and judicial authorities were under political influence.

II. CIVIL PROCEEDINGS FOR DEFAMATION

18. On 18 May 2015 the applicant brought a civil action in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against the company operating the news portal Dnevno.hr. He submitted that the three statements (see paragraph 12 above) in the impugned article were false because the Kanta-Häme District Court's judgment indicated that the two employees of Patria had not been convicted for promising or giving bribes to him (see paragraph 5 above). Those statements had breached his honour and reputation because he had been portrayed as a corrupt politician and a criminal. By publishing that article on its website, the news portal had made those false statements publicly available and accessible to a wide audience. The applicant sought 40,000 Croatian kunas (HRK), approximately 5,290 euros (EUR) at the time, as compensation for non-pecuniary damage sustained.

19. At a preliminary hearing on 1 September 2015 the applicant submitted a partial translation of the Kanta-Häme District Court's judgment, and in his accompanying submissions he drew the court's attention to the passages quoted in paragraph 6 above. He also enclosed a letter from the USKOK dated 29 December 2014 which informed the court that that office had taken a

number of investigative measures in the Patria case, but not against the applicant.

20. On 18 November 2015 a main hearing was held at which the court heard evidence from the applicant and the journalist who was the author of the impugned article.

21. The applicant stated that everything in the impugned article was a notorious lie, and that he had not been involved in the procurement procedure in question as the Ministry of Defence had been in charge of it. He submitted that at the time there had been a media campaign against him and that in October 2013 a journalist from the weekly news magazine *Globus* had had an article published in which she had said that she had spoken with the Finnish Prosecutor General, even though the Finnish embassy in Croatia had on 7 July 2014 stated that, beside the press release of 28 June 2013 (see paragraph 4 above), no other communication with the media had been documented by the Finnish prosecuting authorities. The applicant also stated that no one from the news portal in question had contacted him before the publication of the article.

22. The author of the impugned article stated:

> "I confirm that I am the author of the article published on the news portal Dnevno.hr, and that I obtained the information which is the subject matter of that article [from] various [other pieces of] information published by [the Croatian news agency] HINA and on the basis of a direct interview with the Finnish Prosecutor General, whom I called on the phone. His phone [number] was available online, and on that occasion [he] told me that an indictment had been lodged in Finland and that proceedings had been conducted on the basis of a joint investigation carried out by Austria, Croatia and Finland in the Patria case, whereby the indictment in Finland had been lodged against [Finnish] nationals who had given bribes, [and that] lodging further indictments against the other persons involved in the case was up to each country. [He also] told me ... that the indictment had been lodged and had charged Patria managers with giving bribes through intermediaries ... and that, in his opinion, someone had had to receive those bribes ..., probably [the director of the Croatian company] and Stjepan Mesić. Those were the names stated in the indictment. ... in addition to the telephone conversation, on which I made notes, [he] also emailed me ... the indictment in Finnish."

23. The author further stated that in the article he had not been accusing the applicant of a criminal offence, but had merely reported that in the Finnish indictment he had been suspected of such an offence. He also stated that he had not contacted the applicant before writing the article. However, when he was shown the part of the article suggesting otherwise, he changed his testimony and stated that it seemed that he had contacted the applicant after all.

24. Furthermore, the journalist testified that he was aware of the Kanta-Häme District Court's judgment, but that the judgment had not been adopted at the time he had written the article. At that time the judgment had not been important for him, as he had been writing about the indictment. Since he had not written about the judgment, he had not enquired about it. At the end of his testimony, the journalist stated:

"On the basis of the communication with the [Finnish Prosecutor General], ... from everything, I drew a conclusion that [the applicant] had participated in criminal activities, having regard to the information in the indictment relating to the giving of bribes, in which [the applicant] was mentioned several times."

25. In a judgment of 31 December 2015, the Zagreb Municipal Civil Court dismissed the applicant's claim and ordered him to pay the defendant HRK 3,750 (approximately EUR 490 at the material time) for the costs of the proceedings. The relevant part of that judgment reads as follows:

"What is disputed is ... whether the published information was accurate or sufficiently verified, and whether its publication caused harm to the plaintiff by breaching his ... reputation, honour and dignity.

... It is not disputed that the plaintiff was not charged in the proceedings [in Finland] ....

The plaintiff disputes the accuracy of the statements made in the article relating to the procurement procedure for military vehicles, pointing out that he had no role in it and that he did not receive any bribe or promise of a bribe.

However, since the defendant primarily argues that [the published information] is information ... reported from relevant sources, [the court in this case] should primarily determine whether the author of the article took all the necessary steps to verify its accuracy ...

...

The author of the article ... submits that he obtained the impugned information by consulting [the Finnish] indictment ... which was allegedly sent to him, and from his interview with the Finnish Prosecutor General ... It also appears from his testimony that the content of the indictment suggested that there were grounds for suspecting the plaintiff, although the plaintiff himself was neither suspected nor charged in the criminal proceedings [in Finland]. Therefore, this information was the basis for writing the impugned article.

By consulting the press release of the Office of the Prosecutor General in Finland of 28 June 2013, the court has found that [its] content supports the statements [in] the article. Specifically, that [press] release clearly states that the Finnish accused were suspected of participating in giving a promise of [a bribe] or giving a bribe through an intermediary in exchange for actions by the President of Croatia and [the director of the Croatian company], who were considered to have influence in the vehicle procurement procedure.

Thus, the [press] release directly mentions the office of the President of Croatia, [and] it is undisputed that the plaintiff held that office in the relevant period.

By that [press] release, the media were informed that a joint investigation had resulted in criminal charges being brought in Finland, but that the investigation was continuing in Austria and Croatia.

This court ... will not examine the accuracy of the published information with regard to the role and powers the plaintiff did or did not have in the procurement procedure for military vehicles, or the accuracy of the suspicions about [him] receiving a promise of a bribe or the bribe [itself], because that cannot be the subject of these proceedings. That is why the court has not assessed the part of the plaintiff's testimony in which he

contests the accuracy of the published information, because it is not relevant for these proceedings.

Examining the reliability and [the degree of] verification of the information ... in the impugned ... article, the court has found that it was proven by the content of the press release of the Finnish Prosecutor General's office, as well as by the content of the Finnish court's judgment, the translation of which was submitted by the plaintiff ...

Given that [the plaintiff] only submitted a translation of parts of the Finnish judgment (the original of which was presented to the court) and that the court did not see the full text of the judgment, the court has assessed that evidence having regard to the fact that the defendant did not object to the use of such evidence.

... it appears from the enclosed piece of evidence that the criminal proceedings in Finland were conducted on the basis of an indictment in which the plaintiff and another person [, the director of the Croatian company,] were mentioned by name .... The foregoing further supports the statements made by the author of the article ... that he consulted the Finnish indictment ... [T]his court considers the content of the Finnish judgment to be non-decisive for the dispute in question. In particular, it is undisputed that the plaintiff was not charged [by] the Finnish indictment, which was pointed out ... [in] the article itself. The author of the article used the content of the indictment as the source of grounds for suspicion in relation to the plaintiff, which motivated him to write [the article]. Since the plaintiff was not a participant in the criminal proceedings in Finland and [because] no decision was issued in respect of him regarding the criminal offence [in question], the plaintiff's argument that the author of the article was aware that the judgment had been adopted at the time of the publication of the impugned article is irrelevant.

[The publication of the article] was the disclosure of information that had been published in the media in Finland, and the author of the article, doing his job as a journalist, had the right to report such information, since the plaintiff is a public figure, and publishing such verified information is in the public interest and constitutes exercising the role of [a] journalist. The court has therefore found that the author of the article acted in good faith [and] on the basis of sufficiently verified information.

It should be noted that the plaintiff's presumption of innocence, guaranteed to him by the Constitution, was not called into question in any way by the publication of that information.

The enclosed letter from the USKOK confirming that no investigation measures were taken against the plaintiff in relation to the procurement of military vehicles from the company Patria is not relevant in these proceedings, because it does not prove anything."

26. The applicant then lodged an appeal against the first-instance judgment. He argued that it was evident that the impugned statements were false, that the author had not had a good reason to believe that they were true, and that he had not taken all necessary steps to verify their accuracy.

27. The applicant firstly challenged the municipal court's refusal to examine whether the impugned statements were false. He did so by arguing that their veracity was precisely what had to be examined under the relevant domestic law (see paragraph 36 above). He also strongly challenged the municipal court's finding that the content of the Kanta-Häme District Court's judgment and the journalist's knowledge of it at the time of writing the article

were irrelevant for the case. The article suggested that its author had been aware of that judgment but had nevertheless decided to publish the article and the impugned false statements, which meant that he had not acted in good faith.

28. Despite the Zagreb Municipal Civil Court's refusal to examine the accuracy of the impugned statements and its categorical finding that the Finnish judgment was irrelevant, that court had nevertheless examined that issue by holding that the press release of 28 June 2013 and the Finnish judgment indicated that those statements were true (see paragraphs 4-6 and 25 above). The municipal court's judgment had thus contradicted itself.

29. The applicant then contested the finding that the press release of 28 June 2013 and the Kanta-Häme District Court's judgment indicated that the three impugned statements were true. In particular, given their content, neither of those two documents could serve as evidence of the veracity of the statement that the joint investigation had undoubtedly established that the applicant had participated in criminal activities. Likewise, it could not have been argued that the letter from USKOK of 29 December 2014 was not relevant to the veracity of that statement. However, the first-instance court had held that USKOK's letter did not prove anything (see paragraphs 19 and 25 above).

30. The applicant further pointed out that the defendant had not furnished any evidence indicating that the author of the article had ever spoken to the Finnish Prosecutor General, and that in his testimony before the municipal court the journalist had admitted that he himself had drawn the conclusion that the applicant had participated in criminal activities (see paragraph 24 above). However, that conclusion had lacked any factual basis.

