***Case Title: Feldek v. Slovakia***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: Application no. 29032/95
* **Date of decision**: July 12, 2001
* **Featured case**: N/A
* **Region**: Central Europe and Asia
* **Country**: Slovakia
* **Type of expression**: Political Speech,
* **Judicial Body**: ECtHR, Second Section
* **Type of law**: Civil Law, Human Rights
* **Main Themes**: Defamation/Reputation, Political Speech
* **Outcome**: Violation of Art. 10
* **Status**: Closed
* **Tags**:

***Analysis:***

* **Summary and Outcome**:

In a judgment of 12 July 2001, the Secon Section of the European Court of Human Rights decided, by five votes to two, that the Slovak Republic Supreme Court´s conviction of a publicist for a statement referring to the fascist past of the Slovak Minister of Culture and Education, was a violation of Article 10 of the ECHR. The Court concluded that the Slovak Court had not convincingly established any pressing social need for protecting the personal right of a public figure above the applicant's right to freedom of expression and the general interest of promoting this freedom when issues of public interest are concerned.

**Facts:**

The applicant, Mr. Lubomír Feldek, was a Slovakian poet, writer, and publicist, who later acquired Chezch nationality. In July 1992, several Slovakian newspapers published a statement, which the applicant had distributed to the Public Information Service, entitled "For a better picture of Slovakia-without a fascist past". In the publication, Mr. Feldek expressed his concern about Drusan Slobodnik's fascist past, who at the time, was Minister for Culture and Education of the Slovak Republic. The statement was published shortly after the appointment of a new Government, following the parliamentary elections, and after adopting the declaration of Slovakia's sovereignty. A month later, in an interview, Mr. Feldek stated: "... when I speak of the fascist past [of Mr. Slobodník], I do not characterize him, I only think that the fact that he attended a terrorist training course organized by the SS falls within the term 'fascist past'. I consider that such a person has nothing to do in the government of a democratic State ..." [para.13]. As a result, in September 1992, Mr. Slobodník sued the applicant for defamation.

In October of the same year, the Bratislava City Court dismissed the plaintiff's action. The City Court held that Mr. Feldek had expressed his opinion based on information which Mr. Slobodník himself had commented and given interviews on the issue, both in Slovakia and abroad. Likewise, the City Court stated that the statement concerned a public figure who was inevitably exposed to scrutiny and sometimes also to criticism by other members of society. Therefore, the comments made by the applicant were protected by the right to freedom of expression and had not unjustifiably interfered with the plaintiff's personality rights.

Mr. Slobodník appealed to the Supreme Court, alleging that the applicant had not proved that he had a "fascist past", and that the City Court had not established the meaning of that term. On 23 March 1994, The Supreme Court deemed that the applicant had infringed the plaintiff's personality rights, reversing the lower instance ruling. As a result, Mr. Feldek filed an appeal on points of law alleging a violation of his rights under Article 10 of the Convention.

On 25 May 1995, a different Chamber of the Supreme Court sitting as a Court of Cassation upheld part of the appeal judgment of the Supreme Court. The court of cassation did not share Mr. Feldek's view that Mr. Slobodník should be required to prove that his allegations were untrue. It further considered the applicant's argument that his statement was a value judgment. The Court of Cassation held the latter could have been accepted if Mr. Feldek had expressly referred in his declaration to the particular facts on which such a value judgment was based. The remainder of the case was sent back to the City Court.

On 11 September 1995, Mr. Feldek lodged an application to the ECtHR, and in June 2000, the case was allocated to the Second Section of the Court.

In April 1996, the City Court dismissed the claim for non-pecuniary damage and ordered the applicant to pay costs totaling 1,750 SKK. Posteriorly, The Supreme Court overturned the first instance judgment as to the costs and held that neither party was entitled to have the expenses reimbursed and ordered that each of the parties pay half of the expenses in advance. Mr. Slobodníks filed an appeal on points of law regarding this decision.

* **Decision Overview**:

In the present case, the main issue for the Second Section of the ECtHR to analyze relied upon whether the interference with Mr. Feldek's right to freedom of expression was proportionate to the legitimate aim pursued and whether the reasons given by the national courts to justify it were relevant and sufficient.

Mr. Feldek argued that the Slovakian courts violated his right to freedom of expression and thought by declaring his statement defamatory. He also complained that he had been discriminated against for his political opinion. He relied on Articles 9, 10, and 41 of the ECHR. The applicant maintained that the interference had not been "necessary in the democratic society" given that the domestic courts had failed to respect the principle of proportionality in light of the restriction of his right to freedom of expression.

The Government disagreed and maintained that the interference was prescribed by law, specifically in Article 11 of the Slovakian Civil Code. Additionally, the State argued that the interference was proportionate to the legitimate aim pursued and that the reasons adduced by the domestic courts were sufficient and relevant. "In their view, labeling a politician as a person with a fascist past could seriously impact the reputation of the person concerned" [parra.64].

The ECtHR started the analysis of the case by stating that the test of "necessity in a democratic society" required the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient. When assessing whether such a "need" exists and what measures should be adopted to deal with it, the Court emphasized that the national authorities are left with a certain margin of appreciation.

First, the ECtHR held the interference complained, the Court deemed it had a legal basis, namely Articles 11 and 13 of the Slovakian Civil Code. Hence the Court considered that interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention. Then the Court found that the Slovakian courts were consistent with the aim of protecting the personality rights of the plaintiff, who considered himself affected by the applicant's statement.

