



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

FIFTH SECTION

CASE OF CASALI v. SAN MARINO

(Applications nos. 12744/24 and 33586/24)

JUDGMENT

Art 6 § 1 (criminal) • Tribunal established by law • Revival of the applicant's criminal conviction after the Judge for Extraordinary Remedies ("JER") quashed the Third Instance Judge's supposedly final acquittal decision, without remittance, in proceedings against her in relation to a Facebook post concerning a politician • JER was not a tribunal established by law given the lack of any legal basis for such action and the absence of any competence to decide on such action

Art 10 • Freedom of expression • Impugned interference not "prescribed by law"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 October 2026

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 Casali v. San Marino,

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

Kateřina řimáčková, *President*,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Vahe Grigoryan,

Sébastien Biancheri,

Nicholas Emiliou, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the applications (nos. 12744/24 and 33586/24) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a San Marinese national, Ms Ingrid Casali (“the applicant”), on 22 April 2024 and 4 November 2024 respectively;

the decision to give notice to the San Marinese Government (“the Government”) of the applications;

the parties’ observations;

the decision to reject the Government’s request for the recusal of Mr Gilberto Felici, the judge elected in respect of San Marino, in September 2025 (Rule 28 §§ 3 and 4 of the Rules of Court);

Having deliberated in private on 22 September 2026,

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

INTRODUCTION

1. The case concerns criminal proceedings brought against the applicant in relation to a Facebook post she authored concerning a politician. The main complaints are under Articles 6 and 10 of the Convention.

THE FACTS

2. The applicant was born in 1953 and lives in San Marino. She was represented by Ms A. Mularoni, a lawyer practising in Dogana.

3. The Government were represented by their then Agent, Ms Sabrina Berardi, Representative of San Marino to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. On 8 July 2021, X, at the time Minister (*Segretario di Stato*) for Health of the Republic of San Marino, filed a criminal complaint against the applicant for the crimes referred to in articles 183 (defamation), 184 (proffering insults) and 185 (public libel) of the Criminal Code (see paragraph 56 below) or for any other crime that the investigating judge (*Commissario della Legge Giudice Inquirente*) may establish. He alleged that his honour had been injured by the applicant who, in a post on the Facebook page of a national newspaper, of 8 July 2021, commented on an article entitled “*Fighting domestic violence during Covid, PAM awards X.*”

6. Her comment, in part, read as follows:

“I am astonished! An award to a man who was on trial for violence against a woman (I don’t remember the outcome). A minister who after a delay of two months found a vaccine which had not been approved by the EMA and which covered most of the population because WE had it administered to us because we were desperate, we played the guinea pigs in order to get out of the pandemic and as of January those who got sick died [...] this celebration, this shameful exaltation is an insult. Look at the damage caused by long covid of those who have not managed to get out of it since January. What unbelievable people govern us.”

7. X argued that, in relation to the first sentence of that post, the applicant had falsely written that he had been on trial for violence against a woman, thereby implying that he was not worthy of receiving the award given to him by the Parliamentary Assembly of the Mediterranean, because of his conduct.

II. THE CRIMINAL PROCEEDINGS

A. Preliminary proceedings

8. On 15 July 2021 the investigating judge, considering that the insults were directed against X in his capacity as Minister, transmitted to the applicant a judicial notice for the crime referred to in article 344 of the Criminal Code (damage to the honour of persons vested with public powers) (see paragraph 56 below).

9. In a request, dated 30 August 2021, the applicant’s lawyer (A) observed that it was a known fact that the plaintiff, X, had been subjected to criminal proceedings in San Marino and Italy for violent conduct (brawl, bodily harm, threats, defamation on Facebook and incitement to commit crimes) and therefore she requested the investigating judge to obtain X’s criminal record so to explain for the purposes of her defence that she had erroneously referred to a woman, but he had in fact been violent towards men.

10. On 30 August 2021, the investigating judge, taking into account the specific content of the impugned statement, upheld her request in part and asked the registrar of the court to attach the relevant judgments only in so far as they concerned cases of violence against women, and if there were none,

to attest that those proceedings did not refer to cases of violence against women.

11. On 1 September 2021 the registrar attested that she had not found any judgments against the plaintiff for acts of violence against women.

12. On 22 September 2021 the Gendarmerie officers (*Corpo della Gendarmeria*), enforcing the decree dated 15 July 2021 (see paragraph 8 above), questioned the applicant. She confirmed that she had written the post and that, through newspaper articles (which she submitted), she had learnt of criminal proceedings against the plaintiff in connection with violent acts. She affirmed that the post was due to an emotional state brought about by the way X had managed the anti-Covid vaccination campaign and by the fact that some of her friends had died during the pandemic.

13. On 28 March 2022 the investigating judge convicted the applicant for the crime referred to in article 344 of the Criminal Code (see paragraph 56 below) and sentenced her to three months' imprisonment and to the payment of legal costs and taxes (amounting to 95 euros (EUR)), granting her the benefit of a suspended sentence. He noted that the applicant had been sued for her indignation and disdain in a comment which related to a matter which was unrelated to the management of the vaccination campaign, namely, the fact that X had received an award for combating domestic violence. The investigating judge further noted that, according to the applicant, X was not worthy of the award precisely because of his involvement in a trial for violence against a woman. Moreover, the applicant's post had not included the approximate justifications which she submitted during the proceedings, and in any event X's conviction for brawl and bodily harm, which dated back twenty years, could not be relevant to assess a person's worthiness to an award which was related to something else.

14. On 9 May 2022 the applicant appealed this decision. She argued that, although the complaint referred to the offences in articles 183, 184 and 185 of the Criminal Code, the investigating judge had qualified the conduct as one falling under article 344 of the Criminal Code, resulting in the punishment of imprisonment; he had also departed, for the purposes of conviction, from national case-law that had excluded criminal liability for authors of political criticism. She further emphasised the absence of the subjective element of the crime.

15. By a judgment of 7 June 2022, the investigating judge revoked the criminal conviction (*decreto penale di condanna*) and ordered the indictment to trial of the applicant.

B. The trial (no. 402/21)

16. On 11 January 2023, the applicant submitted, in evidence, three criminal first-instance judgments involving the plaintiff, X, as well as an appeal judgment (which she had managed to obtain). The first concerned the

offence of bodily harm, of which X was acquitted in 1996; the second was a conviction judgment for brawl and bodily harm dated 2002, the third was a conviction for the offence of insult, which was reversed on appeal in 2022. She further submitted two case-law precedents excluding criminal liability for criticism against persons holding political office.

1. First-instance

17. By judgment of 25 January 2023 the first-instance trial judge (*Commissario della Legge Giudice del Dibattimento*, hereinafter ‘CoL’) found the applicant guilty and convicted her to a suspended sentence of four months’ imprisonment (which was not to be mentioned in her criminal record available to the public on individual request), to the payment of legal costs and of the compensation for the damage suffered by the civil party, X, to be settled in civil proceedings, while granting a provisional award of EUR 1,000, as well as the payment of the costs and fees relating to his appearance and defence in court.

18. The CoL noted that the applicant had admitted to having written the post and it had been ruled out that X had ever been convicted or involved in criminal proceedings for crimes of violence against women. This could be inferred from the attestation of the registrar and from the judgments submitted by the same applicant, which concerned cases other than gender-based violence. Moreover, X had been acquitted in some of those cases.

19. According to the CoL the impugned sentence had amounted to a gratuitous attack, inserted in the midst of her criticism concerning the Covid pandemic, the latter being legitimate and falling within the right to criticism which was guaranteed under the national case-law. However, the impugned disproved allegation was intended to install, in the reader, the false idea that X had committed violence against women and thus discredit his dignity as a man and politician. Even accepting that European Court of Human Rights (“ECtHR”) case-law provided that politicians should have a higher degree of tolerance in the face of criticism, they nonetheless had also to be guaranteed their right to reputation. Given the post’s configuration and it having been posted on Facebook on a link to a press article – thus potentially accessible to an indeterminate number of followers – it could not have been a negligent oversight. Rather, the applicant, who called herself a “passive member” (*aderente*) of the opposition party, had clearly been motivated by a desire to demolish X, by attributing to him falsehoods which she did not even care to verify. Indeed, the criminal convictions for brawl and bodily harm whose context was explained in the referenced judgments, could not lead to the conclusion that he was a women-beater. Thus, there existed both the subjective and objective elements of the crime, which could only be punished by imprisonment according to law.

20. As to the issue of constitutional legitimacy raised by the applicant – in relation to imprisonment being the only punishment applicable to the crime

with which she was charged – the CoL held that it was irrelevant in the case under examination, since the case had been assessed in line with articles 88 and 89 of the Criminal Code (see paragraph 56 below), which provided for an assessment of “the overall conduct of the applicant”, including after the facts with which she had been charged. Indeed, instead of resorting to restorative or conciliatory acts towards X, which could demonstrate a critical review of her conduct, the applicant had made further unsubstantiated insinuations (such as a reference to criminal proceedings in Italy which she had never managed to prove) and personal attacks aimed at debasing his dignity (such as the reference to his recent acquittal for insult, emphasising that it had been because the facts did not constitute a crime, and not because he had not committed the facts).

