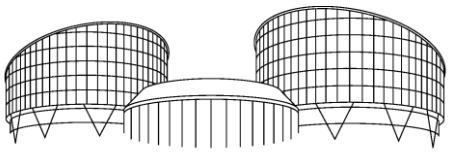

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RINGIER AXEL SPRINGER SLOVAKIA, A.S. v. SLOVAKIA (No. 3)

(Application no. 37986/09)

JUDGMENT

STRASBOURG

7 January 2014

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 Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 3),

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

Alvina Gyulumyan, *President,*
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 3 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 37986/09) 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") on 8 July 2009 by a joint-stock company established under the laws of Slovakia, the name of which is now Ringier Axel Springer Slovakia, a.s. ("the applicant company"), and which was then called RINGIER SLOVAKIA a.s..

2. The applicant company was represented by Mr J. Havlát, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant company alleged that the outcome of the proceedings in a libel case against it had been contrary to its rights under Article 10 of the Convention.

4. On 18 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant company

5. The applicant company is a multimedia publishing house which was established under the laws of Slovakia in 1999. It is constituted as a joint-stock company and its head office is in Bratislava.

6. The applicant company's legal predecessor in respect of the events giving rise to the present application was a limited-liability company established under the laws of Slovakia in 1994 and registered in Bratislava. The latter company was the publisher of a popular daily newspaper, *Nový Čas*, which has national coverage and was later acknowledged by the courts to be one of the most widely read newspapers in Slovakia.

7. Prior to the proceedings described below, in 2004, the applicant company's legal predecessor was merged with the applicant company. For ease of reference, henceforth in this judgment "the applicant company" includes the applicant company's legal predecessor.

B. Factual background

8. The present case revolves around the participation by an individual, A., in a "Who Wants To Be A Millionaire?" type of knowledge quiz in March and April 2004.

9. The quiz was broadcast by a popular national TV channel.

10. For the assessment of certain aspects of this case, it may be of relevance that A. was a student of information technology and was also a co-owner and the statutory representative of a limited liability company specialising in, *inter alia*, the purchase, sale and repair of mobile phones.

11. A. was doing remarkably well in the quiz and had answered thirteen questions correctly, until he failed to answer the fourteenth question right, which was worth the equivalent of some 50,000 euros (EUR). A. was thereby excluded from the quiz with the equivalent of some EUR 2,500 worth of winnings.

12. A. subsequently complained to the organisers of the quiz, arguing that the fourteenth question had been formulated in an ambiguous way and that, in the circumstances, his answer had been correct. The complaint was however dismissed.

13. On 19 May 2004 the organiser of the quiz lodged a criminal complaint on the basis of a suspicion that, in connection with the quiz, A. or other persons unknown had committed the offence of fraud.

14. On 15 May 2006 the investigation of the criminal complaint was stayed, on the ground that it had not been possible to establish any matters of fact justifying the bringing of charges against any specific person.

15. The controversy over the fourteenth question as well as the suspicion against A. received wide media coverage in *Nový Čas* and other press in Slovakia and abroad, *inter alia* presenting amply A.'s position.

Both topics were also the subject of lively debate on various Internet fora.

C. Articles

16. Meanwhile, in addition to the coverage mentioned above, on 11, 18 and 22 May 2004 the applicant company had published three feature articles in *Nový Čas* about the incident. The titles and the introductory paragraphs of these articles appeared on the front pages of the issues published on those days. They were accompanied by photographs and followed by further text and photographs under separate titles further in the paper.

1. Article of 11 May 2004

17. On the front page of the paper, the article had the title:

'Was he cheating? An investigation has already begun!'

18. Further headings on the front page read as follows:

'Discharged contender'

and

'Scandal in [the name of the quiz]'

19. The introductory paragraph on the front page read as follows:

"The tables have turned! A contender who it was thought had been unlawfully divested of [the equivalent of some EUR 50,000] in a TV quiz is now suspected of fraud! Moreover, the disappointed [A.] has not been allowed by [the TV station] to return to the game!"

