



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

SECOND SECTION

**CASE OF MARÔNEK v. SLOVAKIA**

*(Application no. 32686/96)*

JUDGMENT

STRASBOURG

19 April 2001

**FINAL**

*19/07/2001*



**In the case of Marônek v. Slovakia,**

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 22 March 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 32686/96) against the Slovak Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Vladimír Marônek (“the applicant”), on 15 July 1996.

2. The Slovakian Government (“the Government”) were represented by their Agent, Mr P. Vršanský.

3. The applicant alleged, in particular, that his right to freedom of expression was violated as a result of judicial decisions in defamation proceedings brought against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second 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.

6. By a decision of 27 April 2000, the Chamber declared the application admissible [*Note by the Registry*. The Court’s decision is obtainable from the Registry].

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### **A. The dispute concerning the use of the flat allocated to the applicant in 1991**

8. On 27 June 1991 the mayor of Bratislava allocated a single-room flat (“the flat”) to the applicant. It was at the disposal of the State-owned Tesla company, by which the applicant was employed at the time. The mayor’s decision entitled the applicant to have a contract signed, giving him the right to occupy the flat. However, the applicant was not able to sign the contract and move in, as it was occupied by A.

9. By a letter dated 4 March 1991 the Bratislava Staré mesto local council (*Miestny úrad*) informed A., in reply to his request that the right to occupy the flat be transferred to him, that the flat was at the disposal of Tesla. The letter further stated that A. was under no obligation to move out until he was provided with alternative accommodation.

10. On 18 March 1991 the Bratislava I Housing Administration (*Bytový podnik*) informed the housing department of the Bratislava Staré mesto local council that the flat had been occupied by A. without any justification since the death of the former occupant and that A. was registered as living in his parents’ flat, situated in the same house. On the same day a representative of the Bratislava I Housing Administration recorded the fact that the deceased occupant had been the only person living in the flat.

11. In a letter of 5 June 1991 a social welfare authority informed the housing department of the Bratislava Staré mesto local council that, between 1 June 1984 and 11 June 1990, A. had taken care of the occupant of the flat in return for remuneration from public funds. On 26 June 1990 the occupant of the flat had been placed in a welfare institution. The letter stated that, when social workers had visited the former occupant prior to her placement in the institution, nothing belonging to A. had been seen in the flat.

12. On 19 June 1991 Tesla brought an action in the Bratislava I District Court (*Obvodný súd*), claiming that A. should be ordered to move out. The action stated that, during a random inspection of the flat on 14 March 1991, it had been discovered that A. had illegally forced entry to the flat, had changed the lock and had prevented the representatives of Tesla and of the Bratislava I Housing Administration from entering.

13. Tesla further claimed that A. lived with his parents, whose flat was situated next door to the flat in issue. Since both flats had the same address, he had misled the local council when claiming that the right to occupy the

flat in question should be transferred to him. Tesla submitted documentary evidence that A. was registered as living with his parents and that he had never occupied the flat in issue. The plaintiff argued that A. had no right to alternative accommodation.

14. At a later date the applicant joined the proceedings and claimed that he had the right to occupy the flat. A. counter-claimed that he was entitled to have the right to occupy the flat transferred to him.

15. On 1 January 1992 new legislation was enacted which started the process of denationalisation of State-owned flats. As a result, the flat ceased to be at the disposal of Tesla and the latter lost *locus standi* in the proceedings.

16. On 22 January 1992 the Western Slovakia Electricity Board informed the applicant that there had been no consumption of electricity in the flat as of the beginning of 1991.

17. On 29 September 1993 the applicant unsuccessfully requested the Bratislava Staré mesto local council to sign a contract with him for the use of the flat.

18. On 7 September 1994 the Bratislava I District Court discontinued the proceedings concerning the action brought by Tesla and the counter-claim filed by A. The court noted that in the course of the proceedings the ownership rights in respect of the flat had been transferred *ex lege* to the Bratislava Staré mesto municipality and that both the latter and A. had withdrawn their actions.

19. On 26 March 1996 the Bratislava I District Court granted A.'s application, filed on 28 May 1993, concerning his right to occupy the flat. The court held that A. had lived with the former occupant of the flat until her death on 2 July 1990. It concluded that A. had acquired the right to use the flat pursuant to Article 179 § 1 of the Civil Code as in force at the relevant time.

