

European Court of Human Rights: *Kunstelj v. Slovenia*

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In *Kunstelj v. Slovenia*, a unanimous judgment of 7 July 2026, the European Court of Human Rights (Third Section) found that an unconditional prison sentence imposed by the Slovenian national courts for a series of extremely vulgar and offensive blogposts targeting two journalists who were not public figures, while a measure of last resort was not a disproportionate sanction, given the severe nature of the impugned content. The Court held that the applicant's right to freedom of expression under Article 10 of the European Convention on Human Rights had not been violated. In reaching this conclusion, it also took the previous behaviour of the applicant into consideration.

The origin of the case can be traced to 2010, when the applicant – for unknown reasons – started writing on his personal blog about two journalists in extremely vulgar and offensive ways. He persisted in publishing such blogposts, which caused great distress to the two journalists, who consequently initiated civil proceedings against him. Despite several interim injunctions forbidding the applicant from publishing such content, and two fines of EUR 10 000 (which he refused to pay), the applicant persisted. In one blogpost, he threatened one of the journalists and his lawyer with physical violence. The two journalists took private criminal action against the applicant for the criminal offences of libel and slander. Pursuant to a court order, various posts were removed from the applicant's personal blog on Wordpress, but he subsequently republished them on a new personal blog using the Google Blogger web service.

The Ljubljana District Court found the applicant guilty of libel and slander and sentenced him to six months' imprisonment, holding that this was the only appropriate sentence, given the applicant's prolonged and serious insults, his refusal to pay previous fines, his re-uploading of the deleted posts, his lack of remorse and other previous convictions.

The Ljubljana Higher Court dismissed the applicant's appeal against the first-instance judgment, holding that the applicant was not a journalist, that he had committed a criminal offence via mass media (noting that his blog had 35 000 followers), and that the journalists he targeted were not public figures. It underscored the gravity of the criminal offences committed online, the unprecedented quantity and severity of the content in Slovenian court cases to date, and the unprovoked nature of the writings. The Ljubljana Higher Court gave

these – and other – reasons to explain why the unconditional prison sentence had been imposed as a measure of last resort.

A further appeal by the applicant to the Supreme Court and a complaint to the Constitutional Court were dismissed. In its judgment, the Supreme Court paid particular attention to the reasons why the unconditional prison sentence – an *ultima ratio* measure – was not disproportionate to the grave offences in question. Having exhausted domestic remedies, the applicant lodged an application at the European Court of Human Rights (the Court).

At the beginning of its assessment of the case, the Court noted that the vulgar and highly insulting statements by the applicant did not contribute to public debate, prompting the question whether the applicant's intention was to impart information and ideas at all or solely to insult the journalists. The Court then recalled its general principles for balancing the necessity of an interference with the exercise of the right to freedom of expression with the protection of the reputation or rights of others, and in particular the fair balance to be struck by the national authorities when two values protected by the Convention may come into conflict with each other. It also recalled that an attack on a person's reputation must meet a certain level of seriousness in order for Article 8, which protects the right to respect for private life, to enter into play.

When balancing the rights protected under Articles 10 and 8 of the Convention, the Court's criteria include:

“(a) contribution to a debate of public interest,

(b) how well known the person concerned is,

(c) the subject of the publication,

(d) the prior conduct of the person concerned, and

(e) the content, form and consequences of the publication .

In addition, when the Court examines an application lodged under Article 10, it will also examine

(f) the way in which the information was obtained and its veracity, and

(g) the severity of the penalty imposed.”

When the national authorities have weighed up the interests at stake in compliance with these criteria, weighty reasons are required if the Court is to substitute its view for that of the domestic courts.

The Court considered that the applicant's blogposts contained "serious insulting language" portraying the two journalists "extremely negatively and causing them distress" and as such, the impugned posts "undoubtedly attained" the level of seriousness required to bring Article 8 into play. The Court agreed with the Slovenian courts' assessment of the applicant's statements and underscored the reasoning set out above. The Court addressed the nature and severity of the penalty imposed in some detail. It considered that in the specific circumstances of the case at hand, "the imposition of an unconditional prison sentence on the applicant as an exceptional measure in the freedom-of-expression context cannot be regarded as excessive or disproportionate to the legitimate aim pursued", namely the protection of the two journalists' reputation. The Court was satisfied with the relevance and sufficiency of the reasons provided by the domestic courts in support of their decisions; it found that the domestic courts had properly balanced the competing interests at stake within their margin of appreciation. It accordingly ruled, unanimously, that the applicant's right to freedom of expression under Article 10 had not been violated.

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