31. By a judgment of 19 April 2016, the Zagreb County Court (*Županijski sud u Zagrebu*) dismissed the applicant's appeal and upheld the first-instance judgment. The relevant part of that judgment reads as follows:

> "... the first-instance court correctly established that, in the present case, the conditions for exoneration from liability referred to in [section 21 of the Media Act] were met, since the author of the impugned article, by taking into account the information already published in other media, as well as other relevant sources (the telephone interview with the Finnish Prosecutor General, the Finnish indictment), presented accurate and verified information which constituted information of justified public interest, as the plaintiff is a public figure.
>
> In the view of the second-instance court ..., the author of the article acted in good faith on the basis of previously verified information, reporting the statement of the [Finnish] Prosecutor General and the words of the plaintiff himself, [and this] points to the objectivity of the text and does not call into question the plaintiff's presumption of innocence."

32. On 5 July 2016 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). Relying on Article 6 §§ 1 and 2 of the Convention and Article 28 and Article 29 § 1 of the Croatian Constitution (see paragraph 34 below), he argued that the civil

courts had breached his right to a reasoned judgment and his right to be presumed innocent. In so doing, in substance, he repeated the arguments raised in his appeal (see paragraphs 26-30 above) and added that the Zagreb County Court had not replied to any of those arguments. In his constitutional complaint, the applicant stated, *inter alia*, that because of false statements in the impugned article he had "suffered non-pecuniary damage in the form of a violation of the rights of personality, that is, the right to honour and reputation".

33. By a decision of 8 December 2016, the Constitutional Court dismissed the applicant's constitutional complaint. It found that the domestic courts had given sufficient reasons for their decisions, which were not arbitrary, and that the case did not disclose a breach of the applicant's constitutional right to be presumed innocent.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

34. The relevant Articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 28

"Everyone shall be [presumed] innocent and may not be considered guilty of a criminal offence until his [or her] guilt has been established by a final court judgement."

Article 29 § 1

"Everyone shall be entitled to have his or her rights and obligations, or [a] suspicion or accusation [against him or her in respect] of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law."

Article 35

"Everyone shall be guaranteed respect for, and the legal protection of, his [or her] personal and family life, dignity, reputation and honour."

Article 38

"(1) Freedom of thought and expression shall be guaranteed.

(2) Freedom of expression shall include, in particular, freedom of the press and other media, freedom of speech and [the freedom] to speak publicly, and the free establishment of all media institutions.

(3) Censorship shall be forbidden. Journalists shall have a right to freedom of reporting and access to information.

(4) ...

(5) The right to [demand a] correction shall be guaranteed to anyone whose rights guaranteed by the Constitution or by statute have been breached by information in the public domain."

II. RELEVANT LEGISLATION

35. The relevant provisions of the Constitutional Court Act, as amended by the 2002 Amendments (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/99 and 29/02) which entered into force on 15 March 2002, read as follows:

Section 62(1)

"Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision of a State authority, local or regional government, or a legal person invested with public authority, on his or her rights or obligations, or as regards a suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms ... guaranteed by the Constitution ('constitutional right[s]') ..."

Section 65(1)

"A constitutional complaint shall contain ... an indication of the constitutional right alleged to have been violated, [together] with an indication of the relevant provision of the Constitution guaranteeing that right ..."

Section 71(1)

"... [t]he Constitutional Court shall examine only the violations of constitutional rights alleged in the constitutional complaint."

36. The relevant provisions of the Media Act (*Zakon o medijima*, Official Gazette, no. 59/04 with subsequent amendments), which entered into force on 1 January 2006, read as follows:

Liability for damage
Section 21

"(1) A publisher who causes damage to another person by publishing [certain] information in the media shall be obliged to compensate [that person], except in the cases provided for in this Act.

...

(4) The publisher shall not be liable for damages if the damaging information:

...

– was based on accurate facts or facts which the author had good reason to believe were accurate and [if the author] took all necessary measures to verify their accuracy, and there was a justified public interest in the publication of that information, and if it was acted on in good faith."

37. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, no. 35/05 with subsequent amendments), which has been in force since

1 January 2006, is the legislation governing contracts and torts. In accordance with that Act, courts are entitled to award compensation for non-pecuniary damage caused, *inter alia*, by injury to one's reputation and honour. The relevant provisions of that Act are set out in *Mesić v. Croatia,* no. 19362/18, § 25, 5 May 2022.

III. OTHER DOCUMENTS

38. The relevant part of the Code of Ethics of Croatian Journalists (*Kodeks časti hrvatskih novinara*, of 27 February 1993, applicable at the material time, reads as follows:

> "5. A journalist is bound to publish accurate, complete, and verified information. ...
>
> 6. In all journalistic contributions, as well as in comments and polemics, the journalist is bound to respect the ethics of public speaking and the culture of dialogue, and to respect the honour, reputation and dignity of the persons or groups in relation to whom he or she is engaging in polemics. When reporting on topics on which there are different relevant points of view, and especially when accusatory allegations are made, the journalist shall try to present all these points of view to the public.
>
> ...
>
> 17. When reporting about judicial proceedings, the constitutional principle of the presumption of innocence of the accused and the dignity, integrity and sensitivity of all parties to the dispute should be respected.
>
> ...
>
> 29. If inaccurate or substantially incomplete information or information that in some other way is in breach of this Code is published in an edition of a newspaper, [or in a] radio or television programme or electronic publication, anyone who is directly or indirectly actually or potentially harmed by the publication of that information has the right to [demand a] correction."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained that that by dismissing his civil action for compensation, the domestic courts had failed to protect his reputation as part of his right to respect for his private life. He relied on Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) The Government

40. The Government submitted that the applicant had not exhausted domestic remedies, because in his constitutional complaint he had not relied on Article 8 of the Convention or Article 35 of the Croatian Constitution (see paragraphs 32 and 34 above). Instead, he had complained of a violation of his right to a fair hearing and a violation of his right to be presumed innocent.

41. In that way, contrary to the principle of subsidiarity, the applicant had not provided the Constitutional Court with an opportunity to decide on the alleged violation of Article 8 of the Convention. Had he relied on Article 8 of the Convention or the corresponding Article of the Constitution, the Constitutional Court would have examined the substance of his grievances concerning the alleged breach of his right to reputation, and would have carried out the required balancing exercise between the need to protect that reputation and the news portal's freedom of expression. In support of this, the Government furnished several examples of decisions in which the Constitutional Court had done so, and in which the complainants had relied on Article 35 of the Constitution in their constitutional complaints.

(b) The applicant

42. The applicant replied that he had, in substance, raised his complaint under Article 8 of the Convention before the domestic courts. It was obvious that the subject-matter of the civil proceedings for compensation and of the subsequent proceedings before the Constitutional Court had been a breach of his rights of personality, namely his right to reputation. From the content of his constitutional complaint, it was evident that he had, in substance, raised the same grievances concerning the violation of his right to reputation which he had subsequently raised in his application to the Court. His constitutional complaint had been drafted in a professional manner and had provided the domestic courts with a reasonable opportunity to remedy that violation. He had therefore done everything that could reasonably have been expected of him to exhaust domestic remedies.

43. As regards the case-law examples provided by the Government (see paragraph 41 above), the applicant pointed out that some of them were not relevant, *inter alia*, because they concerned complaints of a breach of the right to freedom of expression. In all other cases provided by the Government in which the complainants had complained of a breach of their right to reputation and relied on Article 8 of the Convention and/or Article 35 of the Constitution, the Constitutional Court had dismissed their constitutional complaints in a cursory fashion, without undertaking any balancing exercise

between the respective rights and interests. The applicant therefore averred that even if he had explicitly relied on Article 8 of the Convention and/or Article 35 of the Constitution, his constitutional complaint would not have had any prospect of success.

2. The Court's assessment

44. The Court firstly notes that section 65(1) of the Constitutional Court Act requires complainants to indicate in their constitutional complaints the constitutional right which has allegedly been violated, as well as the relevant provision of the Constitution guaranteeing that right. Likewise, section 71(1) of the same Act provides that the Constitutional Court may examine only violations of the constitutional rights alleged in the constitutional complaint (see paragraph 35 above). It is evident that the applicant, in his constitutional complaint, did not rely on Article 8 of the Convention. Nor did he rely on Article 35 of the Croatian Constitution, which is the provision that arguably corresponds to Article 8 of the Convention. Instead, he referred to Article 28 and Article 29 § 1 of the Constitution, which are the provisions that correspond to Article 6 §§ 1 and 2 of the Convention (see paragraphs 32 and 34 above).

45. However, as the Court has noted in a number of cases against Croatia, the rule that the Constitutional Court may examine only violations of the constitutional rights alleged in the constitutional complaint is not absolute (see *Lelas v. Croatia*, no. 55555/08, § 49, 20 May 2010, and *Žaja v. Croatia*, no. 37462/09, § 69, 4 October 2016). In those cases, the Court held that it was clear from the Constitutional Court's practice that it was not always necessary for persons lodging a constitutional complaint to refer to the relevant Articles of the Constitution, as sections 65(1) and 71(1) of the Constitutional Court Act might suggest (see paragraph 35 above). Sometimes it was sufficient for a violation of a constitutional right to be apparent from the complainant's submissions and the case file (ibid.).

46. Therefore, while it is true that in his constitutional complaint the applicant did not explicitly rely on Article 8 of the Convention or the corresponding provision of the Constitution, he did argue that untrue allegations in the impugned article had violated his right to honour and reputation (see paragraph 32 above).

47. This means that the way in which the applicant expressed his grievances before the Constitutional Court leaves no doubt that the same complaint was subsequently submitted to the Court (see paragraphs 26-30 and 32 above and compare with the applicant's arguments summarised in paragraphs 51-54 below; and contrast with *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013). Therefore, by raising the same issue in substance at domestic level, the applicant provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of

the Convention, namely to put right the violations alleged against them (see *Glasenapp v. Germany*, 28 August 1986, §§ 44-46, Series A no. 104; *Lelas*, cited above, §§ 45 and 47-52; and *Žaja*, cited above, § 71).

