

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

THIRD SECTION

CASE OF SOLTÉSZ v. SLOVAKIA

(Application no. 11867/09)

JUDGMENT

STRASBOURG

22 October 2013

FINAL

22/01/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Soltész v. Slovakia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 11867/09) 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") by a Slovak national, Mr Arpád Soltész ("the applicant"), on 13 February 2009.

2. The applicant was represented by Ms I. Rajtáková, a lawyer practising in Košice.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged that his having been ordered to pay damages in connection with the publication of an article of which he was the author had been contrary to his right to respect for his freedom of expression (Article 10 of the Convention) and that he had had no effective remedy in that respect (Article 13 of the Convention).

4. On 8 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Košice.

A. Background

6. On 22 May 1997 an individual, A., disappeared. He was the head of a municipal office and an entrepreneur. It has been submitted by the applicant, and not disputed by the Government, that he was the principal owner of an important industrial enterprise, B., which was going through the process of denationalisation and was at the relevant time still partly co-owned by the State in the person of the National Property Fund, a public institution responsible for the administration and denationalisation of State-owned property in Slovakia.

7. An official search for A. ensued. It was directed by C. At that time he was the head of the criminal investigation department of a regional police headquarters of the region concerned. According to the Government, whose submission has not been disputed by the applicant, C. left the police for the private sector in 1999.

8. Nevertheless, the search efforts were unsuccessful and, at an unspecified time, A. was pronounced legally dead.

9. In 2000 a criminal investigation of the disappearance of A. was opened by the Serious Offences Investigation Department in another regional town. The investigation was however stayed in 2005, as no evidence had been established allowing charges to be brought against any specific individual.

10. The circumstances of the disappearance of A., the search for him and his presumed whereabouts were the subject of an article published on 31 May 2000 in a weekly magazine with nationwide coverage.

After the publication of the article written by the applicant, which is at the heart of the present case, and which is mentioned in detail below, these matters were again written on in another article published at an unspecified time in another weekly magazine with nationwide coverage.

Without including a reference to it, the latter article contained some parts of the applicant's article.

B. Article

11. In May 2001 the applicant, who is an editor, obtained information from C. concerning the disappearance of A.

12. On 29 May 2001 C. signed a written declaration before a notary public confirming, in the following terms, that he had previously provided the applicant with such information for the purpose of having it published:

> "I have heard a recording of an intercepted telephone conversation which took place on the evening when the head of the municipal office in ... [A.] disappeared. At that time I was the head of the criminal investigation department of the regional police headquarters in ...and I personally took part in the search for the missing [A.].

> The recording contained the voice of [D.], who was calling from [a restaurant] to a hotel ... and announced that [A.] was already on the way. We have not been able to establish who took the call, because the recording, like other evidence, has been removed from the file.
>
> At the very beginning of the investigation we were visited by ... who was at that time deputy director of the Slovak Intelligence Service, and who declared that [A.] was dead and that the investigation was over."

13. At that time the applicant worked for a daily newspaper named *Národná obroda*, which was published by a limited liability company, E.

The daily had nationwide coverage, and in the course of the ensuing proceedings was accepted by the courts as being opinion-forming (*mienkotvorný*).

14. On 16 June 2003 an article written by the applicant was published in *Národná obroda* under the title:

> 'An industrialist [A.] of [a town] has disappeared and never been found'

15. The article drew a parallel between the case of A. and that of another entrepreneur who had disappeared earlier that month. According to the article, that entrepreneur and A. were both associated with one of the major political parties, and their disappearances resembled one another. The individuals referred to in the article included D. and were identified by their full names.

16. In so far as relevant, the article contained the following passages:

> "The last people who saw [A.] had had a meeting with him in [a restaurant] concerning a capital entry into [B.]. [A.] controlled [B.] ...The dinner was attended by [two businessmen on behalf of another company], and a local representative of their interests, [D.] ...
>
> 'My husband went to that meeting with concerns': declared [A.'s] widow. 'The meeting was originally intended to take place over lunch, but it was suddenly rescheduled for the evening. He had no intention of letting any outsider into the company. My husband left all the documents concerning [the company] with his secretary, who was to pass them on to me if something happened to him.'"

17. The passage that would later become crucial (see paragraph 29 below) read as follows:

> "The editorial office of [*Národná obroda*] moreover has in its possession a written statement by one of the police officers who took part in the search for [A.]. 'I have heard a recording of an intercepted telephone conversation from that evening. [D.] called from [a restaurant] to a hotel ... and announced that [A.] was already on the way. We have not however been able to establish who took the message, and the recording, like other evidence, was later removed from the file.', submits the former police officer who took part in the search for [A.].
>
> [D.] dropped [A.] off in his car in front of [a factory] and [A.] has not been seen since. The tape with the recording probably no longer exists.