2. *Appeal*

21. The applicant appealed considering that i) the CoL had unjustifiably reversed the national case-law on political criticism and disregarded ECtHR case-law under Article 10 of the Convention. She emphasised that the applicant had proved that X had been tried for violent crimes in the past, an issue which was certainly in the public interest, and that an imprisonment sentence for a mere Facebook comment raising concerns about a violent person receiving an award could not be justified, even more so when any error therein had been committed in good faith; ii) despite the fact that the complaint had indicated the crimes provided for in articles 183, 184 and 185 of the Criminal Code, the investigating judge and the CoL had established the existence of the more serious crime provided for in article 344 of the Criminal Code (carrying a mandatory imprisonment sentence); iii) the subjective element of the offence (intention) was absent; iv) contrary to the qualification attributed to her by the claimant of “active member” (*esponente*), of the political party in opposition, she was only a “passive member” (*aderente*) of that party; v) she thus could not be considered as having an intention to demolish X, it had rather been the latter who was making a political stunt out of the situation; vi) it had been untrue that criminal proceedings against X dated twenty years, as the last of which (in respect of which he had been found guilty at first instance and reversed on appeal) ended in 2022; vii) the impugned post had obtained six comments and eighteen reactions (likes, smileys etc.), thus had gone practically unnoticed.

22. Lastly, she reiterated her request concerning the constitutional illegitimacy of the punishment of imprisonment provided for in the latter provision, which she considered had not been assessed by the CoL, as well as that for access to X’s entire criminal record, including in relation to Italy on the basis of the relevant Italo-Sammarinese agreement.

23. On 25 January 2024 a hearing was held in which the State Attorney (*Procuratore del Fisco*) reiterated his request for the applicant to be acquitted given the absence of the subjective element of the crime and the defence of

political criticism. X and the applicant, represented by their lawyers, requested a finding of guilt and acquittal respectively.

24. By a judgment of 31 January 2024, the Judge of Appeal in criminal matters, rejecting the appeal brought by the applicant, upheld the first-instance judgment finding the applicant guilty and ordered the payment of the costs of the appeal proceedings and of the expenses borne by the civil party.

25. The Judge of Appeal held that, according to the outcome of the investigation, the applicant had written the post, and X had not been convicted of crimes of violence against women. Therefore, the arguments put forward by the applicant were of no legal pertinence given that the mere fact – which was not proved – that someone had in the past been criminally convicted for acts characterised by violence was irrelevant since insult could not be considered a violent crime. Further, the classification of the conduct as falling under article 344 of the Criminal Code was correct since X was a minister at the time of the facts.

26. The rest of the appeal grounds (iii-iv) were to be grouped and rejected: With respect to the alleged lack of the subjective element of the crime due to the fact that the applicant “acted instinctively and in good faith”, convinced that she was reporting a true fact, the Judge of Appeal considered that the considerable seriousness of the facts attributed to X, namely violence against a woman, prevailed for the purposes of establishing her guilt; The impugned post, published on the Facebook page of an on-line newspaper accessible to a potentially indeterminate number of users, was not the result of a mere unintentional oversight but rather the applicant had intended to libel X without verifying the actual existence of the fact attributed to him; The incriminating words only contained falsehoods and indicated the desire of the applicant, an opposition party activist, to personally attack X so as to discredit him as a man and as a politician. Thus, it had to be excluded that the comment could be considered political criticism, given that it concerned his personal sphere not his political performance; The unproven occurrence that X was subject to criminal proceedings for brawl and bodily harm and convicted could not justify a partial truth or error of fact; The punishment applied had been within the limits provided for in article 344 of the Criminal Code.

27. Lastly, the Judge of Appeal considered that the issue of constitutional legitimacy of the aforementioned article was to be rejected as the CoL’s assessment of the issue had been reasonable and motivated. It was for the legislator to determine the quality and the quantity of the sanction, and not for the Constitutional Court to remodel such choices, as long as the limits of reasonableness had been respected. However, in the present case the punishment had been adequate.

3. Third Instance

28. On 14 March 2024, following the introduction of a new third-instance level of jurisdiction, the applicant lodged an appeal before the Judge of Third

Instance, invoking Articles 6 and 10 of the Convention.

29. With reference to article 199 *bis* (2) of the Criminal Code of Procedure (hereinafter ‘CCP’) (see paragraph 57 above) she pleaded that the Judge of Appeal had failed to provide any reasons on the basis of which he had departed from national case-law with regard to the right to political criticism and complained about the reasons for the rejection of her request for referral to the Constitutional Court of the matter regarding the punishment provided for in article 344 of the Criminal Code, which she considered to be in conflict with Article 10 of the Convention. Furthermore, she argued that the appeal judgment was evidently erroneous insofar as (despite the submissions of the relevant judgment finding X guilty of bodily harm, see paragraph 16 above) it had held that X had had a previous record for insult and not for acts of violence, thus, failing to address the issue of the importance of the excusability of the error as to the gender of the persons who had suffered the violence. She also complained about a lack of reasons in relation to the rejection of the request to obtain the criminal record of the plaintiff, reiterated on appeal; and the lack of reasons as to why several different appeal pleas had been treated simultaneously, and the unfoundedness of those findings.

30. With reference to article 199 *bis* (3) of the CCP (see paragraph 57 above), relying on Article 6 of the Convention, she complained that her rights of defence were violated at the appeal hearing during which her lawyer had been repeatedly interrupted by the judge, who had not allowed her lawyer to illustrate and explain her defence in the most appropriate manner, in breach of the principle of adversarial proceedings (she relied on statements signed by some persons present on the day, which she submitted to the court); and, in this connection, that the minutes of the hearing in which it had been reported that the applicant’s defence counsel had only “referred to the grounds and pleadings of the appeal”, were “FALSE”, in so far as she had simply been precluded from so doing, or even from replying to the other parties’ expressed arguments.

31. X joined the third-instance proceedings and filed pleadings requesting that the appeal be dismissed.

32. By a judgment of 11 June 2024, filed in the registry on 15 July 2024, the Third Instance Judge upheld the appeal given the absence of reasons in reply to the grounds of appeal challenging the refusal to grant full access to the criminal record, and in relation to the reversing of the domestic case-law related to political criticism. There had also been a violation of the applicant’s right of defence (adversarial proceedings) which was, however, absorbed by the failure to give reasons.

33. The Third Instance Judge noted that not only had the appeal judge omitted to give reasons concerning the appeal ground in relation to the criminal record but had also considered that the fact that X had been subject to proceedings, and at times convicted of violent crimes, was irrelevant.

However, it had been the right of the applicant to have access to such evidence, crucial to her defence, the absence of which breached her rights.

34. Indeed, under article 199 *bis* (2) of the CCP (see paragraph 57 above), it was not for the Third Instance Judge solely to identify the omissions of the appeal court, but also to reply to them. As to the defence of political criticism, he considered that the relevant criteria were whether it was a matter of general interest, the language used, and the veracity of the matter which had to be seen against the interest of the public to know the matter and make up its own opinion. ECtHR case-law distinguished between facts and value judgments and emphasised the need for politicians to show tolerance towards criticism. Political criticism required a sufficient factual basis to justify such criticism. In the present case, there was no doubt that X had already been subject to proceedings and even convicted. Thus, the statement that X had had pending charges against him could not be considered devoid of factual foundation and the applicant had expressed a value judgment reflecting her opinion as to whether X was worthy of the award he was to receive. It had been made in respect of a public figure, in relation to his public life and in the context of a polemic on social issues (the management of the Covid emergency), and therefore it fell within the scope of the right to political criticism. However, the Court of Appeal had ignored any such relevant element without giving reasons.

35. As to the applicant's complaint about her defence rights in relation to what went on when her lawyer tried to orally set out her defence, but was precluded from so doing by the judge, the Third Instance Judge considered that it had been inappropriate to bring proceedings no. 234/24 (see paragraph 44 below) against the applicant's lawyer, for false accusations, when the appeal ground related to the false minutes was yet to be determined in the proceedings before the Third Instance Judge. The impossibility for the applicant's lawyer to read out her speech due to the Court of Appeal's actions had been proved via a declaration signed by several persons present on the day and was, thus, not merely an allegation. The appeal judge's actions breached the applicant's right to adversarial oral proceedings and to a defence, and gave the impression that the judge was not impartial.

III. PROCEEDINGS BEFORE THE JUDGE FOR EXTRAORDINARY REMEDIES

A. The request and pleadings

36. On 22 July 2024 X lodged an application (*ricorso*) for *querela nullitatis* at the registry of the courts of criminal jurisdiction, to be heard by the Judge for Extraordinary Remedies (*Giudice per i Rimedi Straordinari* – hereinafter 'JER'), arguing that the judgment of the Third Instance Judge was null and void as the latter had exceeded his functions under article 199 *bis* of

the CCP. In particular, he had totally excluded the injured party from the proceedings and had distorted the facts in order to be able to assess the merits of the appeal by qualifying the defamatory conduct as the expression of a value judgment, whereas, instead, a precise fact had been attributed to the injured party, which turned out to be untrue. According to X, the Third Instance Judge had also usurped the functions of the investigating judge responsible for criminal proceedings no. 234/24 (see paragraph 44 below), in the assessment of the crime of false accusations by the applicant's lawyer A, and expressed an opinion on the responsibility of the Judge of Appeal, without the latter's knowledge and on the basis of evidence not admitted in adversarial proceedings, thus, considerably compromising the civil party's rights of defence. In the light of these grave errors in the judgment, X argued that a *querela nullitatis* should exceptionally be allowed even though it was known that such a remedy was not an ordinary remedy. Moreover, he considered that such a remedy should also be open to the civil party – as had already been decided by the JER in judgment no. 6/2023 (see paragraph 60 above) concerning an interlocutory seizure in the context of criminal proceedings – this being the only remedy available to him (X), which was necessary to conform with the State's obligations under Article 13 of the Convention.

