



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62202/00
by RADIO TWIST, a.s.
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on
8 November 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 July 2000,

Having regard to the observations submitted by the respondent
Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Radio Twist, a.s., is a private broadcasting company with registered office in Bratislava. The application on its behalf was filed by Mr B. Zvrškovec, President of the company's Board of Directors. The applicant company was represented before the Court by Mr M. Hanúšek, a lawyer practising in Bratislava. The respondent Government were represented by Ms A. Poláčková, their Agent.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

At the relevant time the applicant company broadcast on five frequencies in the Slovak Republic and had a daily audience of more than 400,000 listeners. Its broadcasts have been based on the principles of democracy and independence.

At the relevant time *Slovenská poisťovňa, a.s.* was a joint-stock company specialising in insurance and was controlled by the State. In particular, its management and supervisory bodies were controlled by the National Property Fund that is the public institution responsible for administration and denationalisation of State-owned property. Following the parliamentary election held in 1994, the members of its managing board and of the supervisory board had been nominated as a result of an agreement within the coalition of political parties then in power. At that time, the nominees of the Movement for Democratic Slovakia had a majority in the bodies of the National Property Fund.

On 1 June 1996, the Supervisory Board of *Slovenská poisťovňa, a.s.* removed the persons nominated by the Slovak National Party from the company's Board of Directors. It also removed Mr T. from the position of the Director General. The Supervisory Board appointed a new management board for the company. However, the members of the former management did not accept their removal from office.

On 3 June 1996, the former management led by Mr T., supported by the State police and private security guards, took over the headquarters of *Slovenská poisťovňa, a.s.* The president of the Slovak Police Corps, Mr H., who had been nominated to that post by the Slovak National Party, provided Mr T. with a squad of police who forced the security service of the newly appointed management to leave the premises of the company. A few days later, the new leadership of *Slovenská poisťovňa a.s.*, supported by its private security service, regained control over the company and its premises. The background of that struggle related to the wish of those involved to participate in the company's denationalisation. The revocation of the management nominated by the Slovak National Party caused a serious political crisis in the government coalition.

2. The broadcast of a telephone conversation by the applicant company

On 12 June 1996 at 6 p.m., the applicant company broadcast, in the news programme "Journal", the recording of a telephone conversation between Mr K., the Deputy Prime Minister and the Minister of Finance, and Mr D.,

State Secretary at the Ministry of Justice. The posts of State Secretaries within Ministries have been filled through appointments by political parties. Such a post is therefore a political post and not one forming part of the civil service.

The broadcast started with a commentary by the applicant's commentator. In it the names of the persons involved were mentioned in full and it read as follows:

“As mentioned in our programme at noon, we managed to obtain the tape recording of a telephone conversation according to which [Mr K.], the Deputy Prime Minister and the Minister of Finance was involved in the events around Slovenská poisťovňa, a.s. Quite naturally, Radio Twist disapproves of any wiretapping unless it is made under a court order. We consider [the present recording] unlawful and dissociate ourselves from the manner in which it was obtained. But because, in this case, a matter of general interest is involved and one which cannot be concealed, ... we now do our best to carry out our duty to inform the public. At the same time, we would like to ask the competent authorities as to the security situation in our country when wiretapping of its high officials is possible. The fact that high officials are involved in activities concerning the above-mentioned case should be considered by those authorised to deal with it. And now to the tape which, due to its technical quality, is almost unintelligible. The other person speaking over the phone is probably [Mr D.], the State Secretary at the Ministry of Justice.”

Immediately thereafter the recorded conversation of Mr K. and Mr D. was played. The transcript of its broadcast reads as follows:

Mr K: “... the police, with the assistance of the policemen [and] some other security guards have entered and seized the building, they have emptied the building ...”

Mr D: “But this is peculiar, the involvement of the policemen, what could have been the grounds for their action ...”