 To determine the necessity of the interference, the Court remarked on the distinction between statements of facts and value judgments. According to the Court, facts can be demonstrated, whereas value judgments are not susceptible to proof. Further, the Court stressed that the requirement to prove the truth of a value judgment is an impossible task to fulfill and infringes freedom of opinion itself. The Court referred to its case of *De Haes and Gijsels v. Belgium* to highlight that "the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive" [parra. 76].

The Court found that the applicant's statement was a value judgment, hence its truthfulness was not susceptible of proof. The Court noted that the applicant's declarations were made and published as part of a political debate on matters of general and public concern relating to the history of Slovakia, which could potentially have repercussions on its future democratic development. More, the Court held that the value judgment made by the applicant was based on information previously published by Mr. Slobodník himself and by the press before the publication of Mr. Feldek's statement; hence, it was already known to the broader public.

Additionally, the ECtHR considered that the Court of cassation had not convincingly established any pressing social need to protect a public figure's rights above the applicant's right to freedom of expression. In particular, the ECtHR held that domestic courts' decisions did not reflect that the applicant's statement had affected Mr. Slobodník's political career or his professional and private life. Therefore, determined that the national authorities failed to strike a fair balance between the relevant interests. As a result, the ECtHR concluded that the interference of Mr. Feldek's right to freedom of expression was not "necessary in a democratic society" within the meaning of Article 10 § 2 and, thus, held that there had been a violation of Article 10.

Regarding the applicant's claim that his right to freedom of thought had been violated, the Court deemed that the impugned measure constituted an interference with the applicant's exercise of his freedom of expression and that no separate issue arises concerning Article 9. Concerning the applicant's claim that he had been discriminated against based on his political opinion, the Court found no indication that the measure complained of could be attributed to a difference in treatment based on the applicant's political opinion. Thus, the Court concluded that there had been no violation of Article 14 of the Convention.

Finally, based on Article 41 of the ECHR, the Court awarded Mr. Feldek 65,000 Slovakian korunas (SKK) for non-pecuniary damage and SKK 500,000 for legal costs and expenses.

Dissenting Opinions of Judges …:

Judges Fischbach and Lorenzen presented a dissenting opinion in which they regarded the domestic courts had applied their discretion based on a proper assessment of the facts. Similarly, they considered that there was no indication that the applicant was deprived of an effective opportunity to adduce evidence supporting his statement and thereby showed that it constituted a fair decision. Hence, they believed that the standards applied were compatible with the principles embodied in Article 10 of the ECHR.

***Direction:***

* **Outcome**: Expands Expression

The ECtHR decision expands freedom of expression by emphasizing the promotion of free political debate is an essential feature in a democratic society. Likewise, the Court underlined that allowing broad restrictions on political speech in individual cases would undoubtedly affect freedom of expression.

***Perspective***:

* **Related International and/or regional laws**:
* [**ECHR, art. 9**](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [**ECHR, art. 10**](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [**ECHR, art. 14**](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [**ECHR, art. 40**](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
* [**ECtHR,De Haes and Gijsels v. Belgium, App.No. 19983/92 (1997)**](https://hudoc.echr.coe.int/eng?i=001-58015)
* [**ECtHR,Lingens v. Austria, App.No. 9815/82 (1986)**](https://globalfreedomofexpression.columbia.edu/cases/lingens-v-austria/)
* [**ECtHR,Nilsen and Johnsen v. Norway [GC], App.No. 23118/93 (1993)**](https://globalfreedomofexpression.columbia.edu/cases/nilsen-v-norway/)
* [**ECtHR,Prager and Oberschlick v. Austria, App.No. 15974/90 (1995)**](https://hudoc.echr.coe.int/eng?i=001-57926)
* [**ECtHR, Incal v. Turkey, App.No. 41/1997/825/1031 (1998)**](https://globalfreedomofexpression.columbia.edu/cases/incal-v-turkey/)
* [**ECtHR, Jecius v. Lithuania, App. No. 34578/97 (2000)**](https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Jecius%20v.%20Lithuania%22%5D,%22documentcollectionid2%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D%7D)
* [**ECtHR, Jerusalem v. Austria, no. 26958/95 (2001)**](https://globalfreedomofexpression.columbia.edu/laws/ecthr-jerusalem-v-austria-no-2695895-2001/)
* [**ECtHR, Lehideux and Isorni v. France, App.No. 24662/94 (1998)**](https://globalfreedomofexpression.columbia.edu/cases/lehideux-and-isorni-v-france/)
* [**ECtHR, Rekvényi v. Hungary [GC],App. No. 25390/94 (1999)**](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2225390/94%22%5D%7D)
* [**ECtHR, Sürek v. Turkey (No. 1) [GC], App. No. 26682/95 (1999)**](https://hudoc.echr.coe.int/eng?i=001-58279)
* [**ECtHR, Thoma v. Luxembourg, No. 38432/97 (2001)**](https://globalfreedomofexpression.columbia.edu/laws/ecthr-thoma-v-luxembourg-no-3843297-2001/)
* [**ECtHR, Vogt v. Germany of 26, App.No.17851/91 (1995)**](https://globalfreedomofexpression.columbia.edu/cases/vogt-v-germany/)
* **National law or jurisprudence**:
	+ Slovakia, Civil Code, Articles 11 and 13(1)

**Other national law or jurisprudence**:

* **N/A**

***Significance***:

* The decision establishes a binding or persuasive precedent within its jurisdiction.
* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in English): https://hudoc.echr.coe.int/eng?i=001-59588

Press release: https://hudoc.echr.coe.int/eng?i=003-68357-68825

* **Reports, Analysis, and News Articles**: