



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

FOURTH SECTION

CASE OF KLEIN v. SLOVAKIA

(Application no. 72208/01)

JUDGMENT

STRASBOURG

31 October 2006

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 Klein v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 72208/01) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Martin Klein ("the applicant"), on 28 June 2001.

2. The applicant was originally represented by Mr J. Hrubala, a lawyer practising in Banská Bystrica and Bratislava. On 8 May 2003 he appointed Ms Z. Dluhošová, a lawyer practising in Bratislava, to represent him in the proceedings. Prior to that date Ms Dluhošová had been charged with the preparation and filing of the application on behalf of Mr Hrubala.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. The applicant alleged that his right to freedom of expression had been violated as a result of his conviction for the publication of an article.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 8 November 2005 the Court declared the application admissible.

6. The Government, but not the applicant, filed further written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1947 and lives in Bratislava. He is a journalist and film critic.

8. On 27 February 1997 Miloš Forman's film "The People vs. Larry Flynt" was released to cinemas in Slovakia. Prior to that, the film was promoted, *inter alia*, by means of a poster placed in the streets. In the poster the main character had the flag of the U.S.A. around his hips and he was depicted as crucified on a woman's pubic area dressed in a bikini.

9. On 26 February 1997 the "Common Declaration of Ecumenical Council of Churches and of the Slovak Bishops' Conference" was published. The declaration protested against the display of the poster as being a profanation of God. The Movement of Christian Associations of Children subsequently associated itself with the declaration.

10. On 11 March 1997 Archbishop Mons. Ján Sokol made the following declaration on the Slovak Television:

"In these days we are witnessing 'the humiliation of the crucifix'. In spite of all protests of the Slovak Bishops' Conference and the Ecumenical Council of Churches aimed at stopping the production and distribution of the poster promoting the film of Miloš Forman: 'The People versus Larry Flynt' this poster is present in the streets of our capital Bratislava. It is a defamation of the symbol of the Christian religion. The American Film Association did not allow this blasphemy. It was not allowed in France and Belgium either. How is it possible that it was allowed in Slovakia which professes the tradition of Cyril and Methodius, that is the Christian religion, even in the Constitution? ... Therefore we request the Government, the Parliament, our public officials within the legislature and judiciary to examine the entire issue and take appropriate measures for withdrawal of the posters and the film and to hold accountable those who violated the laws... We hope that our protest will be viewed favourably by the responsible officials and that redress will be made. To all those who endeavour to do so we express our sincere thanks in advance."

11. On 28 March 1997 the weekly *Domino Efekt* published an article written by the applicant. The weekly was at that time published in 8,000 copies and it mainly concentrated on political commentary and specialised articles on economy, philosophy, natural sciences and culture. It was aimed at intellectually-oriented readers.

12. The article was entitled "*The falcon is sitting in the maple tree¹; Larry Flynt and seven slaps to the hypocrite²*". In it the applicant criticised Archbishop Ján Sokol². It did not mention that it had been written in reaction to the above TV broadcast of the Archbishop. The article reads as follows:

¹ This phrase is also the title of a folk song.

² The noun "*sokol*" means falcon in the Slovak language.

"I. As is generally known, the Earth is a flat board. Even if it is not a flat board, the Sun turns around it. Even if it does not turn, the church dignitary made love to his mother¹.

II. The text may go on as follows: 'Even if he did not make love...' He did. Proves: (a) Larry Flynt won a Supreme Court trial in the USA. (b) The church dignitary is a '*trtko*'². This all will acknowledge who saw him at least on TV.

III. I profoundly hate using the word '*trtkat*'. The indispensable exceptions can be counted on the fingers of Eltsin's left hand:

1. '*Trtkaj*' is the nickname of a former professor at the Chair of Journalism at the Faculty of Philosophy of the Comenius University during the period of 'normalisation'.

2. '*Trt*' is a rarely used acclamation for [negating something] or the equivalent of the negation term 'shit' used in the Haná region.