20. The article continued on page 20 under the title:

'Suspicion of [the TV station]: A fraud in [the name of the quiz]?'

21. Further bullet-point headings on page 20 read as follows:

"[He] will not return to the quiz"

and

"He'll sue"

22. The introductory paragraph on that page read as follows:

"The scandal in the TV quiz [name of the quiz], in which a contender was apparently unlawfully divested of [the equivalent of some EUR 50,000] worth of winnings, is revving up. [Full name of A.], [age of A.] is in vain claiming his right to sit in the millionaire's armchair. [The TV station] has on this said an unequivocal 'NO' to his attempts to compete again in the popular programme. [The TV station] moreover raised the suspicion that the contender may have cheated!"

23. The text of the article starts as follows:

"The suspicion arose after several lawyers had carefully viewed the footage of the disputed sequence of the TV quiz. The initial intention – to find out whether an error has indeed been committed – has resulted in unexpected finals! Watching the video recording closely, the lawyers were petrified with horror: There has not been fair play! [A.] has seemingly been cheating!

Their suspicion stemmed from the unusual behaviour of the player. 'When given a question, he did not appear to consider the options offered, and responded as if he was intentionally diverting attention by making various remarks which had nothing to do with the question. And then, all of a sudden, he came up with the correct answer', asserts one of the lawyers who has already conveyed his doubts to the management of the TV station.

'A lively discussion has been stirred up on the Internet, and viewers have come forward who also noticed the unusual behaviour of the player', added as 'damning evidence' the spokesperson [name] of [the TV station]. 'Our lawyers are examining further evidence and upon its assessment we will consider lodging a criminal complaint against the contender' she observed.

The surprising suspicion has however not swept [A.] away. 'I was expecting them to pull something on me. But they are absolutely not right', emphasised [A.].

24. The article continues with a neutral description of the incident with the ambiguous question, followed by references to the reactions of A. and the TV station, in the following terms:

"The disappointed contender has not hesitated for a minute and has made a written complaint, to which he is entitled under the appeal rules of the quiz. 'I pointed out the ambiguity of the answer to the [fourteenth] question', submitted [A.]. According to the regulations, [the TV station] had two weeks to reply to this objection, but as early as yesterday they rendered a final judgment: [A.] was not to be readmitted to [the name of the quiz]! 'So far the contender has not submitted any relevant expert evidence supporting his assertions. All our sources, renowned professional publications, support our position', added [the TV station's spokesperson]. The unsuccessful candidate for millionaire still wants to negotiate with [the TV station]. 'If that does not work, I will litigate', declared A."

2. Article of 18 May 2004

25. On the front page of the paper, the article had the title:

"[The TV station] Strikes Back: Instead of winning millions, you will be jailed!"

26. A further heading on the front page read as follows:

"Scandalous [the name of the quiz]"

27. The introductory paragraph on the front page read as follows:

"[The TV station] is preparing an unpleasant surprise for [A.], [the age of A.], who feels cheated because he has been thrown out of the TV quiz [the name of the quiz]. Not only is he not going to be allowed to get back into the game, but there will even be a criminal complaint against him! What does the commercial TV station suspect the unsuccessful 'millionaire' of?"

28. The article continued on page 20 under the title:

"[The TV station] to [A.]: You will be jailed for fraud!"

29. There is a photograph of A. taking part in the quiz with the controversial question in the foreground, with the following explanatory text below it:

"An enormous response from viewers and heated Internet discussion about a possible fraud has forced the management of [the TV station] to transmit the footage of the programme to experts for analysis."

30. The introductory paragraph on that page reads as follows:

"There shall be no negotiation! So the management of the TV station [the name of the TV station] has decided, and they have dismissed the request of [A.] [age of A.]. This man from [a town] feels cheated because has been excluded from a general knowledge quiz allegedly wrongfully, and that is why he wants to get back into the game. The commercial television station will however not allow him to do so. And it will not be deterred from its decision even by the threats of [A.] to bring the whole matter to court. [The TV station] responds even more vigorously: 'We will lodge a criminal complaint against him', submits the spokesperson for the TV station [name of the spokesperson]."