Mr K: “Certainly, this was the failure of the security guards, the ones that were there at the moment, but this was the layman's approach maybe because ... The policemen were rather hard as it seems according to all circumstances. You know, the police raid was probably organised through [Mr H.], you know the Slovak National Party. Well then, this was all I wanted to say, that there is that ...”

Mr D: “Will you be chairing the meeting?”

Mr K: “Yes, but the boss will arrive to speak on two items on the agenda.”

Mr D: “I see. Otherwise, I have been charged with this task, because he is leaving for Banská Bystrica.”

Mr K: “Good, it is clear, all I wanted to say ...”

Mr D: “Nobody is going to interfere with my business ...”

Mr K: “Well, of course not.”

Mr D: “As he does not yet even know what I am doing ...”

Mr K: “[the first name of Mr D. was mentioned], it would be therefore most important ...”

Mr D: “I shall go and personally inspect it in the morning, before the meeting starts ...”

Mr K: "I would like to ask you to do it, as it will emphasise the fact that they have done it ..."

Mr D: "It is clear."

Mr K: "I had a phone call from there just half an hour ago ..."

Mr D: "Very good, I also need to know this in order to speak about it there."

Mr K: "That will be extremely important."

Mr D: "All right then, right in the morning I shall submit the report about how things are going ..."

Mr K: "Otherwise, you have to turn to me, this lady I have arranged, simply speaking, it is all organised by me, hence ..."

Mr D: "Yes, yes."

Mr K: "Even if I am not present, I shall later go directly to the Government session, but through this [Mrs M.], they know for sure, actually they are well oriented on the subject ..."

Mr D: "I have got my instructions."

Mr K: "It is clear, these instructions apply."

Mr D: "Well then, see you."

Mr K: "[The first name of Mr D.], thank you very much, see you ... bye ..."

The subsequent commentary of the journalist, in which full names of those involved were again mentioned, went as follows:

"And let us start to clarify things for a while. The dealings around Slovenská poisťovňa surfaced in public on Monday, 3 June 1996. To put it simply: the ten managers of Slovenská poisťovňa - let us call them Mr [T.] and Co. - were pushed out from their building after the week-end by a private security service. These security guards had been summoned by the new management of Slovenská poisťovňa - let us call them Mrs [B.] and Co. Mr [T.] and Co. have been supported by the police and, as documented by the tapped phone conversation, it is evident that the President of the Police Corps, Major [H.] is the protégé of the Slovak National Party. The former management [T.] and Co. seized the building with the police assistance and, as it has been clear from the start, it was the building of Slovenská poisťovňa. This had happened on Tuesday last week and on the very same day these managers were again sitting in their chairs. As follows from the tapped phone conversation, it is clear that the persons spoke together last Monday, 3 June, and that the State Secretary at the Ministry of Justice, [Mr D.] was a somewhat easier partner for Minister [K.] than the Minister of Justice, [Mr L.], who was in Banská Bystrica that day. We have verified this fact and it was really so. Just to complete the information, it should be noted that last week's Tuesday session of the Government was chaired by Mr [K.]. Owing to the poor technical quality of the recording of the phone conversation between [Mr K.] and [Mr D.], I think it would be worthwhile to listen to it once again." ...

"We asked for the opinion of the Ministry of Justice. [P.Š.], the spokesman of the Ministry, ... did not know of the contents of the recording as it had not yet been made public in Slovakia. He therefore understandingly did not want to react to it. We expect the response of the Ministry tomorrow. We also turned to Minister [K.]."

Mr K: “Look, I do not comment on things that are contrary to democracy. I think that journalists should perhaps choose a different approach since governmental officials have been tapped. So I will not comment on something that has been published without my consent. Undoubtedly, this information is about the fact that there has been certain pressure ... in Slovenská poisťovňa.”