37. In so far as relevant, the State Attorney acknowledged the judgment of the JER no. 6/2023 concerning the availability of a *querela nullitatis* to a civil party; as to the competence of the newly instituted (2023) Third Instance Judge, he was of the view that the legislature did not intend to establish a third level of judgment on the merits, but rather sought to introduce an appeal on points of law alone, which could result in the setting aside of a flawed judgment. In other words, he was of the view that the Third Instance Judge may never rule on the merits, thereby taking the place of the Judge of Appeal.

38. The applicant argued that the action was inadmissible since a *querela nullitatis* was inapplicable to criminal matters, and that it was in any event unfounded since the reasoning followed by the Third Instance Judge in reaching his conclusions was perfectly logical, rational and amply substantiated. Furthermore, the contested third-instance judgment had brought the decision into line with at least thirty years of domestic case-law and the established case-law of the ECtHR regarding Article 10 of the Convention.

B. The judgment

39. By a judgment of 5 October 2024, notified on 9 October 2024, the JER annulled the third-instance judgment, without remittance. The applicant thus had to be considered guilty in accordance with the judgment of the Court of Appeal of 8 February 2024 (see paragraph 24 above).

40. The JER upheld the “request” (*istanza*) to annul the third-instance judgment reiterating his own findings in judgment no. 6/2023 concerning the need to eliminate judgments which were given in proceedings which had been arbitrary and in breach of the principle of adversarial proceedings (see paragraph 60 above). He further reiterated from the same judgment that:

“setting aside the question of whether the appeal lodged can be correctly attributed to the specific category (of civil law) of *querela nullitatis* – the request in relation to a situation marked by serious defects had been correctly made to the Judge for Extraordinary Remedies, since the reconstruction of the overall regulatory framework and the system of appeals, as configured by the constitutional legislature and the rules of procedure, indeed leads to the identification of such a judge ‘*extra ordinem*’ (significantly named the Judge for Extraordinary Remedies: and “*nomino sunt consequentia rerum*”!) as the judicial body to which it was intended to functionally assign the task of the assessment of such matters as those concerning decisions that are not appealable which exhibit the traits of abnormality and arbitrariness”.

41. He then considered that:

“by applying a criterion of analogy in *bonam partem* it was appropriate to extend, to the criminal sphere, the competence to examine rulings that infringe fundamental principles of law (i.e. those vitiated by defects and shortcomings of such gravity as to affect the regularity of the proceedings), which is that of the Judge for Extraordinary Remedies to whom a *querela nullitatis* has been brought in the civil sphere (see judgment no. 5/2007 of the Constitutional Court). Thus, it may be concluded that the extraordinary jurisdictional functions assigned to such a judge identify him as the competent judicial body to hear the complaints referred to in the appeal in question, which concerns, as has been seen, the adoption of a final decision that is clearly in breach of the golden rule of adversarial proceedings (as set out in article 229 of the Code of Criminal Procedure), and furthermore is affected by further extremely serious anomalies (indicative of arbitrariness and abuse of procedural powers), consisting of the alleged overstepping of the functions assigned to the trial judge (which the appellant [X] defines as instrumental to the upholding of the accused’s appeal and the consequent judgment on the merits which would otherwise have been precluded) and of the actual usurpation of the functions of the investigating judge [in proceedings no. 234/24].”

42. The JER considered that the third-instance judgment presented obvious abnormal elements such as to render it null and void. Indeed, all challenges raised by X were founded and deserved being upheld, in particular, the JER considered: i) the total lack of consideration and assessment of the reasons put forward by the civil party’s counsel, both in writing and orally, during the third-instance proceedings, to the extent that the civil party did not even appear in the description of the judgment appealed against, thus breaching the principle of adversarial proceedings; ii) the effort by the Third Instance Judge to uphold the applicant’s pleas of omitted reasoning (concerning the plea relating to the criminal record and that on the change of jurisprudence) – according to the JER, while it was true that this assessment usually depended on the subjective discretion of a judge, in the present case the reasoning had been surprising, if not abhorrent, and devoid of any plausible or acceptable justification, since those two pleas (raised on appeal) had been evidently irrelevant to the assessment of the case, and

moreover they had been dealt with, in substance, by the Court of Appeal. Thus, there had had been no ground for allowing the third-instance appeal pursuant to article 199 *bis* (2) of the CCP; iii) the wrong assessment of the Third Instance Judge (who had found that the applicant's right to adversarial proceedings had been breached) both because the Third Instance Judge should have suspended proceedings and waited for the outcome of proceedings no. 234/24 (see paragraph 44 below) before deciding the merits of the latter case himself and because he had based his decision on the applicant's version of events, ignoring that of X and the State Attorney.

43. According to the JER, bearing in mind that the Third Instance Judge erroneously accepted the appeal, to which the applicant had no right, remittance to the criminal courts was considered unnecessary.

IV. PROCEEDINGS No. 234/24

44. Meanwhile, pending the proceedings before the Third Instance Judge (see paragraph 28 et seq., above), following a report of the Chief Justice, criminal proceedings (no. 234/24) were opened *ex officio* against the applicant's lawyer, A, for the crime of false accusations (*calunnia*) against the Judge of Appeal, in reference to the claims in the applicant's written defence pleadings that the minutes of the hearing had been false (see paragraph 28 above).

45. After acquiring the file of criminal proceedings no. 402/21 (including the pleadings of the civil party's lawyer and of the State Attorney in those proceedings), and questioning the applicant's lawyer, A, and the person taking the minutes during the appeal hearing, on 30 October 2024 the case was dismissed for lack of the subjective element of the crime.

46. It was however noted that A had, in principle, attributed to the Judge of Appeal the crime of "ideological falsehood in public deeds", an allegation which was incomprehensible, since the minutes had been taken in summary form and therefore reproduced the essential parts of the procedural activity. By indicating in the minutes that lawyer A "referred to the grounds and pleadings of the appeal", the Judge of Appeal had in substance correctly reproduced what she had requested at the hearing. Indeed, A had not requested that the minutes be supplemented with additional considerations other than those, arguing that she had not done so because the judge asked them to leave. Moreover, A could not remember what considerations other than those already made in the act and in the grounds of appeal she would have wished to express at the appeal hearing.

47. However, A, via "her colourful (unhappy/offensive) expression", only meant to represent the fact that she had not been able to read her speech at the hearing, as indeed happened, and that the minutes had been too brief in their content. Nevertheless, the investigating judge ordered the deletion of the

offensive sentence contained in the third instance appeal application brought by A (see paragraph 28 *in fine* above).

V. OTHER RELATED MATTERS

48. In a letter dated 22 October 2024, addressed to the highest national bodies and to other international representatives (of the Council of Europe) and, for information, to the Judicial Council, the Third Instance Judge wrote in defence of some of his judgments, including the one related to the applicant. He raised concerns about the principle of the independence of the judiciary as a result of the judgments of the Judge for Extraordinary Remedies.

49. This letter, as well as the way in which the Third Instance Judge conducted the proceedings in the applicant's case, were criticised by the Judicial Council in Resolution no. 1 of 6 November 2024.

50. Following the judgment of the JER in the applicant's case, a number of bodies at the national level discussed the issue of the extension of the *querela nullitatis* to criminal matters, such as the San Marino Criminal Chamber (*Camera Penale*), the Bar of Advocates and Notaries, the Parliamentary Committee for Justice, the Judicial Council, and Parliament, some of whom issued press releases on the matter.

51. The press release of the San Marino Criminal Chamber dated 12 November 2024 read as follows:

“The Criminal Chamber expresses its concern regarding the recent ruling by the Judge for Extraordinary Remedies concerning the ‘*querela nullitatis*’. This is, in fact, a remedy not provided for in criminal law by any current legislation, excluded by the Constitutional Laws, and moreover introduced following an appeal by the civil party against a judgment of acquittal of the defendant. Such a legal precedent jeopardises the fundamental and immutable principles of legal certainty, such as legality, the exhaustive nature of appeals provided by law (*la tassatività delle impugnazioni*), the prohibition of *reformatio in peius* and the presumption in favour of the accused. The Criminal Chamber is certainly in favour of a discussion on this matter and is willing to offer any contribution deemed useful to explore this sensitive issue, which has touched upon the founding principles of our legal system.”

52. The Press release of the Bar of Advocates dated 24 November 2024 read as follows:

“In accordance with its statutory objectives, the General Assembly of the Bar of Advocates and Notaries of the Republic of San Marino met on 8 November to discuss and deliberate, amongst other matters, on the following item on the agenda proposed by a number of members:

‘1) Recent decisions which have introduced, through case-law, the concept of an action for annulment in criminal matters’.