31. The text of the article starts by referring to the TV station's suspicion and by quoting the statement and its source as indicated in paragraph 23 above, followed by a quotation from the TV station's own written statement along the following lines:

"On the basis of an analysis of the video footage by an expert in psychology and on the basis of numerous pieces of indirect evidence, we have a suspicion of fraud in the programme [name of the quiz], and that is why [the TV station] will lodge a criminal complaint against the contender."

32. The article continues by referring to the complaint lodged by A. and by citing his and the TV station's statements:

"I have raised an objection within the fourteen days required. According to the [applicable rules] I have the right to do that."

and

"The protest has not been supported by sufficient expert evidence to give the management of [the TV station] a valid reason for readmitting the contender into the game."

33. The article continues by a neutral reference to the TV station's decision, which was conveyed to the applicant by way of a letter from the TV station's lawyers, and by quoting the reaction of A. as follows:

"From the letter it is unclear whom they represent. I therefore consider this document worthless and I assert that I still do not have the official position of [the TV station]"

34. The closing part of the article reads as follows:

"[A.] fights hard for his right to sit in the millionaire's armchair. Moreover, he has decided 'to pay them out' and he is suing [the TV station]. 'This time for insult, defamation and injury to his good name be it as an individual or a legal entity' adds the co-owner of a company based in [a town] trading in mobile phones.

The dispute over [the fourteenth] question has thus taken a completely different turn. Will the public ever learn the truth?"

3. Article of 22 May 2004

35. The title of the article on the front page was:

'An eyewitness to the scandal in [the name of the quiz]

I know how he cheated!'

36. The introductory paragraph on the front page read as follows:

"*Nový Čas* has obtained a statement from a woman who resolved to speak on the strange practices going on behind the scenes of the shooting of the programme [name of the quiz]! 'The TV crew suspected [A.] even then of having a concealed device on him', says the witness."

37. The article continued on page 20 under the title and subtitle:

'The contestant [A.] allegedly had on him a device such as are carried by government officials

An eyewitness has spoken out'

38. The introductory paragraph on that page read as follows:

"*Nový Čas* has obtained a statement from a woman who has taken several weeks to summon up the courage to reveal a big secret from behind the scenes of the shooting of [the name of the quiz]. This woman claims: 'I was there when the TV crew of [the TV station] uncovered that the contestant [A.] had been cheating! During the shooting they discovered that he had a device on him such as are carried by government officials'."

39. The text of the article itself reads as follows:

"The viewer gradually also recollects other suspicious elements. The shooting allegedly had to be interrupted several times, and the microphone attached to [A.]'s suit had to be shifted from one side to the other. 'Seemingly they already suspected something. I also overheard a conversation between the director and a technician, which took place backstage. They were saying that their equipment was showing suspicious frequencies and that they had no explanation why', recounts the details the viewer from [a town]. According to her both nervous men were clearly relieved when [A.] left the studio with 'only' [the equivalent of some EUR 2,500] in his pocket. Their last sentence allegedly was: 'Thank God it ended up this way. Imagine if he had won [the equivalent of some EUR 50,000!]'.

Despite it being several weeks later, she remembers the entire conversation very well, even being able to describe the director and the technician in quite some detail.

The programme coordinator for [the name of the quiz], [the name], says: 'We had suspicions, but they were not strong enough to warrant taking any action. We did not want to make an unjustified accusation. I believe that we acted correctly.'

The eyewitness to these events does not wish to have her identity disclosed, because she is apprehensive about the consequences of an open confession. (Her name is however at the disposal of *Nový Čas*).

How could the contestant have cheated? [A.] has a business in the area of mobile phones, so he is very familiar with that technology. And that is the whole thing. It sufficed to have it well organised and acted out. The contestant could have had an accomplice in the audience who had his mobile phone on during the entire shooting, so that a third person at the other end of the line could easily learn the questions. The latter person, together with a group of friends, could then have immediately looked the right answer up on the Internet or in encyclopaedias. They could then have announced it to [A.] by a micro device, which he could have had attached to his body.

The fact that members of the TV crew discovered incongruities during the shooting but took no action is, according to the eyewitness, striking. 'Perhaps they wanted to cover it up. They did not expect [A.] to sue them over unclear wording of the question' she speculates."

40. The article concluded by with a neutral summary of the key elements of the story.

D. Libel action

41. On 16 July 2004, with reference to the articles cited above, A. contacted the applicant company with a proposal for an out-of-court settlement consisting of the publication of an apology free of charge and the payment of compensation in an amount equivalent to some EUR 26,300. His proposal failed.

42. On 22 February 2005 A. sued the applicant company for libel, relying on the rules on the protection of personal integrity under Articles 11 et seq. of the Civil Code (Law no. 40/1964 Coll., as amended), and seeking the same redress as in its proposal of 16 July 2004 (see the preceding paragraph).

43. As regards the article of 11 May 2004, A. claimed that it gave the false impression that he had been charged with a criminal offence and that he was a cheat. Moreover, his photograph, full name and age were disclosed without his consent.

As regards the article of 18 May 2004, he contended that it had contained statements that were taken out of context and that this article had had negative repercussions on his relations with his family, at work and with his clients.

Finally, as regards the article of 22 May 2004, A. argued that it contained untrue, made-up and misleading conclusions.

44. The applicant company defended the action through the intermediary of a lawyer, who is the same lawyer as the one representing it before the Court (see paragraph 2 above), and who represented it throughout the domestic proceedings.

In its defence, the applicant company argued that its reporting in the articles concerned a matter of legitimate public interest. In that respect, it pointed out that the quiz had an extremely large audience and that, by having voluntarily taken part in it, A. had become a "public figure" who had to tolerate a higher degree of interference with their personal integrity. The choice of the reporting technique was the applicant company's prerogative. As regards the impugned articles in particular, it was clear that they concerned suspicions and not proven facts. Although some turns of phrase indicated a degree of journalistic exaggeration and provocation, the context and the content of the articles in its entirety left no one in doubt as to the real facts. Moreover, A. had been given the opportunity to comment.

45. In a further submission the applicant company produced a detailed analysis of the behaviour of A. which, according to the applicant company, had given rise to a suspicion that he had been cheating. The submission is based on detailed references to Convention case-law and also includes arguments contesting the claim for damages.

46. The case was examined at first instance by the Bratislava II District Court (*Okresný súd*), which held six hearings, took oral evidence from the parties and five witnesses, and assessed documentary evidence.

47. The person identified in the article of 22 May 2006 as the eyewitness was questioned at a hearing on 10 May 2006. She denied making a statement with the specific wording suggested by the citation in the introductory paragraph on page 20 of that day's issue (see paragraph 38 above), but confirmed everything else attributed to her in the article of that day.

E. First-instance judgment

48. On 18 December 2006 the District Court allowed the action by ordering the applicant company to publish an apology and to pay A. the equivalent of some EUR 1,450 in damages.

49. The District Court held that the applicant company had interfered with the claimant's personal integrity without an acceptable justification. It noted the categorical language of some of the statements, such as "There has not been fair play!", "Instead of winning millions, you will be jailed!" and "You will be jailed for fraud!" and considered that they implied no polemic.

50. In the view of the District Court, the use of expressions such as "seemingly", "perhaps", and "suspicion" did not free the publisher from "accountability for the truthfulness of the published material" and it made no difference whether the applicant company was quoting statements made by others or expressing its own opinions, just as it did not matter whether it intentionally published untruths or negligently relayed the findings of someone else. And neither was it of any consequence for the accountability of the publisher whether the published allegations and information had already been or would later be published elsewhere.

51. The applicant company had failed to discharge its burden of proof with regard to the truthfulness of the suggestion that A. had been cheating in the quiz, since none of the witnesses had been able to confirm that he had, and they had all referred only to suspicious behaviour by A. Moreover, the suspicion had not even been confirmed by the police (see paragraph 14 above).

