



## Slovenian courts failed to strike balance between a publisher's right to freedom of expression and a parliamentarian's right to protection of his reputation in an article criticising his homophobic behaviour

In today's Chamber judgment in the case of [Mladina D.D. Ljubljana v. Slovenia](#) (application no. 20981/10), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (right to the freedom of expression) of the European Convention on Human Rights**

The case concerned the applicant publisher's complaint that it was ordered by the national courts to pay damages to a parliamentarian for insulting him in an article concerning a parliamentary debate on the legal recognition of same-sex relationships. The article was published in the publisher's magazine in June 2005.

The Court pointed out that the limits of acceptable criticism were wider as regards a politician, especially when he himself had made controversial public statements, than as regards a private individual. Both the context in which the publisher's article had been written (an intense political debate) and the style used (matching the parliamentarian's own provocative comments and behavior) had not been given sufficient consideration by the national courts. The article had not, therefore, been a gratuitous personal attack on the parliamentarian, but a counter-response to the parliamentarian's own public remarks and, in particular, conduct which could be regarded as a ridicule of homosexuals and promoting negative stereotypes. Accordingly, the national courts had failed to strike a fair balance between the competing interests of protecting the reputation or rights of the parliamentarian and the publisher's right to freedom of expression.

### Principal facts

The applicant company, Mladina D.D. Ljubljana, is a Slovenian private company with a registered office in Ljubljana (Slovenia) and is a publisher of a weekly magazine called *Mladina*.

In June 2005 the applicant publisher issued an article harshly criticising a parliamentarian for his remarks and, in particular, conduct during a parliamentary debate concerning legal recognition of same-sex relationships. The parliamentarian expressed the opinion that homosexuals were generally undesirable, whether as children, same-sex couples or parents. He imitated a homosexual man, picking up his children from school, using effeminate speech and gestures. The author of the article described the parliamentarian's behaviour as that of "a cerebral bankrupt" who, in a country with less limited human resources, would not be able to find work even as a school janitor.

In August 2005 the parliamentarian brought proceedings against the publisher claiming that the article was offensive and caused him severe distress. The Slovenian courts, subsequently, acknowledged the importance of the publisher's freedom of expression and its right to criticise the

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

parliamentarian but held that “cerebral bankrupt” was an offensive judgment amounting to a personal attack. The publisher was ordered to pay 2,921 euros in damages to the parliamentarian.

## Complaints, procedure and composition of the Court

Relying on Article 10, the applicant publisher complained that the decisions of the national courts, by ordering it to pay damages to a parliamentarian for remarks published in its magazine on his controversial and homophobic behavior in a parliamentary debate, violated its right to the freedom of expression. They complained, in particular, that the national courts had been unwilling to expose harmful, homophobic stereotypes and had not taken into consideration that the exaggerated, satirical style of the article was a reaction to the parliamentarian’s own controversial behaviour.

The application was lodged with the European Court of Human Rights on 8 April 2010.

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

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Ann **Power-Forde** (Ireland),  
Ganna **Yudkivska** (Ukraine),  
Helena **Jäderblom** (Sweden),  
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### [Article 10 \(right to the freedom of expression\)](#)

The Court found that the national courts’ decisions complained of by the applicant publisher had amounted to an interference, prescribed by Slovenian law, with the exercise of the publisher’s right to freedom of expression. The issue turned, however, on whether that interference had been justified as “necessary in a democratic society” for the protection of the reputation and rights of others. The Court clarified that, whilst journalists are required to respect certain boundaries, in particular with regard to the reputation and rights of others, they nevertheless have a duty to impart information and ideas on all matters of public interest. It was therefore essential to protect the competing interests of freedom of expression on the one hand and the rights of others on the other. The limits, the Court reiterated, of acceptable criticism were wider as regards a politician, especially when he himself had made controversial public statements, than as regards a private individual.

The Court held that the national courts had not established any pressing social need for placing the protection of the parliamentarian’s reputation above the publisher’s right to freedom of expression particularly where an issue of public interest was in play. Both the context in which the statement “cerebral bankrupt” had been made (an intense political debate without much restraint) and the style used in the article (matching the parliamentarian’s own behavior) were not given sufficient consideration by the national courts. Viewed in that light, the statement at issue was not a gratuitous personal attack on the parliamentarian. Instead, the statement was a counter-response to the parliamentarian’s own public remarks and, in particular, his conduct which could be regarded as a ridicule of homosexuals and promoting negative stereotypes.

The Court reiterated that there was a high threshold to cross when attempting to restrict the right to freedom of expression in the context of a political debate, especially on a question of public interest. Indeed, ‘political invective’ could often spill into the personal sphere; such were the hazards of

politics and the free debate of ideas which are the guarantee of a democratic society. The national courts had, therefore, failed to strike a fair balance between the competing interests of protecting the parliamentarian from defamatory remarks and the publisher's right to freedom of expression. The interference in question had not therefore been "necessary in a democratic society" and as such violated Article 10 of the Convention.

#### **Just satisfaction (Article 41)**

The Court held that Slovenia was to pay the applicant 2,921.05 euros (EUR) in respect of pecuniary damage and EUR 5,850.29 in respect of costs and expenses.

*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.