**Case Analysis Template**

**Case Title:** Pirjevec v. Turk

**Court:** Constitutional Court of the Republic of Slovenia

**Case Number:** Up-417/16

**Date of Decision:** 03/18/2021

**Country:** Slovenia

**Mode of Expression:** Press / Newspapers

**Outcome:** Reversed Lower Court, Judgment in Favor of Plaintiff

**Summary and Outcome**

The Constitutional Court of the Republic of Slovenia ruled that while the right to freedom of expression protects critical and sharp statements, there is nevertheless a limit to the expression of crude value judgments. The Defendant, in an article in a weekly newspaper, wrote that the complainant Italianized their name and thereby confirmed the validity of fascist denationalization policy. The complainant filed a private prosecution against the Defendant for the crime of insult. The Constitutional Court argued that in cases where the speaker is not concerned with influencing the discussion on matters of public interest, but solely with insulting another and attacking their personality, shaming or ridiculing them, such speech may be unlawful.

**Facts**

Dr Jože Pirjevec, as the Plaintiff, filed a constitutional complaint with which he challenged the judgment of the Slovenian Supreme Court in a criminal case, where he was a private prosecutor. Dr Boštjan Marko Turk was the Defendant in the case. The Defendant wrote an article titled Referents and Renegades, which was published on June 13, 2011, in the weekly newspaper Reporter. In it, he wrote about the Plaintiff that they Italianised their name, stepped into a special type of apostasy and confirmed on their example the validity of fascist denationalization policy.

The Plaintiff filed a private lawsuit for the criminal offense of insult under the second paragraph in conjunction with the first paragraph of Article 158 of the Slovenian Criminal Code (KZ-1, 2012 with amendments). Based on this, the Ljubljana District Court found the Defendant guilty and imposed a suspended sentence, setting a two-month prison term with a two-year probation period. The Ljubljana Higher Court dismissed the appeal of the Defendant, upholding the first-instance court's ruling.

The Supreme Court, with its Judgment No. I Ips 44250/2011 from February 18, 2016 granted the request for the protection of legality filed by the Defendant, based on point 1 of Article 358 of the Criminal Procedure Act (ZKP, 2021 with amendments), and acquitted the Defendant of the alleged criminal offense, deciding that the act of which the Defendant was accused is not a criminal offense under the law.

In the constitutional complaint, Pirjevec argued that the Slovenian Supreme Court allowed an excessive violation of his right to personal dignity and reputation under Articles 34 and 35 of the Slovenian Constitution. He argued that the Defendant's manner of expression in the article was derogatory, insulting, mocking, sensationalist, and biased and claimed that it was evident that the Defendant intended to demean rather than provide serious criticism. The Plaintiff thus challenged the Supreme Court’s Decision and demanded that the Constitutional Court find a breach of his constitutional rights.

**Decision Overview**

Judge Knez, President of the Constitutional Court, delivered the Judgement for the Court, reflecting the majority opinion of the judges.

The main issue was whether the Defendant's statements about the Plaintiff were insulting in a criminally relevant way and thus whether the Supreme Court breached the Plaintiff’s right to honor and a good name by acquitting the Defendant.

The challenged Judgement of the Supreme Court No. I Ips 44250/2011 from February 18, 2016, sided with the arguments of the Defendant that the contentious writings are not statements of fact but merely the Defendant's value judgment on specific conduct of the Plaintiff. These value judgements supposedly were based on an undisputed fact that the Plaintiff only gradually changed their name and surname from Italian to the Slovenian version. Since he was a public figure, he should have expected that such actions would raise public interest. While Plaintiff might have felt insulted, Defendant's intention to insult was not evident.

The Plaintiff argued that the claimed Italianisation of the name was factually inaccurate. He claimed that the comparisons with fascism in connection with reproached apostasy, both without any basis, are not to be protected in the sense of the principle of freedom of expression. He claimed that the Supreme Court allowed for an excessive interference with his right to honor and a good name from Articles 34 and 35 of the Slovenian Constitution, since the manner of Defendant’s expression was contemptuous, insulting, teasing, mocking, sensationalistic and tendentious. The intent to belittle and not seriously criticize, was evident at first glance. The Plaintiff furthermore argued that the Supreme Court ruled contrary to the established practice of the European Court of Human Rights.

The applicable legal basis comprises paragraphs 1 and 2 of Article 158 of the Slovenian Criminal Code (KZ-1), which criminalizes insult with a fine or up to three months’ imprisonment, or up to six months if committed through public media such as the press or websites. Additionally, Article 34 of the Slovenian Constitution guarantees the right to personal dignity and safety, while Article 35 protects the inviolability of physical and mental integrity, privacy, and personality rights. Article 39 guarantees freedom of expression, which must be balanced against other potentially applicable rights. These provisions underpin the evaluation of whether the Defendant's actions constituted a criminal insult and violated the Plaintiff's constitutional rights to personal dignity, integrity and personality.