52. In addition, the District Court found that the criminal complaint by the TV station could have been a certain form of retaliation for the attempts by A. to get back into the game. In the court's view, in the given circumstances, the standing of A. as a public figure was of no consequence.

53. The District Court held specifically that

> "it [was] irrelevant whether [A.] was a public figure or not, since ...even if the articles could be considered as polemic and containing value judgments, as long as they were based on matters about which untruths were being published, they constituted a palpable unjustified interference with the claimant's right to protection of his personal integrity".

54. As to the amount of the damages, the District Court noted that the libellous articles had been published in a daily with a large readership and that some of them had been printed on the front page. Although the claimant had failed to show that he had suffered any loss of esteem among his family and friends, or that he had suffered any loss of business customers, it was accepted that his dignity had suffered in general terms.

F. Appeal

55. The applicant company appealed, repeating its previous arguments and adding, *inter alia*, that the impugned articles implied nothing but suspicions, for which in any case there was a solid factual basis.

56. On 5 June 2008 the Bratislava Regional Court (*Krajský súd*) upheld the contested judgment. It concurred with the applicant company that through his participation in the TV quiz A. had become a public figure and that the level of protection of personal integrity he merited was thereby reduced. However, this reduced standard of protection only applied as long as the published material was truthful and any value judgments had a basis in reality.

57. The Regional Court also concurred with the applicant company that the articles were polemical in nature and related to suspicions. Nevertheless, in terms of the Regional Court's judgment, the impugned articles were

> "objectively capable of interfering with the plaintiff's rights, because they did not have a truthful basis, and that is why they did not enjoy protection. The first-instance court rightly concluded that the evidence taken did not show that the claimant had cheated at the game ..."

58. As regards the statement of the eyewitness cited in the article of 22 May 2006, the Regional Court held that it was presented as a statement of fact, which left the reader with no option of reaching another conclusion than that A. had been cheating. It was irrelevant that that article followed and was based on the previous articles because merely by citing a source the applicant company could not rid itself of its liability for the unjustified interference.

G. Final domestic decision

59. On 17 September 2008 the applicant company challenged the Regional Court's judgment by way of a complaint under Article 127 of the Constitution, alleging a violation of Article 10 of the Convention, recapitulating all its previous arguments with detailed references to Convention case-law, and claiming that the ordinary courts had failed to give any answer to a significant number of its substantive arguments..

60. On 26 February 2009 the Constitutional Court (*Ústavný súd*) declared the complaint inadmissible as manifestly-ill founded. It found no constitutionally relevant arbitrariness, unlawfulness, deficiency or irregularity in the courts' reasoning. Moreover, it reiterated that, pursuant to its established case-law, a general court could not bear "secondary liability" for a violation of fundamental rights and freedoms of a substantive nature unless there had been a violation of procedural rules. As no violation of any procedural rule had been established, there could not have been any violation of any substantive right either.

II. RELEVANT DOMESTIC LAW AND PRACTICE

61. The relevant domestic law has been summarised in, for example, *Ringier Axel Springer Slovakia, a.s. v. Slovakia* (no. 41262/05, §§ 53 et seq., 26 July 2011), and *Ringier Axel Springer Slovakia, a.s. v. Slovakia* ((dec.), no. 35090/07, 4 October 2011).

62. In addition, in a judgment (*nález)* of 28 October 2010 in an unrelated case, no. IV. ÚS 107/2010, the Constitutional Court acknowledged, in relation to an alleged violation of Article 10 rights of a publisher in a libel case against it, that language used in the press such as "apparently" and

"alleged" in principle excluded an interference with personal integrity within the meaning of Articles 11 et seq. of the Civil Code, because any opinion, position and critique, even if expressed in an opinionated manner, was as a general rule permissible, since freedom of expression was one of the most fundamental principles of a democratic society.

63. In the same judgment, the Constitutional Court also specifically rejected a premise applied by the courts in the present case (see paragraph 50 above), that it did not matter whether the person accountable for an interference with another's personal integrity had intentionally published untruths, or whether they had negligently relayed the findings of someone else.