## **B. Defamation proceedings against the applicant**

20. On 8 November 1991 the daily newspaper *Smena* published a full-page article written by a journalist on the applicant's case. It was entitled "Absurd? Absurd!". The article contained, *inter alia*, a description of the applicant's unsuccessful attempt to enter the flat on 29 October 1991 and of the verbal exchanges between the applicant, on the one hand, and A. and his wife H., a public prosecutor, on the other. The article stated that the flat allocated to the applicant had been unlawfully occupied by A. and criticised the fact that the applicant had no possibility of using it.

21. On 17 December 1991 the Bratislava City Prosecutor brought disciplinary proceedings against H. on the ground that, during the applicant's attempt to enter the flat on 29 October 1991, she had behaved in an inappropriate manner. The decision stated that the disciplinary

proceedings had been brought on the basis of the article published in *Smena* on 8 November 1991 and of the explanations given by the persons involved. H. later resigned from her post of public prosecutor.

22. On 5 February 1992 the applicant addressed an open letter to the Prime Minister. It was entitled “For How Long?”, and its relevant parts read as follows:

“I have a flat and I do not have it. I have no roof over my head (I stay the night with various friends) because my flat, a single-room State-owned flat which is at the disposal of the Tesla company, was unlawfully occupied by [A.]. I point out that I can prove all the information set out in this letter. The circumstances of the case were published in greater detail in *Smena* on 8 November 1991, but since then little has changed.

The flat is situated ... opposite the flat of [A.’s father], with whom his son has his permanent address at present. The flat was duly allocated to me by the Bratislava City Council on 27 June 1991. [A.] shamefully benefits from the fact that both flats have the same address (all flats in the same block have the same address) and prevents me from moving into my flat. In doing so, he is vehemently supported by his wife [H.], who is the principal occupant of another State-owned flat ... [A.] claims the right to occupy the flat on the basis of a document signed by the head of the housing department of the Bratislava Staré mesto local council on 4 March 1991 ... stating that [A.] does not have to leave the flat until he has been provided with alternative accommodation. However, [A.] has had alternative accommodation for a long time, namely his wife’s flat. He has acquired the right to occupy that flat automatically. Why has he not yet vacated the flat [allocated to the applicant]?

[A.] and his wife lied to me when they said they had no place to live and alleged that because of this they would not vacate the flat. I point out that [H.] is a public prosecutor (!). If our newly born democracy has such people to represent the law, it will not outlive its childhood and we can bury it right away. The judiciary should first and foremost ensure that the law is respected and justice upheld in the State. But what is our judiciary like?

Tesla brought an action against [A.] on 19 June 1991. The first hearing was scheduled for 27 January 1992 (!!!). Why? [A.] failed to appear.

For how long will certain groups of people think that they detain all the power in the State (and act accordingly)? ...

It is high time to show the world, before the second free election, that our government and society defend justice.

I appeal to you. On 24 February 1992 at 11 a.m. the case of Tesla against [A.] will be heard in room no. 37 at the Bratislava law courts. Do not let democracy be trampled once more and the ideals underlying the promotion of the rule of law become empty words.

P.S. I call upon all who have a similar problem to write to me. I hope that through our joint efforts we will be able to achieve more. May there be no need for it.”

23. The letter was signed by the applicant and gave his address. It also gave the full name and profession of both A. and H. A copy of it was posted up at several tram and bus stops in Bratislava.

24. On 21 February 1992 *Smena* published the applicant's opinion on the case. Its contents were almost identical to the open letter of 5 February 1992.

25. On 28 February 1992 A. and H. lodged with the Bratislava City Court (*Mestský súd*) a civil action against the applicant to protect their good name and reputation. They later extended their action to *Smena*.

26. On 9 April 1993 a witness confirmed before the City Court that, at the relevant time, A. was living with his father.

27. On 23 June 1993 the Bratislava City Court found in favour of A. and H. It ordered the applicant to apologise in writing for damaging the plaintiffs' honour. The applicant was further ordered to pay 100,000 Slovakian korunas (SKK) to each of the plaintiffs for non-pecuniary damage, to reimburse their lawyer's fees and to pay the court fees. *Smena* was ordered to publish an apology, pay another SKK 100,000 to each of the plaintiffs and reimburse their legal costs.

