

April 2014

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## ***Jelševar and Others v. Slovenia (dec.) - 47318/07***

Decision 11.3.2014 [Section V]

### **Article 8**

#### **Article 8-1**

##### **Respect for family life**

##### **Respect for private life**

Alleged breach of personality rights through depiction of applicants' mother as a character in a novel: *inadmissible*

*Facts* – A writer published a novel based on the life of a woman in whom the applicants recognised their late mother. They sued the writer for breach of personality rights, referring to certain passages in the book which they considered offensive to her memory. Before the domestic courts, several neighbours, friends and acquaintances testified that they had easily made the connection between the story and the applicants' family. The Constitutional Court ultimately dismissed the applicants' claims, stating that the average reader would not consider the events narrated in the book as facts about real people. Furthermore, the descriptions of the applicants' mother were not in any way derogatory, and it had not been the intention of the author to cause offence.

*Law* – Article 8: At the outset the Court underlined that a novel was a form of artistic expression protected by Article 10 of the Convention which may involve a certain degree of exaggeration or make use of colourful and expressive imagery. Furthermore, freedom enjoyed by authors of such literary works attracted a high level of protection under the Convention. In cases where a person's reputation was affected by the publication of a book, the right to respect for private life had to be balanced against the right to freedom of expression. If such balancing was done at the domestic level, the Court would require strong reasons to substitute its own view for that of the domestic courts. In the applicants' case the Slovenian Constitutional Court concluded that the novel had been written as a work of fiction and that the events described therein would not be regarded as facts about actual people by an average contemporary reader. Moreover, the controversial passages of the novel would not be regarded as offensive nor were the tone and expressions used insulting or derogatory. Given that the reasons put forward by the Constitutional Court were relevant and consistent with the principles arising from the Court's case-law, in balancing the conflicting interests in the applicants' case the domestic authorities had not overstepped their margin of appreciation afforded in this area.

*Conclusion*: inadmissible (manifestly ill-founded).

(See also *Lindon, Otchakovsky-Laurens and July v. France* [GC], 21279/02 and 36448/02, 22 October 2007, [Information Note 101](#); *Karataş v. Turkey* [GC], 23168/94, 8 July 1999; *Von Hannover v. Germany (no. 2)* [GC], 40660/08 and 60641/08, 7 February 2012, [Information Note 149](#); *Putistin v. Ukraine*, 16882/03, 21 November 2013, [Information Note 168](#))

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