



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

THIRD SECTION

CASE OF MAC TV S.R.O. v. SLOVAKIA

(Application no. 13466/12)

JUDGMENT

STRASBOURG

28 November 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of MAC TV s.r.o. v. Slovakia,

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

Helena Jäderblom, *President*,

Branko Lubarda,

Luis López Guerra,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 13466/12) 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 limited-liability company established under the laws of Slovakia, MAC TV s.r.o. (“the applicant company”), on 27 February 2012.

2. The applicant company was represented by Advokátska kancelária Bugala-Đurček, s.r.o, a law firm with its offices in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant company alleged a violation of its rights, as guaranteed under Article 10 of the Convention, on account of a decision by the Broadcasting Council – later upheld by the courts – finding that the applicant had breached broadcasting rules and fining it for that breach. The breach concerned a commentary broadcast by the applicant company regarding the late Polish President Kaczynski, his death, responses to it, and his political views.

4. On 23 September 2016 the application was communicated to the Government.

5. The Media Legal Defence Initiative (“MLDI”) was given leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

6. The applicant company was established in 1991 and has its registered office in Bratislava. It is the operator of two private television channels and the broadcaster of a television programme, JOJ PLUS. The present case concerns a commentary (*glosa*) delivered during a television programme broadcast on 12 April 2010 after the crash of the plane in which the late President of Poland, Lech Kaczynski, had been travelling.

7. The commentary's title was "Compassion in Accordance with Protocol"; the commentary contained the following:

"The crash of a Polish plane carrying the presidential couple on board is a true human tragedy. The whole of Poland is in mourning and politicians are more or less expressing their condolences. That is required by diplomatic protocol. Thus, Slovak russophile politicians too shed a tear, albeit a forced one, over the death of the russophobe, Lech Kaczynski. Even ordinary citizens, not bound by any protocol, are expressing their sorrow. Jews, homosexuals, liberals, feminists and left-oriented intellectuals are bitterly sorry for the death of a man who represented an extreme Polish conservatism, and who was a symbol of a country where people who are not white heterosexual Catholic Poles were born as a punishment. I am sorry, but I do not pity Poles. I envy them."

B. Administrative proceedings

8. Following the broadcast of the above-mentioned commentary, the Broadcasting Council (*Rada pre vysielanie a retransmisii*) commenced administrative proceedings against the applicant company, pursuant to section 19(1)(a) of the Broadcasting and Retransmission Act (Law no. 308/2000 Coll., as amended - "the Broadcasting Act"), on 25 May 2010.

9. On 14 September 2010 the Broadcasting Council found that the applicant company had breached its obligations under the Broadcasting Act in that the manner of processing and presenting the content of the commentary had interfered with the dignity of the late Polish President, Lech Kaczynski. It fined the applicant company 5,000 euros (EUR).

10. The Broadcasting Council assessed the conflict between the applicant company's freedom of expression and the protection of the human dignity of the late President. On the one hand, it acknowledged the aim of the commentator to express his opinion and his subjective stance on the social and political event through criticism, sarcasm and irony, which were inherent to journalistic expression. On the other hand, where the

Broadcasting Council found difficulties was in particular the content of the last two sentences of the commentary (“I am sorry, but I do not pity the Poles. I envy them”). The Broadcasting Council concluded that the manner in which the commentator had presented his opinion – that is to say his lack of regret for the Polish President’s death – had contravened the duty to respect his human dignity. According to the Broadcasting Council, the degree of sarcasm and irony in the broadcast commentary had been so high that its content and the manner in which the author’s opinion had been presented had been sub-standard and had dishonoured the late President.

11. The Broadcasting Council noted that Mr Kaczynski, as President, was sufficiently recognisable as an “individual”, which was a prerequisite for the applicability of the protection of the dignity, human rights and fundamental freedoms of “others” under section 19(1)(a) of the Broadcasting Act. It concluded that by broadcasting the aforesaid commentary the applicant company had committed an administrative offence (*správny delikt*) – in particular a breach of its duties under the said provision – and that imposing a fine on it in that respect was in order. It considered such a measure to be necessary in a democratic society, as it served a legitimate aim – that is to say the protection of the right to human dignity.

