CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF FELDEK v. SLOVAKIA

(Application no. 29032/95)

JUDGMENT

STRASBOURG

12 July 2001

FINAL

12/10/2001

In the case of Feldek v. Slovakia,

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

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 15 June 2000 and 21 June 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 29032/95) against the Slovak Republic lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Ľubomír Feldek ("the applicant"), on 11 September 1995. The applicant, who is a poet, writer and publicist, later acquired Czech nationality.

2. Before the Court, the applicant was represented by Mr E. Valko, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr R. Fico, who, on 14 April 2000, was succeeded by Mr P. Vršanský.

3. The applicant alleged, in particular, that his rights to freedom of expression and to freedom of thought had been violated and that he had been discriminated against in the context of defamation proceedings brought against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 15 June 2000 the Chamber declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties submitted additional observations on the merits. In addition, third-party comments were received from Mr Dušan Slobodník, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In 1991 Mr Dušan Slobodník, a research worker in the field of literature, published an autobiography entitled *Paragraph: Polar Circle*. He described in it, *inter alia*, his conviction by a Soviet military tribunal in 1945 on the ground that he had been ordered to spy on the Soviet army after having been enrolled, in 1944 when he was 17 years old, in a military training course organised by Germans. In the book, Mr Slobodník also wrote about his detention in Soviet gulags and his rehabilitation by the Supreme Court of the Union of the Soviet Socialist Republics in 1960. In June 1992 Mr Slobodník became Minister for Culture and Education of the Slovak Republic.

9. On 20 July 1992 the newspaper *Telegraf* published a poem by the applicant. It was dated 17 July 1992 (the day when the sovereignty of the Slovak Republic was solemnly proclaimed) and entitled "Good night, my beloved" ("*Dobrú noc, má milá*"). One of its verses read as follows:

> "In Prague prisoner Havel is giving up his presidential office. In Bratislava the prosecutor rules again. And rule by one party is above the law. A member of the SS and a member of the ŠTB [The ŠTB (*Štátna bezpečnosť*) was the secret police during the communist regime in Czechoslovakia] embraced each other."

10. The poem was later published in another newspaper. In separate articles, two journalists alleged that the expression "member of the SS" stood for Mr Dušan Slobodník.

11. On 30 July 1992 several newspapers published a statement which the applicant had distributed to the Public Information Service (*Verejná informačná služba*) the day before. It was entitled "For a better picture of Slovakia – without a minister with a fascist past" ("*Za lepší obraz Slovenska – bez ministra s fašistickou minulosťou*"). It read as follows:

> "There has been a problem about how to keep a democratic character in [the Slovakian] national emancipation process, which we have tried to resolve many times. Until now, Slovakia has lost most when matters related to the Slovakian nation were in the hands of the wrong people who led us away from democratic evolution. The

cost was high: for example, the combatants' lives lost in the Slovakian National Uprising [in 1944 and 1945] .

Now, we are scared that this mistake could be made again. To say that our way to Europe is by working together and cooperating in its democratic evolution is not enough. This is a direct condition arising from international law without the fulfilment of which no one in Europe will take notice of us.

I expressed this concern in my polemics with Mr Dušan Slobodník last year; life has finished the writing of our polemics, and my views were proved correct.

This year Mr Slobodník became the Slovak Republic's Minister for Culture and Education and the next thing was that his fascist past came out in public. Mr Slobodník managed this situation in a way that allowed the writer Ladislav Mňačko to prove he was a liar. But he still has not given up his ministerial post, although in any other democratic country he would have had to do so a long time ago.

Does Mr Slobodník think that Slovakia is some special exception and that it is the only country having the right to revise the philosophy of the Nuremberg trials, which is binding on the post-war development of all other European countries? Or is the message of the Slovakian National Uprising not correct? ... Does Mr Mečiar think that having this minister in the government will help him to persuade people in Europe that his talk about the democratic intentions of his government is serious? Is it good to have Mr Slobodník in the government when this fact will lead to the political, economic and cultural isolation of Slovakia?

Mr Slobodník likes to use every chance to talk about improving the image of Slovakia around the world. I fully agree with him on this. He has a personal opportunity to do something in order to improve the image of Slovakia: to resign."

12. On 5 August 1992 Mr Slobodník publicly declared that he would sue the applicant for the above statement.

13. In an interview published in the Czech daily *Lidové noviny* on 12 August 1992 the applicant stated, *inter alia*:

"... when I speak of the fascist past [of Mr Slobodník], I do not characterise him, I only think that the fact that he attended a terrorist training course organised 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 ..."

14. In the context of the nomination of Mr Slobodník to a post in the government, issues relating to his past were taken up by several Slovakian and Czech newspapers both before and after the publication of the applicant's statement. Articles concerning this subject were also published in *The New York Times*, on 22 July 1992, the *Tribune de Genève*, on 18 September 1992, *Izvestia* on 31 August 1992, as well as by the Austrian Press Agency. *The New York Times*, the *Tribune de Genève* and *Izvestia* later published the reaction of Mr Slobodník to their respective articles.

15. On 9 September 1992 Mr Slobodník sued the applicant for defamation under Article 11 et seq. of the Civil Code before the Bratislava City Court (*Mestský súd*). He later extended the action and alleged that the

verses "In Bratislava the prosecutor rules again. And rule by one party is above the law. A member of the SS and a member of the ŠTB embraced each other" from the applicant's poem referred to him. He also alleged that the above-mentioned statement published in the newspapers wrongly referred to his fascist past. The plaintiff claimed that the applicant should bear the costs of publication of an apology in five newspapers and also pay him 250,000 Slovakian korunas (SKK) as compensation.

A. Proceedings before the Bratislava City Court

16. On 18 October 1993 the Bratislava City Court dismissed the action. It established that the plaintiff had been a member of the Hlinka Youth (*Hlinkova mládež*) and that in February and March 1945 he had participated in a terrorist training course in Sekule. It observed that the Hlinka Youth had been a military corps of the Hlinka Slovakian People's Party (*Hlinkova slovenská ľudová strana*) and that under the law then in force the Slovak nation had participated in the exercise of State power through the intermediary of that party. The court pointed out that, under Article 5 of Presidential Decree no. 5/1945 of 19 May 1945, legal persons which had deliberately promoted the war waged by Germany and Hungary or had served fascist and Nazi aims were to be considered unworthy of the State's trust.

17. The City Court further established that in May 1945 a military tribunal of the Soviet army had sentenced Mr Slobodník to fifteen years' imprisonment on the ground that he had attended the training course in Sekule and had been ordered, on 22 March 1945, to cross the front line and to spy on Soviet troops. The military tribunal's judgment further stated that Mr Slobodník had not crossed the front line but had gone home in April 1945, when he had been arrested. The City Court also noted that the plaintiff had served the sentence in Soviet camps until his release in 1953. In 1960 the Supreme Court of the USSR had quashed the sentence and discontinued the proceedings for the lack of factual elements of an offence.