In that respect, the Constitutional Court held that the given premise denied an element of the foundation on which the Court's case-law on freedom of expression was based. In particular, as regards journalists and the media, they had a privileged position in the sphere of reporting, which included being able to resort to certain simplifications and even inaccuracies as long as the overall presentation of the published information at the relevant time corresponded to existing circumstances.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

64. The applicant company complained that the outcome of the proceedings in the libel action against it had been contrary to its rights protected under 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

65. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

66. The applicant company contended that, when adjudicating against it, the domestic courts had arbitrarily focused exclusively on the protection of the privacy of A., and that they had completely disregarded its right to freedom of expression. It submitted a number of further arguments including that the suspicions published by the applicant company should not have been assessed from the point of view of truthfulness, but merely as to whether or not they had an adequate factual basis. By requiring of the applicant company to prove what it had not been claiming, in particular that A. was guilty of fraud, the courts had placed an excessive burden on it.

67. In reply, the Government raised a number of arguments, emphasising the criminal-law connotations of the published information, in the light of the presumption of innocence, and the fact that the impugned information had been published in one of the most widely read papers in the country.

68. The Government held that the ordinary courts and, ultimately, also the Constitutional Court had properly examined the case and had concluded that it had not been established that A. had committed the actions imputed to him in the contested articles.

69. The Government's further arguments concern the applicant company's failure to give A. an opportunity to comment on the material published in the article of 22 May 2004 and represented as having been relayed by an eyewitness (see paragraphs 35-39 above), while even the purportedly quoted eyewitness had denied making such a statement (see paragraph 47 above).

70. Furthermore, the Government considered the amount of the just satisfaction awarded to A. adequate and the way in which the applicant company had ensured reporting on A.'s participation in the quiz inappropriate and lacking *bona fides*.

71. In a rejoinder, the applicant company *inter alia* emphasised that the impugned articles had not suggested that A. had committed any wrongdoing, but merely that he had been suspected of doing something; that such suspicion had not emanated from the applicant company, but from the organiser of the quiz; and that it had in any event been spreading over the Internet.

The question to be asked was whether in the circumstances the applicant company had had the right to publish the disputed material, which, in the applicant company's submission, it did.

However, the domestic courts had not even posed that question, let alone answered it, and had required the applicant company to prove something which was impossible to prove, namely the truthfulness of value judgments.

72. In addition, the applicant company submitted that its arguments on points of law had eventually been acknowledged by the Constitutional Court, albeit in another case (see paragraphs 62 and 63 above).

73. In a further rejoinder, the Government *inter alia* added that even if the contested information could be considered a value judgment, it lacked an adequate factual basis; that the Constitutional Court's judgment invoked by the applicant company post-dated the judgments contested in the present case; and that even the use of cautious language such as "in all probability" and "very probably" could still run counter to the presumption of innocence.

2. *The Court's assessment*

(a) Interference, legality and legitimate aim

74. The Court finds, and it has not been disputed between the parties, that the outcome of the proceedings in the action by A. against the applicant company for the protection of his personal integrity constituted an interference with the applicant company's right to freedom of expression as guaranteed by Article 10 § 1 of the Convention.

75. Furthermore, the Court finds, and it has likewise not been disputed by the parties, that the interference complained of was prescribed by law, namely Articles 11 et seq. of the Civil Code, and that it pursued the legitimate aim of protecting the reputation and rights of others.

Thus the only point in issue is whether the interference was "necessary" in a "democratic society".

(b) Necessity

(i) General principles

76. The Court notes that the present case raises specific issues of press freedom similar to those dealt with in previous cases, namely the duties and responsibilities of the press when publishing allegations about third parties.

77. The Court's established case-law on the matter (see Ringier Axel Springer Slovakia, a.s. (no. 41262/05), cited above, §§ 94-100, with further references) may be summarised as follows:

- The freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, *inter alia*, in the interest of "the protection of the reputation or rights of others", it is nevertheless incumbent on it to impart information and ideas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it

otherwise, the press would be unable to play its vital role of "public watchdog".