12. On 10 March 2011 the Supreme Court upheld the Broadcasting Council’s decision. It rejected the applicant company’s argument that the Broadcasting Council had sanctioned it for voicing its political opinion. Rather, the Supreme Court confirmed the Broadcasting Council’s conclusion about the defamatory character of the commentary in question and the interference with the late President’s human dignity.

C. Constitutional complaint

13. The applicant company lodged a complaint before the Constitutional Court challenging the decisions of the Broadcasting Council and the Supreme Court under Articles 6 § 1 and 10 of the Convention and Articles 26 (freedom of expression) and 46 (right to judicial protection) of the Constitution.

It alleged that the decisions in question had been arbitrary, unfair and insufficiently reasoned and that their respective authors had breached its freedom of expression by sanctioning it for voicing its opinion regarding the late President as a politician.

14. On 27 July 2011 the Constitutional Court rejected the applicant company’s complaint. It considered, *inter alia*, that the above-mentioned authorities had duly explained their conclusions, without having overly strayed from a reasonable interpretation of the applicable rules and established practice. The Constitutional Court noted that the impugned commentary had expressed not only sarcasm and criticism of the late

President's policy but also a positive attitude towards his death. This very fact had interfered with his right to respect for his human dignity, which led the Constitutional Court to conclude that the domestic authorities' decisions had not been arbitrary.

As to the applicant company's complaint under Article 10 of the Convention (and Article 26 of the Constitution), the Constitutional Court 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 constitutionally relevant violation of procedural rules. Given that it had rejected the complaint concerning the alleged violation of procedural rules, it also had to reject the complaint relating to an alleged violation of a substantive provision.

II. RELEVANT DOMESTIC LAW

Act no. 308/2000 Coll. on broadcasting and retransmission

15. The Broadcasting Act regulates the rights and obligations of, *inter alia*, broadcasting companies and network operators. It also defines the competencies of the Broadcasting Council.

16. Section 3(b) defines an on-demand audio-visual media service (*audiovizuálna mediálna služba na požiadanie*) as a service of an economic nature offering a catalogue of programmes through electronic communications intended for viewing. The aim of such a service is to inform, entertain or educate the general public.

17. Section 19(1)(a), in particular, stipulates the protection of human dignity and humanity. Under this provision, an on-demand audio-visual media service, and a programme and its components, shall not broadcast anything which, by virtue of its content and the means by which it is processed, interferes with human dignity and the fundamental rights and freedoms of others.

18. Under section 64(2) and (3), the Broadcasting Council is to impose a fine, without any prior warning, in the event (for example) of a breach of section 19 of the Broadcasting Act. The level of such a fine depends on the gravity, manner, duration, consequences and extent of the impugned broadcast, as well as the level of any unjust enrichment gained in that regard.

19. Pursuant to section 67(5)(e), the Broadcasting Council shall impose a fine of between EUR 3,319 and EUR 165,969 on a broadcasting company or a television channel for breaching the obligation stipulated under section 19.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant company complained that the Broadcasting Council had arbitrarily penalised it for having expressed its political opinion of the late Polish President's alleged extreme conservatism. It relied on 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

21. The Court notes that the application 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. *The parties' submissions*

22. The applicant company argued that the domestic authorities' conclusion that the commentary had praised or welcomed the death of the Polish President had been wrong and arbitrary. It asserted that the authorities had taken the reporter's statement “I do not pity the Poles. I envy them” out of context. Such a statement had not been related to the President's tragic death and had not condoned it *per se*. Rather, the applicant company's reporter had expressed his opinion that the politics of Lech Kaczynski had been marked by extreme, intolerant and aggressive conservatism and he had welcomed the end of the political era that the President had represented. In this connection, the reporter had been comparing the politics of Poland and Slovakia. Since in the latter country the political *status quo* remained the same, the applicant company had “envied” the Poles for their upcoming change. In the applicant company's

opinion, the Slovakian authorities had unjustifiably sanctioned it for expressing its political views and the interference with its freedom of expression had been unnecessary and disproportionate in a democratic society.

23. In response, the Government argued that the Broadcasting Council's decision, which had interfered with the applicant company's right to freedom of expression, had had a legal basis in the Broadcasting Act, it had pursued a legitimate aim and it had been "necessary in a democratic society".