The Assembly debated recent judicial decisions at length, concluding, by a majority of those voting, that the advancement and progress of the profession require, amongst other things, a system of clear and certain rules, particularly in criminal matters, where

the principle of exhaustiveness (*tassatività*) applies – including with regard to legal remedies – for the protection of citizens. Consequently, in order to avoid conflicting decisions and divergent outcomes, it is hoped that legislative action may be taken regarding the terms and conditions for the admissibility, including in criminal procedural law, of extraordinary remedies in general against abnormal decisions. This reform, to which the legal profession wishes to contribute, will make it possible – by analysing current case law – to relieve the interpreter of the burden of seeking justice through the use of remedies that are not fully regulated by statute and have been adopted through case-law.”

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Declaration on the Citizen’s Rights and Fundamental Principles of the San Marino Constitutional Order

53. In so far as relevant, articles 1 and 3 of the Declaration on the Citizen’s Rights and Fundamental Principles of the San Marino Constitutional Order read as follows:

Article 1

“The Republic of San Marino shall adopt generally recognised rules of international law as an integral part of its legal system and shall conform its acts and conduct thereto. It shall comply with the provisions set forth in international declarations on human rights and fundamental freedoms.

...

The San Marino legal system shall recognise, guarantee and enforce the rights and fundamental freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Duly concluded and enforced international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict.”

Article 3

“...

State bodies shall act by mutually respecting their autonomy and competence.”

B. Constitutional Law no. 1/2007

54. Article 3(5) of Constitutional Law no. 1/2021 (7 December 2021) concerning the Judiciary, the Judicial System and the Judicial Council, in so far as relevant, read as follows:

“The Judge for Extraordinary Remedies shall decide on disputes between civil, criminal and administrative jurisdictions, on appeals for the revision of criminal judgments, on *querela nullitatis* (complaint for annulment) and *restitutio in integrum*

(reinstatement) in civil proceedings, as well as on objections of magistrates and on requests for abstention submitted pending decisions on objections.”

C. Qualified Law no. 55/2003

55. Article 13 of Qualified Law no. 55/2003 of 25 April 2003, in so far as relevant, reads as follows:

“Applications for review of constitutionality may be lodged through incidental action in the context of proceedings pending before the Republic’s jurisdictional bodies by the parties or the *Procuratore del Fisco*, by means of an ad-hoc written application, or ex-officio by the Judge, by means of a reasoned decision.

...

The Judge shall grant the parties and the *Procuratore del Fisco*, if involved in the case, twenty days to submit their pleadings and arguments. After such period, the Judge shall reject, by means of an order, manifestly ill-founded or simply dilatory appeals.

...”

D. Criminal Law

56. The relevant articles of the Criminal Code, in so far as relevant, read as follows:

Article 87

“Within the limits of the law, the judge imposes the sentence at his or her discretion.
...”

Article 88

(Assessment criteria: the seriousness of the crime)

“In exercising the discretionary power referred to in the preceding article, the judge must take into account the seriousness of the offence as determined:

1) the insidious means, deception, cleverness and other circumstances relating to time, place or person, which the offender employed to hinder public or private defence; or, conversely, the fact that the victim’s intentional act, and, in the case of delicts, also their negligent act, contributed to bringing about the event; the number of persons involved in the offence; and, in any event, the manner in which the act was carried out;

2) the significant extent or particular insignificance of the financial loss caused to the victim; the number of persons who suffered harm; the public outrage; and, in any event, the extent of the damage or danger;

3) acts of torture or cruelty towards persons or, conversely, having acted in a fit of rage caused by another’s provocation or under the influence of a rioting crowd; conduct following the offence, intended to aggravate or mitigate its consequences; ...”

Article 89
(Assessment criteria: the offender's character)

“In exercising their discretion, the judge must also take into account the offender's character, as inferred:

1) from the fact that the offence was committed whilst the offender was voluntarily evading the execution of a warrant issued in respect of a previous offence; or, conversely, from the fact that, prior to the trial, the offender made full reparation for the damage caused; from the fact that the offender voluntarily surrendered to the authorities; from a voluntary confession; and, in any event, from the offender's conduct at the time of or following the offence;

2) the motives for committing the offence, the offender's previous life, their personal circumstances, and their family and social environment.”

Article 183 (defamation)

“Whosoever, in a public meeting or while communicating with people, attributes to someone else, who is present or absent, a fact that offends his/her honour shall be punished, upon a complaint lodged by the offended person, by arrest or a daily fine of the second degree.”

Article 184 (proffering insults)

“Whosoever, in a public meeting or while communicating with people, offends the honour of a person, present or absent, shall be punished, upon a complaint lodged by the offended person, by arrest or a daily fine of the second degree or by reprimand.

Epistolary, telegraph, telephone communication and the like shall be considered equivalent to presence.”

Article 185 (public libel)

“If the offence referred to in Article 183 is committed through social communication, even abroad, legal action shall always be taken upon a complaint lodged by the offended person and the offence shall be punished by first degree imprisonment or a fine, or second-degree arrest or a fine or a daily fine of the third degree.”

Article 188

“Offensive remarks contained in writings submitted or speeches delivered by the parties or their lawyers in legal proceedings shall be exempt from punishment, provided that they are relevant to the subject matter of the case.

The judge shall have the power to order the suppression of writings or the deletion of sentences when offensive remarks exceed the limits of defence.

Upon request by the offended party, pecuniary compensation may be granted by means of an order in the same proceedings.”

Article 189

“In the cases of defamation under Articles 183 and 185, the offender shall be permitted to give evidence of the truth of the facts attributed to the offended person in the following cases:

1) if the offended person formally permits it;

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2) if criminal proceedings are pending for the defamatory facts;

3) if the establishment of the facts is in the public interest in view of the status of the offended person or for other reasons.

If the truth of the fact is proven or if the offended person is subsequently convicted thereof, the offender shall be exempt from punishment.”

Article 343

“When crimes against life, integrity or freedom are perpetrated against Members of the Parliament (*Consiglio Grande e Generale*), the Government (*Congresso di Stato*) and the Council of the Twelve (*Consiglio dei XII*), Ministers (*Segretari di Stato*), Judges of the Republic of San Marino and the State Attorney (*Procuratore del Fisco*), the punishments established for each crime shall apply, increased by one degree.”

Article 344

“If the damage to honour or prestige affects one of the persons mentioned in the preceding Article, first-degree imprisonment shall apply.”

57. The relevant articles of the Code of Criminal Procedure (‘CCP), in so far as relevant, read as follows:

Article 56

“Decrees ordering personal precautionary measures may be challenged by the defendant and the *Procuratore del Fisco* before the Judge of Appeal in criminal matters within ten days of their notification or enforcement. This time-limit may be extended by an additional ten days upon the defendant’s express and timely request.

Orders issued by the Judge of Appeal may be challenged by the defendant’s lawyer and the *Procuratore del Fisco* on grounds of lawfulness (*legittimità*) before the Third Instance Judge in criminal matters within thirty days of notification of the order.”

Article 187

“The defendant can appeal against convictions and against judgments finding that there is insufficient evidence to establish his guilt.

The *Procuratore del Fisco* may appeal against all judgments, whether convictions or acquittals.

The civil party may appeal against those provisions of the judgment relating solely to civil claims, where the defendant has been convicted, and against the order for the civil party to pay costs and damages, in accordance with the provisions of Article 7, where the defendant has been acquitted.

...”

Article 199 bis

“Where the second instance judgment has amended the first instance acquittal judgment or has imposed a more severe punishment on the defendant in terms of type and quantity, if the defendant’s appeal is not declared inadmissible or rejected, the Third Instance Judge, shall annul the judgment appealed against and refer the case to the Judge of Appeal for a new judgment, or, if he/she considers such referral superfluous and no

further factual assessments are necessary, shall annul the judgment appealed against without any referral and shall decide that the first instance judgment has become final.

If in the appeal proceedings consideration of one or more specific grounds of appeal has been omitted, the Third Instance Judge shall assess the omitted grounds and shall rule on the case, confirming the judgment appealed against or adopting the necessary measures to amend it (*confermando la sentenza impugnata o, in riforma di questa, adottando i provvedimenti necessari*).

If the principle of adversarial/fair proceedings has been violated in the appeal proceedings, the Third Instance Judge, in finding the appeal well-founded, shall annul the judgment appealed against and shall refer the case to the Judge of Appeal for a new judgment.

...”

Article 200

“1. The revision of a final judgement of conviction or acquittal, which entails the application of security or confiscation measures, or of a final criminal conviction order, shall be admissible:

a) If new evidence has emerged or is discovered, which demonstrates, alone or together with evidence already obtained, that the convicted person shall be acquitted pursuant to Article 162, paragraph 1;

b) If the measure was issued as a consequence of false circumstances or of another offence;

c) If the facts upon which the measure is based are not compatible with those established in another final criminal ruling;

d) If the Court of Human Rights has ruled that the judgment was rendered in violation of the provisions of the European Convention on Human Rights and Fundamental Freedoms or of its Protocols and the serious negative effects of this judgment can only be removed by means of a revision.

2. The following persons shall be entitled to submit an application for revision:

a) The person convicted or acquitted, either personally or through a special attorney, or one of his next of kin or heir if the person convicted or acquitted is dead;

b) The *Procuratore del Fisco*.

3. ...”

II. DOMESTIC CASE-LAW

A. Querela nullitatis

58. According to the judgment of the Constitutional Court no. 5 of 19 June 2007:

“Such is the rationale behind the action for nullity (*querela di nullità*) that article 30 of Qualified Law No. 55 of 25 April 2003 permits, within strict limits, exclusively against final civil judgments and against arbitral awards not subject to appeal, drawing a clear distinction from the *querela* or *actio nullitatis* known in medieval law – and

from the *Leges Statutes* of San Marino themselves: see, for example, Book IV, Chapter III – considered, moreover, not without uncertainties and ambiguities.”