18. Before the City Court, Mr Slobodník claimed that he had been a member of the Hlinka Youth only for a short time and that he had joined the organisation only because it had been a prerequisite for his participation in a table-tennis tournament. He further explained that he had been summoned to the training course in Sekule and that he had complied with the summons out of fear for himself and his family. Mr Slobodník alleged that he had been excluded from the course as being unreliable after he had expressed his negative opinion about it. He had then been taken to the Hlinka Youth headquarters in Bratislava, from where he had been allowed to return home to Banská Bystrica under the condition that he would report on the Soviet army. However, the City Court did not find these facts established. In particular, it did not consider as relevant evidence the description of the

events contained in the plaintiff's book *Paragraph: Polar Circle*, which had been published earlier. In its view, the fact that the 1945 sentence had been quashed did not prove that the plaintiff had not been a member of the Hlinka Youth and that he had not attended the training course in Sekule.

19. The City Court also noted that the relevant period of Mr Slobodník's life had been covered by the press both in Slovakia and abroad prior to the applicant's statement, and that on several occasions Mr Slobodník himself had commented and given interviews on those issues, both in Slovakia and abroad. The court concluded that, in the statement, the applicant had expressed his opinion on the basis of information which had already been published in the press. The statement concerned a public figure who was inevitably exposed to close scrutiny and sometimes also to criticism by other members of society. By making the statement, the applicant had exercised his right to freedom of expression and he had not unjustifiably interfered with the plaintiff's personality rights.

B. Appeal proceedings

20. Mr Slobodník appealed to the Supreme Court (*Najvyšší súd*), 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. Mr Slobodník argued that he had been summoned to the training course in Sekule by an order and that he had left it at the first opportunity after he had learned about its real purpose. He also explained that martial law had been in force at the material time and that people had been unlawfully executed or detained. Members of the Hlinka Youth had been incorporated in the armed forces by a presidential order and had fallen under military judicial and disciplinary rules. The plaintiff maintained that he had done nothing against his homeland or the anti-fascist allies and concluded that the applicant's statement and poem were defamatory.

21. The applicant contended, in particular, that the courts should abandon their established practice according to which the defendant has to prove the truthfulness of his statements in defamation proceedings. He maintained that the burden of proof should be shifted onto the plaintiff or shared between the parties. The applicant further argued that his statement was a value judgment based on the undisputed facts that the plaintiff had been a member of the Hlinka Youth and that he had attended a terrorist training course in Sekule. It was irrelevant to what extent the plaintiff had been involved in the activities of the Hlinka Youth or for how long he had been a member of it. What mattered was that the plaintiff had voluntarily joined the organisation and that, after his alleged exclusion from the training course in Sekule, he had undertaken, as shown by the Soviet military tribunal's judgment of 19 May 1945, to provide information on the

movements of Soviet troops to the headquarters of the Hlinka Youth. The applicant therefore proposed that the appeal be dismissed.

22. On 23 March 1994 the Supreme Court reversed the first-instance judgment, ruling as follows:

> "... [the applicant] has to accept that ... Dušan Slobodník will distribute, if he thinks fit, to the Press Agency of the Slovak Republic as well as to five newspapers of his choice, both in Slovakia and abroad, the following declaration to be published at [the applicant's] expense:
>
> '(1) [The applicant's] statement addressed to [the Public Information Service] and published in daily newspapers on 30 July 1992 which reads: "...This year Mr Slobodník became the Slovak Republic's Minister for Culture and Education and the next thing was that his fascist past came out in public ... Does Mr Slobodník think that Slovakia is some special exception and that it is the only country having the right to revise the philosophy of the Nuremberg trials, which is binding on the post-war development of all other European countries? ..."
>
> (2) The occasional poem ... entitled "Good night, my beloved" in its part "... In Bratislava the prosecutor rules again. And rule by one party is above the law. A member of the SS and a member of the ŠTB embraced each other ..."
>
> ... represent a gross slander and disparagement of the civil honour and life, and an unjustified interference with the personality of the plaintiff Dušan Slobodník.'
>
> ...
>
> (4) [The applicant] is liable to pay SKK 200,000 to the plaintiff in respect of non-pecuniary damage. ...' "

23. The applicant was also ordered to pay costs and the other party's expenses.

24. The Supreme Court noted that the plaintiff had described the relevant events in his book *Paragraph: Polar Circle* before the dispute concerning his past had arisen, and that no other relevant facts had been established in the course of the proceedings.

25. In the appellate court's view, the term "fascist past" was equivalent to the statement that a person was a fascist in the past. The court considered that the applicant himself had given a restrictive interpretation of that term in connection with the plaintiff, namely the interpretation according to the philosophy of the Nuremberg trials. This philosophy was derived from the multilateral agreement of 8 August 1945, which included also the statute of the International Military Tribunal, and which had become part of the Czechoslovakian legal order on 2 October 1947. The Supreme Court held that it was bound by the principle of individual responsibility set out in that agreement.

26. The Supreme Court further studied all available documents and evidence used during the Nuremberg trials relating to Slovakia. It found no reference in those documents to the Hlinka Youth in connection with fascist

organisations. It established that the propagation or implementation of fascist theories had not been inherent in the statutory rules and regulations governing the Hlinka Youth. If some persons had abused the Christian principles on which the organisation had been built, this had contravened the rules then in force. Such persons and, as the case might be, those who had let themselves be abused for criminal purposes, were individually responsible. However, such was not the case of the plaintiff. The Supreme Court accepted the latter's argument that he had learned about the character of the training course in Sekule only after he had started attending it.

27. The appellate court found irrelevant the reference, in the first-instance court's judgment, to Presidential Decree no. 5/1945 of 19 May 1945 as that decree had only concerned property, in that it had placed under national administration the property of persons whom the State had considered unreliable.

28. The Supreme Court recalled that, at the relevant time, criminal and moral liability had been governed by Order no. 33 on the punishment of fascist criminals, occupants, traitors and collaborators and on the establishment of the people's judiciary adopted by the Slovakian National Council on 15 May 1945 and also by Presidential Decree no. 16/1945 of 19 June 1945 on the punishment of Nazi criminals, traitors and their assistants and on extra-ordinary people's courts. These rules were partly based on the principle of collective liability, but they did not mention the Hlinka Youth.

29. As regards the poem by the applicant, the Supreme Court noted that it was dated 17 July 1992, that is, the day on which the sovereignty of the Slovak Republic had been proclaimed from the balcony of the Slovakian National Council, where Mr Slobodník had also been present. Shortly afterwards, the applicant had written his statement concerning Mr Slobodník's past and two journalists had interpreted the poem as a description of the scene during the proclamation. They had alleged that by "member of the SS" the applicant had meant to designate Mr Slobodník. The court therefore concluded that the applicant had infringed the plaintiff's personality rights by his poem as well as by his statement of 29 July 1992.

30. The applicant's request that the burden of proof in the case should be shifted onto the plaintiff or at least shared between the parties was not accepted as it had no basis in domestic law and practice. The Supreme Court concluded that the applicant had not proved that Mr Slobodník had been a fascist in the past, holding that the latter had joined the Hlinka Youth because he had wanted to participate in sports activities and had not been motivated by fascist sympathies. As to the training course in Sekule, it found that Mr Slobodník had not completed it, and it was irrelevant whether he had been excluded or had left it on his own initiative. The only relevant fact was that the plaintiff's past could not be considered fascist from that point of view.