24. In this connection, they submitted that the role of the Broadcasting Council was among other things to supervise compliance with legislation regulating broadcasting activities as stipulated in the Broadcasting Act. Section 19(1)(a) of that Act provided protection to human dignity and the fundamental rights of others.

Having regard to the legislation in place, the Broadcasting Council had needed to balance two conflicting fundamental rights in the present case, that is to say the applicant company's freedom of expression and the right to protect the human dignity of the deceased President. While undertaking that exercise, the Broadcasting Council had concluded that the applicant company's reporter had expressed a positive view about the tragic death of the Polish President, which had compromised his human dignity.

25. The Government contested the applicant company's argument that the commentator had merely expressed his views about the late President's policy of aggressive and intolerant extreme conservatism. Rather, they viewed a part of its commentary as an expression of satisfaction over his death. They submitted that the domestic authorities at all levels had clearly distinguished between the political opinion expressed in the commentary and the defamatory nature of it. In respect of the former opinion, the Broadcasting Council had not reproached the applicant company for broadcasting some sarcastic or ironic criticism of the late President's political views and the impact they had had on the Polish society. Rather, the Broadcasting Council disagreed with the commentator's attitude towards the death in question, as it concerned not only a politician but also a human being. Therefore, the commentator's statement about envying the Poles for the tragic death of Lech Kaczynski as well as his expressions of approval in respect of such an event had interfered with the human dignity of the late President.

26. Furthermore, the Government raised another argument - that the action taken by the Broadcasting Council had not merely concerned the protection of individual rights of the late Polish President. It had also concerned the general protection of rights and freedoms of natural persons. In this connection, the Government submitted that the Broadcasting Council had disapproved of the applicant company's statements, which had been capable of evoking the impression amongst the public that it was acceptable

to welcome the death of another person in the light of his different political views or for any other reasons (such as race, religion, or colour of skin).

27. Lastly, the financial sanction imposed on the applicant company had amounted to EUR 5,000, which was minimal and could not have had a significant impact on the applicant company's business. Thus, it had had no chilling effect on the applicant company's activities.

28. The applicant company replied by contesting the Government's argument that section 19(1)(a) of the Broadcasting Act also protected the rights and freedoms of all natural persons in general, as it was contrary to the content of that provision. Therefore, the impugned commentary could not have and had not breached the rights and freedoms of others. In this regard, it emphasised that section 19(1)(a) was to be invoked only if an individual person's dignity was at stake, which according to the applicant company had not been the case with the contested commentary, as the reporter's remarks had merely concerned the political views of Lech Kaczynski. They had in no way encouraged people to condone or welcome his death.

2. *The third party's observations*

29. The MLDI as a third party advanced the position that an individual's right to a reputation, as guaranteed by the Convention, did not survive the death of that individual. In its submission, the MLDI relied on a common-law paradigm that a cause of action in defamation died with an individual. They referred to a comparative-law study on how defamation of a deceased person was regulated in a number of common-law jurisdictions in order to support its argument.

It submitted, *inter alia*, that should the Court find that the pursuit of the "legitimate aim" of protecting the reputation of a deceased person was "necessary in a democratic society", it should do so only in exceptional circumstances, as it had done on previous occasions (see for example *Putistin v. Ukraine*, no. 16882/03, § 33, 21 November 2013, and, *a contrario*, *Genner v. Austria*, no. 55495/08, §§ 44-45, 12 January 2016). In this connection, they invited the Court to consider a number of factors (the background of a person subject to defamation – whether he or she was a public or private figure; the nature of the publication; and the time elapsed between the person's death and the publication of the impugned article) in the assessment of the necessity of an interference in the pursuit of the protection of a person's reputation.

30. In a further reply, the Government contested the MLDI's submission that protecting the reputation of a deceased person was not a legitimate aim under Article 10 § 2 of the Convention. Rather, they pointed out that the Slovakian legal order recognised the right to protection of personality including that of a deceased person. Moreover, they suggested that the domestic authorities had attached some significance to the fact that the

impugned commentary had been broadcast only two days after the tragic event. In addition, they reaffirmed that the interference with the applicant company's right had not merely concerned the protection of the individual rights of the late President. It had also related to the protection of the general public in situations such as the present one, where the impugned statements allegedly approving of the death of another person in the light of his political views (or for other reasons such as race or religion) were capable of evoking the impression among the public that such statements could be tolerated and accepted.