28. The City Court noted that proceedings were pending before the Bratislava I District Court which concerned Tesla's claim for the flat in issue to be vacated and A.'s counter-claim. The City Court held that the proceedings before the District Court raised difficult questions of fact and law. It further held that the applicant had not, so far, acquired the right to occupy the flat and noted that, according to a document issued by the housing department of the Bratislava Staré mesto local council on 4 March 1991, A. was under no obligation to vacate the flat until he obtained alternative accommodation.

29. In the City Court's view, the opinions of the applicant and of a journalist which had been published in *Smena* on 8 November 1991 and 21 February 1992 had not been substantiated. The court considered that the applicant had also interfered with the plaintiffs' right to protection of their personality by displaying his open letter of 5 February 1992 in public places or, as the case may be, allowing it to be published. The court held that the letter contained tendentious, distorted and unsubstantiated information which had damaged the plaintiffs' personal integrity.

30. The City Court found that the damage had affected H.'s health, that, following the publication of the article of 8 November 1991, disciplinary proceedings had been brought against her and that, for the same reason, a loan had not been granted to A., who was a businessman. The family life of the claimants and of H.'s children had also been affected.

31. Both the applicant and *Smena* appealed. The applicant claimed, with reference to the documents included in the case file, that the information contained in his open letter of 5 February 1992 was true. In particular, he argued that, under the relevant law, A. had no right to occupy the flat in

question. He also offered proof that, at the relevant time, A. had had a permanent address with his parents and that his wife had had the right to occupy another flat.

32. The applicant also pointed out that he could not have the contract for the use of the flat signed as the flat had been illegally occupied by A. He therefore maintained that his conclusion that A. had prevented him from moving into the flat was correct. Finally, the applicant alleged that, in any event, the interference in question had not had any defamatory effect within the meaning of Article 11 of the Civil Code and that the City Court had not indicated any relevant damage or circumstance within the meaning of Article 13 of the Civil Code on which its conclusion had been based.

33. On 16 November 1995 the Supreme Court (*Najvyšší súd*) dismissed the appeal. It considered that the evidence heard by the City Court showed that the information contained in the article of 8 November 1991, in the applicant's opinion published in *Smena* on 21 February 1992 and in the applicant's open letter displayed in public places did not correspond to reality and was objectively capable of affecting the plaintiffs' personality rights.

34. The Supreme Court recalled that, after the allocation of the flat to the applicant, the relevant authorities had not signed a contract for its use with him as required by the law then in force and that the applicant had not requested that such a contract be signed. The Supreme Court therefore considered that the applicant's allegation that A. had occupied the flat in question unlawfully and that he had shamefully benefited from the fact that his permanent address was the same as that of the flat in question had been tendentious and misleading as the proceedings concerning the right to occupy the flat in issue were still pending before the Bratislava I District Court.

35. In the Supreme Court's view, the disclosure, in both the open letter and the opinion of 21 February 1992, of H.'s name and of the fact that she was a public prosecutor had grossly interfered with her right to protection of her personality. It concluded that the way in which the applicant had attempted to resolve his housing problem was inappropriate as he had had other lawful means of seeking redress.

36. In the judgment, the Supreme Court referred to the profession of the plaintiffs and found that the compensation the applicant had been ordered to pay was appropriate and corresponded to the non-pecuniary damage A. and H. had suffered. The applicant was ordered to reimburse to the plaintiffs the cost of the proceedings. The judgment was served on 17 January 1996.

37. On 14 February 1996 the applicant lodged a petition with the Constitutional Court (*Ústavný súd*). He alleged a violation of his constitutional rights, including freedom of expression, in the proceedings leading to the Supreme Court's judgment of 16 November 1995.

38. On 27 February 1996 the Constitutional Court rejected the petition on the ground that it lacked jurisdiction to review or quash the ordinary courts' decisions and to award compensation to the applicant.

39. Subsequently a bailiff started to enforce payment of the sums due by the applicant by attaching one-third of his salary.

## II. RELEVANT DOMESTIC LAW

40. The right to protection of a person's dignity, honour, reputation and good name is guaranteed by Articles 11 et seq. of the Civil Code.