3. '*Trtko*' is – as from a certain age – the same as the perhaps more colourful and euphemistic '*trotkoš*'. Such a person does not make love, nor does he ... At the utmost – oh – [the verb '*trtkat*' is used]; poor mother.

IV. Slovakia is not a Christian State. (When French church dignitaries requested the prohibition of the Flynt poster, they had not even thought, fearful ones, of requesting prohibition of the film. They also alleged that France was a Christian State. Alas, a glimpse at the first articles of the constitution shows that the French people live in liberty, democracy and that it is their private affair whether or not they believe. Not a single word about a Christian State.)

A Christian State would be equally as intolerable as an Islamic State, for example Iran. It indirectly follows that none of the western States is Christian. The long-lasting separation of church from the State is to be considered as a major victory of spirit over matter. (I now disregard the fact that your neighbours in an Austrian or Bavarian village will make your life difficult if you leave the church).

The continuation of certain ceremonials is no proof that a State is 'Christian'. For example, the American President ends the oath with the ritual words: 'So help me God'. However, Larry Flynt refused to swear on the Bible with the explanation that he did not believe in God. Of course, the judge was satisfied with his statement that he would tell the truth. The American President could act likewise, but he would complicate his political life. The number of political struggles which we are able to fight in our life is limited. It is thus more important that Bill Clinton should send soldiers to Bosnia than the fact that he finally did not send there soldiers who were openly homosexual.

¹ The verb "*trkat*" was used which is a slang and unofficial term for, *inter alia*, having sexual intercourse (The Dictionary of Slovak Slang by B. Hochel, HEVI 1993, p. 164).

² The noun "*trtko*" means stupid or undecided person according to the Dictionary of Slovak Slang cited above (p. 164).

V. Given that the archbishop apparently lacks any sex-appeal it is entirely irrelevant whether in the inside of his body he is homosexual or bisexual (as Courtney Love in the film) or whatever. What matters, however, is his positive lustration finding¹. This principal representative of the first Christian church has not even as much honour as the leader of the last gypsy band in his bow!

I do not understand at all why decent Catholics do not leave the organisation which is headed by such an ogre. Are they waiting until he dies? That is too weak. No member of the Communist Party of Czechoslovakia maintains in his or her defence: 'I waited until Husák and Jakeš had died. Then I would make an effort to ensure redress'. Otherwise we would still live in the trees.

VI. As we actually do – in the figurative sense. The success of 'Kolja' (there is not a jot of paedophilia, not a single fellatio in that film) shows how pale the world has become. Salman Rushdie is the hunted one. It is true that the French President received him, but it is unthinkable that the Slovakian President would do the same. The latter preferred joining the archbishop in his effusions. Which '-ko'² advised him to do so: Štefko, Zemko?

VII. The real Larry Flynt published and continues publishing materials that are scurrilous. Their degree of effrontery exceeded the threshold accepted up to then. So what? The real Larry Flynt acted in the film as a judge and in his role he made unacceptable statements. That was however foreseen in the script. The Slovak archbishop makes unacceptable statements without being ordered to do so by anyone. And nothing?! Vanity, all is vanity.

At the request of the editorial office I leave it to the kind readers to pronounce a judgment as to the degree of scurrility of the Slovak archbishop."

13. Subsequently two associations complained that the religious feelings of their members had been offended by the article. Criminal proceedings were brought against the applicant. Archbishop J. Sokol first joined the proceedings as an aggrieved person. He later withdrew from the case and waived his right to claim compensation.

14. On 15 June 2000 the Košice I District Court convicted the applicant of an offence under Article 198(1)(b) of the Criminal Code. The relevant operational part of the judgment reads as follows:

"... as author of the article 'The falcon is sitting in the maple tree; Larry Flynt and seven slaps to the hypocrite' ... stating *inter alia*: 'This principal representative of the first Christian church has not even as much honour as the leader of the last gypsy band in his bow! I do not understand at all why decent Catholics do not leave the organisation which is headed by such an ogre ...', to which the local association of the Cyril and Methodius Community in Prievidza and the Bernolák Society in Bratislava reacted independently of

¹ The so called "Lustration Act" was adopted in the former Czechoslovakia in 1991; it was aimed at preventing high-ranking representatives of the communist regime and collaborators of its secret police from holding certain public posts.