The Court analyzed the collision between the right to honor and a good name and balanced it against the right to freedom of expression. It first delineated the scope of the right to freedom of expression as including the freedom of thought, speech and journalistic expression. It stated that “for a discussion to be truly free, an individual’s right to express their opinions must generally be protected, regardless of whether the statement is coarse or neutral, rational or emotionally charged, mild or aggressive, beneficial or harmful, correct or incorrect,” [para. 16], but at the same time it held that the limits may be set “where the speaker’s intent is no longer to influence the debate on matters of public importance but merely to insult another, and the reader may perceive the expression as an attack on that person’s character, their humiliation, degradation, contempt, or ridicule” [para. 16]. In further analysis of the statements made by the Defendant, the court focused on the extent to which the Defendant and Plaintiff were public figures, since it held that “the boundaries of acceptable criticism largely depend on the societal role of the person concerned” [para. 16].

The Court held that Pirjevec was a well-known historian with extensive publication activity who had engaged in political activity and was thus a public figure. Hence, it stated that "negative reactions toward him were expected to be sharper, and thus the threshold for acceptable critical reactions should be correspondingly higher” [para. 24]. However, the Constitutional Court disagreed with the Supreme Court that the Plaintiff was an absolutely public figure and instead held that he was a relatively public figure. It found that “based on the established facts, the complainant did not hold public office or actively engage in politics” [para. 25].

Therefore, the Court held that Pirjevec was not an absolutely, but a relatively public figure and thus was not required to endure the most intense interventions into his right to honor and a good name.

In analyzing the question of whether the statements made in the news article by Turk were made with the intention of contempt, or whether they intended to foster public debate on particular actions of Pirjevec, such as gradually changing their name from Italian to Slovenian version, the Court sided with the Plaintiff. It stated that "key question in this assessment is whether the accused’s statement was directed at criticizing the complainant’s actions (ad rem) or whether its purpose was the personal humiliation and shaming of the complainant (ad personam)” [para. 29] and that “when critical and sharp statements are not directed at issues subject to public debate but instead shift to a personal level (ad personam), the question arises whether they were made solely to disparage the affected person” [para. 29].

The Court held that the Defendant’s statements that the Plaintiff as a person, who was regarded as a victim of the Italian regime’s denationalization acts, disregarded their Slovenian identity and symbolically supported the occupying regime, could deeply offend Slovenes from the area and are objectively insulting. It stated that the subjective element of offense was even more pronounced in the case of the Plaintiff as the victim, since their public and cultural activities indicate the exact opposite. "In this context, the accused’s claims about the complainant’s Italianization of their name can only be understood as highly offensive, humiliating, and disparaging” [para. 30].

The Court furthermore found that the intent to disparage was “undoubtedly evident from the context of the disputed article” [para. 31]. In the parts of the article not directly subject to the private lawsuit for the crime of offense, which the Court nevertheless considered in the sense of the broader context of the disputed statements, the Defendant stated that the Plaintiff is a “covert voyeur” and “perverse in character”, which the Court held was not a substantive and serious criticism. The Court also held that title “Referents and Renegades” further reflects that “the disparaging tone is not only clearly evident but also predominant in the disputed article, starting with the title” [para. 33]. Additionally, the Court stated that “in assessing the conflict of the rights in question, it is also relevant whether there is a sufficient factual basis for a value judgment, especially when it is particularly offensive” [para. 34] and found that there was not a sufficient factual basis for the claims made by the Defendant.

Accordingly, the Court held that the statements made in the article constituted a breach of Pirjevec's right to honor and a good name and that the Supreme Court's judgment No. I Ips 44250/2011, dated February 18, 2016, violated his rights under Articles 34 and 35 of the Constitution.

**Decision Direction**

The decision contracts freedom of expression by finding that the Slovenian Supreme Court's acquittal of the Defendant violated the complainant's rights to personal dignity and reputation under Articles 34 and 35 of the Slovenian Constitution, emphasizing that defamatory statements lacking sufficient factual basis, particularly those with a clear intent to humiliate, do not merit protection under freedom of expression. This landmark ruling, which overturned the Slovenian Supreme Court’s judgment, strengthens protections for personal dignity in cases of defamation, aligning with restrictive interpretations of freedom of expression under international human rights standards, notably the European Court of Human Rights, but has been critiqued for potentially chilling legitimate public debate due to its broad application to value judgments.