C. Proceedings concerning the applicant's appeal on points of law

31. The applicant filed an appeal on points of law alleging, *inter alia*, a violation of his rights under Article 10 of the Convention. He claimed that the Supreme Court should have concluded from the relevant provisions of Presidential Decree no. 5/1945 that the Hlinka Youth was a fascist organisation and that, in accordance with the relevant provisions of the Slovakian National Council's Orders nos. 1/1944 and 4/1944, participation in any activity within the Hlinka Youth was to be considered as participation in an unlawful fascist organisation. He further complained that the Supreme Court had not established with sufficient certainty whether the plaintiff had actually been excluded from the training course in Sekule, and whether he had undertaken to carry out terrorist activities or not.

32. On 25 May 1995 a different Chamber of the Supreme Court sitting as a court of cassation upheld the part of the appeal judgment of 23 March 1994 according to which the plaintiff was entitled to arrange for publication of the text set out in it and concerning the applicant's statement of 29 July 1992. As for the remainder, the court of cassation quashed both the first and second-instance judgments and sent the case back to the Bratislava City Court.

33. The court of cassation did not share the applicant's view that the plaintiff should be required to prove that the applicant's allegations were untrue. It further held that a person could be considered as having a fascist past only if he or she had propagated or practised fascism in an active manner. Mere membership of an organisation and participation in a terrorist training course which had not been followed by any practical actions could not be characterised as a fascist past.

34. As the applicant had failed to prove that the plaintiff had a fascist past within the above meaning, the court found that his statement had infringed without justification the plaintiff's personality rights. In the judgment, the court admitted that Slovakian law characterised the Hlinka Youth as a fascist organisation. It recalled, however, that the relevant legal rules, including those relied on by the applicant, applied to natural persons only where justified by their specific actions. Applying those rules to all members of such organisations without considering their actual deeds would entail the recognition of their collective guilt. It recalled that children over the age of 6 had been admitted to the Hlinka Youth.

35. The court considered that the applicant's argument according to which his statement was a value judgment could only have been accepted if the applicant had expressly referred, in that statement, to the particular facts on which such a value judgment was based. The court stated, *inter alia*:

> "Indicating that the plaintiff has had a fascist past is not a value judgment based on an analysis of facts, but an allegation (statement) made without any concurrent justification of factual circumstances from which a conclusion can be inferred by the

person making the judgment. It could have been a value judgment if the statement [of the applicant] had been accompanied by reference to the [plaintiff's] membership of the Hlinka Youth and his participation in the training course, namely, to the activities which the person making the judgment considers to constitute a fascist past. Only such a statement, based on circumstantial facts used by the person making the judgment, would be a value judgment the truthfulness of which would not require any proof. Only such an interpretation will guarantee a balance between the freedom of expression and the right to the protection of [a person's] reputation within the meaning of Article 10 of the Convention."

36. The court then found the restriction on the applicant's freedom of expression compatible with the requirements of Article 10 § 2 of the Convention as it was necessary for the protection of the plaintiff's reputation in accordance with Articles 11 et seq. of the Civil Code.

37. As to the poem, the court of cassation quashed both the first and second-instance judgments for lack of evidence and held that in further proceedings the plaintiff would have to prove that the applicant had referred to him in the poem. It also quashed the part of the appeal concerning compensation for non-pecuniary damage and costs since their award depended on an assessment of both the interferences complained of by the plaintiff.

D. Further proceedings

38. On 15 April 1996 the Bratislava City Court reached a new decision on the remainder of the case. It stayed the proceedings as far as the poem was concerned on the ground that the plaintiff had withdrawn that part of the action.

39. The City Court further dismissed the claim in respect of non-pecuniary damage as it did not find it established that the applicant's statement had considerably diminished the plaintiff's dignity and position in society within the meaning of Article 13 § 2 of the Civil Code. In its view, the plaintiff had failed to show that the considerable publicity concerning his person had arisen as a result of the applicant's statement and not, as the case might be, as a consequence of newspaper articles and the plaintiff's book published prior to the applicant's statement.

40. Having considered to what extent the parties had been successful in the proceedings, the City Court ordered the plaintiff to pay SKK 56,780 to the applicant in reimbursement of the relevant part of the latter's costs. The applicant and the plaintiff were further ordered to pay respectively SKK 875 and 2,625 in reimbursement of the costs paid in advance by the court.

41. On 25 November 1998 the Supreme Court upheld the decision of the Bratislava City Court to discontinue the proceedings in respect of the poem and to dismiss the plaintiff's claim for non-pecuniary damage. The Supreme Court held that neither party was entitled to have the costs reimbursed. It further ordered each party to pay half of the costs paid in advance by the

State, namely SKK 1,750. Mr Slobodník filed an appeal on points of law. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Presidential Decree no. 5/1945

42. The above decree was issued by President Beneš on 19 May 1945 and concerned, *inter alia*, the placing under national administration of the property of "Germans, Hungarians, traitors and collaborators and of certain organisations and institutions".

43. Article 4 (b) qualifies as unworthy of the State's trust

> "persons who carried out activities directed against State sovereignty, the independence, integrity, democratic and republican form of the State, or the security and defence of the Czechoslovak Republic, who incited other persons to take part in such activities and deliberately supported the German and Hungarian occupants in any way whatsoever. Persons falling under this category shall include, for example, ... leading representatives of ... the Hlinka Youth ... and other fascist organisations of a similar nature."

44. Article 5 qualifies as being unworthy of the State's trust those legal persons whose administrations had deliberately promoted the conduct of war by Germany and Hungary or served fascist and Nazi aims.

B. The Civil Code and the relevant practice

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

46. 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.

47. According to Article 13 § 1, any natural person has the right to request that unjustified infringement of his or her personality rights should be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.

48. 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 has been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage.

49. In accordance with the established practice, a plaintiff in defamation proceedings has to prove that the defendant's allegations were objectively capable of affecting his or her rights under Article 11 of the Civil Code. If this requirement is met, the defendant is obliged to produce evidence

capable of proving the truth of his or her allegations if the defence is to succeed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

50. The applicant complained that his right to freedom of expression had been violated in that the courts had granted Mr Slobodník's action concerning the statement published on 30 July 1992. He alleged a violation of Article 10 of the Convention which provides:

> "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. Existence of an interference

51. The Court finds that it is clear and undisputed that there has been an interference with the applicant's right to freedom of expression in that the relevant judicial decisions declared the applicant's statement defamatory and ordered him to endure the publication of this conclusion in five newspapers of the plaintiff's choice.

B. Justification of the interference

52. This interference would contravene Article 10 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 of Article 10, and was "necessary in a democratic society" for achieving such aim or aims. The Court will examine each of these criteria in turn.

1. "Prescribed by law"

53. The applicant contended that the legal basis for the restriction of his freedom of expression was not sufficiently foreseeable as required by the Court's case-law. He alleged, in particular, that Slovakian law, as interpreted and applied by the domestic courts, does not adequately define what is defamation in that it does not distinguish between value judgments and facts and between public officials and private persons. The foreseeability of the restriction could also be questioned because the applicant had justifiably believed that the national courts would proceed in compliance with the case-law under the Convention relating to the notions of fair comment and burden of proof in similar cases.

54. The Government disagreed and maintained that the interference was prescribed by law, namely, by Articles 11 et seq. of the Civil Code.

55. As to the applicant's argument that the domestic courts failed to proceed in compliance with the case-law under the Convention, the Court finds that this issue falls to be examined below when determining whether the interference was "necessary in a democratic society".