59. In the judgment no. 212/2016 of the Judge of Appeal in Civil Matters, which concerned a *querela nullitatis* lodged in the context of the execution of a civil case, the latter explained:

“It must first be noted that this court is fully entitled to hear the action *querela nullitatis* brought here, since, as is well known and as the claimant’s counsel has rightly emphasised, an action aimed at establishing the nullity of a procedure, a judgment or, more generally, judicial measures, does not always and necessarily take the form of the extraordinary remedy of *querela nullitatis*. The latter, first and foremost, presupposes either that all ordinary remedies have already been exhausted, or that it is no longer possible to resort to them. It must therefore be ruled out that the action brought here can be classified as a *querela nullitatis*, understood as an extraordinary remedy.

It must also be noted that the Court of Appeal is not precluded from ruling on applications seeking a declaration of nullity. This is confirmed on numerous and significant occasions in the *Leges Statuae*.”

60. The judgment of the Judge for Extraordinary Remedies (JER) no. 6/2023 of 14 December 2023, concerned a *querela nullitatis* against an interlocutory decree (not a final judgment) concerning a preventive seizure delivered by the Third Instance Judge in criminal matters. Relying on Article 13 of the Convention, the parties in that case had argued that a *querela nullitatis* lodged by a civil party, which would not normally be available in such circumstances, would be the only available remedy to uphold their rights. In that case the JER considered that the possibility to lodge a *querela nullitatis* against a criminal judgment by a civil party, must be allowed as this was necessary:

“to remove from the proceedings, and from the legal system, judicial decisions which openly and indisputably clash, in a blatant and striking manner, with the fundamental principles of San Marino’s system of criminal procedure.

... the defining characteristics of this system, inspired by the guiding principle of the primacy of law over arbitrariness, the right of access to justice and the inalienable guarantees of due process (in its emblematic notions of the impartiality and independence of the judge and of the adversarial process), do not seem to permit that a violation of the above-mentioned principles - where absolutely evident and not disputable, glaringly obvious and irremediable - remain devoid of any safeguards (as might occur when, as in the case under consideration, such a breach is committed by a judge of the highest instance and the legal system provides no explicit and specific remedy in respect of it).”

B. Sui generis remedies

61. In the order of the Judge of Appeal of 18 May 2000, concerning a challenge in the context of a request for letters rogatory, which was upheld by the Judge of Appeal who declared inadmissible the request for a letter rogatory by a foreign prosecutor and, consequently, annulled the decree of

the *Commissario della Legge* and revoked the seizures which had been put in place in that context, that Judge of Appeal held:

“It also seems worth noting that, at present, there are no provisions allowing for appeals against the *Commissario della Legge*’s decision to grant a letter rogatory: the principle of the exhaustive list of appeals therefore does not permit complaints in this regard to be brought before the Court of Appeal, which is not a body responsible for the ongoing supervision of proceedings before the *Commissario della Legge*, but may only be called upon to rule during the investigative phase only in cases expressly provided for by law, namely appeals against precautionary measures (see ...).

The verification of whether the conditions for executing the request from the foreign judiciary are met may therefore be sought and must take place within the aforementioned interlocutory proceedings.

The only exception that can be identified is the issuance of an irregular act, which occurs if the act itself does not conform to any procedural framework and does not fall within the list of acts which are subject to appeal according to any express and exhaustive provision of law, but even when, they are acts falling within some abstract legitimate competence, the act was taken out of the scope of the situations prescribed by law, beyond any reasonable limit, and may not be removed from juridical reality unless its abnormality is challenged (see, most recently, on this concept: Criminal Appeal Judge Gualtieri, order of 4 September 1998, Bini, case no. 53/1998 and Appeal Court Judge Nobili, order of 18 January 1993, De Biagi et al., case no. 1257/1988).”

62. By means of decree no. 410/2019 the Judge of Appeal rejected the request (*reclamo*) under article 56 of the CCP of a defendant against a decision to indict him, as the latter could not be considered “abnormal”, it reiterated that:

“According to established case law, appeals to the Court of Appeal are limited to matters expressly specified in article 56 of the Code of Criminal Procedure (measures of personal or financial coercion and seizures or their validation) and they cannot amount to a ‘broad’ and ‘preventive’ review of how the powers to conduct the preliminary investigation and the trial proceedings are exercised (see...);

the extension of the right of appeal to so-called ‘abnormal’ measures, as permitted by case law, even where the law does not so provide, far from constituting a breach of the principle of the exhaustive nature of the means of appeal, concerns exclusively acts which do not conform to any procedural framework and which do not fall within the category of those otherwise subject to appeal or review;”

63. Similar considerations and conclusions had been made earlier, in the Court of Appeal order no. 2/2014, concerning a request to annul a decision by the *Uditore Commissariale* to reject a request to discontinue a criminal case; and subsequently in orders no. 3/2022 concerning a request to annul a decision of the *Commissario della Legge* authorising the Central Bank to take certain investigative measures, and no. 11/2024 concerning a decision of the investigating judge to request the restitution of certain documentation.

64. Conversely, on the basis of the same considerations of principle, the request to annul a decision of the *Uditore Commissariale*, allowing the police to take certain measures, was upheld in the Court of Appeal order no. 8/2022, on the basis that it had been “abnormal”, as they were irrelevant

to the charges brought against the applicant. Such request was also upheld by the Court of Appeal in its judgment no. 3/2004 which annulled a decision of the *Commissario delle Legge* concerning the calculation of punishment in criminal proceedings, it being “abnormal” as it was not based on any law.

65. In Judgment no. 2/2022 of the Third Instance Judge, the latter rejected a request under article 56 of the CCP against the indictment issued against the accused in that case, on the basis that it was contrary to Article 6 of the Convention. It held that:

“It is well established that the abnormality of a procedural act must relate to the structural aspect, where, by virtue of its singular nature, the act in question falls outside the organic framework of procedural law; or to the functional aspect, where, although not outside the legal framework, it causes an undue standstill in the proceedings and makes it impossible to continue them. Abnormality constitutes a form of procedural defect, which is not recognised in an explicit provision of law, it being the result of the conceptual elaboration carried out by doctrine and case-law to identify a remedy for the prejudicial effects resulting from measures which are not appealable, but which are affected by inherent or functional anomalies that make them both dissimilar and inconsistent with the procedural system and radically incompatible with it, and which constitute an obstacle to the regular conduct of the proceedings.”

66. In its judgment no. 5/2010, the Constitutional Court was called upon to decide whether the creation *via* case-law of a remedy, against preventive measures issued at first instance in the administrative sphere, was compatible with the Constitution. In that case, where the remedy had been created via a wide interpretation of the word “judgment” so to allow such appeals (and not in order to fill a lacuna), the Constitutional Court had found that the case-law, with which the judges were not bound, had not been coherent and there had not been a unanimous application of such approach, thus, it could not be considered “customary law” which could be subject of review by the Constitutional Court. In any event, the latter considered that there would be no violation of the principal of “tribunal established by law” as the administrative appeal judge had the functional competence (provided by law) to review first-instance judgments. Neither would there be a violation of Article 6 bearing in mind that parties had a right to a double degree of jurisdiction. Nor would there be a violation of the principle of separation of powers, as the judiciary was not only called on to apply the current law but also to interpret the law. In the present case that court had not created a law but rather interpreted one.

THE LAW

I. JOINDER OF THE APPLICATIONS

67. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE GOVERNMENT’S OBJECTION OF ABUSE OF PETITION

68. The Court reiterates that an application may be rejected as an abuse of the right of application under Article 35 § 3 (a) of the Convention, which provides, as far as relevant:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application.”

A. The parties’ submissions

1. The Government

69. The Government submitted that the application was inadmissible for abuse of the right of individual application on the following grounds:

70. The applicant, as well as her lawyer, were not only members of the opposition political party but also “prominent” representatives of it, the applicant having been a candidate in the 2016 elections, and in 2025 having chaired their congress, while currently holding the office of “head of the internal documentation/information body”. Her lawyer is a member of Parliament as a representative of the same political party.

71. The political party *Repubblica Futura* took a position in Parliament criticising the conduct of the judiciary and raising concerns about the extension of the *querela nullitatis* to the criminal sphere, as well as expressed solidarity with the applicant during the criminal proceedings. Moreover, the daily newspaper *L’Informazione*, referring to the questions set by the Court in the present case, anticipated a successful outcome for the applicant in these proceedings in order to influence public opinion. In the Government’s view such behaviour constituted abuse of petition. They further submitted that due to the above they had been unable to serenely consider a friendly settlement given that “the subject of the applications, rather than being kept confidential as required by the Rules of Court” was improperly turned into a political matter, thus both the applicant and her lawyer had failed in their duty of correctness.

72. According to the Government certain elements of application no. 12744/24 were untrue, namely the statements that:

- the applicant’s conduct was qualified “autonomously” as a crime under article 344 of the Criminal Code - while the Government noted that according to law this was precisely the duty of the judge;
- “the national case-law has never criminally convicted anyone for facts similar to those charged against the applicant, let alone for a violation of article 344 of the Criminal Code” – conversely, the Government submitted that, case-law constantly distinguished political criticism from the attribution to a person holding a public office of an objectively false fact, seriously damaging honour and constituting an unjustified attack on personal dignity, with explicit references to hatred and contempt;

- the acquisition of the criminal record was “fundamental evidence” – when, according to the Government, it was irrelevant.