**Global Perspective**

Related International and/or regional laws

ECHR, Art. 8

ECHR, Art. 10

ECtHR, Axel Springer AG v. Germany, Application No. 39954/08, 7 February 2012

ECtHR, Błaja News Sp. z o.o. v. Poland, Application No. 59545/10, 26 November 2013

ECtHR, Braun v. Poland, Application No. 30162/10, 4 November 2014

ECtHR, Caragea v. Romania, Application No. 51/06, 8 December 2015

ECtHR, Jerusalem v. Austria, Application No. 26958/95, 27 February 2001

ECtHR, Karako v. Hungary, Application No. 39311/05, 28 April 2009

ECtHR, Kieser and Tralau-Kleinert v. Germany, Application No. 18748/10, 2 December 2014

ECtHR, Lešník v. Slovakia, Application No. 35640/97, 11 March 2003

ECtHR, Lingens v. Austria, Application No. 9815/82, 8 July 1986

ECtHR, Mamère v. France, Application No. 12697/03, 7 November 2006

ECtHR, Mladina d.d. Ljubljana v. Slovenia, Application No. 20981/10, 17 April 2014

ECtHR, Nilsen and Johnsen v. Norway, Application No. 23118/93, 25 November 1999

ECtHR, Oberschlick v. Austria, Application No. 11662/85, 23 May 1991

ECtHR, Pedersen and Baadsgaard v. Denmark, Application No. 49017/99, 17 December 2004

ECtHR, Pfeifer v. Austria, Application No. 12556/03, 15 November 2007

ECtHR, Rujak v. Croatia, Application No. 57942/10, 2 October 2012

ECtHR, Skałka v. Poland, Application No. 43425/98, 27 May 2003

ECtHR, Thorgeir Thorgeirson v. Iceland, Application No. 13778/88, 25 June 1992

ECtHR, Von Hannover v. Germany (No. 2), Application Nos. 40660/08 and 60641/08, 7 February 2012

ECtHR, X v. San Marino, Application No. 76795/13, 19 April 2016

National standards, law or jurisprudence:

Slovenia, Criminal Code, KZ-1, 2012 with amendments

Slovenia, Criminal Procedure Act, ZKP, 2021 with amendments

Slovenia, A.A. and B.B. v. Supreme Court, Constitutional Court Decision No. Up-50/99, 2000

Slovenia, A.A. v. Higher Court in Ljubljana, Constitutional Court Decision No. Up-406/05, 2007

Slovenia, A.A. v. Supreme Court, Constitutional Court Decision No. Up-422/02, 2005

Slovenia, A.A. v. Supreme Court, Constitutional Court Decision No. Up-46/99, 2002

Slovenia, A.A.A. v. Higher Court in Ljubljana, Constitutional Court Decision No. Up-406/05, 2007

Slovenia, A.A.A. v. Higher Court in Maribor, Constitutional Court Decision No. Up-168/98, 2001

Slovenia, A.B., C. v. Higher Court in Maribor, Constitutional Court Decision No. Up-320/14, U-I-5/17, 2017

Slovenia, Aleksander Hribar v. Higher Court in Ljubljana, Constitutional Court Decision No. Up-584/12, 2014

Slovenia, Aleksander Hribar v. Higher Court in Ljubljana, Constitutional Court Decision No. Up-614/15, 2018

Slovenia, Ana Lapuh v. Supreme Court, Constitutional Court Decision No. Up-1019/12, 2015

Slovenia, Boris Popovič v. Supreme Court, Constitutional Court Decision No. Up-381/14, 2018

Slovenia, Branko Grims v. Mladina, Constitutional Court Decision No. Up-407/14, 2016

Slovenia, D.R. v. B.N., Supreme Court Judgment No. I Ips 237/1997, 1997

Slovenia, Franc Prislan v. Slovenia, Constitutional Court Resolution No. U-I-92/97, 1997

Slovenia, Janez Sirše v. Slovenia, Constitutional Court Decision No. U-I-226/95, 1999

Slovenia, Jaša Drnovšek v. Supreme Court, Constitutional Court Decision No. Up-1005/15, 2018

Slovenia, J.H. v. Higher Court in Koper, Supreme Court Judgment No. I Ips 297/2010, 2011

Slovenia, M.L., Higher Court in Koper, Supreme Court Judgment No. I Ips 45741/2012-59, 2015

Slovenia, Miro Petek v. Večer, Constitutional Court Decision No. Up-570/09, 2012

Slovenia, S.K. v. M.P., Supreme Court Judgment No. I Ips 231/2006, 2007

Slovenia, Slovenska Demokratska Stranka v. Delo, Constitutional Court Decision No. Up-530/14, 2017

Slovenia, Slovenska Demokratska Stranka v. Higher Court in Ljubljana, Constitutional Court Decision No. Up-515/14, 2017

Slovenia, Špela Mlakar v. Supreme Court, Constitutional Court Decision No. Up-1084/16, 2019

Slovenia, Zmago Jelinčič Plemeniti v. Supreme Court, Constitutional Court Decision No. Up-1128/12, 2015

**Case Significance**

The decision establishes a binding or persuasive precedent within its jurisdiction.

**Official Case Documents**

https://www.us-rs.si/sl/informacijsko-sredisce/novice-in-objave/odlocba-ustavnega-sodisca-st-up-41716-z-dne-18-3-2021