3. Proceeding concerning the personality rights of Mr D.

Mr D. filed in the Bánovce nad Bebravou District Court a civil action for protection of his personality rights against the applicant company. He argued that the company had broadcast the telephone conversation despite the fact that it had been obtained in an illegal manner. The broadcast had interfered with his reputation by publishing statements that harmed his integrity, dignity and respect for his person among the public. In addition, the published statements included false information and assumptions capable of discrediting him. The plaintiff also referred to the fact that the information had subsequently been taken over by the Czech TV station *Nova*, and that several articles had been published in the Slovak dailies *SME*, *Práca* and *Slovenská republika*. As a result, the confidence between the Minister of Justice and the plaintiff had been undermined. He confirmed that, at the time when the recording had been made, he had spoken with several persons and admitted that the recording contained his voice. The recording and the comments as such had been isolated from their context, and the telephone conversation had not been published in its entirety. The plaintiff denied that the subject of the conversation had been the facts as presented by the commentator, since his office did not authorise him to intervene in the case as indicated in the broadcast.

In its observations in reply the applicant company stated that the recording had been deposited in its mailbox by unknown persons. At the time when the tape had arrived controversial issues had been discussed concerning the fact that, as a result of the above conversation, the coalition government was threatened with a split. Prior to the broadcast employees of the applicant company had tried to contact the persons concerned in accordance with the company's internal rules. Although the tape was almost unintelligible, as an information medium the applicant company felt obliged to inform the public and to show what was going on in political circles at that time. In the commentary on the programme the journalist had stated that the applicant company disapproved of the manner by which the recording had been obtained.

In a judgment delivered on 16 March 1999 the Bánovce nad Bebravou District Court ordered the applicant company to offer the following apology to the plaintiff, in writing and within 15 days, which was also to be broadcast at the same time:

“We apologise to [Mr D.], the former State Secretary at the Ministry of Justice of the Slovak Republic, at present judge of the Constitutional Court of the Slovak

Republic, for having broadcast an unlawfully obtained recording of a telephone conversation on 12 June 1996 at 6 p.m.”

The applicant company was further ordered to pay 100,000 Slovakian korunas¹ to Mr D. in compensation for damage of a non-pecuniary nature as well as to reimburse the plaintiff’s costs.

The reasons for the judgment stated, *inter alia*, that the applicant, being a licensed radio broadcasting company, had the right to use, without the previous consent of a person, sound recording for scientific and artistic purposes and also for news reporting. However, under the last sentence of Article 12(3) of the Civil Code, such use should not be in conflict with the justified interest of the person concerned. The applicant company had not been restricted from commenting on the situation which had arisen and in presenting its views. However, in order to do so it had not been necessary to broadcast a tape obtained in an illegal manner.

In the judgment the District Court further noted that the dignity of the plaintiff as a public official had been diminished as the issue had been commented upon in the press and television. It therefore considered it appropriate to order the applicant company to compensate the plaintiff in respect of non-pecuniary damage under paragraph 2 of Section 13 of the Civil Code.

The applicant company appealed. It maintained that the Constitution did not subject the use of recordings to the prior establishment of their lawfulness and that it had not been formally shown that the recording had been unlawfully obtained. The plaintiff was a public official and the contents of the recording concerned the exercise of a public function. It had been discussed several days prior to its publication. By broadcasting the telephone conversation the applicant company had fulfilled its task to inform the public about issues of public interest. Finally, the applicant pointed out that the defendant had become a constitutional judge in the meantime, and that it had not been shown that he had suffered any damage as a result of the broadcast.

On 22 February 2000 the Žilina Regional Court upheld the above finding of the District Court. The Regional Court admitted that imparting of information by media was one of the important instruments of control of political power in a democratic society. Informing about and criticising matters of public interest thus belonged among the most important public interests. The constitutional protection of such interests was ensured by the guarantee of freedom of expression and of the right to information. However, in the case under consideration the freedom of communication of the users of telecommunication services had been violated, and an interference with the right to respect for privacy had occurred as a result of making public the telephone conversation. That fact was the essence of the

¹ The equivalent of approximately 2,500 euros.

applicant company's unjustified interference with the plaintiff's personal rights since, as the Regional Court held, the protection of privacy extends to the conversations of a public official.