‘The next day the then director of counter-espionage at [the Slovak Intelligence Service] ..., seized the recording. He said that [A.] was dead and that the investigation was over.’, alleges the police officer.”

C. Libel action

18. D. is a practising lawyer and an entrepreneur involved in national and international trade. On 18 June 2003 he addressed complaints about the article of 16 June 2003 to the chief editor of *Národná obroda* and to its publisher, E., seeking publication of a correction and an apology, as well as the payment of an equivalent of approximately 120,000 euros (EUR) in damages. He received no reply.

19. On 4 August 2003 D. lodged a libel action against E. with the Poprad District Court (*Okresný súd*). He relied on Articles 11 et seq. of the Civil Code (Law no. 40/1964 Coll., as amended) and Article 8 of the Convention, asserted protection of his personal integrity, and claimed damages in the amount mentioned above.

20. The action was later amended so as eventually to advance the line of argument that the article contained untrue, incomplete and misleading statements, in particular as regards (i) the alleged representation by D. of the interests of another entity; (ii) the implied suggestion that A. had been dragged to the meeting against his will by D.; (iii) the allegation that D. had made a telephone call giving information about A.’s movements; (iv) the business background of the meeting; and (v) the general tenor of the article, which implied that D. might have had something to do with A.’s disappearance.

21. On 27 July 2004 the District Court admitted the applicant to the proceedings as the second defendant of the action, following an application by D. to that effect at a hearing held the previous day.

22. Further hearings were held on 18 February and 8 April 2005 and 19 April, 30 May, and 15 December 2006.

At these hearings, the parties, their representatives and a number of witnesses were heard, including C., who acknowledged knowing and having spoken to the applicant before the publication of the article and having provided him with information concerning the investigation of the disappearance of A. However, C. could not recall the information he had provided to the applicant in any detail.

C. confirmed that he had directed the investigation and taken part personally in some of the interviews. As regards whether he should have told the applicant that D. had called and given information about A.’s movements, this was unofficial information that C. had obtained from the then deputy director of the Slovak Intelligence Service (“the SIS”). The latter had not been a member of the investigative team and had provided C. with that information off the record.

The investigators had been looking into that matter but the SIS had not compared notes, as a result of which the allegation that D. had called and given information about A. could neither be confirmed nor disproved.

C. could not recall whether he had heard a recording of the alleged call or seen a transcript, but he did not rule out either, and acknowledged that the case file had contained some transcripts.

As regards the involvement of the then deputy director of the SIS, C. had had the impression that the former wanted to take the investigation in a particular direction.

When asked how the voice of D. in the alleged call had been identified, C. replied that the call had been analysed by officers with local knowledge who had presented that information to him, and he had taken it on trust.

23. The examination of further witness evidence was principally aimed at assessing the repercussions of the article on D.'s reputation and business, the circumstances of the fateful meeting, and its corporate and transactional background.

24. The District Court also obtained information from the police concerning the status of the criminal investigation of A.'s disappearance and the existence of any elements in the investigation case file originating from the alleged interception of calls. According to the police report, no such elements were or had been present in the investigation file. However, the investigation had only been opened in 2000 (see paragraph 9 above), and prior to its commencement there had been no criminal investigation *stricto sensu,* but only an official search for A. (see paragraph 7 above).

25. Following the last-mentioned hearing, on 15 December 2006 the District Court allowed the action in so far as D. was claiming the equivalent of approximately EUR 28,500 in damages and a further EUR 14,650 in costs and expenses, payable by E. and the applicant jointly and severally. The remainder of the claim was dismissed.

26. The applicant appealed, arguing, *inter alia*, that the article concerned matters of what was known as large-scale privatisation, that is to say the process of transferring State ownership of industrial enterprises into private hands. This process was undoubtedly of public interest, and the media had the duty to report on matters concerning it. Furthermore, the article only went as far as indicating that the editorial office of *Národná obroda* had had in its possession a written statement by C., which was true. By no means had the article suggested that the contents of this statement were endorsed by E. or the applicant, and neither were they presented as a matter of fact.

27. The appeal was subject to a court fee amounting to the equivalent of some EUR 1,950, the applicant's request for an exemption from which was dismissed.

28. On 20 February 2008 the Prešov Regional Court (*Krajský súd*) determined the appeals by quashing the contested judgment and discontinuing the proceedings in so far as they concerned E., because in the

course of the proceedings E. had been dissolved and struck out of the Companies' Register without a legal successor.