² "-ko" may stand for the name of a person whose name ends with these letters but may also imply a slang noun for a person, possibly with negative connotation.

each other as offending their religious feelings, the applicant publicly defamed a group of citizens for their faith.”

15. The applicant was sentenced to a fine of 15,000 Slovakian korunas¹, to be converted into one month’s imprisonment in the event that he deliberately attempted to avoid payment of the sum.

16. In the proceedings before the District Court the applicant explained that his article had been a reaction to statements by Archbishop J. Sokol broadcast in the main evening news bulletin of the Slovak Television in March 1997. The applicant considered the Archbishop’s proposal to prohibit the distribution of both the poster and the film to be contrary to the principles of a democratic society and, in particular, the freedom of expression. The applicant considered it appropriate to express his view openly as in the TV broadcast no one had been given the opportunity to express a different view from that of the Archbishop. He did not consider the Archbishop to be morally spotless as he had learned that he had been registered in the files of the former communist secret police. The applicant underlined that he had not intended to offend the feelings of members of the Catholic Church.

17. As to his article, the applicant stated that it was not a commentary but a literary joke with ideas and associations which, admittedly, might be appreciated only by a couple of intellectuals. The applicant stressed that it had not been his intention to accuse the Archbishop of incest as the relevant passage related to the film in question in which a preacher had allegedly committed incest with his mother. His statement concerning the alleged scurrility of the Slovakian Archbishop had no erotic connotation, the applicant had in mind exclusively the moral failings of the person criticised.

18. The applicant also explained that he had not been able to publish any articles for three years and that Radio Free Europe had stopped co-operating with him following the publication of the above article.

19. In the course of the criminal proceedings the Archbishop stated that he did not understand the purpose of the applicant’s attack against his person, his mother and the church which he represented. He further stated that he had pardoned the applicant.

20. The court heard the representatives of the two associations which had filed a criminal complaint against the applicant. They stated that the applicant had offended and scandalised Roman Catholic worshippers in that, *inter alia*, he had invited them to leave their church if they considered themselves to be decent and alleged that the representative of the church was an ogre.

21. On the basis of the evidence taken the District Court found that the applicant had committed an offence under Article 198(1) of the Criminal Code in that in his article as a whole, and in particular by the words quoted in the operative part of its judgment, he had defamed the highest representative of the Roman Catholic Church in Slovakia and thereby offended the members of that church. In particular, the applicant’s statement in which he wondered why decent members of the church did not leave it had blatantly discredited and disparaged a group of citizens for their Catholic faith. In doing so the applicant had placed the Catholic Church at the level of an organisation to which decent Catholics should not belong and which they should leave. The applicant should have been aware that his article was capable of offending the interests of other persons protected

¹ SKK 15,000 was at that time the equivalent of approximately 375 euros.

by law. Given that a high proportion of citizens of Slovakia were Catholic, the applicant through his article harmed the religious feelings of a considerable number of persons.

22. Both the applicant and the associations which had filed the criminal complaint against him appealed.

23. The applicant argued that he had committed no offence and that his conviction violated his right to freedom of expression. He referred to constitutional provisions, international instruments and the practice of the European Court of Human Rights under Article 10 of the Convention.

24. The representatives of the complaining associations expressed the view that the sentence imposed on the applicant was too lenient.

25. On 10 January 2001 the Košice Regional Court dismissed both appeals. It held that the first-instance court had established the relevant facts with sufficient certainty and that it had correctly applied the relevant law. As to the applicant's arguments relating to his right to freedom of expression, the Regional Court held:

"It is true that Article 26 (1) and (2) of the Constitution of the Slovak Republic as well as Article 10 of the European Convention on Human Rights and Article 19 of the Universal Declaration of Human Rights guarantee the freedom of expression and the right to information.