3. *The Court's assessment*

(a) **Interference "prescribed by law"**

31. The Court notes that it is common ground between the parties that the Broadcasting Council's decision of 14 September 2010 constituted an interference with the applicant company's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

32. An interference contravenes Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" for achieving such an aim or aims.

33. As to the legal basis for the interference, the Court notes the broad scope of the powers of the Broadcasting Council (see paragraphs 18 and 19 above). On the facts of the present case it is prepared to accept that the interference was "prescribed by law" – namely by the Broadcasting Act, which set up the regulatory framework for the Broadcasting Council.

(b) **Legitimate aim**

34. Whether the interference also "pursued a legitimate aim" within the meaning of Article 10 § 2 of the Convention, as argued by the Government – that is to say "the protection of the reputation or rights of others" – was not in dispute between the parties, the third party advancing an extensive argument in that respect (see paragraph 29 above).

35. Having regard to the particular circumstances of the present case – where the state authorities interfered with the applicant company's freedom of expression by means of an *ex officio* administrative measure rather than in response to a libel action by a third private person – as well as to the specific legislation governing the matter at hand in Slovakia, the Court considers that it is not required to reach a general conclusion on whether or not the interference created by a measure concerning a deceased person's reputation pursued a legitimate aim, as discussed by the MLDI.

36. This is so because, even assuming that the interference pursued the legitimate aim of ensuring protection of the reputation or rights of others,

for the reasons laid out below it was not necessary in a democratic society in terms of Article 10 of the Convention.

(c) “Necessary in a democratic society”

(i) *General principles*

37. What then remains to be established is whether the interference was “necessary in a democratic society”.

38. The general principles concerning the necessity of an interference with freedom of expression, which have been frequently reaffirmed by the Court since the case of *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), were summarised, for example, in *Stoll v. Switzerland* ([GC], no. 69698/01, § 101, ECHR 2007-V) and reiterated more recently in *Morice v. France* ([GC], no. 29369/10, § 124, ECHR 2015); *Pentikäinen v. Finland* ([GC], no. 11882/10, §§ 87-88, ECHR 2015); *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016; and *Delfi AS v. Estonia* [GC], no. 64569/09, § 131, ECHR 2015).

39. The Court’s task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, the decisions they have taken pursuant to their margin of appreciation. The Court must look at the interference complained of in the light of the case as a whole, including the content of the comment held against the applicant company and the context in which it was made (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 69, ECHR 2004-XI).

As a matter of general principle, the “necessity” for any restriction on freedom of expression must be convincingly established. Admittedly, it is in the first place for the national authorities to assess whether there is a “pressing social need” for the restriction. In cases concerning the press, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see *Thoma v. Luxembourg*, no. 38432/97, § 48, ECHR 2001-III).

40. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were “relevant and sufficient” and whether the measure taken was “proportionate to the legitimate aims pursued” (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, on the basis of an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles

embodied in Article 10 (see *Aquilina and Others v. Malta*, no. 28040/08, § 41, 14 June 2011).

(ii) *Application to the present case*

41. In the present case, in view of its previous findings (see paragraphs 34-36 above), the Court is called upon to examine whether the interference with the applicant company's freedom of expression was "necessary in a democratic society" within the meaning of with Article 10 of the Convention.

42. At the outset, the Court notes that the applicant company is a private provider of two television channels. It was fined in the administrative proceedings initiated by the public authority for broadcasting a commentary critical of the political views of the former Polish President. It contained the reporter's reaction to a political era that ended with his death.

43. As regards the reasons adduced by the domestic authorities to justify the interference with the applicant company's rights, the Court notes that they relied on these main elements. They acknowledged that the impugned commentary had contained the political views of the reporter, who had been reacting to ongoing events, and that that commentary had employed sarcasm, criticism and irony, which were inherent in journalistic expression. However, in their opinion, the author of that commentary had failed to show regret over the President's death. Instead, he had delivered the commentary in such a manner, given the portrayal of its subject and high level of sarcasm and irony, that it had constituted a serious attack on the honour and reputation of Lech Kaczynski as a politician and a human being.

