

## Tabloid articles about Slovak woman's deceased son violated her rights

In today's **Chamber** judgment<sup>1</sup> in the case of [M.L. v. Slovakia](#) (application no. 34159/17) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights**

The case concerned three 2006 newspaper articles about the applicant's son – a former parish priest – after his passing, and the ensuing court proceedings. The articles had combined certain elements from the criminal case files of the applicant's son's convictions with frivolous and unverified statements, in particular around the man's death and alleged confessions.

The Court found in particular that a criminal conviction did not deprive a convicted person of his or her right to be forgotten, and the applicant's son could not be deprived of the protections of Article 8. The articles in question had been sensationalist and had not made a contribution to the debate around sexual abuse by Catholic clergymen. The domestic courts overall had failed to adequately balance the freedom of expression of the newspapers with the applicant's right to privacy.

### Principal facts

The applicant, M.L., is a Slovak national who was born in 1948 and lives in Čierne pole (Slovakia).

At the turn of the century M.L.'s son – a then Catholic priest – was convicted separately of sexual abuse and threatening the moral education of young people (he had attempted to have non-consensual oral sex with a minor boy) and disorderly conduct (because of consensual oral sex with an adult man in a public place). The convictions were both spent by 2003. M.L.'s son died in 2006.

In March to May 2008 three tabloid newspapers reported on M.L.'s son's convictions. The articles were entitled "Priest confessed to abuse of minor boys. Secret of priest's suicide", "Priest abused Roma boys. He confessed before his suicide", and "Protected priests. The Church provided a guarantee to get a paedophile priest out of prison". The articles outlined various accusations against M.L.'s son, including alleged confessions and linking those confessions to the man's alleged suicide, and the Catholic church hierarchy, mentioning many private details about the man; one of the articles included pictures.

In August 2008 M.L. instituted proceedings against the newspapers' publishers. She argued that her son had confessed to disorderly conduct, but not to sexual abuse. She averred that the articles had contained many falsehoods, in particular that he had died from drugs and medical negligence. She asserted that the allegations had interfered with both her and her late son's privacy rights and had provoked a negative reaction from acquaintances.

The District Court partially allowed the suit but dismissed her claim for damages. The applicant appealed, mainly on the basis that the court had ordered neither damages nor an apology for the publication of M.L.'s son's picture.

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](http://www.coe.int/t/dghl/monitoring/execution).

In 2013 the Košice Regional Court quashed the first-instance judgment, citing the lack of adequate reasoning in the original judgment. The applicant lost the retrial, with the District Court determining, in particular, that as a parish priest the applicant's son had been a "public figure" open to more criticism, and that coverage of the case and publication of the applicant's son's image had been justified.

Ultimately, following further court proceedings, the applicant took a constitutional complaint to the Constitutional Court, which was declared manifestly ill-founded. The court found that the lower courts had dealt with the applicant's arguments and had provided reasoning in accordance with the constitution.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the dismissal of her action against the newspaper publishers had amounted to a violation of her Convention rights.

The application was lodged with the European Court of Human Rights on 5 May 2017.

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

Ksenija **Turković** (Croatia), *President*,  
Péter **Paczolay** (Hungary),  
Krzysztof **Wojtyczek** (Poland),  
Alena **Poláčková** (Slovakia),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

The Court found it established that the applicant had been directly affected by the articles in question.

Even though the domestic courts had found that priests could be treated as public figures, the applicant's son had been, for the Court, not a well-known public figure or a high-ranking Church dignitary. It stated that an individual retains the right to be forgotten after a criminal conviction, especially a spent conviction, aiding his or her reintegration into society. In the present case, the Court noted the applicant's son had completed his probation and the conviction had been spent.

The Court reiterated that even a value judgment had to be based on sufficient facts to be considered fair under the Convention. The difference between a value judgment and a statement of fact ultimately lay in the degree of factual proof which had to be established. In the articles in question in this case, frivolous and unverified statements had been presented as the facts that had led to the applicant's son's convictions. This failure to distinguish value judgments had been particularly salient in relation to their reporting of the man's passing. The Court found that the domestic courts had failed to carry out an adequate assessment of all the elements relevant to the matter and of the evidence available. Furthermore, the journalists' frivolous statements had not been responsible journalism.

In line with previous cases, the Court accepted that the subject of sexual abuse by a Roman Catholic clergyman had been in the public interest. However, the sensationalist articles in this case had not made much of a contribution to the public discussion of this matter.

Overall, the Court found that the domestic courts had failed to balance the applicant's right to private life and the newspaper's right to freedom of expression, leading to a violation of Article 8.

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

The Court held that Slovakia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 267 in respect of costs and expenses.

*The judgment is available only in French.*

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#### **Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Neil Connolly (tel : + 33 3 90 21 48 05)**

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Jane Swift (tel : + 33 3 88 41 29 04)

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