48. Lastly, the Court reiterates that the protection afforded under Article 6 § 2 of the Convention may overlap with that afforded by Article 8 (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 94, ECHR 2013, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 314, 28 June 2018). That is why the inapplicability of Article 6 § 2 did not prevent the Court, in earlier cases, from taking into account the interests sought to be protected by that Article when carrying out the balancing exercise under Article 8 of the Convention (see, for example, *A. v. Norway*, no. 28070/06, §§ 46-47, 9 April 2009, and *Mikolajová v. Slovakia*, no. 4479/03, § 44, 18 January 2011).

49. It follows that the Government's objection as to non-exhaustion of domestic remedies must be rejected.

50. The Court further notes that this 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

51. The applicant submitted that the three statements in the impugned article (see paragraph 12 above) suggesting that the joint investigation had undoubtedly established that he had participated in criminal activities and had received a bribe were factual statements which had seriously tarnished his reputation and discredited him in the eyes of the public by portraying him as an immoral person and a criminal. Because of those statements, he had been exposed to mockery by the public and by various State officials. For example, one member of parliament had stated "Stipe Mesić ... clearly aims to get his hands on State money, as he has been doing so far. However, I would advise him to try and go to Finland to seek compensation, if he can!"

52. Those defamatory statements had been false, which was evident from the content of the first-instance criminal judgment in Finland against the two Patria employees that had been adopted one day before the publication of the impugned article (see paragraphs 5-6 and 9 above). The journalist who had written the article must have been aware of that judgment, because in the article he had mentioned that the two Patria employees had just been convicted (see paragraphs 11 above). However, that journalist had not even attempted to check the content of the Finnish judgment before writing the article. That meant that, contrary to the ethics of journalism, he had not acted in good faith or taken all the necessary steps to verify the accuracy of the

defamatory statements in question. The seriousness of those statements had meant that the highest possible degree of verification had been required before their publication.

53. In the subsequent civil proceedings for defamation, the domestic civil courts had *de facto* confirmed those false statements by holding that they had been accurate and reliable (see paragraphs 25 and 31 above). In that way, those courts had failed to comply with not only their positive obligations to ensure the effective protection of his right to respect for his private life, but also their negative obligation under Article 8 of the Convention.

54. What is more, the civil courts' decisions had been arbitrary, in that the Zagreb Municipal Court had considered the first-instance Finnish judgment irrelevant, and the Zagreb County Court had not even addressed the applicant's argument that the author of the article must have been aware of that judgment's content (see paragraphs 25-31 above). Therefore, it could not have been argued that those courts had struck a fair balance between his right to respect for his private life and the right of the media to freedom of expression.

(b) The Government

55. The Government submitted that the impugned article had not constituted an attack on the applicant's honour and reputation but had conveyed verified information on a matter of public interest. In any event, the publication of the article in question had not caused any actual prejudice to the applicant's private life or political career, as it was understood that for Article 8 to come into play, an attack on a person's reputation had to attain a certain level of seriousness (see paragraph 62 below).

56. The Government further submitted that the domestic courts had undertaken a balancing exercise in conformity with the criteria laid down in the Court's case-law (see paragraph 70 below) and had struck a fair balance between the applicant's right to respect for his private life on the one hand, and the right of the media to freedom of expression and the public interest on the other. Their decisions could not be considered arbitrary or manifestly unreasonable. Thus, there were no strong reasons for the Court to substitute its view for that of the domestic courts.

57. In particular, those courts had examined (i) whether the factual statements made in the impugned article had constituted information on a matter of public interest; (ii) whether those factual statements had been sufficiently verified by the journalist prior to their publication; and (iii) whether the journalist had acted in good faith (see paragraphs 25, 31 and 33 above).

58. The Government endorsed the findings reached by the domestic courts. The article in question had concerned the alleged corruption of the former President of Croatia in the procurement of armoured vehicles for the Croatian army, that is, a matter of public interest. In that connection, the

Government emphasised that the extent of acceptable public criticism was greater in respect of politicians or other public figures, like the applicant, than in respect of private individuals (they cited *Petrina v. Romania*, no. 78060/01, § 40, 14 October 2008, and *Caragea v. Romania*, no. 51/06, § 25, 8 December 2015).

59. As regards the method of obtaining the information and its veracity, the Government firstly referred to the Court's case-law, according to which the protection of journalists' freedom of expression was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (they cited *Narodni List d.d. v. Croatia*, no. 2782/12, § 58, 8 November 2018). In the present case, the author of the article had obtained the information from several previously published articles, and he had verified that information in a telephone interview with the Finnish Prosecutor General, from whom he had also obtained the indictment in which the applicant had been mentioned. The author had also asked the applicant for comment and had published his reply. That was why the domestic courts had held that the factual statements in the impugned article had been sufficiently verified and published in good faith (see paragraph 25, 31 and 33 above). The applicant's arguments challenging their findings were of a fourth-instance nature.

60. For these reasons, the Government argued that there had been no violation of Article 8 of the Convention in the present case.

2. The Court's assessment

(a) General principles

61. The Court reiterates the principles it has established in its case-law concerning the protection afforded by Article 8 to the right to reputation as part of the right to respect for private life (see, among other authorities, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-99, ECHR 2012; *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-84, 7 February 2012; and *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007). The Court has already ruled that a person's reputation, even if that person is criticised in the context of a public debate, forms part of his or her personal identity and psychological integrity and therefore also falls within the scope of his or her private life (see *Pfeifer*, § 35, and *Petrie v. Italy*, no. 25322/12, § 39, 18 May 2017). The same considerations apply to a person's honour (see *Sanchez Cardenas v. Norway*, no. 12148/03, § 38, 4 October 2007, and *A. v. Norway*, cited above, § 64).

62. In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 137, ECHR 2015; *Medžlis*

Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina [GC], no. 17224/11, § 76, 27 June 2017; and *A. v. Norway*, cited above, § 64).

63. The Court further reiterates that freedom of the press fulfils a fundamental and essential function in a democratic society. 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 (see, for example, in the context of Article 8 of the Convention, *Kaboğlu and Oran v. Turkey*, nos. 1759/08 and 2 others, § 66, and, in the context of Article 10 of the Convention, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III).

64. In particular, where judicial cases or criminal investigations are concerned, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or among the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them (see, for example, *SIC - Sociedade Independente de Comunicação v. Portugal*, no. 29856/13, § 58, 27 July 2021).

65. However, the protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide "reliable and accurate" information in accordance with the ethics of journalism. Freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations. Also, of relevance for the balancing of competing interests which the Court must carry out is the fact that under Article 6 § 2 of the Convention individuals have a right to be presumed innocent of any criminal offence until proved guilty (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI).

66. Nonetheless, reporters and other members of the media must be free to report on events based on information gathered from official sources without having to verify them (see *Selistö v. Finland*, no. 56767/00, § 60, 16 November 2004, and *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 51, 2 October 2012).

67. The Court has also acknowledged that distorting the truth, in bad faith, can sometimes overstep the boundaries of acceptable criticism: a correct

statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind. Thus, the task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously. That is especially so where a media report attributes very serious actions to named persons, as such "allegations" comprise the risk of exposing the latter to public contempt (see *Kaboğlu and Oran*, cited above, § 67, and the cases cited therein).

68. In cases of the type being examined here, the main issue is whether the State, in the context of its positive obligations under Article 8, has achieved a fair balance between an individual's right to protection of reputation and the other party's right to freedom of expression guaranteed by Article 10 of the Convention (see *Von Hannover (no. 2)*, cited above, § 98, and *Pfeifer*, cited above, § 38). In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention or under Article 10. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 91, ECHR 2015 (extracts)).

69. When exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see, among other authorities, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 164, 27 June 2017). Where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic courts (see *Bédat v. Switzerland* [GC], no. 56925/08, § 54, ECHR 2016, with further references).

70. The Court has indicated various relevant criteria for balancing the right to respect for private life against the right to freedom of expression (see, among other authorities, *Axel Springer AG*, cited above, §§ 89-95; *Von Hannover (no. 2)*, cited above, §§ 108-113; and *Couderc and Hachette Filipacchi Associés*, cited above, § 93). In the circumstances of the present case, the Court finds it appropriate to consider the following applicable criteria: the contribution to a debate of general interest, how well known the applicant was, and the method of obtaining the information and its veracity.

(b) Application of the above principles to the present case

71. The Court notes that the three statements in the impugned article suggested that the joint investigation had undoubtedly established that the

applicant had participated in criminal activities and had received a bribe (see paragraph 12 above). The Court agrees with the applicant that those statements, portraying him as a criminal, were capable of seriously tarnishing his reputation and discrediting him in the eyes of the public. The impugned article was published on the website of the web portal Dnevno.hr and was thus available to a wide public readership. In these circumstances, and having regard to its case-law on the matter (see, for example, *White v. Sweden*, no. 42435/02, § 19, 19 September 2006; *A. v. Norway*, cited above, § 67; and *Travaglio v. Italy* (dec.), no. 64746/14, § 26, 24 January 2017), the Court considers that the statements in question attained the requisite level of seriousness so as to cause prejudice to the applicant's rights under Article 8 of the Convention.

72. The Court further notes that in examining the case, the domestic courts had regard to the relevant criteria laid down in the Court's case-law for balancing freedom of expression with the applicant's rights under Article 8 of the Convention. In particular, they took into account whether the article in question had contributed to a debate on a matter of public interest, how well known the applicant was, and assessed the method of obtaining the information and its veracity (see paragraphs 69-70 above).

73. The article suggested that the findings of the Finnish prosecuting and judicial authorities called for further investigation in Croatia into the possible corruption of the former President of Croatia – a public figure *par excellence* – in the procurement process for military vehicles for the Croatian army. It would appear that the opinion of the author of the article was also shared by the Transparency International Croatia (see paragraph 8 above).

74. The Court therefore finds, as the domestic courts did (see paragraphs 25 and 31 above), that the impugned article undoubtedly concerned a matter of public interest, and reiterates that there is little scope under the Convention for restrictions on debate on such matters (see, for example, *Kaboğlu and Oran v. Turkey (no. 2)*, no. 36944/07, § 67, 20 October 2020, and *Kılıçdaroğlu v. Turkey*, no. 16558/18, § 52, 27 October 2020). The "watchdog" role of the media assumes particular importance in such a context, where investigative journalism is a guarantee that the authorities can be held to account for their conduct.

