



Slovakian courts did not pay enough attention to right to freedom of expression in their examination of libel cases against newspaper *Nový Čas*

In today's Chamber judgments in the cases of [Ringier Axel Springer Slovakia, A.S. v. Slovakia \(no.2\)](#) and [Ringier Axel Springer Slovakia, A.S. v. Slovakia \(no.3\)](#) (application nos. 21666/09 and 37986/09), which are not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights in both cases.

The cases concerned the liability of the applicant company for the content of certain articles published in *Nový Čas*, one of the most widely read newspapers in Slovakia. The first application concerned the applicant's liability for publishing the identities of the victim of a car accident and the victim's father. The second application concerned its liability for a separate series of articles which reported that a contestant on the quiz show 'Who Wants To Be A Millionaire?' was suspected of having cheated. The applicant claimed that, in both cases, finding the company liable had been arbitrary in particular because the Slovakian courts had focused exclusively on the protection of the claimants' privacy, completely disregarding the company's right to freedom of expression.

In both applications the Court held that the Slovakian courts had failed to examine the elements of the cases that they needed to consider – such as the context of the articles, whether they had been published in good faith, what was their aim, and whether there was a genuine public interest in their publication – in order to balance the newspaper's right to freedom of expression against the claimants' right to protection of privacy.

Principal facts

The applicant company, Ringier Axel Springer Slovakia, a.s., is a multimedia publishing house set up in 1999 with its head office in Bratislava.

Both cases concern libel actions brought against the applicant company following the publication of articles by the national daily newspaper, *Nový Čas*, owned by the legal predecessor of Ringier.

In the first case, an article published in October 2001 told the story of an accident in a car park where a driver had hit a pedestrian, who later died from his injuries. The pedestrian was the son of a chief prosecutor in the local district, and the driver was detained following the incident. The article focused on the extensive time the Slovakian courts were taking to address the driver's bail request. However, it also contained the name of the chief prosecutor and that of his son. The prosecutor sued Ringier's legal predecessor for libel, submitting that the article had caused him pain and distress. He succeeded, and in February 2005 a Slovakian court ordered the company to publish an apology and make a payment of 100,000 Slovak korunas (SKK) in damages (the equivalent of

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

around 2,600 euros (EUR) at that time). Ringier appealed the judgment in several proceedings, but it was ultimately unsuccessful, and its final application was dismissed in April 2009.

In the second case, *Nový Čas* published a series of articles in May 2004 about a man who had been a contestant on the television quiz “Who Wants To Be A Millionaire?” earlier that year. The contestant had answered 13 questions correctly, and had been playing for the equivalent of EUR 50,000 on the fourteenth question. However, he answered this question incorrectly, and he only won EUR 2,500. The articles in *Nový Čas* stated that there was a dispute between the organisers of the quiz and the contestant, the organisers claiming that the contestant had been suspected of having cheated using electronic communication and the contestant alleging that the fourteenth question had been ambiguous, and that he had in fact answered it correctly. In February 2005 the contestant launched a claim for libel against Ringier, arguing, among other things, that the *Nový Čas* articles had wrongly suggested that he was a cheat and had been charged with a criminal offence. The contestant’s claim was successful, and the court ordered Ringier to publish an apology and pay the contestant the equivalent of EUR 1,450 in damages. The company appealed, but it was unsuccessful, and its last application was dismissed by the Slovakian Constitutional Court in February 2009.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Ringier complained in both cases that the findings of libel by the Slovakian courts had been arbitrary and, in particular, that the courts had focused exclusively on the protection of the claimants’ privacy, completely disregarding its right to freedom of expression.

The application concerning the company’s liability for the article about the driving accident was lodged with the European Court of Human Rights on 14 April 2009. The application relating to the company’s liability for the ‘Who Wants To Be A Millionaire?’ articles was lodged with the Court on 8 July 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Alvina **Gyulumyan** (Armenia), *President*,
Corneliu **Bîrsan** (Romania),
Ján **Šikuta** (Slovakia),
Luis **López Guerra** (Spain),
Kristina **Pardalos** (San Marino),
Johannes **Silvis** (the Netherlands),
Valeriu **Grițco** (the Republic of Moldova),

and also Marialena Tsirli, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the main issue in both cases was whether the Slovakian courts’ interference with Ringier’s freedom of expression had been necessary in a democratic society. Among other things, this involved assessing whether the courts applied standards that were in conformity with the principles of Article 10.

[The case concerning the article about the driving accident \(application no. 21666/09\)](#)

The Court began by identifying the reasoning behind the Slovakian courts’ decisions to impose liability on Ringier for publishing the article. It noted that the Slovakian authorities found against the

company because the disclosure of the identity of the chief prosecutor and his late son without the former's consent, along with a description of the accident, had revived the family's suffering.

That reasoning had failed to take into account the full context of the article, and in particular the circumstances of the detention of the driver of the vehicle. The Slovakian courts gave no attention to whether Ringier had published the article in good faith, the reason why it had published the article, the public interest at stake or the necessity of disclosing the identities of the people involved. Consequently, there was a failure to examine the elements of the case that the courts would have needed to consider in order properly to assess whether the principles of Article 10 had been followed, and the Convention had been violated.

[The case concerning the articles about the 'Who Wants To Be A Millionaire?' dispute \(application no. 37986/09\)](#)

The Court noted that the contestant in the case had become the subject of widespread public debate, and that, in addition to the official proceedings, he had chosen to assert his side of the argument publicly through the media.

Despite this, the Slovakian courts held that his status as a public figure played no role because the material published about him was based on elements that had proven to be untrue. They did not consider whether the articles were related to a matter of genuine public interest, whether they were published in good faith, what aim they pursued, or any other questions which would be relevant to an assessment of the company's compliance with its 'duties and responsibilities' under Article 10. By failing to examine these elements, the domestic courts did not apply the standards which were consistent with the principles embodied in the Convention. Furthermore, the Court noted that, when considering whether the Slovakian authorities had supplied the procedural guarantees inherent to Article 10, it was relevant to note that the Constitutional Court had rejected Ringier's complaint on the basis that no remedy was available because no violation of the applicable rules of procedure had been established. For these reasons, the Court held that the legal protection of the company's Article 10 rights was not compatible with the requirements of the Convention.

[Just satisfaction \(Article 41\)](#)

In regard to Ringier's liability for the article about the driving accident (application no. 21666/09), the court held that Slovakia was to pay the applicant 6,191.76 euros (EUR) in respect of pecuniary damage, EUR 5,850 in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses. In relation to Ringier's liability for the 'Who Wants To Be A Millionaire?' articles, (application no. 37986/09), the court held that Slovakia was to pay the applicant EUR 4,431.35 in respect of pecuniary damage, EUR 9,750 in respect of non-pecuniary damage and EUR 1,536.89 in respect of costs and expenses.

Separate opinion

Judges Gyulumyan and López Guerra expressed a joint partly dissenting opinion, concerning the awarding of damages in the 'Who Wants To Be A Millionaire?' case. This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.