At the same time, the Regional Court reduced the amount of damages payable by the applicant to the equivalent of some EUR 3,000, along with costs amounting to the equivalent of some EUR 10,150.

29. The reasoning of the District Court, as complemented by that of the Regional Court, may be summarised as follows:

There had been an interference with D.'s personal integrity, stemming in particular from the suggestion that he had made a telephone call concerning A.'s movements. The claimant's complaint about the other factual allegations in the article, such as that he had been representing someone else's interests and had dragged A. along to the meeting, was ill-founded.

As regards the crucial allegation concerning the alleged phone call, the courts noted that this was based on the information provided to the applicant by C., which however had been unofficial and unconfirmed. In that respect, with reference to the position taken by the police, the courts concluded that the truthfulness of this allegation had not been established.

It was the role of the media to provide objective and balanced news, and the applicant's defence, which relied on the fact that he had obtained the impugned information from C. and the statement that he had no duty to verify it, could not be accepted.

In that respect, as a matter of principle, the author and the publisher of an article were responsible for providing truthful content for their published information. This responsibility was to be construed as an objective one, and it was not discharged by quoting the information and referring to its source. Moreover, issues such as intent and negligence were irrelevant.

The applicant, who had not ascertained the truthfulness or otherwise of the contested information, was liable for its being untrue, and the fact that he had quoted it and referred to its source was of no consequence.

The unlawful interference with his personal integrity had caused considerable damage to D.'s good name and reputation. But the fact that the applicant had cited his source and that, despite the article, D. continued with a private and social life as well as his successful career, militated in favour of reducing the amount of damages as determined by the Court of Appeal.

30. The matter became resolved by force of a final and binding judgment on 14 April 2008.

D. Final domestic decision

31. On 18 June 2008 the applicant lodged a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended), alleging a violation of his rights under Article 10 of the Convention.

The applicant argued that the information in the article concerning the alleged call by D. was a statement of fact, made in quotation marks and with a general reference to its source. It was, as such, truthful, because the editorial office of *Národná obroda* did in fact have at its disposal the information quoted. Moreover, in view of the official function of C., the applicant should not have had any legitimate doubt that that information was true.

32. On 3 June 2008 the Constitutional Court (*Ústavný súd*) declared the complaint inadmissible as manifestly ill-founded. It held that 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 alleged, there could not have been a violation of the cited substantive provision either.

The decision was served on the applicant's lawyer on 15 August 2008.

II. RELEVANT DOMESTIC LAW

33. 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, §§ 57 et seq., 4 October 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

34. The applicant complained that the outcome of the domestic proceedings was in breach of his rights guaranteed 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

35. The Court notes that this complaint 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

36. The applicant contended that the contested information in the article was a statement of fact, made in quotation marks and with a general reference to its source, which, as such, was true, because the editorial office had in fact had at its disposal the quoted statement. Moreover, as C. at the relevant time had been the head of a regional police criminal investigation department directly involved in the search for A., the applicant considered that the information provided by him could not have been from a more reliable source, and that this gave the applicant every reason to presume that it was credible and indeed true.

37. In reply, the Government acknowledged that the crucial element of the contested article was the allegation that D. had made a telephone call about A.'s whereabouts, and that the crux of the case was whether the outcome of the proceedings could be regarded as "necessary in a democratic society" in terms of Article 10 of the Convention.

In that respect the Government relied on the factual findings and legal conclusions of the domestic courts, and submitted that the decisive criterion was whether there were any specific grounds on which the applicant should have been exempted from the obligation to verify the information obtained from C.

For the assessment of the case under that criterion the following elements were of relevance: what was the authority of the applicant's source; had the applicant carried out a reasonable amount of research before publication; did the article present the story in a reasonably balanced manner; and were the individuals concerned given the opportunity to defend themselves.

As regards the authority of the applicant's source, the Government submitted that C. had left the police in 1999 (see paragraph 7 above), that according to his own testimony before the courts the impugned information had been unofficial (see paragraph 22 above), and that at the time of the publication of the article the investigation of A.'s disappearance had been pending for about three years (see paragraph 9 above).

As regards any independent research, the applicant himself had admitted that he had relied only on the information from C. Even if he had taken into account the previous article of 31 May 2000, which concerned similar

matters to those contained in his own article (see paragraph 10 above), the other article was neutral in tone and contained no basis for the allegations contested in the present case.