75. In this connection the Court also reiterates that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance (see, for example, *Eon v. France*, no. 26118/10, § 59, 14 March 2013). These considerations apply even more so to the present case as the applicant was not an ordinary politician but a head of State. Moreover, like in *Eon*, the impugned article did not target the applicant's private life (ibid., § 57) but referred to his conduct in the exercise of his official duties.

76. Turning to the content of the impugned article, the Court finds that, to be properly understood, the domestic courts' findings must be seen in the light of the fact that they examined the article as a whole rather than reviewing the three impugned statements in isolation (compare *Marcinkevičius v. Lithuania*, no. 24919/20, § 85, 15 November 2022). For the Court, this approach seems justified. In the given circumstances, the three statements**,** which can be seen in the context as describing the results of the investigation, cannot be disassociated from the rest of the article, in particular the last two paragraphs, from which a careful reader may discern that the allegation mentioned in the indictment that the applicant was a recipient of bribes was not established for lack of evidence (see paragraph 11 above). Therefore, the press release of 28 June 2013 and the Kanta-Häme District Court's judgment did indeed indicate that the article as a whole had a sufficient factual basis, as the domestic courts established (see paragraphs 4-6 and 25 and 31 above).

77. The Court further notes that the impugned article did not state that "[the applicant] received a bribe of 630,000 euros from people who have just been convicted of giving bribes", as the applicant suggested (see paragraph 12 above), but that this had been stated in the documents sent to the author of the article by the Finnish Prosecutor General (see paragraphs 10-11 above). This means that the journalist in question was only reporting what was stated in those official documents, and he made it clear that this statement was not his. The applicant did not argue that those documents did not contain such a statement.

78. Furthermore, the Court finds nothing inaccurate in the statement "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 [terms of imprisonment of] one year and eight months for giving bribes for the sale of armoured vehicles to Croatia" (see paragraphs 11-12 above). From the press release issued by the Finnish Prosecutor General, it appears that the two employees of Patria were indicted for promising or giving bribes in exchange for actions by the President of Croatia, among other people (see paragraph 4 above). Moreover, it is evident that the two Patria employees were convicted by the Kanta-Häme District Court on 16 February 2015 (see paragraphs 5-6 above), it being understood that their subsequent acquittal by the Turku Court of Appeal is of no relevance because it occurred after the publication of the impugned article (see paragraphs 7 and 9 above).

79. As regards the third statement, suggesting that the joint investigation had undoubtedly established that the applicant had been involved in criminal activities (see paragraphs 11-12 above), the Court reiterates that the rather categorical character of that statement is significantly weakened, if not even contradicted, by the last two paragraphs in the impugned article (see paragraph 76 above). Thus, while the author of the article should have chosen his words more carefully, it cannot be said that, having regard to the

article as a whole and those two paragraphs in particular, he unambiguously stated that the applicant participated in criminal activities. It would indeed be difficult to argue that, after reading the two paragraphs in question, any reader would still be under the impression that the applicant was "undoubtedly" engaged in such activities. As stated above (see paragraph 76), that statement, in the context of the article, rather referred to the reasons why the applicant was mentioned in the indictment.

80. As already noted above (see paragraph 65), in the cases such as the present one, the right of the media to inform the public and the public's right to receive information come up against the equally important right of the applicant to the presumption of innocence and protection of his private life (compare *Bédat*, cited above, § 55). However, in that regard it is important to emphasise that under the Court's case-law (see *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 46, ECHR 2002-I; and *Brosa v. Germany*, no. 5709/09, § 48, 17 April 2014) the degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by journalists when expressing opinions on matters of public concern (see paragraph 74 above).

81. The foregoing considerations are sufficient to enable the Court to conclude that there are no strong reasons to substitute its view for that of the domestic courts, which struck the requisite fair balance between the applicant's right to respect for his private life and the right of the news portal to freedom of expression. Therefore, it cannot be said that those courts failed to discharge their positive obligation under Article 8 of the Convention to ensure effective respect for the applicant's private life, in particular, his right to respect for his reputation.

82. There has accordingly been no violation of that Article in the present case.

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 8 of the Convention.

Done in English, and notified in writing on 30 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kūris joined by Judge Ilievski is annexed to this judgment.

A.B.
H.B.

DISSENTING OPINION OF JUDGE KŪRIS, JOINED BY JUDGE ILIEVSKI

1. The present judgment is evidence not only, as the saying goes, that hard cases make bad law, but that bad law may be made in even seemingly easy cases. For what, it seems, could be easier than to state what has until now been considered obvious – that no one should be accused of having committed a criminal activity where there is no conviction by a court – especially where there is a court judgment wherein it is explicitly spelled out (in whatever words) that, on the basis of the case as examined by the court, no inferences may be drawn that the individual in question has participated in a criminal activity.

However, this judgment goes in the opposite direction: such an accusation *is* apparently possible, and is justified under the Convention.

To wit, this judgment sets *a very low standard* for the protection of personality rights. In fact, it *declines* to protect these rights, as it *fails to strike a balance* between the rights enshrined in Article 8 of the Convention as juxtaposed with those enshrined in Article 10.

In my opinion, this has occurred because many important factual circumstances of the case have been overlooked or misinterpreted.

I

2. The applicant, Mr Stjepan Mesić, is a former President of Croatia. It would therefore be reasonable to expect that, compared with most people, he has much greater possibilities to defend himself in the court of public opinion, which, as needs no reminder, is not bound by evidentiary rules and procedural constraints. For the purposes of this opinion, however, the applicant's former or current status is completely irrelevant, because my objections to the majority's findings as set out below concern not only and not so much the instant applicant's situation but rather various hypothetical situations, which cannot currently be foreseen but in which other persons may be *subject to trial, not by court, but by media*. If the approach taken in this judgment is followed in these cases, such trial by media may be found to be acceptable by domestic courts and, moreover, this finding, if challenged, may subsequently be endorsed by the European Court of Human Rights. For this is exactly what has happened in the instant case.

Without speculating as to whether or not there was anything blameworthy or otherwise objectionable in the applicant's conduct when the impugned arms procurement for military vehicles took place, I shall focus on what is, in my opinion, the main fault in this judgment, namely, the fact that the majority are ambiguous about the applicant's conviction by media as concerns his non-conviction by any court in either Croatia or Finland and even with regard

to the absence of criminal charges and his explicit exoneration by the Finnish court.

In my firm belief, no one, whether a public figure or an ordinary person, a "man on the street", so to speak, can be left to the mercy of trial (let alone conviction) by media. No one. Never ever. Under no circumstances. And if that happens (which indeed happens rather too often), the courts – and certainly the Strasbourg Court – must not indulge such encroachments on personality rights.

3. It should be stated from the outset that, as a matter of principle, when exercising their professional and civic duty to inform the public, the media should not be prevented from reporting on criminal activities (blatant or alleged), not only once these have been established in court, but also before that point and thus while they are still subject to requalification or even disavowal. The Court's case-law on the media as a "public watchdog" is so rich and well-known that there is no need to reiterate it here. Censorship on media reporting of investigations into criminal activities prior to their completion would run counter not only to the media's rights, but also to the very core of freedom of expression and to the public interest; any limitations on media reporting of an ongoing criminal investigation can be justified only by especially weighty reasons (related, for instance, to the need to protect the secrecy of the investigation).

However, the instant case does not concern any ongoing investigation. It concerns an investigation which, when the impugned article was published, had been already completed and with regard to which a court judgment had been adopted, even if it had not yet become final. Moreover, no limitations had been placed on media reporting about the allegedly improper arms procurement for military vehicles; on the contrary, the author of the impugned article had obtained the relevant information directly from senior prosecutorial authorities in Finland and was therefore fully entitled to share that information with the public.

4. In cases involving reporting on alleged criminal activities which have not been confirmed by a final court judgment, what makes the difference is whether journalists exercise the requisite discretion and circumspection in their reporting, that is, whether they avoid using wording which creates an impression that the guilt of the person in question has been already established beyond doubt, even if that person's case has not yet been decided by a court. It is true that greater leniency is normally permitted in assessing media statements than statements by the authorities. All the same, that greater leniency must not be understood as being limitless. The prudence and fairness which dictate the media's relative self-restraint are not only ethical precepts governing the profession of journalist, but also a legal obligation under the Convention. This obligation stems from, *inter alia*, Article 6 § 2 (which consolidates the presumption of innocence), Article 8 (which affirms the right to respect for private and family life), and Article 10 (which, while enshrining

freedom of expression, explicitly mentions the "duties and responsibilities" entailed in the exercise of the rights comprising that freedom). In the Court's case-law, the "duties and responsibilities" entailed in the exercise of freedom of expression have been dubbed "responsible journalism". The concept of responsible journalism, like many other jurisprudential concepts, is developed on a case-by-case basis.

The further the tenets of responsible journalism are departed from, the closer we are to trial by media and to neglect of personality rights. There is no need to perorate on the fact that trial by media, where not preceded by conviction in a courtroom, is the exact opposite of responsible journalism and, *per extensionem*, of the rule of law. No court can ever turn a blind eye to it, let alone attempt to justify it.

5. It is striking that the notion of responsible journalism *does not* feature in the majority's reasoning, as though it had never been coined at all. This is surprising in itself, because, as I believe, there can hardly be too much emphasis placed on this underlying legal, professional and ethical principle in a case like this one, especially in the era of fake news. This omission on the majority's part, or, rather, their reluctance to use, even if *à propos*, the notion of responsible journalism, is even more bewildering in view of the fact that the respondent Government themselves referred in their submissions to the "tenets of responsible journalism" although they limited themselves to citing a Court judgment which, despite its many merits, would not appear to be the most outstanding in this regard, namely, *Narodni list v. Croatia* (no. 2782/12, § 58, 8 November 2018; see paragraph 59 of the present judgment).