73. It was also not true that the issue of the constitutional legitimacy raised by the applicant had not been examined as both first-instance and appeal judge made the assessment under article 13 of Qualified Law no. 55/2003 (see paragraph 55 above) concluding that the issue was irrelevant; similarly, it was untrue that the State Attorney had requested the applicant’s acquittal because the fact did not constitute a crime, rather he requested it because there had been insufficient evidence.

74. According to the Government, application no. 33586/24 had also contained an untrue fact. X had not instituted a *querela nullitatis* but rather an appeal against an abnormal measure, which was open to everyone.

75. Furthermore, the applicant’s lawyer submitted an update claiming that the applicant’s lawyers were subject to forms of pressure, and that A had been subjected to criminal proceedings, which was not supported by evidence. Furthermore, the applicant’s lawyer reported untrue facts to the Third Instance Judge and provided “evidence” consisting of written statements (see paragraph 28 above) by members or supporters of the political party in which the applicant and her lawyer are active, attempting to disguise what could be described as defence strategy errors behind a political issue. She had further falsely claimed that the minutes of the appeal proceedings had been false; in this connection they referred to the decision in proceedings no. 234/24 which the Government submitted to the Court (see paragraphs 44 et seq. above).

2. The applicant

76. The applicant submitted that at the time of the facts she was a member of the San Marino political party *Repubblica Futura*, of which she became the General Assembly’s Chairperson in 2025 (after the domestic proceedings complained of came to an end). The applicant’s lawyer is a sitting parliamentarian, of the same party. However, such facts were of no relevance to this objection, and the Government had only been trying to “politicise” the current applications to divert attention from their merits.

77. She further noted that neither her nor her lawyer had revealed any friendly settlement proposals. She also had no control over the press who, as public watchdogs, were reporting on public information available on the Court’s Hudoc site, nor on various other bodies which had discussed the issue of the extension of the *querela nullitatis* to criminal matters (see paragraph 50 above). It appeared, thus, to be the Government’s intention only to silence all actors.

78. The applicant further rebutted the Government’s allegations concerning the precision of the facts in the application forms, reiterating her submissions on the facts and merits.

79. Lastly, she submitted that opening *ex officio* a criminal complaint against the applicant’s lawyer for false accusations (because of the

submissions made to the Third Instance Judge when the latter had not even decided the case) was inappropriate as well as reprehensible and also amounted to undue interference with the applicant's defence rights.

B. The Court's assessment

1. General principles

80. The Court reiterates that declaring an application inadmissible as being an abuse of the right of individual application is an "exceptional procedural measure" and that the concept of "abuse" must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right by its holder for purposes other than those for which it is designed (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009; *De Luca v. Italy*, no. 43870/04, § 35, 24 September 2013; and *Petrović v. Serbia* (dec.), nos. 56551/11 and 10 others, 18 October 2011).

81. The Court has applied this provision in four types of situations (see *Miroļubovs and Others*, cited above, §§ 62-66): in cases where applications were knowingly based on untrue facts (see *Y.T. v. Bulgaria* (revision), no. 41701/16, §§ 35-40, 4 July 2024, and *Volozhanin and Znakovan v. Ukraine* (dec.), nos. 19951/21 and 31160/21, §§ 18-41, 3 March 2026), in cases where an applicant used particularly vexatious, contemptuous, threatening, or provocative language in his communication with the Court (see, for example, *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, 4 February 2003), in cases where an applicant deliberately breached the confidentiality of friendly-settlement negotiations (see, for example, *Deceuninck v. France* (dec.), no. 47447/08, 13 December 2011) and in cases where applicants repeatedly sent quibbling and manifestly ill-founded applications resembling those they had previously lodged that had been declared inadmissible (see *Anibal Vieira & Filhos LDA and Maria Rosa Ferreira da Costa LDA v. Portugal* (dec.), nos. 980/12 and 28385/12, 13 November 2012).

82. However, the Court has held that the notion of abuse of the right of application under Article 35 § 3 (a) of the Convention is not limited to those four situations, and that other situations can also be considered an abuse of that right. In principle, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered an abuse of the right of application (see *Miroļubovs and Others*, cited above, § 65; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014 (extracts); and *Koch v. Poland* (dec.), no. 15005/11, 7 March 2017).

83. Furthermore, the Court has found that the misuse of domestic remedies and an applicant's conduct before the national authorities are relevant factors in assessing whether an application should be considered an

abuse of the right of application (see *Bock v. Germany* (dec.), no. 22051/07, 19 January 2010; *Dudek (VIII) v. Germany* (dec.), no. 12977/09 and 4 others, 23 November 2010; and *Ferrara and Others v. Italy* (dec.) nos. 2394/22 and 18 others, § 43, 16 May 2023). With regard to the subjective element, the Court has emphasised that for behaviour to qualify as abuse of the right of application, it must be intentional, and this intention must be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Miroļubovs and Others*, cited above, § 66; and *Ferrara and Others*, cited above, §§ 63 and 66).

84. The Court reiterates that dealing with manifestly abusive conduct by applicants or their authorised representatives is incompatible with its proper functions under the Convention (see *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 21, 10 April 2012, and *De Cristofaro v. Italy* (dec.), nos. 30464/07 and 7 others, § 45, 10 July 2012).

2. Application to the present case

85. Turning to the present case, the Court notes the grounds relied on by the Government in respect of their objection of abuse of petition, namely the applicant's and her lawyer's affiliation to a political party and the latter's position in Parliament on a matter of public interest (see paragraph 70-71 above). At the risk of stating the obvious, the Court highlights that a member of a political party in opposition is entitled to bring proceedings before the Court, and be represented by a member of parliament in the opposition ranks, it is also a sign of a healthy political environment that a political party raises an issue of general interest effecting the domestic legal framework in the context of a parliamentary debate. Thus, the Government's submissions are not only devoid of any relevance to their claim that there has been abuse of the right of petition but also indicate a strong political tension at the domestic level. However, the Court is not a forum for the expression of such hostilities which go beyond the legal issues presented in the case.

86. The Court also expresses concern about the Government's reference, albeit in wide terms, to the non-contentious phase of the present proceedings, despite them having been informed that such submissions may not be relied on in the contentious proceedings (Rule 62 § 2 of the Rules of Court). This is even more so when the Government have not claimed any disclosure concerning any possible friendly settlement exchanges by the applicant or her representative (contrast *Gherardi Martiri v. San Marino*, no. 35511/20, § 69, 15 December 2022). Rather, they focused their objection on failings of confidentiality in relation to "the subject of the applications" and press reports referring to the notification of the present applications to the respondent Government. In this connection the Court notes that, contrary to friendly settlement negotiations, such information is public and purposefully put in the public domain via the Court's online database (Hudoc), thus ensuring accessibility to all those concerned, and anyone interested, as well as the

transparency of Court procedures (see *Simoncini v. San Marino*, no. 14396/24, § 79, 19 February 2026). Thus, this public information is available online and can be accessed by anyone who in turn can draw the relevant conclusion as to their significance; and in any event, the applicant cannot be answerable for the fact that a piece of public information, in what is certainly a case of media interest in the respondent State, was published by the press (*ibid.*).

87. In so far as the Government consider certain statements in the applications as being untruthful, the Court notes that other than linguistic issues or matters irrelevant to the legal assessment of the case, the disputed phrases concern matters which relate to the merits of the complaints and will, in so far as relevant, be dealt with in that context accordingly. Irrespective of whether the applicant's arguments are well-founded, there is nothing to indicate that there was a deliberate distortion of irrefutable facts with a view to deceiving the Court (compare *X and Others v. Bulgaria* [GC], no. 22457/16, § 145, 2 February 2021, and contrast *Bencheref v. Sweden* (dec.), no. 9602/15, 5 December 2017).

88. Lastly, in so far as the Government argue that the lawyer's actions before this Court and at the domestic level constitute abuse of petition (see paragraph 75 above) the Court observes that the criminal proceedings brought against her at the request of the Chief Justice could reasonably, in her subjective perspective, have been considered as pressure being brought upon her, especially in a heightened political context. Moreover, the Government also considered them sufficiently relevant to be brought to the attention of the Court, even though they were ultimately dismissed (see paragraphs 44-47 above). In respect of the allegations concerning the witness evidence produced before the domestic courts, it is firstly for those courts to assess such evidence and not for this Court to usurp their function, noting moreover that the Third Instance Judge had accepted such evidence brought before him and that in the proceedings for the offence of false accusations the judge had determined that in fact A had been unable to read her speech (see paragraph 47 above).

89. In consequence, there is nothing in the Government's submissions which could indicate a deliberate intent on the part of the applicant to impede the proper conduct of the proceedings (compare *Podeschi v. San Marino*, no. 66357/14, § 88, 13 April 2017, and *Simoncini*, cited above, § 78).