Moreover, in the Government's submission the applicant's article was not balanced, he had failed to seek comments from those concerned, and he had unnecessarily identified D. by his full name.

In conclusion, according to the Government, the applicant had failed to comply with the duties and responsibilities inherent in his profession of journalism.

In addition, the courts had obtained and duly examined abundant evidence, which they had assessed in an acceptable manner, and on the basis of which they had arrived at appropriate conclusions free from arbitrariness.

38. The applicant rejoined that B. was a company that had been going through denationalisation (see paragraph 6 above), that at the relevant time it was still partly owned by the State, that the process of denationalisation in Slovakia was in general tainted with various suspicions and irregularities, and that A. had at one time been associated with a major party of government. The article thus clearly bore on a matter of public concern. Moreover, the applicant submitted that D. and his partners had been directly striving to bring B. into their operation. In such circumstances, the applicant could not see that a fair balance had been struck between, on the one hand his rights, and on the other hand his duties and obligations, within the meaning of Article 10 of the Convention.

2. The Court's assessment

(a) Interference, legality and legitimate aim

39. The Court finds, and it has not been disputed between the parties, that the judgments of the District Court and the Regional Court in the action brought by D. for the protection of his personal integrity constituted an interference with the applicant's right to freedom of expression as guaranteed by Article 10 § 1 of the Convention.

40. 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

41. 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.

As regards the general principles relating to freedom of the press in that context, the Court refers to the summary of its established case-law, for example in the case of *Ringier Axel Springer Slovakia, a.s.* (no. 41262/05, cited above, §§ 94-100).

42. In the present case the civil courts found the applicant liable for a violation of D.'s personal integrity, and ordered him to pay D. damages in an amount eventually totalling more than EUR 13,000 (non-pecuniary damage and costs – see paragraph 28 above) in connection with a published article about the disappearance of A of which the applicant was the author.

43. In establishing the applicant's liability the domestic courts appear to have attached decisive importance to the fact that, as regards the suggestion that D. had made a telephone call relaying information about A.'s movements, that information had not been proved to be true (see paragraphs 22, 24 and 29 above).

44. The Court observes that in that respect the domestic courts appear to have resorted to a form of what it 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).

45. The Court notes in particular that it was mainly with a view to establishing the truthfulness of the factual basis of the article and its repercussions for D.'s good name and reputation that the domestic courts took and assessed evidence and drew conclusions (see paragraphs 22-24 above).

46. In other words, although the applicant argued that the article related to a matter of public concern (see paragraph 26 above), no evidence appears to have been taken or assessed, and no specific conclusions appear to have been drawn 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, the aim pursued by him in publishing the article, or any other criteria relevant to the assessment of the applicant's compliance with his "duties and responsibilities" within the meaning of Article 10 § 2 of the Convention.

47. From that perspective, the Court notes the domestic courts' specific position suggesting that questions of intent, negligence, source of information and whether it had been quoted or not were of no or very little consequence (see paragraph 29 above). It may be concluded that the summary dismissal, without any real analysis, of the applicant's key argument concerning the credibility of his source, was due to this particular premise relied on by the ordinary courts.

48. The Court cannot fail to acknowledge the pertinence from the Convention point of view of the arguments and considerations proposed for the assessment of the present case by the Government (see paragraph 37 above). It notes however that these arguments and considerations are

factually and legally somewhat different from those entertained by the domestic courts.

49. 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).

50. The Court observes that, according to its case-law, an examination of the case under the criteria of "duties and responsibilities" within the meaning of Article 10 § 2 of the Convention would involve individual and contextual assessment, with reference to the situation at the time when the impugned article was published, of such complex matters as, for example, the existence and importance of the public interest at stake in correlation with the status of D.; the necessity of disclosing his identity; the *bona fides* of the applicant; the genuine aim pursued by him in publishing the article; the extent to which the applicant could rely on the credibility of his source, seen in the light of the status of C. at the time of his involvement in the search for A., but with reference to the time of the publication of the article; and the adequacy of the amount of adjudicated damages (see, for example, *Ringier Axel Springer Slovakia, a.s.* (no. 41262/05), cited above, § 106).

51. In this connection, the Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. It is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them (see *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009).

52. In these circumstances, 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 to 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 he 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).

53. The Court considers that by failing to examine these 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).

54. 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 also observes that, in defence of its substantive rights under Article 10 of the Convention, the applicant 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 32 above).