Still, even the *Narodni list* judgment outlines the crux of the principle of responsible journalism. Namely, the relevant paragraph states that journalists must "act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism" (ibid, § 58). Thus, some key terms are there, in particular "good faith" and "accurate and reliable information". On closer inspection, this paragraph of *Narodni list* refers to paragraph 72 of *Bédat v. Switzerland* ([GC] no. 56925/09, 29 March 2016), in which, remarkably, responsible journalism is not actually mentioned. Responsible journalism is indeed mentioned in *Bédat*, albeit not in paragraph 72 but in paragraph 50, which states not only that journalists must "act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism", but also that the "concept of responsible journalism is not confined to the contents of information which is collected and/or disseminated by journalistic means" but "also embraces the lawfulness of the conduct of a journalist"; it also states that the "fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly". The latter statement has been transposed from *Pentikäinen v. Finland* ([GC], no. 11882/10, § 90, ECHR 2015), duly referred to in

paragraph 50 of *Bédat*. Turning to the *Pentikäinen* judgment, its paragraph 90 refers to several earlier judgments by the Court, which were available in 2015 and in which various aspects of the concept of responsible journalism had been already developed.

The development of the concept of responsible journalism did not stop with *Pentikäinen*, *Bédat* or *Narodni list*. A very recent example would be *NIT S.R.L. v. the Republic of Moldova* ([GC] no. 28470/12, 5 April 2022), in which the Court, citing its earlier case-law (some of it from the 1990s), reiterated its principled stance that the "protection of the right of journalists to impart information on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism ..., or in other words, in accordance with the tenets of responsible journalism" (§ 180). In view of this steady trend, it was hardly to be expected that the principle of responsible journalism could be so drastically departed from, in fact thwarted in the instant case. Alas, the present judgment *runs counter to* the Court's case-law on the matter and effectively *reverses* the gradual "unwrapping" of the manifold facets of responsible journalism.

6. The facet of responsible journalism which would be most relevant to the instant case is to be found in *Kącki v. Poland* (no. 10947/11, § 52, 4 July 2017), where it is postulated that "[r]esponsible journalism requires that the journalists check the information provided to the public to a reasonable extent". There, "standards of journalistic diligence" are also underlined.

Although the present judgment does not cite *Kącki*, it nevertheless contains a passage where this principled position is mirrored, at least to a certain extent. Namely, paragraph 69 reiterates (with references to the Court's established case-law) that "distorting the truth, in bad faith, can sometimes overstep the boundaries of acceptable criticism", because a "correct statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind", therefore, the "task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously", especially "where a media report attributes very serious actions to named persons, as such 'allegations' comprise the risk of exposing the latter to public contempt". Regrettably, this important elucidation is only mentioned in the "General principles" section and then completely neglected in the subsequent section, in which these general principles are – or, rather, should be – be applied.

Indeed, hardly anyone would argue that it is not coincidental that Article 10, which enshrines freedom of expression – against which personality rights, including the right to privacy, have to be balanced – is the only article of the Convention which explicitly mentions "duties and responsibilities".

7. It was therefore only natural to expect that, having reiterated the Court's principled stance on responsible journalism (even without using this term), the majority would examine and assess whether the author of the article complained of by the applicant had not "qualified" what may have been a "correct statement" by his own "additional remarks", "value judgments", "suppositions" or "insinuations" , which would be "liable to create a false image in the public mind". If such "qualification" was present, this would mean that the impugned article was a manifestation of journalism which was anything but responsible.

8. In *Kącki*, the Court found a violation of Article 10 in respect of the journalist, who had been found criminally responsible at domestic level for the defamation of a politician. Among several points on which a violation of Article 10 was found was the fact that the journalist had not published his own statements, but those made by a third person in an interview; in addition, the text of the interview had been sent to the politician in question in advance to ascertain whether that third person's statements had been accurately cited and, possibly, to make corrections, but the text had been returned to the journalist without any comments or corrections. In these circumstances the Court held that a journalist could not always be reasonably expected to check all the information provided in an interview, and that there was "no reason to doubt the good faith of the journalist in the instant case".

9. The "plot" of the present case is entirely different from that of *Kącki*. Some of the impugned statements were the author's *own* statements, and where they reproduced statements from the Finnish Prosecutor General, the author "qualified" them with his own remarks and judgments. Also, although at some point the author did contact the applicant, it appears that he would not consider it problematic if the person concerned was not contacted at all (see paragraph 23, on the fact that the author of the article did not initially remember whether "they", whoever the plural might include, had contacted the applicant). I surmise that for an impartial reader it would not be easy to shake off the impression that the contact with the applicant prior to publication of the article had been a mere formality or (I do not speculate which of the two would be worse) that it was intended only to obtain a quotation which, irrespective of what the applicant would say on the matter, could be dismissed as "pointless" (see paragraph 11, citing the impugned article, in which the word "pointless" is used this dismissive manner).

10. The Government claimed that the author of the article had obtained the information from several previously published articles and that he had verified it in a telephone interview with the Finnish Prosecutor General. There is no doubt about this point. Indeed, it was the Finnish Prosecutor General from whom the author obtained the indictment in which the applicant was mentioned. Moreover, according to the Government, the author had asked the applicant for comment and had "published his reply" (see paragraph 59). The Government did not comment on the fact that the "publication of the reply"

had been accompanied by the dismissive word "pointless", or the fact that the news portal had rejected the applicant's request for the correction of three statements (see paragraph 14).

However, what is central in this case is not wherefrom the author of the article had obtained the information in question, but what he made of that information for the purposes of his article and how he presented it to the public.

11. Whereas in *Kącki* the domestic (Polish) court which convicted the journalist held that "in the light of the journalist's right to publish critical comments an individual's right to legal protection of good name and reputation should also be taken into account", notwithstanding the fact that the impugned statement had not been that of the journalist himself but of a third person whom the journalist had interviewed, and the fact that the politician in question had been given a chance to rebut the statements in the forthcoming publication but had not seized it, in the instant case the impugned statements were the author's own words or they served as a basis for the author's own remarks and judgments, and the author attached virtually no importance whatsoever to anything that the applicant would say regarding the accusations against him.

That notwithstanding, the domestic courts assessed the impugned article as one which had been based on "sufficiently" or "previously" verified information and found that its author had acted in good faith (see paragraphs 25 and 31). In corroborating the stance of the domestic courts, the Government also maintained that they "had held that the factual statements in the impugned article had been sufficiently verified and published in good faith" (ibid.).

The majority appear to be of the same opinion.

I am not.

II

12. Before turning to my disagreement with the majority's assessment of the merits of the case, I must devote a few paragraphs to those points on which I agree with them. As will be seen, on certain points I do not agree one hundred per cent, so I rather should say that I concede.

13. The majority have upheld the applicant's claim that the impugned statements could seriously tarnish his reputation and discredit him in the eyes of the public. At the same time, they note that the domestic courts "had regard" to the criteria laid down in the Court's case-law for balancing freedom of expression with the applicant's rights under Article 8 of the Convention, such as whether the article in question had contributed to a debate on a matter of public interest and how well known the applicant was. In the Government's argument, the domestic courts had assessed the method

of obtaining the information and its veracity (see paragraphs 71 and 72 of the judgment).

Very good. But here's the rub. The majority is circumspect enough to use the words "had regard", not "had due regard". However, regard which is not due is (please forgive me for this sounding like the infamous pejorative employed in American partisan debates) nothing but RINO, that is, "regard in name only". In fact, due regard was not had to the above-mentioned principles as underlined in *Kącki*.

14. Another point where I do not depart in essence from the majority's views is that the impugned article was aimed at prompting further investigation in Croatia into possible corruption on the part of the former head of State in the procurement process for military vehicles (see paragraph 73). This we do not know for sure (because, at least in theory, there might also have been other motives), but the benefit of the doubt lies with the journalist (it appears that the view that such an investigation would be desirable was shared by Transparency International Croatia; see paragraphs 8 and 73). If the aim of the journalist was such as the majority hold, it was absolutely legitimate; there is no doubt that the publication, as such, concerned a matter of public interest (see paragraph 74).

15. It is also true that the impugned statements did not target the applicant's private life but referred to the exercise of his official duties, and that the applicant, who had been the Head of State, "la[id] himself open to close scrutiny of his every word and deed by both journalists and the public at large" and had to "display a greater degree of tolerance" (see paragraph 75).

16. Yet another point on which I agree with the majority is that "to be properly understood, the domestic courts' findings must be seen in the light of the fact that they examined the article as a whole rather than reviewing the three impugned statements in isolation" (see paragraph 76). In other words, what may matter is *not only the text but also the context* – textual analysis must be supplemented by *contextual analysis*, which in certain instances is indispensable. Here, the majority refers to the recent judgment in *Marcinkevičius v. Lithuania* (no. 24919/20, § 85, 15 November 2022), predicated on this methodological stance, which the majority call "justified" (see paragraph 76). In that case the Court, relying on *Morice v. France*, [GC] no. 29369/10, § 156, 23 April 2015) reiterated the importance of "reading each statement in context". The applicant in *Marcinkevičius* was not a journalist but a person who had expressed his views via a media outlet. He complained before the Court under Article 10, alleging a violation of his freedom of expression. The Court undertook to balance the rights under Articles 8 and 10. As a result, it did not uphold the domestic (Lithuanian) courts' findings that the impugned statements – of which, as in the instant case, there were three – were all statements of fact which were not based on facts, in other words, they were all "not true". To wit, the Court, having

performed contextual analysis, held that one statement had been a value judgment, which was defendable under the Convention, and found a violation of Article 10 on that account.

Here I have to make a broader comment, because while I do not object to the invocation of contextual analysis as such, I am not satisfied with *how* it has been relied on in the instant case. I shall come back to this issue in due course, so what is presented here are only some general considerations on the methodology itself.