56. To the extent that the applicant alleges that the relevant law was not sufficiently foreseeable, the Court recalls that one of the requirements flowing from the expression "prescribed by law" is the foreseeability of the measure concerned. A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

57. The interference complained of had a legal basis, namely Articles 11 and 13 § 1 of the Civil Code. Under the latter provision, any natural person may request that unjustified infringement of his or her personality rights within the meaning of Article 11 of the Civil Code should be stopped, that the consequences of such interference should be eliminated and that he or she should be granted appropriate satisfaction. It is within the national courts' discretion to consider any specific complaint of an alleged infringement and to decide on the appropriate satisfaction. In accordance with the established practice, a plaintiff in defamation proceedings has to prove that the defendant's allegations were objectively capable of affecting his or her rights under Article 11 of the Civil Code, in which case the defendant is required to produce evidence capable of proving the truth of his or her allegations if the defence is to succeed. The Court is satisfied that the

application of these legal provisions and practice to the applicant's case did not go beyond what could reasonably be foreseen in the circumstances. Accordingly, the interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

2. Legitimate aim

58. The Court finds, and this was not in dispute between the parties, that the grounds relied on by 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. The interference therefore had a legitimate aim for the purposes of paragraph 2 of Article 10, namely, to protect "the reputation or rights of others".

3. "Necessary in a democratic society"

(a) Arguments before the Court

(i) The applicant

59. The applicant maintained that the interference had not been "necessary in the democratic society" because the domestic courts had failed to respect the principle of proportionality between the restriction of freedom of expression and the objective set out in Article 10 § 2 of the Convention. In particular, he had been sanctioned for criticism of a member of the government in respect of whom the limits of acceptable criticism should be wider than in respect of a private individual. He further argued that a free political debate is the core concept of a democratic society, that the discussions about political issues deserve a greater protection than non-political discussions and that, consequently, the State has very narrow margins for restricting such expression.

60. The applicant submitted, with reference to the Court's case-law, that the freedom of expression was applicable also to information or ideas that offend, shock or disturb and that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation.

61. His statement about the past of Mr Slobodník was a value judgment which he had formulated after he had learned, through the media and from the book written by Mr Slobodník, that the latter had been a member of the Hlinka Youth and had participated in a terrorist training course in Sekule. The applicant deemed it necessary to express his opinion to the public, who have the right to be informed about the past of a public figure. He did not act in bad faith, making the statement on the basis of widely known facts which, as he believed, justified using the term "fascist past".

62. In the applicant's view, the Supreme Court's opinion according to which his statement could have been considered a value judgment only if he

had simultaneously referred to the facts on which it had been based was too restrictive and erroneous. He contended that the burden of proof imposed on him in conformity with the domestic practice had been in violation of his right to freedom of expression. In this regard he argued, in particular, that (i) the Supreme Court had denied him the means of proving the truthfulness of his allegations by distorting what constituted a fascist past or, in the alternative, had unlawfully denied him a reasonable margin of error for making statements about a member of the government which were not devoid of foundation or good faith, and (ii) he had been required to prove the truthfulness of his opinion expressed in the statement even though statements of opinion are not susceptible of proof.

63. Finally, the applicant underlined that his statement had been made in the context of a free political debate and that it involved a matter of public interest, namely the assessment of a politician's past. The statement pursued a legitimate objective, namely to show that, if there was even a shadow of suspicion, the person concerned should not hold any public position. It also concerned, in a broader context, the history of Slovakia during the Second World War, which is still a topical issue in Slovakia. The applicant concluded that his right to freedom of expression had been violated.

(ii) The Government

64. The Government 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, labelling a politician as a person with a fascist past could have a serious impact on the reputation of the person concerned.

65. They submitted that the applicant had made his statement shortly after the parliamentary election of 1992 and after Mr Slobodník had become the Minister for Culture and Education. According to the Government, the applicant had learned all about Mr Slobodník's past long before the election from the latter's book. Apart from the statement about Mr Slobodník's alleged fascist past, the applicant had not mentioned any other relevant facts, such as that Mr Slobodník had been 17 years old in 1945, the reasons for his participation in the terrorist training course, his exclusion from the course, his later conviction and eight-year incarceration in Soviet camps, and finally the decision of 1960 of the Supreme Court of the USSR by which Mr Slobodník's conviction had been quashed on the ground that he had committed no offence. In addition, the comparison of Mr Slobodník's conduct and fascist history had not been based on precise or correct facts, nor had it corresponded to a bona fide evaluation of the relevant facts.

66. The Government recalled that the national courts had not required the applicant to publish an apology, that they had given the plaintiff the possibility of having the declaration of the defamatory character of the applicant's statement published in five newspapers at the cost of the

applicant who had, therefore, only been required to endure the exercise of the plaintiff's right in this respect.

67. Finally, the Government pointed out that the case attracted the attention of the public at large in Slovakia and underlined that the Court's decision on the merits of the present application would be important for the Slovakian courts when deciding on similar issues.

(iii) Mr Slobodník

68. In his comments submitted under Article 36 § 2 of the Convention and Rule 61 § 3 of the Rules of Court, Mr Slobodník observed that he had written his book *Paragraph: Polar Circle* between 1989 and 1990, that is, when he had been a research worker in the field of literature, and that it had been published in 1991. The book contained a detailed description of the relevant events which, in Mr Slobodník's view, the applicant had failed to take into consideration when making his statement. In this context, Mr Slobodník maintained, in particular, that (i) he had joined the Hlinka Youth after he had won, in May 1944, a regional table-tennis championship, as membership of the organisation had been a prerequisite for his participation in the ensuing all-Slovakian tournament, and (ii) in 1944, after the Slovakian National Uprising had been suppressed and martial law had been declared, he and his mother had helped four foreign partisans to escape from a German hospital.

69. As to the training course in Sekule, Mr Slobodník had to comply with the summons by the headquarters of the Hlinka Youth for fear of reprisals. He futher explained that he had learned about the real purpose of the course only after his arrival in Sekule, that he had attended it only for some ten or twelve days and that he had been excluded after he had expressed his negative attitude towards the course. Subsequently he had promised the representatives of the Hlinka Youth headquarters to provide them with information concerning the Soviet army as he had wanted to get back home. He had not, however, carried out any spying. Mr Slobodník submitted that these facts were supported by the relevant documents kept in the archives and that the courts at second and third instance had held them to be established.

70. According to Mr Slobodník, the applicant had distorted the relevant facts and had made the statement about his past because they had started having different political views in the context of the 1992 parliamentary election. Mr Slobodník contended that, while the applicant had publicly referred to his book in 1991 as having been "written by the kind, forgiving pen of a Christian", it had become for him the proof of Mr Slobodník's fascist past one year later. The applicant had not, therefore, made his statement in good faith.

71. Finally, Mr Slobodník asserted that by linking his past to the Nuremberg trials the applicant had grossly interfered with his privacy.

Moreover, the applicant had criticised his past and not his actions as a member of the government. Mr Slobodník concluded that the interference with the applicant's right to freedom of expression had been justified.

(b) The Court's assessment

(i) The relevant principles

72. According to the Court's case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII, and *Lehideux and Isorni v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2886, § 52).