- The right to freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any section of the community. In addition, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.

- There is a distinction between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof.

- Article 10 of the Convention however does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. Furthermore, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

- The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". 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 a 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.

- The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation.

- This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing

so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10. The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention.

(ii) Application of the general principles in the present case

78. On the facts of this case, the Court observes that the applicant company published in *Nový Čas* a series of articles concerning the participation of A. in a popular general knowledge quiz broadcast on a national TV channel. The Court notes in this respect that the participation of A. in that quiz attracted wide media attention, in *Nový Čas* and elsewhere, that it was subject of lively debate on various Internet fora, and that such attention could be attributed, *inter alia,* to the amount at stake, as well as to the fact that, in addition to the official procedure, A. opted to assert his claim for readmission to the quiz through the media.

79. Although the domestic courts recognised that, in the given context, A. had become a public figure in terms of the Convention case-law (see paragraph 56 above), they held that this status of his played no role, because even if the published statements were to be considered a value judgment, they were based on circumstances about which untruths were being published (see paragraph 53 above) and that the resultant lesser standard of protection applied only as long as the published material was truthful and any possible value judgments had a basis in reality (see paragraph 56 above).

80. It would thus appear that the domestic courts may be said to have resorted to a form of what the Court has already examined as a "doctrine of truthfulness of information" (see *Ringier Axel Springer Slovakia, a.s.* (no. 41262/05), cited above, §§ 34, 42, and 101). The presence of this doctrine in this case appears to be emphasised by the District Court's specific observations that qualifiers such as "seemingly", "perhaps" and "suspicion" did not free the publisher from "liability for the truthfulness of the published information" and by its suggestion that questions of intent, negligence, source of information and whether or not it had been quoted were of no consequence (see paragraph 50 above).

81. In that respect, the Court reiterates that the extent to which an applicant can reasonably regard a source of information as reliable is to be determined in the light of the situation as it presented itself to the applicant at the material time, rather than with the benefit of hindsight obtained a long time thereafter (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 66, ECHR 1999 III).

82. The Court cannot fail to acknowledge the pertinence from the Convention point of view of some of the arguments and considerations proposed by the Government as regards the assessment of the applicant company's compliance with its "duties and responsibilities" pursuant to Article 10 of the Convention. It notes however that these arguments and considerations are factually and legally somewhat different from those entertained by the domestic courts.

83. Indeed, the Court considers that it was crucial that the domestic courts make a careful assessment of the presence and level of public interest in the publishing of the impugned information in the present case, as well as strike a balance between any such public interest and the individual interests of those concerned, since as a matter of principle domestic courts are better equipped to establish the facts relevant to the ensuing legal analysis. This also applies to the issue of the *bona fides* of the applicant and other aspects of the case that are necessary for establishing whether has acted in accordance with the "duties and responsibilities" inherent in Article 10 § 2 of the Convention (see *Ringier Axel Springer Slovakia, a.s.* (no. 41262/05), cited above, § 109).

84. On the facts, the Court notes that, although the applicant company argued that the articles related to a matter of legitimate public interest, no evidence appears to have been taken or assessed, and no specific conclusions appear to have been drawn by the domestic courts in respect of that argument; neither does any judicial attention appear to have been given to the presence or absence of good faith on the part of the applicant company, the aim pursued by it in publishing the articles, or any other criteria relevant to the assessment of the applicant company's compliance with its "duties and responsibilities" within the meaning of Article 10 § 2 of the Convention.

85. The Court considers that by failing to examine the above-mentioned elements of the case the domestic courts cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10" or to have "based themselves on an acceptable assessment of the relevant facts" (see *Kommersant Moldovy v. Moldova*, no. 41827/02, § 38, 9 January 2007).