The *distinction between statements of fact and value judgments* is often palpable, evident and clear-cut. But at times this distinction does not lend itself to easy definition (regarding the difficulties of drawing this distinction, see, among many authorities, *Kwiecień v. Poland*, no. 51744/99, 9 January 2007; *Morice v. France*, cited above, and the cases cited in its § 126; and *ATV Zrt v. Hungary*, no. 61178/14, 28 April 2020). In *Marcinkevičius* the Court not only (once again) drew the said distinction, but also examined whether the value judgment in question was defendable (or justifiable) under the Convention. It was for the purpose of ascertaining that defendability that the Court invoked the contextual analysis. Indeed, in the Court's case-law the "reading [of] each statement in context" is invoked for no other purpose than to ascertain whether an impugned statement, which is *not a statement of fact but a value judgment*, has a *sufficient factual basis*. For if it is not a value judgment but a statement of fact, there is no sense in speaking of any "sufficient factual basis", because – in order to be defendable – a statement of fact simply has to be *true*. Plainly and simply: a statement of fact is either true or it is not; it cannot, by definition, be "sufficiently true", whereas a value judgment can be – that is, if it is not completely true, it may still be "not made-up " and found to rely on some set of facts, even if these are not adequately perceived and interpreted, and in this sense it can have a "sufficient factual basis". The Court has held on numerous occasions that, while the existence of facts can be demonstrated, value judgments are not susceptible of proof (see, among many authorities, *McVicar v. the United Kingdom*, no. 46311/99, § 83, 7 May 2002, and *Lingens v. Austria* [Plenary] no. 981582, § 46, 8 July 1986, Series A no. 103).

Therefore, in order to reach a conclusion as regards the defendability (justifiability) under the Convention of a value judgment, the Court must examine and assess a specific statement in the context of the article or other impugned text "as a whole rather than reviewing [it] in isolation". But contextual analysis, if it is invoked, does not preclude the examination of a concrete statement for what it represents in and of itself, and does not allow for textual examination to be replaced by contextual examination of the given statement. The text "as a whole" provides the context in which a specific statement has been placed, but the defendability of the entire text on the basis of its examination "as a whole" does not allow for that statement to be worded in *any* terms. The methodological stance discussed here does not imply that,

once a "justifying" context has been established, the Court may leave aside the examination of the statement in question itself. The examination of the text "as a whole" is not intended to overshadow, let alone dispense with, the assessment of concrete impugned statement. It is an additional tool for reaching a conclusion regarding a specific statement. It is one of the keys but not a master-key.

If context matters so much (an approach with which I agree in principle), then the citation from *Marcinkevičius* must also be seen in *its* context. That context is that, ultimately, the Court, having examined the three impugned statements "in the light" of the interview "as a whole", found that one of these statements was a value judgment which had a sufficient factual basis, even if it may not have represented a proven fact.

I will spare myself the time- and effort-consuming task of citing the Court's abundant case-law pointing in precisely this direction. For that, one can consult the *Guide on Article 10 of the European Convention on Human Rights*. All of the relevant cases discussed therein where the "sufficient legal basis" criterion was invoked by the Court for ascertaining whether certain statements had violated an individual's personality rights, concerned value judgments exclusively (this expression does not appear in the *Guide on Article 8 of the European Convention on Human Rights*).

17. The majority conclude that the "article as a whole had a sufficient factual basis, as the domestic courts established" (see paragraph 76 of the present judgment). But they do not stop there, for it would be a fallacious deduction to conclude that, once the "article as a whole" has met the "sufficient factual basis" criterion, the same criterion has been met by every single statement. It is thus only logical that the majority have attempted to examine, at least to a certain extent, not only the "article as a whole" (which "had a sufficient factual basis"), but also the three impugned statements – each on its own merits.

As we shall see, "merit", in the common sense of the word, is indeed something which one of these statements contains little of.

18. I have no qualms in subscribing to the assessment that the first two of the impugned statements, like the article "as a whole", did indeed have a sufficient factual basis, because they did not imply that the applicant was involved in criminal activity, but merely informed the public that his name had been mentioned in relation to criminal activity in the indictment issued by the Finnish prosecutors against other persons (see paragraphs 77 and 78).

But beyond this point, that is, regarding the assessment of the third statement, I respectfully disagree.

III

19. It is high time to move from the context to the text. I shall return to the context of the impugned third statement in due course.

But now let us remind ourselves of the wording of the third impugned statement, which has been so easily vindicated by the majority in a single paragraph, that is, paragraph 79. I believe that this statement deserves more.

20. The statement in question was worded in the following way: "the joint investigation *undoubtedly* established that Mesić participated in criminal activities" (see paragraphs 11 and 12; emphasis added).

How blunt. Every word – like a lash, a stripe, a dagger, a shot, a bullet, a bomb. The joint investigation. Undoubtedly. Established. That. Mesić. Participated. In criminal activities.

Let no one be lulled by the verb "participated". It is a euphemism, a thinly disguised veneer for the word "committed". To say that a person "participated in criminal activities" means nothing other than to state that he or she "committed a criminal offence", and maybe more than one.

It is noteworthy that, as regards the third statement, the majority acknowledge that the "author of the article should have chosen his words more carefully" (see paragraph 79). This bitter characterization suggests nothing else but than that there must be very weighty reasons which would allow the given statement to be somehow exonerated under the Convention.

21. And yet the author of the impugned statement had maintained in the domestic court proceedings that "he had not been accusing the applicant of a criminal offence, but had merely reported that in the Finnish indictment he had been suspected of such an offence" (see paragraph 23).

Such ratiocinations as this should be dismissed in the same way as, for example, flat-earthers' "theories". A judicious judicial body should not state that "it cannot be said that, having regard to the article as a whole and [the last] two paragraphs in particular, [the author] *unambiguously* stated that the applicant participated in criminal activities", or that "it would indeed be difficult to argue that, after reading the two paragraphs in question, any reader would still be under the impression that the applicant was '*undoubtedly*' engaged in such activities" (see paragraph 79; emphasis added).

Where is the "difficulty" with which "any reader" would be faced?

I see no "difficulty" whatsoever. The author writes "undoubtedly", the majority "unambiguously". But "undoubtedly" means "unambiguously", doesn't it? Nothing can be asserted "undoubtedly" and, at the same time, not "unambiguously", because both these words, at least when used to state that someone has committed a certain action, signify the same thing – that the action in question, "sure as can be", was committed by that person. Dictionaries suggest a broad spectrum of synonyms for these words: "assuredly", "beyond question", "categorically", "conclusively", "decidedly", "definitely", "exactly", "for sure", "indeed", "of course", "on the nose", "positively", "precisely", "really", "sure as hell", "surely", "the very thing", "truly", "unconditionally", "unmistakably", "unquestionably", and so on.

22. To conclude, the third statement is an *accusation*, plain and simple. It is a *statement of fact* – and it was deliberately couched in terms that defy its interpretation as a value judgment.

23. It remains to be ascertained whether there were any legally established facts on which the impugned third statement was based.

IV

24. The domestic courts considered that the article in question had been based on "sufficiently" or "previously" verified information and that the author had acted in good faith (see paragraphs 25 and 31).

25. The majority appear to be convinced by this argument. They state that "the press release of 28 June 2013 and the Kanta-Häme District Court's judgment did indeed indicate that the article as a whole had a sufficient factual basis, as the domestic courts established" (see paragraph 76).

I take this conclusion with a considerable pinch of salt. The wording of the said press release was quite circumspect. It did *not explicitly state* that the applicant was suspected of taking a bribe, only that the "Finnish defendants [were] suspected to have participated in promising or giving bribes through intermediaries in exchange for actions [by] the President of the Republic of Croatia and [a] general manager of a Croatian State-owned company, who were considered to have leverage in the procurement procedure [for] the vehicles" (see paragraph 4). In addition, contrary to the assertion that "[i]f someone gave a bribe, it is clear that someone on the other side received it" (see paragraph 11), and that that "someone" could be no one other than the applicant, it is quite possible that even if the money did change hands, the hands "on the other side" were not necessarily the applicant's. For have we not heard of cases where the money stays with the intermediary, although the bribe-giver is confident that it will go all the way to the intended recipient?

But let it ride. I turn to other points.

26. As already shown, it does not stem from the assessment that the article "as a whole" had a "sufficient factual basis" that each and every impugned statement had such a basis. The vindication of the third statement begs the question: what could its factual basis be?

27. It is undisputed that the "article as a whole" had a "sufficient factual basis" for asserting that an indictment had been issued in Finland, in which the applicant was mentioned, and that this mention had not been favourable, to say the least. To the extent that the author (or other media outlets) informed the public of this fact, this may be assessed as being beyond reproach under the Convention. The majority, basing themselves on the contextual analysis, conclude that the first two impugned statements meet this threshold, and I reiterate that I agree with this conclusion.

28. But was there a "sufficient factual basis" which would allow the author to announce *urbi et orbi* that "it was undoubtedly established that Mesić ... participated in criminal activities"?

The answer is an emphatic *no*.

There is no bridge between the "sufficient" veracity of a reference to an individual in the indictment, let alone an indictment issued against other persons, and the veracity of the statement that the given individual "participated in criminal activities". This is a *non sequitur*. One may be referred to as a person who "participated in criminal activities" only when there is a court judgment by which that person is convicted. Incidentally, this is known as the *presumption of innocence*. As there exists abundant case-law by the Court on this matter, it would be too tedious to explore this topic any further. Only one remark: the majority rightly state that "under the Court's case-law the degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by journalists when expressing opinions on matters of public concern" (see paragraph 80). This does not mean that the said "degree of precision", which "ought to be observed by journalists" is *zero*. If a journalist makes a statement of fact, there must still be *some* factual basis for it.

29. If the third statement could not be based on the indictment, could it be based on the judgment of the first-instance court, namely the Kanta-Häme District Court, adopted on the eve of the article's publication? This is not an irrelevant question, because the author was clearly aware that the judgment had been adopted (even if it is not clear to what extent he had apprised himself of its content). I shall not speculate on the relationship between the times of the judgment's adoption and the article's publication. I merely note that the latter was published immediately after the Kanta-Häme court had delivered its judgment. Those convicted by the first-instance court were subsequently acquitted on appeal, but these acquittals occurred long after the publication and cannot be taken into consideration for the purpose of assessing whether the requisite basis existed at the time of publication. In this regard, the majority rightly note that the "subsequent acquittal ... is of no relevance because it occurred after the publication of the impugned article" (see paragraph 78). The judgment of the first-instance court is a different matter, because the author was aware of it (even if not in full detail). This is clear from his observation that certain persons "have just been convicted of giving bribes" and that "[i]t was proven in court that one and half million euros in bribes" was intended for certain intermediaries, except that (as one would surmise, regrettably) he and some unnamed other person (he referred to himself and that other person or persons cumulatively as "we") were unable to establish an actual link between the bribes and the applicant (see paragraph 11). At the same time, the author maintained that his awareness of the Kanta-Häme court's judgment was irrelevant, because the

"judgment had not been adopted at the time he had written the article" and it "had not been important for him, as he had been writing about the indictment" (see paragraph 24).