Thus it is not disputed that, under the Constitution of the Slovak Republic, each citizen has the right to receive, seek and impart any information, however only to the extent that the constitutional rights and freedoms of others are not thereby violated. This conclusion can be indirectly deduced from Constitutional Court's finding PL ÚS 7/96 in which the Constitutional Court held that 'All fundamental rights and freedoms are protected only to the extent that availing oneself of a right or freedom does not disproportionately restrict or even negate a different right or freedom'.

The article 'The falcon is sitting in the maple tree; Larry Flynt and seven slaps to the hypocrite' is not of a common journalistic standard; the accused admitted this at the main hearing and the Regional Court considers that it goes beyond the principles of journalistic ethics. [The Regional Court] is also aware that Article 10 of the Convention protects the freedom of expression not only in cases of 'information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb or worry the State or any part of population'. The members of the appellate court's chamber believe that even in such cases certain limits exist which should not be exceeded. The article in question is vulgar and it ridicules and offends. In the view of the Regional Court it therefore enjoys no protection. Otherwise media could easily become distributors of, *inter alia*, various malevolent expressions which diminish human dignity. That would certainly not correspond to the spirit and principles of democracy. By the contents of the published article the accused violated the rights, guaranteed by the Constitution of the Slovak Republic, of other persons – namely a group of inhabitants with Christian faith. He thereby offended their religious feelings."

26. As to the qualification of the applicant's action under the Slovak criminal law and the penalty imposed, the Regional Court upheld the reasoning of the first-

instance court. Finally, the Regional Court pointed out that the associations concerned lacked standing to challenge by means of an appeal the sentence imposed on the applicant.

27. On 2 April 2001 the applicant complied with the order to reimburse to the District Court the costs of the proceedings amounting to SKK 800.

On 10 December 2002 the company VMV a.s. paid, on behalf of the applicant, SKK 15,000 to the Košice I District Court with reference to the pecuniary penalty which had been imposed on him. The Companies' Register available on the web indicates that that company has been in liquidation since 15 January 2005.

II. RELEVANT DOMESTIC LAW

A. Constitution

28. The Preamble to the Constitution provides, *inter alia*, as follows:

"... Mindful of the spiritual bequest of Cyril and Methodius, ...

We, the citizens of the Slovak Republic, have, herewith and through our representatives, adopted this Constitution:" ...

29. Pursuant to Article 1, the Slovak Republic is a sovereign, democratic State governed by the rule of law. It is not bound by any ideology or religion.

30. Article 24 reads as follows:

"1. Freedom of thought, conscience, religion and faith shall be guaranteed. This right shall include the right to change religion or faith and the right to refrain from a religious affiliation. Every person shall be entitled to express his or her opinion publicly...

4. The rights under paragraphs 1 to 3 of this Article can be restricted only in accordance with a law where it is necessary in a democratic society for the protection of the public order, health, morals or the rights and freedoms of others."

31. Article 26 provides:

"1. Freedom of expression and the right to information shall be guaranteed.

2. Every person has the right to express his or her opinion in ... writing, ... and also to seek, receive and disseminate ideas and information ...

4. Freedom of expression and the right to receive and disseminate information may be limited by law where it is necessary in a democratic society to protect rights and freedoms of others, state security, public order, health and morals." ...

B. Criminal Code

32. Article 198 of the Criminal Code is entitled "Defamation of nation, race and belief". At the relevant time paragraph 1 of Article 198 read as follows:

"A person who publicly defames

a) a nation, its language or a race or

b) a group of inhabitants of the republic for their political belief, faith or because they have no religion,

shall be punished by up to one year's imprisonment or by a pecuniary penalty."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicant complained that his right to freedom of expression had been violated as a result of his conviction for publication of the above article. He relied on Article 10 of the Convention, the relevant part of 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...