41. Under Article 11, any natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.

42. According to Article 13 § 1 any natural person has the right to request that unjustified interference with his or her personality rights be stopped and that the consequences of such interference be eliminated, and to obtain just satisfaction.

43. Article 13 § 2 provides that, in cases where satisfaction obtained under Article 13 § 1 is insufficient, in particular because a person's dignity and position in society have been considerably diminished, the person affected is entitled to compensation in respect of non-pecuniary damage.

44. Under Article 13 § 3, the amount of compensation to be paid under Article 13 § 2 is fixed by the courts after considering the severity of the damage and the circumstances in which the person's right was violated.

45. Article 179 § 1 of the Civil Code, as in force up until 31 December 1991, provides that the right to use a flat after the death of the occupant shall be transferred to persons who, *inter alia*, have lived in a common household with the person entitled to use it for at least one year before his or her death, provided that they have no flat of their own.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicant complained that his right to freedom of expression was violated in the proceedings leading to the Supreme Court's judgment of 16 November 1995. He alleged a violation of Article 10 of the Convention, which provides 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.”

47. The Court finds, and this was not disputed by the parties, that the decisions complained of constituted an interference with the applicant’s right to freedom of expression as guaranteed under the first paragraph of Article 10, that the interference was “prescribed by law”, namely Articles 11 et seq. of the Civil Code, and pursued the legitimate aim of protecting “the reputation or rights of others”. The interference thus fulfilled two of the three conditions for being justified under the second paragraph of Article 10.

48. The point at issue in the present case relates to the third condition set out in the second paragraph of Article 10, namely whether the interference was “necessary in a democratic society”.

### **A. Arguments of the parties**

#### *1. The applicant*

49. The applicant maintained that his statements were true and contained no intimate information. In his view, the courts erroneously shifted the burden of proof onto him, disregarded the documentary evidence he provided and failed to establish any link between his statements and the alleged interference with the personality rights of A. and H., including any non-pecuniary damage suffered by them. The applicant further alleged that the compensation which he had been obliged to pay was excessive, as it was equivalent to twenty-five average monthly salaries in Slovakia at the relevant period. He concluded that his right to freedom of expression had been violated.

#### *2. The Government*

50. The Government contended that the applicant’s open letter had contained untrue and misleading statements about A. and H. and that the applicant had disclosed A.’s full name and address, as well as H.’s name and profession. The applicant had failed to provide evidence in support of his allegations that A. had occupied the flat unlawfully, had registered as living in his father’s flat, had shamefully benefited from the fact that his

father's address coincided with the address of the flat in issue, and that H. had actively supported her husband in his activities.

51. In the Government's view, the non-pecuniary damage the applicant was ordered to pay to A. and H. was justified by the particular circumstances of the case. The Government concluded that the interference with the applicant's right to freedom of expression was necessary in a democratic society within the meaning of Article 10 § 2 of the Convention.

## **B. The Court's assessment**

### *1. The relevant principles*

52. According to the Court's case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it 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. As set forth in Article 10 § 2, this freedom is subject to the exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly. 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 (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

53. 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, in the light of the case as a whole, 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 and determine whether it is "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52).

*2. Application of the above principles to the present case*

54. The Court will consequently examine whether the measures in issue were proportionate to the aim pursued. It must determine, in particular, whether a fair balance was struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that the rights and reputation of others be protected.

55. On the one hand, the Court finds relevant the domestic courts' argument that the applicant had other and more appropriate means at his disposal of seeking redress as regards his housing problem.

56. On the other hand, the Court notes that the purpose of the applicant's open letter was not exclusively to resolve his individual problem. In fact, at the end of his letter the applicant called upon other persons with a similar problem, with a view to taking joint action. He expressed the view, apparently in good faith, that the resolution of the problem was important for strengthening the rule of law in the newly born democracy. The letter thus undeniably raised issues capable of affecting the general interest, namely housing policy at a period when State-owned flats were about to be denationalised (see paragraph 15 above).

57. Considering the applicant's letter as a whole, his statements do not appear excessive. Most of the events on which the applicant relied had been made public earlier in the article published in *Smena* on 8 November 1991.