44. The Court emphasises that the promotion of free political debate is a very important feature of a democratic society. It attaches the highest importance to the freedom of expression in the context of political debate and considers that very strong reasons are required to justify restrictions on political speech. Allowing broad restrictions on political speech in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006). The limits of acceptable criticism are drawn more widely as regards a politician than they are as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 117, ECHR 2015 (extracts)).

45. The Court notes that the article dealt with the human tragedy of the death of the former President in the context of the applicant's views concerning his political stance. The Court accepts that the question of the

applicant's reaction to political governance of the late President and his political conservatism gave rise to a matter of public interest.

46. The Court notes that the person who the domestic authorities found to have been defamed was a former President, and thus a politician and a public figure. He was therefore subject to wider limits of acceptable criticism.

47. The Court also observes that the domestic authorities specifically disagreed that the political view expressed by the applicant company in that commentary had been within an acceptable margin. Rather, they justified their impugned interference in respect of the applicant company by the fact that that commentary – in particular some components of it – had expressed a positive attitude towards the death of the President, which had belittled the latter's human dignity. The Court observes that even though the domestic authorities claimed to have considered the commentary in its overall context, they essentially based their conclusions predominantly on its closing remarks ("I am sorry, but I do not pity the Poles. I envy them").

48. In that respect, and in so far as the national authorities may be understood as having at least in substance reproached the applicant company for the quality of the commentary in question, the Court has previously held that a criterion of responsible journalism is that it should recognise the fact that it is the commentary (or article) as a whole that the reporter presents to the public (see, *mutatis mutandis*, *Bozhkov v. Bulgaria*, no. 3316/04, § 50, 19 April 2011).

49. In the absence of the domestic authorities' interpretation of the wider context of the commentary and any sufficiently compelling grounds in that connection, the Court sees their assessment to be narrow in scope. Contrary to what the domestic authorities concluded, the Court considers that the impugned commentary, seen in its context, cannot be understood to have constituted a gratuitous personal attack on, or insult to Lech Kaczynski. It is true that it contained a sarcastic tone unsympathetic to the political ideology of the late President. However, the title of the article "Compassion in Accordance with Protocol" hinted at the dichotomy between the human elements of the late President's death and the journalist's view of his politics. The phrases employed in the article, such as "the russophobe, Lech Kaczynski [...] who was a symbol of a country where people who are not white heterosexual Catholic Poles were born as a punishment" or "I do not pity the Poles. I envy them" may appear strong, yet they remain within the acceptable degree of stylistic exaggeration used to express the journalist's opinion concerning the political views that the late President had represented. The article accepted, in its first sentence, that the death of the former President was a human tragedy, and the Court does not consider that the final two phrases focused on by the national courts relate to that human tragedy. Rather, they continue the directly preceding commentaries on the former President's policies. In this connection, the Court is mindful that

journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III).

50. Having regard to the above-mentioned elements, with regard to Mr Kaczynski himself, nothing in that commentary suggests that the applicant company overstepped the limits of freedom of expression tolerated under Article 10 of the Convention by using a sarcastic tone and ironic language.

51. Furthermore, the Court also observes that the Government argued that the sanction was aimed not only at protecting the personal integrity of the late President. In the Government's view, it also served to protect the general rights and freedoms of others – that is to say the public in general – from any hateful or other unacceptable comments, such as welcoming the death of a person on account of their different political views (or other grounds) (see paragraphs 26 and 30 above).

52. The Court notes that the latter argument concerning the protection of the general rights and freedoms of others advanced by the Government does not correspond to the matters examined and the conclusions reached by the domestic authorities. Looking at their decisions, the Court observes that they merely focused on the protection of the individual rights of the late President. This approach appears to have been particularly accentuated by that part of the Broadcasting Council's analysis that concerned the question of whether those "others" whose dignity, human rights and fundamental freedoms were protected under section 19(1)(a) of the Broadcasting Act (see paragraph 17 above) had been sufficiently identified as "individuals". In that respect, the Broadcasting Council concluded that since Lech Kaczynski had been the head of a State, the criterion of "individualisation" had been fulfilled (see paragraph 11 above). By contrast, it offered no conclusion or stipulation as regards the need to protect the public in general.