55. The foregoing considerations are sufficient to enable the Court to conclude that the legal protection received by the applicant 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. ALLEGED VIOLATION OF ARTICLE 13, IN CONJUNCTION WITH ARTICLE 10 OF THE CONVENTION

56. In conjunction with the violation alleged above, the applicant also complained of a violation of his right to an effective remedy under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

57. The Court notes that this complaint 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

58. The applicant argued in particular that the Constitutional Court had denied him an effective remedy against the judgment of the Regional Court by relying on the premise that there could only have been a violation of fundamental rights and freedoms of a substantive nature if there had been a violation of the rules of procedure.

59. In reply, referring to the Court's conclusions in the cases of *V.C. v. Slovakia* (no. 18968/07, § 166, ECHR 2011 (extracts)), and *N.B. v. Slovakia* (no. 29518/10, § 109, 12 June 2012), the Government

conceded that the Constitutional Court's approach displayed a degree of formalism. However, as the merits of the case had previously been properly examined by the ordinary courts at two levels, which eventually reduced the amount of damages payable by the applicant, in the Government's view the applicant had in fact eventually had a remedy compatible with the requirements of Article 13 of the Convention.

60. The applicant rejoined by disagreeing, and adding that the refusal to examine his constitutional complaint on the merits had in fact amounted to a total suppression of his right to an effective remedy under Article 13 of the Convention.

61. In view of the finding of a violation of the applicant's rights under Article 10 of the Convention (see paragraph 55 above), the Court finds that there is no need to examine separately the merits of the complaint under Article 13 of the Convention, in conjunction with Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed EUR 14,463 in compensation for pecuniary damage and EUR 6,700 in compensation for non-pecuniary damage. The former amount consisted of the damages and court costs that the applicant had been ordered to pay to the claimant at the domestic level, converted to euros by the applicant himself.

64. As regards the former claim, the Government stated that if the applicant had incurred any pecuniary damage, a potential finding by the Court of a violation of his Convention rights would provide a basis for reopening the domestic proceedings under Article 228 § 1 (d) of the Code of Civil Procedure, the applicant being able to seek compensation in such reopened proceedings. As regards the latter claim, the Government considered it excessive.

65. As regards the Government's argument concerning the possibility of seeking reopening of the proceedings at the domestic level, the Court reiterates that it has already held that if a victim, after exhausting the domestic remedies in vain before complaining to the Convention institutions of a violation of his or her rights, were obliged to do so a second time before

being able to obtain just satisfaction from the Court, the total length of the procedure instituted by the Convention would scarcely be in keeping with the idea of the effective protection of human rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention (see, for example, *Ferenčíková v. Slovakia*, no. 39912/09, § 74, 25 September 2012, with further references). Consequently, the Court is not prevented from making an award in this respect.

66. The Court, being satisfied that there was a causal link between the pecuniary damage claimed and the violation of the Convention found (see *Bladet Tromsø and Stensaas*, cited above, § 77), awards the totality of the sum sought under this head, that is EUR 14,463.

67. At the same time, ruling on an equitable basis, the Court awards the applicant EUR 5,850, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 2,157.60 for the court fee for his appeal at the domestic level, converted to euros by the applicant himself, and EUR 1,777.50 for legal fees incurred before the Court. The latter amount included value-added tax, and had been calculated on an hourly basis under a legal-assistance contract providing that the fees would be payable on the conclusion of the proceedings before the Court. The applicant submitted that, in view of the provision last mentioned, he was not yet in a position to support the claim with any receipts or bills.

69. The Government pointed out that, as regards the claim for compensation in respect of his own legal fees, the applicant had submitted no receipts or bills, and that only such costs and expenses were awardable as were reasonable as to quantum and supported by relevant evidence.

70. 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). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

71. In the present case, the applicant has submitted documentation concerning the payment of the court fee for his appeal, as well as a copy of his legal-assistance contract, under the provisions of which the legal fees of his lawyer are payable on the conclusion of the proceedings before the Court. In so far as the Government's objection has been substantiated, the Court has found no reason to doubt that this contractual provision actually

constitutes a legal obligation on the part of the applicant to pay his lawyer the fees as reflected in the present claim. These fees therefore have to be considered as having been "actually incurred" (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 106, ECHR 2009). Furthermore, in respect of its amount the Court has found no reasons to consider this claim unreasonable.

72. Therefore, taking into consideration the documents in its possession and the above criteria, the Court considers that the claim should be allowed in full. It accordingly awards the applicant EUR 3,935.10 under this head.

C. Default interest

73. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there is no need to examine separately the merits of the complaint under Article 13, in conjunction with Article 10 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 14,463 (fourteen thousand four hundred and sixty-three euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,850 (five thousand eight hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,935.10 (three thousand nine hundred and thirty-five euros and ten cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President