I shall deal with these arguments later. What is important in ascertaining whether the third statement could be based on the Kanta-Häme court's judgment is that, when the applicant asked the news portal on which the article had been published to publish a correction of the three impugned statements, the author maintained that the "article had not contradicted the finding in the Finnish judgment that [two persons] had not been found guilty of promising or giving bribes to the applicant", because in any case "they had given the bribes to the two ... intermediaries, whose task had been to forward that money to the applicant and [another person]", and "those intermediaries had then reported back that the applicant's and [that other person's] support had been secured" (see paragraph 16).

The latter explanation does not withstand any scrutiny.

30. Firstly, not only had the applicant *not been convicted* in the case decided by the Kanta-Häme court, but that court attempted to *dispel any suspicion* that he might have "participated in criminal activities". It stated that "the mere fact that Mesić was considered an important lobbying target does not in fact prove that he was promised or given a bribe". It also stated that "[a]lthough Mesić's name appears in a number of messages ... the bribe given or promised to Mesić was not presented with enough evidence, from the point of view of the accusation" (see paragraph 8).

One would reasonably expect that a professional journalist who writes about matters legal knows that whatever is in the indictment may not only be confirmed but may also be dismissed by a court. This is letter A in the ABC for those writing on criminal-law matters. Once there has been a conviction by a court judgment, the indictment, which was a "prelude" to that conviction, loses any force that it might have had as regards the alleged guilt of the persons mentioned in it. What matters is the court's judgment.

31. Secondly, the Kanta-Häme court's judgment was not final (incidentally, it never became final).

One would reasonably expect that a professional journalist who writes about matters legal knows that first-instance court judgments, at least in criminal cases, do not become final immediately, on the day of adoption. This is letter B in the ABC for journalists writing on law-related matters.

32. Thirdly, the judgment was delivered by a court of first instance. A year later the appellate court acquitted those who had been convicted by the first-instance court. The prosecution did not appeal against that judgment. The appellate court did not mention the applicant in its judgment (see paragraph 7).

Although, as mentioned, that subsequent acquittal may not be taken into consideration in assessing whether the requisite factual basis existed at the time of publication, the possibility of acquittal on appeal may and must be

taken into consideration. One would reasonably expect that a professional journalist who writes about matters legal knows that there is always a possibility of appeal against a first-instance judgment in a criminal case. This is why many judgments by first-instance courts do not become final, at least in their initial form. This is letter C in the ABC for journalists writing on law.

33. If a journalist is aware of a court judgment that may disprove his opinion that someone "participated in criminal activities", it is highly unprofessional and irresponsible to write about that judgment as though it confirmed his opinion. It is no less unprofessional and irresponsible to assert that the judgment is "not important" for the purposes of writing on these matters.

A couple of rhetorical questions. First: how, if at all, does the reliance on the indictment, rather than the court judgment, and the obstinate defiance of the latter's findings correspond to paragraph 17 of the Code of Ethics of Croatian Journalists (as applicable at the material time), under which, when reporting about judicial proceedings, *inter alia*, the presumption of innocence of the accused should be respected (see paragraph 38)? Second: how does it meet the tenets of responsible journalism? These questions could have been answered very easily in this judgment, had the principles underlined in *Kącki* (cited above) not been passed over in silence. The same goes for such yardsticks as "distortion of the truth", "additional remarks", "suppositions", "insinuations" or a "false image in the public mind", rightly mentioned by the majority in the "general principles" section but then not applied.

34. To sum up, nothing in the Kanta-Häme court's judgment could be understood as facts which would support the third impugned statement, which was the statement of fact.

35. Here comes the most interesting part.

As already explained, in the Court's case-law the contextual analysis of a statement, where it is examined in the light of the text "as a whole" rather than "in isolation", is a tool for vindicating statements which on the surface may appear to be statements of fact, but which prove in a specific context to be value judgments. Thus, in *Morice* (cited above) the Court "[took] the view that, in the circumstances of the case, the impugned statements were more value judgments than pure statements of fact, in view of the general tone of the remarks and the context in which they were made, as they reflected mainly an overall assessment of the conduct of the investigating judges in the course of the investigation". Having established that it considered that "[i]t thus [remained] to be examined whether the 'factual basis' for those value judgments was sufficient" (§§ 156 and 157) and having performed a most thorough contextual analysis, the Court found a violation of Article 10. In a similar vein, in *Marcinkevičius* (cited above), the Court stated that it "acknowledged that, when read on its own and understood in its literal sense, such phrasing would give a strong indication of the impugned statement amounting to a statement of fact", but after a thorough contextual analysis

concluded that "the use of the word 'obvious', when read together with the applicant's other statements and the article as a whole, was not sufficient to demonstrate that the sentence in question amounted to a statement of fact" (*Marcinkevičius*, cited above, § 85). On that basis a violation of Article 10 was found.

What can one make of this? In order to proceed with contextual analysis the Court first must establish that the statement in question is a not a statement of fact but a *value judgment*. This is a *precondition*. For if the statement in question is not a value judgment, but rather a statement of fact, it must be based on established facts and not on a much more vague "sufficient factual basis", the criterion reserved for the assessment of value judgments.

36. The catch is that in the instant case the majority *have not undertaken the assessment of whether the third impugned statement is a statement of fact or a value judgment*. It has already been shown that this statement is nothing other than a statement of fact. But in the present judgment this most important issue has been *completely left aside*. The expression "statement of fact" does not appear once in the entire judgment. And the expression "value judgment" appears only once – in paragraph 67, in the "General principles" section, but it is *not mentioned further*, where the general principles are – or, rather, should be – applied.

This is telling in itself.

V

37. With regard to the statement in question, while, as already mentioned, the majority acknowledge that the author "should have chosen his words more carefully", they hold at the same time that the "rather categorical character of that statement is significantly weakened, if not even contradicted, by the last two paragraphs in the impugned article" (see paragraph 79).

This reliance on the contextual criterion in order to vindicate a statement of fact is nothing short of an attempt to introduce a fundamentally new methodological approach.

38. But let us suppose that they are right: in other words, that, notwithstanding the Court's well-established case-law, it may still be permissible in certain circumstances to conclude that a statement of fact, in order to comply with the Convention, may be based upon a "sufficient factual basis", a criterion so far applicable only to value judgments? After all, the *Guide on Article 10*, as indicated in the disclaimer on its front page, is "[p]repared by the Registry" and "does not bind the Court". Be that as it may, the Court's case-law is an evolving body of jurisprudence, so why not initiate an interesting evolution in the present case? Leaving aside the fact that any "evolution" undertaken in this case would require it to be examined by the Grand Chamber and not by a Chamber, I dare to maintain that the departure

from the Court's case-law embarked on in this case could not be undertaken in these specific circumstances.

This brings us back to examination of the presumed contextual support – or rather, as we shall see, the lack thereof – for the statement in question.

39. The majority find justification for the impugned third statement in the last two paragraphs of the article. There, the author expressed his opinion that, with regard to the applicant, the Kanta-Häme court had not proven that the applicant was the person who had received the bribe, but established that the intermediary had met the applicant, after which the former had informed his counterparts that the latter's support had been secured. The author also stated that the Finnish court had not even tried to prove that the applicant was guilty of taking a bribe, but this did not mean that he was not guilty. In the author's view, responsibility for proving such guilt lay with the Croatian judiciary, but they were not fulfilling this obligation. The author also predicted that the applicant would "continue to manipulate" by relying on the fact that he had not been accused of anything by anyone. Further citations follow below.

In the majority's assessment, these considerations represent a context which vindicates the third impugned statement.

Do they?! Indeed?!

40. The majority's interpretation of the last two paragraphs is that they help to avoid the impression that the impugned third statement meant that the applicant was "'undoubtedly' engaged in criminal activities", because that statement, read in the context of these two paragraphs, only "referred to the reasons why the applicant was mentioned in the indictment" (see paragraph 71).

Did they?! Indeed?!

41. Contrary to the majority's reading, these last two paragraphs of the article are *not innocent at all*.

42. Firstly, the author did not call on the Croatian authorities (judiciary) simply to investigate the suggestion that there had been something fishy about the procurement in question. He stated that Croatian judiciary were *obliged to try to prove the applicant's guilt*. No less. For the author, there could be *only one* acceptable result of such an investigation. *Secundum non datur.* Go and do it, quickly. The author issued a command. He knew in advance what the right result should be. And he supplemented his command by the speculative prediction that, until the Croatian judiciary proved "that part of the indictment", the applicant would "continue to manipulate ... by saying that no one [had] been accusing him of anything".

43. Secondly, the reason why the Croatian judiciary were, in the author's opinion, not fulfilling their "obligation" was that they were a "branch" of the "former Yugoslav secret service". Any evidence for that assertion? Oh no, why bother with such trifles: the applicant knew it – and that had to be enough, *dovoljno*.

44. Thirdly, as the Croatian judiciary were not doing what they were obliged to do, it was not only Mr Mesić who ought to be put on trial, but also "those in the judiciary who [had] been protecting him ... for years." If "any reader" read the article "as a whole", he or she could not but notice that the author elsewhere asserted (in a statement no less categorical than the others) that the current and former Principal State Attorneys of Croatia were "systematically ignoring", "not investigating the case", "not lodging an indictment" against Mr Mesić and thereby were "committing a criminal offence and violating an international agreement".