90. In view of the foregoing, the Government's objection must be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

91. In her application no. 33586/24, the applicant complained that she had been found guilty by a tribunal which was not established by law, contrary to Article 6 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

92. The Court notes that the 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

93. The applicant submitted that after being acquitted she was then convicted by a tribunal which was not established by law. Indeed, the law did not provide the JER with the competence to hear requests for *querela nullitatis* in criminal matters. The latter procedure was not provided for in any law of whatever kind. The wording of article 3 (5) of Constitutional Law no. 1 of 2021 (see paragraph 54 above) was clear about the JER's competence, with reference, in so far as relevant, to that court being competent to try conflicts of jurisdiction in all fields (civil, criminal and administrative), revision requests in respect of criminal judgments, and requests *querela nullitatis* in civil cases.

94. The inexistence of such a remedy in civil matters had also been pronounced by the Constitutional Court in its judgment no. 1 of 2007 (see paragraph 58 above).

95. At the time of the present case, under the San Marino legal framework, criminal procedures came to an end after the third degree of jurisdiction, namely by a decision of the Third Instance Judge in criminal matters (as per amendments introduced in 2023). A revision was also possible under article 200 of the CCP (see paragraph 56 above), which was also amended in 2023. However, the legislator had never intervened and amended any law to introduce the notion of a *querela nullitatis* in criminal matters. Nevertheless, the JER in the present case, while referring to the Constitutional Court judgment no. 1 of 2007 referred to above, decided that the *querela nullitatis* was a remedy open to a civil party in criminal proceedings. Ironically this resulted in the civil party having a further remedy which was not available to the accused in the same proceedings. That same judge had made a similar finding in 2023, in a request regarding an interlocutory measure (see paragraph 60 above) and thus having lesser consequences. Conversely, in the applicant's case, the JER quashed a final acquittal decision, without remittance, and revived a guilty verdict.

96. This jurisprudential development was contrary to law also in respect of the clear wording of article 187 (3) and 199 *bis* of the CCP (see

paragraph 57 above) which prescribed the limits of a civil party's right of action in the context of criminal proceedings. Such limitations were reasonable given that civil parties had other means of action via civil proceedings.

97. This situation came about despite the fact that, even within the San Marino legal system, criminal law is characterised by the principle of precise and exhaustive definitions (*tassatività*), the prohibition of analogy *in malam partem* (in a negative spirit) to the detriment of the accused and the principle of *in dubio pro reo* (doubt must benefit the accused).

98. In reply to the Government's argument, the applicant submitted that there was no doubt that the request introduced by X before the JER was a *querela nullitatis*, and the judgment of the JER upheld that request. This was even more evident by the fact that following that judgment, for about two months, public debates discussed precisely "the extension of the *querela nullitatis* to criminal matters" (see paragraphs 71 and 77 above). In any event, even their argument that the JER could always intervene in cases of abnormal decisions, did not change the situation, as such action also lacked any legal basis. She emphasised that criminal law did not allow for the creation of remedies and procedures which were not provided by law, and the case-law relied on by the Government concerned civil and administrative cases, not criminal. Moreover, the Government's argument that such remedy was necessary was circular in so far as it would call for an infinite possibility of remedies.

(b) The Government

99. The Government submitted that the applicant had been tried before a judge established by law as the JER had jurisdiction to rule on the appeal lodged by the civil party X. They considered that this appeal did not constitute an analogical extension of the *querela nullitatis* – as an extraordinary remedy provided for civil judgments – but rather "a complaint for nullity" against the abnormal measure, admitted both in criminal and civil matters, by national case-law, which by way of interpretation provided a remedy for very serious issues that lead to violations of the fundamental rights of the parties.

100. In criminal matters, in particular, it constituted living law because it had been recognised for more than twenty years. Indeed, by derogation of the principle of legal remedies being provided in an exhaustive way in a provision of law, both in criminal and civil matters, case-law allowed an appeal against abnormal measures. The Government referred to a decision of the Court of Appeal in 2000 (see paragraph 61 above) and considered that such extension had happened through the extension of the complaint under article 56 of the CCP which was limited in law to measures of personal or patrimonial coercion and seizures (see paragraphs 62-65 above). Similarly, in civil matters a complaint for nullity against judicial measures of enforcement, in respect of which no remedy existed in law, had been allowed through

case-law, distinguishing it from a *querela nullitatis* (see paragraph 59 above). They submitted that, according to domestic case-law, this was not in breach of human rights (see paragraph 62 above).

101. Thus, the JER had applied settled case-law, which, with a constitutionally oriented interpretation (allowing for the introduction of remedies not provided for by law, see for example judgment no. 5/2010 at paragraph 66 above) – offered an indispensable remedy against abnormal judgments. In the Government’s view the direct application of Article 13 of the Convention pursuant to article 1 of the Declaration of Citizen’s Rights (see paragraph 53 above), required the national adaptation of the system of extraordinary appeals through case-law, when there existed a violation of fundamental rights that could not otherwise be remedied.

102. They considered that appeals against abnormal judgments had to be lodged before a judge of a higher instance than the one who issued the impugned judgment, and therefore in the present case, an appeal against a third-instance judgment could only be lodged before the JER. Had this not been the case, there would be no remedy against abnormal judgments, adopted on the basis of an arbitrary assessment and violating fundamental rights, which could open the way, in a monocratic court system, even at the highest instance, to “personalist tendencies”.

103. They considered that such a remedy had not been expressly regulated by law, as done in other legal systems, due to the objective difficulty of categorising – in the absence of uniform criteria for identifying the distinctive characteristics of abnormal measures – cases of flagrant abuse of power that affect the lawfulness of the proceedings altering their course and inevitably affecting the rights of defence of the parties to the proceedings.

104. Turning to the present case, the Government submitted that the deficiencies of the third instance-judgment had been evident, reiterating the findings of the JER in this respect.

105. Further, the JER had not remitted the case to the criminal tribunals because the third-instance judgment had been wrong and *contra legem* thus had to be annulled. Indeed article 199 *bis* of the Code of Criminal Procedure introduced an appeal to the third-instance jurisdiction only on the basis of lawfulness (*leggitimità*), not on the merits (except in the case of its paragraph 2). Thus, the Third Instance Judge should not have taken cognisance of the merits of the case. Indeed, that provision did not give the Third Instance Judge power of effective reform, but rather provided for the annulment of the appeal judgment to be followed by measures which could be either a) order that the first-instance judgment become *res judicata*, in the event of a discrepancy with the appeal judgment; b) in the event of consistency between the first instance judgment and the appeal judgment, refer the case to the Judge of Appeal so that he/she may decide on the merits of the case on the basis of the findings, if necessary by re-examining the evidence.

2. *The Court's assessment*

106. The Court reiterates that under Article 6 § 1 of the Convention, a court or tribunal must always be “established by law”. This expression reflects the principle of the rule of law which is inherent in the system of protection established by the Convention and the Protocols thereto, and which is expressly mentioned in the Preamble to the Convention (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 211, 1 December 2020; see also, for example, *Jorgic v. Germany*, no. 74613/01, § 64, ECHR 2007-III).

107. The purpose of the term “established by law” in Article 6 § 1 of the Convention is to ensure “that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament” (see *Guðmundur Andri Ástráðsson*, cited above, § 214; see also *Zand v. Austria*, no. 7360/76, Commission’s report of 12 October 1978, *Decisions and Reports* (DR) 15, pp. 70-80, and *Miracle Europe Kft v. Hungary*, no. 57774/13, § 51, 12 January 2016). A tribunal that is not established in conformity with the intentions of the legislature will necessarily lack the legitimacy required in a democratic society to resolve legal disputes (see *Guðmundur Andri Ástráðsson*, cited above, § 211; see also *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002).

108. A tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 99, ECHR 2000-VII).

109. The Court emphasises that the “law”, within the meaning of Article 6 § 1, comprises in particular the legislation on the establishment and competence of judicial organs (see, *inter alia*, *Lavents*, cited above, § 114, and *Jorgic*, cited above, § 64). Accordingly, if a tribunal does not have jurisdiction to try a defendant in accordance with the provisions applicable under domestic law, it is not “established by law” within the meaning of Article 6 § 1 (compare *Coëme and Others*, cited above, §§ 99 and 107-08). The Court further reiterates that, in principle, a violation of the said domestic legal provisions on the establishment and competence of judicial organs by a tribunal gives rise to a violation of Article 6 § 1. The Court is therefore competent to examine whether the national law has been complied with in this respect. However, having regard to the general principle according to which it is in the first place for the national courts themselves to interpret the provisions of domestic law, the Court may not question their interpretation unless there has been a flagrant violation of domestic law (see *Jorgic*, cited above, § 65).

110. The Court notes that, it is not disputed that the concept of *querela nullitatis* only applied to the civil sphere. While the Government argued that the action before the JER in the present case was not a *querela nullitatis* the

Court observes that the application lodged by X was precisely a request for a *querela nullitatis*, as indicated in all the documents related to those proceedings (submitted to the Court), and as evidenced by the arguments contained therein (reproduced in the facts part of this judgment), without prejudice to the final decision taken by the JER. Whether the JER treated the action as a *querela nullitatis* (applying by analogy the action which is limited to the civil sphere) or as an unspecified action “for the nullity of abnormal judgments” is another matter. Indeed, the Court accepts that from the wording of that judgment (see paragraph 40-41 above), it seems that it was an action for the nullity of abnormal judgments which the JER took cognisance of. However, the Court cannot but note that such a remedy is not provided for by a law enacted by Parliament and thus cannot be said to be in conformity with the intention of the legislature, nor in this case has it been the result of an interpretation of some other wording established in some other provision of law (contrast the situation in judgment no. 5/2010 at paragraph 66 above). Indeed, neither the JER, nor the Government in their submissions have relied on any provision of law grounding this action.