58. Furthermore, and most importantly, the Court finds a disparity between the measures complained of and the behaviour they were intended to rectify. In particular, the reasons relied on by the domestic courts do not appear sufficiently convincing to justify the relatively high amount of compensation awarded to the claimants. For example, disciplinary proceedings against H. were brought on 17 December 1991, that is, prior to the publication of the applicant's open letter. Any damage which H. may have suffered in this context should not, therefore, be imputed to the applicant.

59. Having regard to the above considerations, the Court concludes that there was no reasonable relationship of proportionality between the measures applied by the domestic courts and the legitimate aim pursued.

60. Accordingly, there has been a violation of Article 10 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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. Pecuniary damage

62. The applicant claimed 1,727,055 Slovakian korunas (SKK). That sum included SKK 527,055 which a bailiff had decided to collect from both the applicant and the daily newspaper *Smena*. It further comprised SKK 1,200,000 in respect of compensation for the flat which had been allocated to the applicant in 1991.

63. The Government maintained, with reference to their arguments as to the merits of the case, that the applicant was not entitled to any award of just satisfaction.

64. The Court finds, on the basis of the documents before it, that the domestic courts ordered the applicant to pay SKK 200,000 in damages to the plaintiffs and to reimburse their costs amounting to SKK 21,522.50. It therefore awards the applicant SKK 221,522.50 together with any costs of enforcement proceedings the applicant may be liable to pay.

The Court further finds that there is no causal link between the applicant's claim for compensation for the flat in question and the violation found. The remainder of the applicant's claims under this head must therefore be dismissed.

### B. Non-pecuniary damage

65. The applicant claimed SKK 2,000,000 as compensation for the hardship and suffering which he had experienced as a result of the judicial decisions complained of and their enforcement.

66. The Government contended that Article 41 was not applicable.

67. The Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It therefore sees no reason to award the applicant any sum under this head.

### C. Costs and expenses

68. The applicant sought reimbursement of SKK 20,070. That sum comprised the fees of his lawyers in the defamation proceedings, the costs

of the appellate proceedings and also the postage for the correspondence with the Court and the Commission.

69. The Government argued that Article 41 was not applicable.

70. The Court is satisfied that the sums claimed were actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, *Jėčius v. Lithuania*, no. 34578/97, § 112, ECHR 2000-IX). It therefore awards the full amount, namely SKK 20,070.

#### **D. Default interest**

71. According to the information available to the Court, the statutory rate of interest applicable in Slovakia at the date of adoption of the present judgment is 17.6% per annum.

### **FOR THESE REASONS, THE COURT**

1. *Holds* unanimously that there has been a violation of Article 10 of the Convention;
2. *Holds* by six votes to one that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
3. *Holds* unanimously
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
    - (i) SKK 221,522.50 (two hundred and twenty-one thousand five hundred and twenty-two Slovakian korunas fifty halers), together with any costs of enforcement proceedings the applicant may be liable to pay, in respect of pecuniary damage;
    - (ii) SKK 20,070 (twenty thousand and seventy Slovakian korunas) in respect of costs and expenses;
  - (b) that simple interest at an annual rate of 17.6% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 19 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Rozakis joined by Mr Baka and Mr Lorenzen;
- (b) partly dissenting opinion of Mr Bonello.

C.L.R.  
E.F.

### CONCURRING OPINION OF JUDGE ROZAKIS JOINED BY JUDGES BAKA AND LORENZEN

The only reason which has led me to vote in favour of finding a violation of Article 10 of the Convention, in the particular circumstances of this case, is that the amount awarded to the plaintiffs and paid by the applicant was disproportionate to the wrong done by the latter and did not strike the right balance between the interests of society in protecting the reputation of private persons and the right of the individual to express his opinion freely in an open, democratic environment. Indeed, the payment of some 220,000 Slovakian korunas in damages and legal costs ordered by the courts was a very high amount by the country's standards – the equivalent of twenty-five average monthly salaries at the relevant time, as the applicant correctly states – which exceeded, to my mind, the degree of severity of sanction that the courts ought to attribute in a civil case to the transgression committed by the applicant. As the Court rightly notes in paragraph 58 of the judgment, the reasons relied on by the domestic courts to justify the amount of compensation do not appear sufficiently convincing since, *inter alia*, disciplinary proceedings against H. were brought prior to the publication of the applicant's open letter and, hence, any damage she may have suffered cannot be imputed to the applicant.

On the other hand, I am unable to follow the other parts of the reasoning of the Court which led it to find a violation of Article 10. A perusal of the relevant paragraphs – and, more particularly, the conclusive findings of paragraph 57 – creates the impression that the Chamber underestimates the autonomous significance of the applicant's letter (regardless of the practical impact that it may have had) for the reputation of the plaintiffs. The fact is that in dubious factual circumstances where – as the domestic courts found – the right of the applicant to occupy the flat was not absolutely established, the latter wrote a defamatory open letter addressed to the Prime Minister which was posted up at several tram and bus stops in Bratislava. In that letter, he severely criticised the claimants, presenting his own subjective point of view, and exposed them to public criticism. In my view, the paragraph which states that “[A.] and his wife lied to me when they said they had no place to live and alleged that because of this they would not vacate the flat. I point out that [H.] is a public prosecutor (!). If our newly born democracy has legal representatives like this, it will not outlive its childhood and we can bury it right away. The judiciary should first and foremost ensure that the law is respected and justice upheld in the State. But what is our judiciary like?” contains harsh language which cannot easily be reconciled with the respect which is owed by one individual to another and the intrinsic duty of the members of a democratic society to

protect each other from undue harm to their reputation.

It should not be forgotten, at this juncture, that the freedom of expression enshrined in Article 10 of the Convention is not absolute and that the protection afforded by it, according to the Court's case-law, does not apply to all forms of expression. The freedom of journalists to express their opinions freely through the media is, for example, different from that of a private individual; the degree of tolerance that a politician must show *vis-à-vis* public criticism is different from the degree of tolerance that may be expected of a private individual who does not participate actively in public matters and is not obliged, unlike a politician, to be constantly exposed to the public eye. It is a commonplace in the Court's case-law that a private individual's reputation is a precious element of his or her personality and should be carefully guarded from undue interference, particularly when it comes from another private individual acting in his or her own interests.

The situation before us is exactly one where a private individual, acting in pursuance of the protection of his own private rights and not wider social concerns, attacks the reputation of another private individual (A.) and his wife (H.). Admittedly, H. had her share of public life – being a public prosecutor – but in no way did that attain the level of a politician's responsibility and, hence, the higher degree of exposure to public criticism; the matter was of a purely private nature, and her responsibility (if any) for the initiatives of her husband or of the family as such was not easily discernible. And in any event, even assuming that H. had to have a high level of tolerance of public criticism because of her duties, A. who, after all, was the person directly involved in the conflict with the applicant, had no public office and no obligation to expose himself to harsh public criticism.

For all these reasons, and given the very dubious circumstances of the present case regarding the degree of responsibility of the main actors, I cannot agree with the Court when, in finding a violation, it considered that the applicant's criticism of A. and H. was not excessive.

## PARTLY DISSENTING OPINION OF JUDGE BONELLO

I record my unease at the majority's view that the finding of a violation of Article 10 "constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant". In other words, the majority accepts that the applicant did suffer non-pecuniary damage, but "sees no reason to award the applicant any sum under this head" (see paragraph 67 of the judgment).

To establish that the fundamental rights of the applicant have been flouted and that the violation caused the applicant non-pecuniary damage, while failing to entertain any possibility of compensation, in my view renders the protection of the Convention nugatory. The Court gives the applicant a hallowed testimonial certifying him as the victim of human rights violations; it then hastens to invite him to grin and bear it. Immunity endures.

In this case, particularly compelling circumstances demanded the award of damages for pain and suffering. The Court accepts that the applicant acted in good faith (see paragraph 56 of the judgment). After being, in his view, undeservedly deprived of a flat to which he believed he was entitled by law, he was subjected to civil proceedings for defamation. The association of these two events must inevitably have inflicted an oppressive burden of frustration and anguish on the applicant's peace of mind. The fact that the Bratislava District Court responded to his *cri de cœur* by ordering him to pay exorbitant damages could only have fortified his belief that he was being singled out to be made an example of. For this he was awarded the grand sum of zero compensation.

It is ironic that in a case where the violation of the Convention lay in the award of inordinate compensation for non-pecuniary damage against the applicant, no compensation for non-pecuniary damage at all was awarded in his favour. The pain and the suffering of the applicant's victims have a price. His don't.