53. The Court's subsidiary role in principle focuses on the examination of the domestic authorities' conclusions. In this connection, the Court can only appreciate the argument advanced by the Government – namely that a statement that is alleged to stir up or justify violence, hatred or intolerance may be subject to justified interferences "necessary in a democratic society" in the light of the general principles formulated in its case-law and in context-specific situations (see, for example, *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 204-208, ECHR 2015 (extracts)). However, it sees no relevance of that argument in the present case – particularly given the absence of any such reasoning in the domestic authorities' decisions.

54. By a similar token, the Court cannot attach any relevance to the Government's suggestion that the domestic authorities had taken further factors into account – notably that the commentary had been broadcast

shortly after the tragic death of Mr Kaczynski (see paragraph 30 above) – as this contention does not appear to have been reflected in their decisions.

55. Quite apart from the additional explanations provided by the Government above, the Court considers that the applicant company's commentary, when assessed in its overall context, neither incites praise for the death of the President for his political views nor constitutes hate-speech (see, by converse implication, *Süreş v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV, and *Gerger v. Turkey* [GC], no. 24919/94, § 50, 8 July 1999).

56. Moreover, the Court also takes into account the nature of the contested proceedings. To the Court's knowledge, the Broadcasting Council commenced the administrative proceedings against the applicant company on its own motion. The latter did not act upon the request of the late President's close relatives (see, for comparison, *John Anthony Mizzi v. Malta*, no. 17320/10, 22 November 2011) or upon a demand by Polish people or authorities that Lech Kaczynski's personality rights in that respect be protected. It was the Broadcasting Council's own initiative to apply the Broadcasting Act in order to protect the dignity of the deceased President.

57. Lastly, as in previous similar cases (see, for example, *Soltész v. Slovakia*, no. 11867/09, § 54, 22 October 2013), at the procedural level, the Court notes that the Constitutional Court declined to provide the applicant company protection of its Article 10 rights on the grounds that no remedy for the alleged violation of its substantive rights under that provision was available to it in constitutional proceedings under Article 127 of the Constitution as long as there had been no violation of the applicable rules of procedure (see paragraph 14 above).

58. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to demonstrate that the interference with the applicant company's rights, as protected under Article 10 of the Convention, had been necessary in terms of that provision.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant company claimed 5,000 euros (EUR) in respect of pecuniary damage, representing the sanction paid for its breach of the

Broadcasting Act. It also claimed EUR 100,000 in respect of non-pecuniary damage.

61. The Government conceded that there existed a causal link between the pecuniary damage claimed by the applicant company and the violation alleged. However, they considered its claim for non-pecuniary damage overstated.

62. The Court considers that the claim in respect of the fine paid under the contested decisions falls to be examined under the heading of pecuniary damage. Being satisfied that there was a causal link between the pecuniary damage claimed and the violation of the Convention found (see, for example, *Bladet Tromsø and Stensaas*, cited above, §§ 75-77, and *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 61, 7 January 2014), it awards the applicant company all of the sum sought under this head, that is to say EUR 5,000, plus any tax that may be chargeable to the applicant company.

63. At the same time, ruling on an equitable basis, the Court awards the applicant company EUR 5,850, plus any tax that may be chargeable, in respect of non-pecuniary damage and dismisses the remainder of the applicant company's claim under this head.

B. Costs and expenses

64. The applicant company also claimed EUR 6,900 for the costs and expenses incurred before both the domestic courts and before the Court. In support of this claim, it submitted a copy of a letter, breaking down the legal fees for different domestic and Court proceedings, which amounted to forty-six billable hours at a rate of EUR 150 per hour.

65. The Government invited the Court to award the applicant company only adequate compensation for costs of legal representation and to dismiss the rest of the claim.

66. 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 that the applicant company has paid them or is bound to pay them and which are reasonable as to quantum.

67. Regard being had to the documents in its possession, together with the applicant company's letter confirming its consent to paying those fees and the above-mentioned criteria, the Court considers it reasonable to award the sum of EUR 6,900 covering costs under all heads, plus any tax that may be chargeable to the applicant company, in respect of costs and expenses.

C. Default interest

68. 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*
 - (a) that the respondent State is to pay the applicant company, 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 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant company, 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 6,900 (six thousand and nine hundred euros), plus any tax that may be chargeable to the applicant company, 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;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President