111. As admitted by the Government (see paragraph 100 above), the remedy which they referred to as a kind of *sui generis* action for nullity of abnormal judgments – applied in other civil or administrative spheres in the past and in the criminal context in the present case – derived from case-law and therefore was a creation by the judiciary in the absence of any legal basis. In this connection, the Court reiterates that in countries where the law is codified, the organisation of the judicial system cannot be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation (see, *Coëme and Others*, cited above, § 98, and *Sokurenko and Strygun v. Ukraine*, nos. 29458/04 and 29465/04, § 23, 20 July 2006). However, as already noted above, in the present case, in so far it concerned an action for nullity of abnormal judgments, this was not a situation of interpreting the wording of any specific provision of law.

112. In addition, in the criminal context relevant to the present case, no law provides for the procedural requirements of such an action allowing for proceedings to be conducted in a prescribed manner as required by this institutional guarantee. In this connection the Court reiterates that the principle that the rules of criminal procedure must be laid down by law is a general principle of law. It stands side by side with the requirement that the rules of substantive criminal law must likewise be established by law and is enshrined in the maxim “*nullum iudicium sine lege*”. It imposes certain specific requirements regarding the conduct of proceedings, with a view to guaranteeing a fair trial (see *Coëme and Others*, cited above, § 102). The Court further observes that the primary purpose of procedural rules is to protect the defendant against any abuse of authority and it is therefore the

defence which is the most likely to suffer from omissions and lack of clarity in such rules (ibid.).

113. Furthermore, while it is not disputed that the JER is an organ established according to legislation, the mere lawful existence of a judicial body is not in itself sufficient to qualify it as a court “established by law” (see *Gorguiladzé v. Georgia*, no. 4313/04, § 72, 20 October 2009). The Court cannot but note the limited remit given to the JER according to article 3 (5) of Constitutional Law no. 1 of 2021 (see paragraph 54 above) which, in so far as it concerns the criminal sphere, is circumscribed to revision requests in respect of criminal judgments (under article 200 of the CCP, at paragraph 57 above), which can be lodged by the accused or by the State Attorney but not the civil party (see article 200 (2), at paragraph 57 above). The Court reiterates that a court which exceeds the jurisdictional powers clearly conferred upon it by law cannot, in principle, be regarded as a “court established by law” (see *Gorguiladzé*, cited above, § 69). Nevertheless, in the present case, the JER clearly went beyond the powers conferred upon him by law, thus overstepping the limits of the competence of that court.

114. It follows that the JER who quashed the Third Instance Judge’s supposedly final acquittal decision, without remittance, thus reviving the applicant’s guilty verdict, was not a tribunal established by law, given both the lack of any legal basis for such action and the absence of any competence to decide on such action.

115. The Court further notes that, albeit with certain different considerations, the same conclusion would ensue had the action of which the JER took cognisance of been that of a *querela nullitatis*. This is so since the law expressly provided for such an action solely in the civil sphere, and, accordingly, the law provided for the JER’s competence only in respect of that civil action, namely “on *querela nullitatis* ... in civil proceedings” (see article 3 (5) of Constitutional Law no. 1 of 2021 at paragraph 54 above). In such context, the Court cannot accept, as compliant with the Convention, a judge-made interpretation of the word “civil” as including or being intended to cover also the notion “criminal”, to the detriment of the accused and the principle of legal certainty.

116. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of the concept “tribunal established by law”.

IV. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

117. In her application no. 12744/24, the applicant complained, also under Article 6, about the fairness of her trial up to the appeal stage. In particular, she complained that she had not been given access to crucial evidence (X’s full criminal record); that she had been found guilty despite providing evidence that the Minister had been found guilty of certain violent acts against

men; and that the appeal had not conformed to the requirements of a “public hearing” in so far as she had not even been asked to speak, and her lawyer had been repeatedly interrupted while trying to make oral submissions.

118. The Government submitted that the applicant had had a fair trial, and that it was not true that the applicant’s lawyer had not been able to set out her defence.

119. The Court 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.

120. However, the Court notes that this complaint had been lodged prior to the appeal before the Third Instance Judge which became available via amendments introduced in 2023. It follows that the appeal judgment complained of was then superseded by the findings of the Third Instance Judge, which were subsequently superseded again by a tribunal which the Court found was “not established by law” (see paragraph 116 above). Bearing in mind the latter findings, the Court considers that it is not necessary to examine the merits of the complaint under Article 6 concerning the aspects related to the period up to the appeal stage.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

121. The applicant complained of an unjustified interference with her freedom of expression contrary to Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

122. The Court 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

123. The applicant submitted that the judgment of the JER reviving the Court of Appeal judgment had not been regulated by law, and that the judgment of the Court of Appeal finding her guilty and sentencing her to a suspended sentence of imprisonment amounted to a disproportionate interference with her freedom of expression.

(b) The Government

124. The Government submitted that there had been no violation of the provision as the judgment had been lawful, the applicant having been found guilty on the merits by three judges, and the JER having only quashed the decision of the Third Instance Judge acquitting the applicant due to its “manifest extraordinary abnormality”, thus, reviving the findings of the Court of Appeal. The interference had also been justified.

2. *The Court's assessment*

125. To satisfy the requirements of paragraph 2 of Article 10, an interference with freedom of expression must be “prescribed by law”, pursue one or more legitimate aims and be “necessary in a democratic society” for the pursuit of such aim or aims (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-95, 7 February 2012).

126. The Court reiterates that the expression “prescribed by law” in the second paragraph of Article 10 not only requires that the impugned measure have a legal basis in domestic law, but also refers to the quality of the law in question – which should be accessible to the person concerned and foreseeable as to its effects. (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 93-94, 20 January 2020). The notion of “quality of the law” requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (*ibid.*, § 93; see also *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 159, 5 April 2022).

127. The Court notes that it is not disputed that the impugned measure, namely the applicant’s conviction, constituted an interference with the applicant’s right to freedom of expression under the first paragraph of Article 10 of the Convention.

128. As to the lawfulness of the measure, the Court notes that, while article 344 of the Criminal Code constituted the relevant legal basis the quality of which is not disputed, the Court has previously considered that the decision-making procedure leading to an interference must also be a

procedure “prescribed by law” (see for example, *Unifaun Theatre Productions Limited and Others v. Malta*, no. 37326/13, § 86, 15 May 2018) and that serious faults in such decision-making procedures may result in the interference not meeting the Convention requirement of lawfulness (see, for example, *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, no. 257/12, § 82, 18 February 2025). In the present case, the Court has already found above that the tribunal which revived the applicant’s conviction, after she had been acquitted, was not a tribunal “established by law”.

129. It follows that the interference in the present case cannot be considered to have been “prescribed by law” within the meaning of the Convention. Having reached that conclusion, the Court does not need to ascertain whether the domestic courts struck a fair balance when protecting the two values guaranteed by Articles 8 and 10 of Convention, in the present case.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

132. The applicant claimed non-pecuniary damage in an amount to be decided by the Court. Bearing in mind that X had not asked for the payment of the provisional award of civil damage or instituted proceedings to have a final award, and thus no such payment had yet been made, she could not at this stage submit such a pecuniary claim.

133. The Government submitted that while the Court of Appeal ordered the applicant to pay a provisional sum of civil damage, she admitted to not having yet paid them.

134. In these circumstances the Court awards the applicant 5,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

135. The applicant also claimed EUR 37,415.50 for the costs and expenses incurred before the domestic courts (of which EUR 36,000 represented lawyer’s fees for the four instances of domestic proceedings as

per court decree of 18 November 2025 submitted to the court on the same day) and an amount to be determined by the Court for legal fees for both applications and relevant submissions, as well as EUR 92.70 for expenses incurred before the Court.

136. The Government submitted that the costs of the domestic proceedings would in any event have been paid, and that the applicant had not demonstrated to have paid them.

137. According to the Court's case-law (see *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023), an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court observes that under the San Marino system the costs of the criminal proceedings would have been incurred by the applicant, irrespective of the outcome of the proceedings. However, it notes that the proceedings instituted by X before the JER, which the Court found was not a tribunal established by law, should never have come to be, and therefore the applicant should not be made to bear the brunt of those costs (a portion of those claimed). In this connection, nevertheless, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009). The Court further notes that the applicant has signed a power of attorney mandating the legal representative to represent her before the domestic proceedings and this Court, and thus has entered into a contractual relationship with the legal representative who is entitled to recover relevant dues as per the domestic judgment of the execution judge (which she submitted on the day it was issued, leaving little time for payment), and as are to be awarded by this Court, even assuming that these had not yet been paid when the claims were submitted (see, *mutatis mutandis*, *S.H. v. Malta*, no. 37241/21, § 113, 20 December 2022). In the present case, regard being had to the documents in its possession and the above criteria, the Court awards EUR 9,000 for costs and expenses in the domestic proceedings before the JER and considers it reasonable to award the sum of EUR 10,000 for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the concept “tribunal established by law”;

4. *Holds* that there is no need to examine the complaint under Article 6 of the Convention concerning the aspects related to the period up to the appeal stage;
5. *Holds* that there has been a violation of Article 10 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 19,000 (nineteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Kateřina Šimáčková
President