B. Relevant domestic law

1. The Constitution

Article 16(1) provides for protection of a person's integrity and privacy. Restrictions are permissible only in cases provided for by the law.

Article 26(1) guarantees freedom of expression and the right to information. Article 26(2) provides, *inter alia*, that anyone has the right to express his or her views and to freely seek, receive and impart ideas and information. Under paragraph 4 of Article 26, freedom of expression and the right to seek and impart information can be restricted by means of a law where such restriction is necessary in a democratic society for the protection of, *inter alia*, the rights and freedoms of others.

Article 26(5), as in force at the relevant time, obliged State authorities and local self-government authorities to provide information about their activities in an appropriate manner. Further details in this respect were to be laid down in a special law.

2. The Civil Code

The right to protection of a person's dignity, honour, reputation and good name is guaranteed by Article 11 et seq. of the Civil Code.

According to Article 11, any natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.

Article 12(1) provides, *inter alia*, that sound recordings concerning a natural person or concerning his or her expressions of personal nature may only be made or used with the consent of the person concerned. Under paragraph 2 of Article 12, such consent is not required where the documents or recordings are used for official purpose in accordance with the law. Article 12(3) provides that pictures and sound recordings can also be made without the consent of the person concerned or used in an appropriate manner for scientific and artistic purpose and also for news reporting by means of press, film, radio and television. Such use cannot, however, be contrary to the justified interests of the person concerned.

Pursuant to Article 13(1), any natural person has the right to request that the unjustified infringement of his or her personal rights should be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.

Article 13(2) provides that in cases where the satisfaction obtained under Article 13(1) is insufficient, in particular because a person's dignity and

position in society have been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage.

COMPLAINT

The applicant company complained under Article 10 of the Convention that its right to impart information had been violated as a result of the judicial decisions granting the action of Mr D.

THE LAW

The applicant company complained that its right to impart information had been violated. It relied on Article 10 of the Convention the relevant part of 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...

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.”

The Government contended that the interference had had a legal basis, namely Articles 11 to 13 of the Civil Code. Those provisions were sufficiently accessible and foreseeable as required by the Court’s case-law. The interference pursued the legitimate aim of protecting the reputation and rights of Mr D.

The Government admitted that Mr D. had been a public figure at the relevant time as he had been involved in politics. However, the recorded telephone conversation had been of a private character and it had been obtained illegally. Its broadcast had therefore been in violation of the plaintiff’s right to respect for his private life.

The conversation in issue could not be said to relate to matters of public interest as (i) its recording was almost unintelligible, (ii) doubts existed as to whether one of the participants to it was actually Mr D., and (iii) no relevant information could be derived from it due to the obscure and unclear character of the contents. Its broadcast did not make any contribution to the public discussion apart from that as to whether the applicant company had breached the principles of journalistic ethics.

The Government considered relevant and sufficient the reasons given in particular by the District Court. As to the sanction imposed, it was proportionate to the legitimate aim pursued. They concluded that the interference had been necessary in a democratic society in that it had complied with a pressing social need and had been proportionate to the legitimate aim pursued.

Finally, the Government relied on Article 17 of the Convention and maintained that the applicant company could not seek protection under Article 10 of the Convention as its conduct had intentionally interfered with the rights of Mr D. which are also guaranteed by the Convention. In particular, nothing had prevented the applicant company from commenting on the existing situation and criticising in a reasonable manner the conduct of those involved without broadcasting an illegally obtained recording.

The Government proposed the rejection of the complaint as being manifestly ill-founded.

The applicant company maintained that the interference complained of did not correspond to any social need sufficiently pressing to outweigh the public interest in ensuring the freedom of media and in informing the public of matters of general interest.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President