45. One would find more such statements in the truly magnificent last two paragraphs, as well as in the entire article. But even those cited here more than suffice to make an objective assessment about who, in this version of "responsible journalism", has the final say on matters both factual and legal. To argue with such statements would amount to giving them an importance which they do not deserve. Although the author (like anyone who issues condemnations regardless of what has been established by the courts) is fully entitled to think of the Croatian judiciary in that way, the Court should not give credit to such an outlandish breed of conspiratorial generalisations. Not only do statements such as those cited above, so abundant in the last two paragraphs, not whitewash the impugned third statement, but they themselves would require a search for contextual justification (in the article or in the author's other statements), and I am not convinced this would not be an impossible mission.

Take, for example, the categorical declaration that the Croatian judiciary is a "branch" of the "former Yugoslav secret service". It is not "weakened" or "contradicted" but rather corroborated by the author's statement that the fact that the applicant had not been indicted (in Croatia) "was not proof of [his] innocence, but only fuelled public suspicion that the prosecuting and judicial authorities were under political influence" (see paragraph 17). Likewise, the assertion that the applicant's hypothetical denial of his "participation in criminal activities" (on the basis that "no one [had] been accusing him of anything") would constitute "continued manipulation" on his part is not "weakened" or "contradicted" but rather strengthened by the assertion that the fact that two individuals "had not been found guilty of promising or giving bribes to the applicant... was irrelevant because they had given the bribes to the ... intermediaries" (see paragraph 16), in spite of the court's unequivocal explanation that "the mere fact that Mesić was considered an important lobbying target does not in fact prove that he was promised or given a bribe". Here the same logic is used as in the old joke about the mayor who bragged that his city had wireless phones a thousand years ago, providing as evidence the fact that archaeologists had not found any wires in that area.

46. More generally, the majority maintain that the impugned statements "can be seen in the context as describing the results of the investigation" and

therefore "cannot be disassociated from the rest of the article, in particular the last two paragraphs, from which a careful reader may discern that the allegation in the indictment that the applicant had been a recipient of bribes was not established for lack of evidence" (see paragraph 76). This applies to the third statement as much as to the first two.

I, too, am a "reader", but perhaps I have not been "careful" enough, for I (also) "discern" something else, not merely that the article "described the results of the investigation" and that "the allegation ... that the applicant was a recipient of bribes was not established for lack of evidence".

47. For instance, I "discern" that, although the author was aware (even if not in full detail) of the judgment of the Kanta-Häme court, he chose to flout – or, rather, distort and misrepresent – it, because, firstly, the "judgment had not been adopted at the time he had written the article" and, secondly, it "had not been important for him, as he had been writing about the indictment".

One could choose to comment on these two "iron arguments" (which would require a rich imagination to be seen as a demonstration of good-faith and responsible journalism) in the same way as Stephen King's Poke (from *The Stand*) used to comment on almost anything: "Do you believe that happy crappy?".

But let us nevertheless look into them.

48. The first "iron argument" is unpretentiously false. The author wrote that some people had been convicted, and referred to the court's judgment. Thus, his article was written or at least completed after he learned about the judgment. Consequently, the article was not about the indictment or at least not about the indictment alone. It did not merely "[describe] the results of the investigation" but falsely implied that what had been in the indictment had been confirmed by the court.

49. As regards the second "iron argument", it also does not hold water. Just imagine a journalist who claims that he "had been writing about the indictment", on the basis of which, in his own words, he had already "[drawn] a conclusion that [the applicant] had participated in criminal activities" (see paragraph 26). Then he learns that a court judgment has been adopted, by which that indictment could be either upheld or rejected (in full or in part). However, he decides that this judgment is "not important for him", because he already has reached his own conclusion. This is as if a doctor is "not interested" in whether his preliminary diagnosis has been confirmed or refuted by lab tests and other medical research.

"Not important" – is this not the quintessence of *irresponsible journalism*?

50. As a "reader" who has not been "careful" enough, I also "discern" that the majority's finding, to the effect that the article did not claim that "the allegation ... that the applicant was a recipient of bribes was not established for lack of evidence", requires clarification. The Kanta-Häme court's judgment may indeed be read as positing a "lack of evidence". But nowhere in the impugned article – either in the last two paragraphs, or elsewhere – was

there even a hint dropped as to a "lack of evidence" *in the legal sense*, that is, a "lack" that would explain why the applicant was not found in the judgment to have been a bribe-taker. Instead, the author asserted that it would be "pointless" to consider the fact that "the Finns did not even accuse [the applicant]", because "that [was] not their job" (see paragraph 11). While the Kanta-Häme court found that it was not "proven that [the applicant] was promised or given a bribe" (see paragraph 8), the "lack of evidence" dealt with in the article (including the last two paragraphs) was established not by that court but by the author of the article and whoever assisted him: he confessed that "they" had not traced the "flow of money" to anyone in Croatia, including the applicant (see paragraph 11). Thus, the "lack of evidence" about which the author wrote was not evidence in the legal sense, which the prosecution had failed to gather, but evidence in the non-legal sense, which the author and whoever assisted him had not gathered.

51. To sum up, the last two paragraphs do not, as the majority maintain, "weaken" (let alone "significantly"), or "contradict" the "rather categorical character of [the third] statement". Quite the contrary, they *support, corroborate and strengthen* that statement. They are *not mitigating but aggravating*. The fundamentally new methodological approach introduced in this case is a non-starter.

VI

52. I am ready to accept the assessment of the Constitutional Court of Croatia, which dismissed the applicant's constitutional complaint, to the effect that "the domestic courts had given sufficient reasons for their decisions", which "were not arbitrary" (see paragraph 33). Had the applicant complained under Article 6 § 1, these arguments of "sufficient reasoning" and "not arbitrary" decisions might have allowed for a finding of no violation of that provision.

But the applicant complained under Article 8. Therefore, in view of the foregoing considerations and with all due respect, I am unable to accept the Constitutional Court's finding that the "case did not disclose a breach of the applicant's constitutional right to be presumed innocent" (ibid.).

Because it *did*.

53. I consider that the reasoning with regard to the third impugned statement – which is confined to one single, laconic paragraph 79 – ought to have been addressed differently. To cut a long story short (some would say that it is already too long, but gratuitously cropped reasoning of judgments tends to prolong dissents), below is my proposal, or synopsis, of an alternative reasoning on this issue. It ought to include the following elements:

(a) The parties disagreed as to whether the third statement was true and, if not, whether the author had acted in good faith and sufficiently verified the accuracy of this statement before publishing it.

(b) It was suggested in the article that the joint investigation "undoubtedly" established that the applicant had participated in criminal activities. This statement was not corroborated by the findings of the Kanta-Häme court. On the contrary, the court's judgment suggests otherwise, stating that the mere fact that the applicant was considered an "important lobbying target" did not mean that he had been promised or received a bribe, and that the prosecution did not present enough evidence to prove his involvement. The Court cannot therefore agree with the domestic courts' finding that the third statement was accurate and that its veracity was substantiated, *inter alia*, by the judgment. Moreover, once the judgment had been adopted, the press release issued by the Office of the Finnish Prosecutor General on 28 June 2013 could no longer serve as evidence of that statement's veracity.

(c) As regards the method of obtaining the information, it is evident that when the impugned article was published the author was already aware that, one day previously, the Kanta-Häme court had adopted its judgment in the case discussed in his article. This is clear from the first impugned statement, which suggested that the applicant had received bribes from accused individuals "who have just been convicted of giving bribes". It is not clear whether the author was aware of the judgment's content and, if so, to what extent. But this question may be left open, as in any case there has been a violation of Article 8 for the following reasons.

(d) If the author was aware of the content of the judgment, specifically of the court's findings regarding the applicant, then he did not act in good faith, since he deliberately published the third impugned statement, which distorted the truth. That statement, read together with the last two paragraphs of the impugned article, gave readers the impression that, although the applicant had "undoubtedly" participated in criminal activities by accepting a bribe, the only reasons he had not been prosecuted were because the Finnish judiciary lacked jurisdiction to do so and because the Croatian prosecution and judicial authorities had for their part been unwilling to take such action, since they were a "branch" of the "former Yugoslav secret service" and "under political influence". This is contrary to the findings in the Kanta-Häme court's judgment.

(e) Responsible journalism requires journalists to check the information provided to the public to a reasonable extent (see *Kącki v. Poland*, cited above, § 52). If the author – who was clearly aware of the Kanta-Häme court's judgment – was nonetheless not (fully) aware of its content, the Court, having regard to its case-law, considers that, given the seriousness of the allegations levied against the applicant, the author was under an unconditional obligation to seek more information prior to publication. In the circumstances of the case such an obligation was only reasonable.

(f) For these reasons, the Court is unable to agree with the domestic courts' findings that the third statement had been based on "sufficiently" or "previously" verified information and that the author had acted in good faith.

The domestic courts did not sufficiently weigh up the interests at stake, in compliance with the criteria laid down in the Court's case-law for balancing freedom of expression against the applicant's rights under Article 8.

(g) The foregoing considerations are sufficient for the Court to conclude that the domestic courts failed to strike the requisite fair balance between the applicant's right to respect for his private life and the right of the news portal to freedom of expression, and thus to comply with their positive obligation under Article 8 to ensure effective respect for the applicant's private life, in particular, his right to respect for his reputation. There has accordingly been a violation of Article 8.

VII

54. I finish where I started – by reiterating that this judgment sets *a very low standard for the protection of personality rights against trial by media*. Not only does it forcefully and resolutely depart from the tenets of responsible journalism – it effectively encourages and promotes journalism which I have difficulty in describing other than as irresponsible.

I only hope that this judgment – assuming the case is not re-examined by the Grand Chamber, a re-assessment for which it cries out, – does not become a precedent that is followed in subsequent cases. Hope springs eternal.

55. Lastly, I would again state that readers of this opinion should not be distracted by the fact that the applicant was (and still is) a public figure. My quixotic objections to this most unfortunate judgment are not in the least related to the applicant's status.

Next time it may be someone else. It is hardly necessary to remind ourselves of the Niemöller principle. Nor for whom the bell tolls.