73. The test of "necessity in a democratic society" requires 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. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. 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, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52, and *Jerusalem v. Austria*, no. 26958/95, § 33, ECHR 2001-II, with further references).

74. The Court further recalls that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61,ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike

the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, or *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54).

75. In its practice, the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lingens*, cited above, p. 28, § 46, and *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, p. 27, § 63).

76. Where a statement amounts to a value judgment, 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 (see *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports* 1997-I, p. 236, § 47, and *Jerusalem*, cited above, § 43).

(ii) Application of the aforementioned principles to the instant case

77. In the present case, the Court is called upon to examine the applicant's complaint that the judgment of the court of cassation whereby he was obliged to endure the publication of a text declaring his statement defamatory interfered with his freedom of expression in violation of Article 10 of the Convention. In exercising its supervisory jurisdiction the Court must look at the impugned interference with the applicant's right to freedom of expression in the light of the case as a whole, including the content of the statement concerned, the context in which it was made and also the particular circumstances of those involved.

78. 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).

79. The applicant's statement was published shortly after the parliamentary election in 1992 and the setting up of a new government, and after the proclamation of Slovakia's sovereignty. Mr Slobodník had been appointed Minister for Culture and Education.

80. In the statement, the applicant expressed serious concern about maintaining the democratic character of the Slovakian emancipation process. The applicant was particularly worried about the political leaders of Slovakia. He criticised Mr Slobodník for his alleged fascist past, which he considered incompatible with the personal qualities required of a member of the government. The applicant called for the resignation of Mr Slobodník, considering that otherwise Slovakia might find itself isolated because of doubts which might arise as to the government's democratic intentions.

81. The Court notes that the applicant's statement was made and published as part of a political debate on matters of general and public concern relating to the history of Slovakia which might have repercussions on its future democratic development. Moreover, although the statement did not indicate the sources, it was based on facts which had been published both by Mr Slobodník himself and by the press prior to the publication of the applicant's statement.

82. As regards the reasons adduced by the court of cassation to justify the interference with the applicant's rights, the Court notes that it admitted that Slovakian law characterised the Hlinka Youth as a fascist organisation. Nevertheless, that court found that the applicant's argument that his statement was a value judgment could only have been accepted if the statement had been accompanied by a reference to the facts on which the applicant had based his conclusion, namely Mr Slobodník's membership of the Hlinka Youth and his participation in the training course in Sekule. The court of cassation held that in such a case the opinion expressed by the applicant would not have required any proof. Thus, the highest judicial instance deciding on the merits of the relevant part of the case admitted, in substance, that the applicant's statement was not devoid of a factual basis for the opinion expressed. However, the court of cassation also held that the term "fascist past" implied that a person had propagated or practised fascism in an active manner. Since the applicant had failed to prove that Mr Slobodník had a fascist past in that sense, his statement had unjustifiably infringed Mr Slobodník's personality rights.

83. 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.

84. The applicant's statement was clearly made in a very political context and one that was crucial for the development of Slovakia. It contained harsh words, but was not without a factual basis. There is nothing to suggest that it was made otherwise than in good faith and in pursuit of the

legitimate aim of protecting the democratic development of the newly established State of which the applicant was a national.

85. The Court finds that the applicant's statement was a value judgment the truthfulness of which is not susceptible of proof. It was made in the context of a free debate on an issue of general interest, namely the political development of Slovakia in the light of the country's historical background. The statement concerned a public figure, a government minister, in respect of whom the limits of acceptable criticism are wider than for a private individual.

86. As regards the reasons adduced by the court of cassation, the Court cannot accept the proposition, as a matter of principle, that a value judgment can only be considered as such if it is accompanied by the facts on which that judgment is based (see paragraph 35 above). The necessity of a link between a value judgment and its supporting facts may vary from case to case according to the specific circumstances. In the present case, the Court is satisfied that the value judgment made by the applicant was based on information which was already known to the general public, both because Mr Slobodník's political life was known, and because information about his past was disclosed, by him in his book, and in publications by the press which preceded the statement by the applicant. Nor can the Court subscribe to a restrictive definition of the term "fascist past". The term is a wide one, capable of evoking in those who read it different notions as to its content and significance. One of them can be that a person participated in a fascist organisation, as a member, even if this was not coupled with specific activities propagating fascist ideals.

87. The court of cassation did not convincingly establish any pressing social need for putting the protection of the personality rights of a public figure above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned. In particular, it does not appear from the domestic courts' decisions that the applicant's statement affected Mr Slobodník's political career or his professional and private life.

88. In conclusion, the Court finds that the reasons adduced by the court of cassation cannot be regarded as a sufficient and relevant justification for the interference with the applicant's right to freedom of expression. The national authorities therefore failed to strike a fair balance between the relevant interests.

89. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

90. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

91. The applicant further complained that his right to freedom of thought had been violated in that he had been ordered to endure the publication of a text declaring his statement defamatory. He alleged a violation of Article 9 of the Convention which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

92. The Court considers that the impugned measure constituted an interference with the applicant's exercise of his freedom of expression, which it has examined above under Article 10 of the Convention, and that no separate issue arises in relation to Article 9 in this respect.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

93. The applicant complained that he had been discriminated against on the basis of his political opinion in that the domestic courts had placed an unreasonable burden of proof on him, that they had distorted the definition of the term "fascist", and that he had had to endure the publication of a text declaring his statement defamatory. He alleged a violation of Article 14 of the Convention which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

94. The Government maintained that the applicant's complaint of discrimination was unsubstantiated.

95. The Court has examined this complaint in conjunction with Articles 9 and 10 of the Convention but finds no indication that the measure complained of can be attributed to a difference in treatment based on the applicant's political opinion or any other relevant ground.

96. Accordingly, the Court concludes that there has been no violation of Article 14 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 1,000,000 Slovakian korunas (SKK) as compensation for both pecuniary and non-pecuniary damage. He explained that during the time the government of which Mr Slobodník had been a member was in place he had been dismissed from the theatre where he was employed and could not publish his works as the publishers, distributors and booksellers had not wanted to deal with him on account of the negative attitude several officials had shown towards him. The applicant further argued that the loss of income, pressure brought to bear on him and threats against his person had obliged him to move to the Czech Republic and that he had incurred significant costs in this connection.

99. The Government replied that there was no causal connection between the alleged violations of the Convention and the damage claimed.

100. The Court finds that there is not sufficient evidence of a causal link between the violation of Article 10 it has found and the pecuniary damage allegedly sustained by the applicant. This claim must therefore be dismissed.

101. As to the applicant's claim for non-pecuniary damage, the Court considers that the applicant sustained prejudice as a result of the breach of Article 10, on account of the inconvenience occasioned by the proceedings and decisions in question. Having regard to the relevant circumstances, it awards the applicant SKK 65,000 under this head.

B. Costs and expenses

102. The applicant claimed SKK 701,750 for his costs and expenses. This sum included SKK 250,000 as compensation for the costs and expenses incurred by the applicant in the context of the proceedings before the Convention organs.

103. The Government contended that the sum claimed was excessive and that the applicant had not furnished any relevant document in support of this claim.

104. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among others, *Jėčius v. Lithuania*, no. 34578/97, § 112,

ECHR 2000-IX). The Court is not satisfied that these conditions are met as regards the applicant's claims. Since it is obvious that the applicant incurred costs and expenses both at national level and in the proceedings before the Convention organs, the Court, making its assessment on an equitable basis, awards the applicant a total sum of SKK 500,000.

C. Default interest

105. According to the information available to the Court, the statutory rate of interest applicable in Slovakia at the date of adoption of the present judgment is 17.6% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by five votes to two that there has been a violation of Article 10 of the Convention;

2. *Holds* unanimously that no separate issue arises under Article 9 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 14 of the Convention;

4. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) SKK 65,000 (sixty-five thousand Slovakian korunas) in respect of non-pecuniary damage;
      (ii) SKK 500,000 (five hundred thousand Slovakian korunas) in respect of costs and expenses;
   (b) that simple interest at an annual rate of 17.6% shall be payable from the expiry of the above-mentioned three months until settlement;

5. Dismisses unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Fischbach and Mr Lorenzen is annexed to this judgment.

C.L.R.
E.F.

DISSENTING OPINION OF JUDGES FISCHBACH AND LORENZEN

We do not share the view of the majority of judges that there has been a violation of Article 10 of the Convention.

The main point in question in the present case is whether the interference with the applicant'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. In this respect, we point out at the outset that it is not the Court's task to take the place of the domestic courts in assessing the factual background of the case or, in particular, to give any qualification whatsoever to the relevant period of the past of Mr Slobodník.

It is apparent from the statement of 29 July 1992, when read as a whole, that the applicant's main concern was to show that the past of Mr Slobodník, which "came out in public" and which he characterised as being "fascist" constituted a threat to the democratic development and image of Slovakia, and that it was incompatible with the personal qualities required of a member of the government. The applicant further called for the resignation of Mr Slobodník as, in his view, Slovakia could otherwise find itself in political, economic and cultural isolation. In doing so, the applicant expressly referred to the philosophy of the Nuremberg trials, namely the philosophy governing the proceedings before the International Military Tribunal, the purpose of which had been to try and punish the major war criminals of the European Axis bearing individual responsibility for crimes against peace, war crimes and crimes against humanity.

In their judgments, the appellate court and the court of cassation noted that the relevant period of the life of Mr Slobodník had been described in the book written by himself and published in 1991. It had also been covered by the press in Slovakia and abroad both prior to and after the applicant's statement, and on several occasions Mr Slobodník had commented and given interviews on the subject.

Thus, the applicant's statement was based only on information which had already been published in 1991 and no other relevant facts were established in the course of the public debate and court proceedings in Slovakia. In his statement the applicant referred to the fact that Mr Slobodník had been appointed Minister for Culture and Education in June 1992 and added that "... the next thing was that his fascist past came out in public". That sentence could give the reader the impression that the allegation of a "fascist past" was based on information that had become public only after Mr Slobodník's appointment as a minister of the government.

We admit that the opinion expressed in the statement was a value judgment on an issue of public interest, as it concerned a minister, that is, a public figure in respect of whom the limits of acceptable criticism are admittedly wider than for a private individual.

As to the question whether there existed a sufficient factual basis for the impugned statement, it should be recalled that the appellate court held that the applicant himself had given a restrictive interpretation to the term "fascist past" in that he had expressly referred to the philosophy of the Nuremberg trials.

The appellate court examined all the available documents and evidence used during the Nuremberg trials and relating to Slovakia, but it found no reference in them to the Hlinka Youth in connection with fascist organisations. It established that the propagation or implementation of fascist theories had not been inherent in the statutory rules and regulations governing the Hlinka Youth. The appellate court found that Mr Slobodník had joined that organisation because he had wanted to participate in sports activities and had not been motivated by fascist sympathies. As to the training course in Sekule, it found that Mr Slobodník had not completed it and accepted the latter's argument that he had learned about the purpose of the course only after he had started attending it. The appellate court concluded that Mr Slobodník was not individually responsible for any action which would justify describing his past as fascist.

The court of cassation upheld the finding of the appellate court that a person could be considered to have a fascist past only if he had propagated or practised fascism in an active manner. Mere membership of an organisation and participation in a terrorist training course which had not been followed by any practical actions could not be characterised as a fascist past. As the applicant had not proved that Mr Slobodník had a fascist past within that meaning, the court of cassation found that the statement of 29 July 1992 had been an unjustified interference with his personality rights. However, the court of cassation did not exclude that the applicant's statement could be regarded as a value judgment, which would not require any proof, if it had been accompanied by reference to the facts on which the applicant had based his judgment.

In our opinion, the term "fascist past" used by the applicant in his statement is a vast term capable of evoking in those who read it different notions as to its content and significance. Admittedly, the role of a journalist and the press in general is to impart information and ideas on matters of public interest, even those that may offend, shock or disturb. However, that information must permit readers to understand the circumstances or events on which the author has expressed a value judgment so that they do not gain the wrong impression about the content of the information.

In his statement, the applicant made no reference to the book by Mr Slobodník, the relevant newspaper articles or other sources of information, nor did he reveal the circumstances or events from which he derived his value judgment, merely mentioning Mr Slobodník's "fascist past" which "came out in public". By indicating that the information on Mr Slobodník's past came out after he had become Minister for Culture and

Education, the applicant gave the impression that his statement was based on information that was not already publicly known. This is all the more important as he expressly referred to the philosophy of the Nuremberg trials. In doing so, the applicant opened the door to all kinds of speculations about the fascist and criminal past of Mr Slobodník even for those who had read the material concerning Mr Slobodník's past. The applicant thereby exceeded the wide limits of acceptable criticism afforded by the Court's case-law in respect of a politician or a member of the government.

In these circumstances, and having regard to the duties and responsibilities inherent in the right to freedom of expression guaranteed by Article 10 of the Convention and the Contracting States' obligation to provide a measure of protection to the right of an individual to respect for his private life, we consider that it was not unreasonable that, having examined and balanced the interests at issue, the appellate court and the court of cassation rejected the argument that the applicant's right to freedom of expression should outweigh Mr Slobodník's right to protection of his reputation and reached the opposite conclusion.

In our opinion, the appellate court and the court of cassation exercised their discretion carefully and reasonably. The reasons adduced by them appear to be based on an acceptable assessment of the facts and they are relevant and sufficient. Furthermore, there is no indication that the applicant was deprived of an effective opportunity to adduce evidence in support of his statement and thereby show that it constituted a fair comment. We therefore consider that the standards applied were compatible with the principles embodied in Article 10.

In addition, taking into account the fact that the court of cassation ordered the applicant only to endure publication of a declaration of the defamatory character of his statement but dismissed Mr Slobodník's claim for non-pecuniary damage as being unsubstantiated, we find that the ruling complained of was not disproportionate to the legitimate aim pursued.

We therefore consider that the interference with the applicant's right to freedom of expression can reasonably be regarded as having been "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 and that, accordingly, there has been no violation of Article 10 of the Convention.

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

APPLICATION NO. 49418/99
BY ANDREJ HRICO
AGAINST SLOVAKIA

The European Court of Human Rights (Fourth Section), sitting on 16 September 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 7 May 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andrej Hrico, is a Slovakian national, who was born in 1949 and lives in Košice. He was represented before the Court by Mr A. Fuchs, a lawyer practising in Košice. The respondent Government were represented by Mr P. Vršanský, their Agent.