86. In addition, as regards the procedural guarantees inherent in Article 10 of the Convention (see, for example, *Andrushko v. Russia*, no. 4260/04, § 53, 14 October 2010, with further references), the Court observes that, in defence of its substantive rights under Article 10 of the Convention, the applicant company lodged a complaint under Article 127 of the Constitution. However, the Constitutional Court rejected that complaint on the basis of a premise, stemming from no more than its own decision-making practice, that no such remedy was available because no violation of the applicable rules of procedure had been established (see paragraph 60 above).

87. The foregoing considerations are sufficient to enable the Court to conclude that the legal protection received by the applicant company at the domestic level was not compatible with the requirements of Article 10 of the Convention. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant company claimed EUR 4,431.45 in compensation for the damages and court costs that it had paid to A. under the contested judgments.

The applicant company also claimed EUR 10,000 in compensation for non-pecuniary damage.

90. The Government submitted no specific comment on the former claim and disputed the latter as excessive.

91. The Court considers that the claim for compensation in respect of the damages paid and costs reimbursed under the contested judgments falls to be examined under the heading of pecuniary damage. Being satisfied that there was a causal link between the pecuniary damage claimed and the violation of the Convention found (see, for example, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 75-7, ECHR 1999 III), it awards the applicant company totality of the sum sought under this head, that is EUR 4,431.45, plus any tax that may be chargeable.

92. At the same time, ruling on an equitable basis, the Court awards the applicant company EUR 9,750, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant company also claimed EUR 1,271.34 for legal fees at the national level and before the Court, as well as EUR 265.55 for court fees incurred before the Court of Appeal.

In support of the former claim, the applicant company submitted a solemn declaration by its lawyer that the legal service at the domestic level and before the Court had actually been provided and paid for.

As for the amount of the claim in respect of the legal fees, it had been calculated on the basis of the number of "acts of legal assistance" rendered

and reward for every such "act" established under the calculation formula applicable at the national level.

94. The Government submitted that no costs and expenses should be compensated for which had been incurred in the proceedings before the ordinary courts. As regards the legal fees incurred before the Constitutional Court and the Court, they pointed out that the applicant company had submitted no evidence showing that it was under an obligation to pay these fees or that it had actually paid them.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

96. The Court observes that the applicant company has had the same legal representation throughout the domestic proceedings as well as before the Court (see paragraphs 2 and 44 above) and that, through its legal representation, it has been rather active in asserting its Convention rights both domestically and before the Court. There can thus be no doubt that the legal services, the costs of which it now seeks to have compensated, have actually been provided. The Court finds it natural that such legal services are subject to remuneration as attested by the solemn declaration by the applicant company's legal representative, the truthfulness of which has by no means been put in any doubt. In addition, the Court finds the amount of the claim in respect of the legal fees reasonable.

97. Regard being had to the documents in its possession and the above criteria, the Court considers that the amount claimed should be awarded in full. It therefore awards the applicant company EUR 1,536.89 covering costs under all heads.

C. Default interest

98. The Court considers it appropriate that the default interest rate 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

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by five votes to two,
(a) that the respondent State is to pay the applicant company, 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 4,431.45 (four thousand four hundred and thirty-one euros and forty-five cents), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 1,536.89 (one thousand five hundred and thirty-six euros and eighty-nine cents), plus any tax that may be chargeable to the applicant company, 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;

4. *Dismisses*, unanimously, the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 7 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Alvina Gyulumyan
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Gyulumyan and López Guerra is annexed to this judgment.

A.B.G.
M.T.

PARTLY DISSENTING OPINION OF JUDGES GYULUMYAN AND LÓPEZ GUERRA

We have voted with the majority in finding that there has been a violation of Article 10 of the Convention. However, we differ from the majority as to the award by way of just satisfaction under Article 41 of the Convention. We consider the sum awarded in respect of non-pecuniary damage to be clearly excessive.

There can be no doubt that the consistency of the Court's case-law in awarding just satisfaction is also of particular importance, and compensation has a bearing on foreseeability for a Government. On the same day, the Court dealt with an identical issue in another case brought by the same applicant (no. 21666/09) and the award for non-pecuniary damage was considerably less than in the present case. We cannot identify any reasons for awarding more in this case.