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. Arguments of the parties

1. The Government

34. The Government admitted that there had been an interference with the applicant's right to freedom of expression as a result of his conviction. That interference had a legal basis, namely Article 198(1) of the Criminal Code, and it pursued the legitimate aim of protection of the rights and freedoms of others, namely of Archbishop Mons. Ján Sokol and of other persons of the Catholic faith.

35. As regards the question whether the interference was "necessary in a democratic society", the Government underlined that the article had been published before Easter, that is at a time when Catholic believers were about to recall the crucifixion and resurrection of Jesus Christ. The Archbishop had been authorised to make the statement by the Slovak Bishops' Conference and the Ecumenical Council of Churches in Slovakia. The statement to which the article had reacted had thus presented the view of several religious institutions in Slovakia. In his article the applicant had attacked not only the supreme representative of the Roman Catholic Church in Slovakia, but also the religious feelings of believers. Approximately 69% of the population of Slovakia were Catholic and approximately 4% belonged to the Greek Orthodox Church. There was therefore a pressing social need to protect the feelings of the persons concerned. The extremely offensive statements in respect of Archbishop J. Sokol were clearly an exaggerated reaction to the Archbishop's statement. As such, they were not acceptable.

The article did not indicate the context in which it should be read, and it was impossible for a reader to distinguish which parts of the statements referred to the character in M. Forman's film and which concerned the person of Archbishop J. Sokol. Furthermore, it contained practically no arguments, and its form clearly exceeded the limits of acceptable criticism and tolerance. Accordingly, the interest in protecting the rights of the persons whose religious feelings the applicant had grossly offended outweighed his right to freedom of expression.

36. The amount of the pecuniary penalty imposed was relatively low and the applicant had the right to ask for the expunging of his conviction. The severity of the penalty imposed on the applicant thus did not exceed the gravity of the offence which he had committed, and it was not so severe as to discourage the press from participating in discussions on matters of public interest.

37. The Government concluded that the interference complained of had been proportionate to the legitimate aim pursued and that the applicant's right under Article 10 had not been violated.

2. The applicant

38. The applicant first claimed that he had not breached the limits set out in the criminal law of the Slovak Republic as none of the mandatory constituent elements of Article 198(1)(b) of the Criminal Code was present in the action for which he had been convicted.

39. There was nothing in his criticism which could be interpreted as targeting adherents of the Catholic faith and it had no relationship to the Catholic religion as such. As regards the person of Archbishop J. Sokol, the applicant had wished to attract readers' attention to the moral integrity of a public figure and, in particular, to point out the unacceptability of his activities involving (i) an appeal to ban the film and remove the posters and (ii) his co-operation with the secret police of the communist regime. His value judgment concerning the person of the Archbishop had been based on the relevant file in the secret police's records and that value judgment had not been shown to be untrue.

40. In his article, the applicant had used imagery which was not commonly accepted by society, in particular by referring to the act of incest between the church dignitary in the film "The People vs. Larry Flynt" and his own mother. However, that imagery did not represent a statement concerning the Slovakian Archbishop. The applicant had used it to point to the limits of the freedom of expression which had also been the object of the polemic raised by the Archbishop

when he had asked to ban the screening of the film. Although the article may have shocked and offended believers who held the Archbishop in great esteem, it did not interfere with the right of the believers to express and exercise their religion nor did it denigrate the content of their religious faith. Considering the topic of the article and also given the atmosphere and political context in the society, it did not overstep the boundaries set out in both the domestic legal system and the Convention. The form of his article reflected the degree of his indignation in respect of the Archbishop.

41. In the applicant's view, the interference with his freedom of expression based solely on the fact that certain persons may have taken offence to the attack on the Archbishop could not be considered legitimate in a democratic society.

42. The article was published in a weekly read by a more demanding and intellectually-oriented readership. It contained certain intellectual connotations and allusions that reflected this fact. Furthermore, the weekly was published with a circulation of 8,000 whereas the Archbishop's statement had been made during the main news programme on public service TV which had around 80% viewer rating at that time. The applicant further contested the Government's analysis of individual passages of his article.

43. The investigation and conviction of the applicant had considerably contributed to reducing his prospects of finding employment on the journalistic market. Expunging his conviction would not erase the damage caused to his reputation in the eyes of the public and within the media community. Furthermore, there existed situations where a copy and not an extract of a criminal conviction record was required which comprised all convictions including those that had been expunged from the record.

44. The applicant concluded that the interference had been grossly disproportionate to the objective pursued and, as such, it could not be regarded as having been "necessary in a democratic society".

B. The Court's assessment

45. The applicant's conviction for publication of the above article amounted to an interference with his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. It had a legal basis, namely Article 198 of the Criminal Code, and it pursued the legitimate aim of protection of the rights of other persons whose religious feelings, as the Slovak authorities concluded, had been offended by the applicant's article.

46. It is not for the Court to assess whether the criminal courts correctly applied the relevant law. Its task in the context of the present application is to determine whether the interference in issue was justified in the particular circumstances of the case, that is whether it was "necessary in a democratic society" within the meaning of the second paragraph of Article 10.

47. The Court has underlined the importance in a democratic society of the freedom of expression on many occasions. While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such

beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane.

The test of whether the interference complained of was "necessary in a democratic society" requires the Court to determine whether it corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued (the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference), and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (for the recapitulation of the relevant principles in more detail, see *Giniewski v. France*, no. 64016/00, §§ 43-54, ECHR 2006-...; *Aydın Tatlav v. Turkey*, no. 50692/99, §§ 22-27, 2 May 2006; *Gündüz v. Turkey*, no. 35071/97, § 38, ECHR 2003-XI; *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), with further references).

48. The Court notes the applicant's argument that his article had been a reaction to the Archbishop's statement, broadcast in the main evening news bulletin of a public TV station, and which he had considered to be contrary to the principles of a democratic society and, in particular, freedom of expression. The fact that it was published in a weekly journal aimed at intellectually-oriented readers is in line with the applicant's explanation that he had meant the article to be a literary joke with ideas and associations to the film "The People vs. Larry Flynt" which he had not expected to be understood and appreciated by everyone. The journal was then published with a circulation of approximately 8,000 copies.

49. The Court is not required to assess the journalistic quality of the article although it notes that it contained slang terms and innuendoes with oblique vulgar and sexual connotations. Similarly, the determination of the point at issue does not require the examination of whether a sufficient factual basis existed for the impugned statements directed at the person of the Archbishop (see, *mutatis mutandis*, *Feldek v. Slovakia*, no. 29032/95, §§ 75-76, ECHR 2001-VIII).

50. The applicant was convicted of the offence of "Defamation of nation, race and belief". The first-instance court concluded, *inter alia*, that he had defamed the highest representative of the Roman Catholic Church in Slovakia and had thereby offended the members of that church. The applicant's statement that he wondered why decent members of the church did not leave it had blatantly discredited and disparaged a group of citizens for their Catholic faith. That view was upheld by the court of appeal which found that, by the contents of the published article, the applicant had violated the rights, guaranteed by the Constitution, of a group of inhabitants of the Christian faith.

51. The Court does not accept this conclusion. In particular, in his article the applicant sharply criticised the person of Archbishop J. Sokol following the latter's call, in a TV broadcast, for the withdrawal of both the film "The People vs. Larry Flynt" and the poster accompanying that film, and for action to be taken against the persons who had acted contrary to the law in that context. The applicant's strongly worded pejorative opinion related exclusively to the person of a high representative of the Catholic Church in Slovakia. Contrary to the domestic courts' findings, the Court is not persuaded that by his statements the applicant

discredited and disparaged a sector of the population on account of their Catholic faith.

52. The fact that some members of the Catholic Church could have been offended by the applicant's criticism of the Archbishop and by his statement that he did not understand why decent Catholics did not leave that Church since it was headed by Archbishop J. Sokol cannot affect the position. The Court accepts the applicant's argument that the article neither unduly interfered with the right of believers to express and exercise their religion, nor did it denigrate the content of their religious faith (see also, *mutatis mutandis*, *Giniewski v. France* referred to above, § 51).

The reasons invoked for the interference in issue are therefore too narrow and are insufficient.

53. The applicant was convicted on the basis of complaints filed by two associations, and the Archbishop as an injured party against whom the article was directed withdrew from the criminal proceedings and publicly pardoned the applicant. Given that the applicant in his article criticised exclusively the person of the Archbishop, and irrespective of the nature of the penalty imposed, his conviction of the criminal offence of defamation of other persons' belief was in itself inappropriate in the particular circumstances of the case (see also *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 36, ECHR 2000-X).

54. For the above reasons, and despite the tone of the article referred to in paragraph 49 above, it cannot be concluded that by its publication the applicant interfered with other persons' right to freedom of religion in a manner justifying the sanction imposed on him. The interference with his right to freedom of expression therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. It thus was not "necessary in a democratic society".

55. It follows that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 28,084 Slovakian korunas¹ (SKK) in compensation for pecuniary damage. That sum comprised SKK 10,000 for his legal representation in the criminal proceedings in issue, SKK 2,284 for the applicant's travel expenses related to his participation at court hearings in Košice, SKK 800 corresponding to the costs of the criminal proceedings which the applicant had been obliged to reimburse and SKK 15,000 corresponding to the pecuniary penalty imposed. As

¹ SKK 28,084 is the equivalent of approximately 740 euros.

regards the last-mentioned sum, the applicant claimed it so that he could reimburse the company which had paid it on his behalf.

The applicant further claimed EUR 90,000 in compensation for damage of a non-pecuniary nature. He submitted that he had suffered stress as a result of his prosecution, that he had experienced difficulties in finding suitable employment following his conviction and that his social status had been harmed. As a result, he suffered from bouts of depression, insomnia, hypoactivity and anxiety and he had to consult a professional psychiatrist.

58. The Government argued that (i) the pecuniary penalty imposed had been paid by a private company and not by the applicant himself, (ii) the applicant had not shown that he had incurred the sum related to his travel expenses and (iii) the claim related to legal representation in the domestic proceedings and their cost fell to be examined under a separate head together with other costs and expenses incurred by the applicant.

As regards the alleged non-pecuniary damage, the Government contended that it was exaggerated.

59. The Court notes that the sum corresponding to the pecuniary penalty imposed on the applicant had been paid on his behalf by a private company on 10 December 2002, and that that company has been in liquidation since 15 January 2005. The applicant has not explained under which circumstances the payment was made and he does not allege that he is under any legal obligation to return that sum to the company. In these circumstances, the Court dismisses this part of the claim for pecuniary damage. As regards the claims related to legal representation in the domestic proceedings and their cost as well as the claim concerning travelling expenses, they fall to be addressed under the head of "Costs and expenses" below.

The Court further finds that, as result of his prosecution and conviction, the applicant suffered damage of a non-pecuniary nature which is not sufficiently compensated by the above finding of a violation of Article 10 of the Convention. Making its assessment on an equitable basis, it awards him EUR 6,000 in this respect.

B. Costs and expenses

60. The applicant claimed EUR 4,860 in respect of his legal representation before the Court. In accordance with the contract which he had concluded with Ms Dluhošová, that sum covered also the period during which the applicant had been formally represented by Mr Hrubala.

61. The Government argued that Ms Dluhošová represented the applicant from 8 May 2003. Any award should therefore relate only to the period subsequent to that date. They further stated that compensation should be granted only for the costs which can be said to be reasonable as to the quantum.

62. Having regard to the documents before it, the Court grants the applicant EUR 350 in respect of his costs and expenses related to the domestic proceedings. That sum corresponds approximately to the claims which the Court decided to examine under this head (see paragraph 59 above).

As regards the claim related to the costs of the proceedings under the Convention, the Court, on the basis of the documents before it, awards the applicant the sum claimed, namely EUR 4,860.

C. Default interest

63. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 5,210 (five thousand two hundred and ten euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President