A. THE CIRCUMSTANCES OF THE CASE

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

At the relevant time the applicant was the publisher and editor in chief of the weekly *Domino efekt*. In 1994 and 1995 the weekly published three articles which concerned civil proceedings for defamation pending before the Slovakian courts. The proceedings were between Mr Slobodník, a Minister who became later a Member of Parliament, and Mr Feldek, a poet and publicist who had published a statement alleging, *inter alia*, that

Mr Slobodník had a fascist past. The relevant parts of the articles, which were not written by the applicant, read as follows:

1. Article published on 1 April 1994

"Quo vadis, Slovakian justice? (A shameful judgment delivered by the Supreme Court)

When the Bratislava City Court put an end to the first round of the judicial dispute between Mr Slobodník and Mr Feldek dismissing the former minister's action for protection of his personality rights, voices could be heard alleging that the outcome of the appellate proceedings before the Supreme Court would be different. They argued that [the Supreme Court] judges were 'different'. Those views came true and Slovakia faces further ridicule at the international level. The Supreme Court chamber presided over by [judge Š - the article mentioned the full name of the judge] did not disappoint.

A tragicomic farce

The Slovakian poet and writer Ľubomír Feldek (who opted for Czech nationality in the meantime) stated in 1992 that Mr Dušan Slobodník, who had just become the Minister of Culture of the Slovak Republic, should not exercise the post of a minister in a democratic state as he had a fascist past... The statement was based on facts which were generally known: during World War II Slobodník had been a member of the Hlinka Youth and he had participated in a terrorist course in Sekule organised under the auspices of that organisation. Several participants in that course (it should be mentioned that Dušan Slobodník was not among them) had been later involved in the killing of the inhabitants of [a] village...

Feldek, who never alleged that Slobodník was a murderer or a criminal ... expressed the view of a citizen of a free society who considered that a person who had belonged to the Hlinka Youth and who had been close to people who later killed members of the civilian population, should not be a minister of a democratic state. Nothing more and nothing less...

[Instead of retiring from the post] Slobodník filed an action for protection of his personality rights and thus gave rise to a case which, in a certain way, is tragicomic... [and in the course of which Mr Slobodník] failed to show that he had not been a member of the Hlinka Youth and that he had not participated in the course in Sekule. [Mr Slobodník] thus failed to disprove the facts on the basis of which Feldek had declared that he had a fascist past. We simply recall that a decree by President Beneš of 1945 provided that the Hlinka Youth was to be considered as a fascist organisation.

Strange reasoning

The Bratislava City Court took all the above facts into account and ... dismissed the action of Slobodník. [The City Court judge] ...thus established the very best case-law for the newly born democracy and warned every politician that his or her past may and even must be the object of an increased interest by the public.

At the hearing held on 22 March 1994 [the Supreme Court] judge Š. took the opposite approach in that he ordered Feldek to pay 200,000 Slovakian korunas [SKK] to Slobodník and to apologise to the latter [in the press]... Thus [judge Š.] warned all

citizens of the Slovak Republic that should they come to the conclusion that the moral profile of a politician is incompatible with the exercise of the public function entrusted to him or her, they had better keep quiet.

[Judge Š.] also showed the strength of his spirit when giving reasons for the judgment. 1. Hlinka Youth ... was, in principle, a very good organisation which had been abused by politicians, 2. Feldek not only caused damage to Slobodník, but also to the whole of Slovakia, the Prime Minister, the Movement for a Democractic Slovakia, the Government and the Parliament, ... 4. the post-war retribution decrees enacted in Czechoslovakia were the result of a conspiracy between President Beneš and the communists.

[Judge Š.] revises history

...

[It should be recalled that] the Czechoslovak legal rules on retribution, of which the decrees by President Beneš form a part, were adopted in accordance with the principles of the United Nations Commission for the Investigation of War Crimes established in London on 20 October 1943. They were further based on the ... agreement on the establishment of the International Military Tribunal of 8 August 1945 and the Report on the Berlin Conference held in Potsdam... Such retribution rules were adopted by practically all European states which had been occupied by Nazi Germany during the war and which had to take a position with respect to collaborators and traitors.

The words which [judge Š.] used in order to justify his judgment directly call in question the attitude which, after World War II, the democratic states in Europe took towards fascism and those who had served it.

It should be said, however, that [judge Š.] had no choice. When he wanted to reach the decision which he reached, no other reasoning was available – it simply did not exist... When I wish to say A, i.e. that the past of a person who was a member of the Hlinka Youth and who took part in the course in Sekule is not a fascist, I am obliged to say also B, i.e. that I do not recognise the law which defines the Hlinka Youth as a fascist organisation. As the case may be, I will add that the Hlinka Youth was a good organisation and things are settled.

Thus, quo vadis, Slovakian justice? Slobodník is said to look forward to the international court in Strasbourg. However, a Slovakian citizen, having in mind such 'objective' decisions of the 'independent' and 'impartial' Supreme Court does not have many reasons for being pleased. Even if he or she is successful at first instance, the chances of obtaining justice after a possible appeal to the Supreme Court are slight as has been shown by the case Feldek v. Slobodník."

2. Interview published on 12 August 1994

On 12 August 1994 the weekly *Domino efekt* published an interview with the former president of the Constitutional Court who was the lawyer of

Mr Feldek in the defamation proceedings brought by Mr Slobodník. It was entitled "Slovakia is governed by an absolute legal chaos" and the relevant parts read as follows:

- "The press stated that [judge Š.], who decided the case of Slobodník against Feldek in the way he did and in which you were the advocate of the poet, is a candidate of the Christian-Social Union in the [parliamentary] election. What do you think about it?

- ... It is...unusual that a judge, whose task it is to guarantee the objectiveness and impartiality in a democratic society, manifests his political views in public. Having one's name included in the list of candidates of a political party undoubtedly represents such a manifestation of political views.

- Let's talk about the particular inscription of [judge Š.] on the election list of a particular party, namely the Christian-Social Union...

- One should see that that party has a clear position as regards the period between 1939 and 1945. To put it mildly - it does not condemn that period. And this is the core of the problem - [judge Š.], who decided the case of Slobodník against Feldek, i.e. a dispute in which one of the main points at issue had been the behaviour of one of the participants during the period of the Slovakian State, is the candidate of a party which does not condemn the Slovakian State or the regime by which it was governed, on the contrary...

... Section 54 of the Judiciary and Judges Act clearly provides that one of the principal obligations of judges is that 'a judge shall abstain from any action which could impair the dignity of the judicial function or jeopardise the trust in independent, impartial and just decision-making of the courts'...

- Do you think that [judge Š.] had internally decided 'the case of Feldek' long before the delivery of the judgment and that all the fuss in the court room served nothing?

- There is nothing else that I can think. The performance of that judge has no other explanation. In particular, I can say that, after the delivery of the judgment, I learned that the Supreme Court judges had expected such a decision to be taken. The views of [judge Š.] as regards the case or as regards the existence of the Slovakian State during World War II were known...

The appeal against the Bratislava City Court judgment, which was in favour of Mr Feldek, was transmitted to the Supreme Court on 22 February 1994... The case was decided upon on 23 March ... i.e. with the rapidity of a missile, and one can hardly find another case examined by the Supreme Court which was dealt with the same promptness."

3. Article published on 16 June 1995

"See you soon in Strasbourg (Not even death will separate the couple Slobodník – Feldek)

The judicial proceedings in the case Slobodník v. Feldek which have lasted three years have not been ended by the decision delivered by the cassation chamber of the Supreme Court. Even the latter has not found the courage to quash in full the legal farce ('*paškvil*'[1]) produced by [judge Š.] on 23 March 1994. The aforesaid judge quashed the decision delivered by the City Court in Bratislava and granted the whole claim lodged by Slobodník.

Two jokes were thus produced out of one... [To the extent that the claim by Mr Slobodník was granted by the cassation chamber of the Supreme Court], Feldek will bring the case ... before the European Court of Human Rights in Strasbourg.

Thus Slovakian justice was open to ridicule. To make things clear – the Slovak Republic has no chances of success in Strasbourg. The existing case law of [the European Court of Human Rights] comprises a sufficient number of examples when that court used a phrase protecting freedom of expression as such, which every politician in a democratic state should be acquainted with: 'The limits of admissible criticism are wider as regards a politician and narrower in the case of a private person'. It is easy and clear at the same time and the cassation chamber of the Supreme Court (like [Mr] Slobodník) has not grasped it...

A different fact is relevant: Feldek has to apologise for a civic 'value judgment' whereas this is not acceptable for the free world. 'Value judgments' expressed publicly are not, in accordance with the established European practice and also in accordance with the European Convention on Human Rights, susceptible of proof...

Should we admit (as we did in fact) [that a journalist who publishes his or her value judgments in respect of a public figure be obliged to prove the truth of such statements], a situation would arise which has nothing to do with democracy and with the principles of a democratic society. Citizens will simply fear making 'value judgments' because they will be under the threat of a sanction. As a result, the vital sap of democracy will dry out – namely an open debate on issues of public interest.

The Supreme Court failed to understand these principles which ... are simple and easy to understand and which are respected by the democratic world as something that is 'given'. Or, as the case might be, it did not want to understand.

P.S. I will dare make a 'value judgment' despite the position which 'value judgments' have in this country thanks to this case law. In my view, the Supreme Court of the Slovak Republic did NOT WANT to respect the European principles of the protection of the freedom of expression. It would have sufficed if the judges had read the Constitution of the Slovak Republic. In particular Article 11 where it is written in black and white."

On 20 September 1995 judge Š. filed an action under Article 11 et seq. of the Civil Code for protection of his personality rights against the applicant. The plaintiff claimed that the above articles interfered grossly with his civil and professional honour and also with his authority as a Supreme Court judge. The plaintiff further claimed that the applicant be ordered to publish

[1] The Short Dictionary of the Slovakian Language (Slovak Academy of Sciences, Bratislava, 1989, p. 282) defines "*paškvil*" as (i) a satirical and offensive piece of writing or as (ii) an unsuccessful imitation of something.

an apology and to pay him SKK 150,000 in compensation for non-pecuniary damage.

In his reply the applicant stated that the author of the above articles had informed the public about the judicial proceedings in a case which attracted public attention. The contested statements were value judgments and the articles contained permissible criticism of a public figure.

On 3 July 1996 the Košice 1 District Court (*Obvodný súd*) delivered a judgment in which it ordered the applicant to publish, in the weekly *Domino efekt,* the following statement:

> "a) ... the article 'A shameful judgment delivered by the Supreme Court; Quo vadis, Slovakian justice', which presented [judge Š.], the president of a chamber of the Supreme Court in a negative light and which ridiculed the proceedings conducted by him,
>
> b) ... the interview with the former president of the Constitutional Court published on 12 August 1994 in which it is stated that [judge Š.] made up his mind on the outcome of the proceedings long before the delivery of the judgment,
>
> c) the phrase ... 'Even the latter has not found courage to quash in full the legal farce produced by [judge Š.] on 23 March 1994' which was published in the article 'Not even death will separate the couple Slobodník – Feldek; See you soon in Strasbourg' published on 16 June 1995,
>
> interfere grossly and without any justification with the civil and professional honour of [judge Š.] for which [the applicant], as the editor of the newspaper Domino efekt makes a public apology to [judge Š.]..."

The applicant was further ordered to pay the plaintiff SKK 50,000 in compensation for non-pecuniary damage and to pay the court fees and the plaintiff's costs.

The District Court found that the limits of objective and acceptable criticism had been exceeded in that the above articles comprised such expressions as "tragicomic farce", "shameful judgment", "strange reasoning" and "legal farce". The first and the third article were capable of giving the readers the impression that the plaintiff had been biased. The District Court further recalled that the judgment criticised in the articles was delivered by an appellate chamber of three judges. However, the articles referred to the plaintiff as if he were the only author of the judgment. The District Court recalled that a chamber of the appellate court always decides after deliberations in the presence of a typist. A majority of votes is required and the presiding judge is the last to vote. The District Court also recalled that judges are independent when deciding on matters before them and that the cassation chamber of the Supreme Court had not found any procedural shortcomings in the proceedings leading to the judgment criticised in the above articles.

When deciding to grant non-pecuniary damages to the plaintiff the District Court noted that the above articles criticised, repeatedly and without

justification, the judge of a Supreme Court whereby his dignity and position in the society were considerably affected.

The applicant and the plaintiff appealed. The applicant argued that the District Court had failed to apply the law correctly and that it had decided arbitrarily. The applicant submitted that the statements in question were value judgments which were based on facts explicitly set out in the articles. He therefore requested that the first instance judgment, to the extent that it granted the action, be overturned.

The plaintiff also filed an appeal. However, he failed to submit any reasons for it and subsequently he maintained that he had not appealed.

On 24 June 1997 the Košice Regional Court (*Krajský súd*) overturned the first instance judgment in that it dismissed the action of judge Š. The Regional Court's judgment stated that the applicant had ceased being the editor of *Domino efekt* in February 1997. As he was not the author of the articles in question, he no longer had standing to be a defendant in the case. The new editor could not be sued as he was not a general successor to the rights and obligations relating to the weekly. The plaintiff's claim that an apology be published in the weekly could not, therefore, be granted.

The Regional Court also examined the merits of the case and found that the phrase "Even the latter has not found courage to quash in full the legal farce produced by [judge Š.] on 23 March 1994" published on 16 June 1995 represented an attack against the authority of the courts as such and that it was not proportionate to the aim pursued, namely to criticise the reasons for the Supreme Court judgment presented orally by judge Š. However, no satisfaction could be granted in this respect as the applicant had lost standing in the case.

On 9 September 1997 the plaintiff filed an appeal on points of law in which he challenged the conclusions reached by the Regional Court.

On 29 May 1998 the cassation chamber of the Supreme Court quashed the Regional Court's judgment of 24 June 1997. The Supreme Court held that the appellate court had decided erroneously and instructed the latter to take further evidence. As regards the merits of the case in particular, the court of cassation held that because of their expressive character the applicant's statements were disproportionate to the aim pursued, namely to criticise a judicial decision or the public activities of judge Š. In the Supreme Court's view, those statements clearly indicated that the applicant had intended to offend judge Š., to humiliate and discredit him. Limits of acceptable criticism had been thereby exceeded.

On 11 March 1999 the Košice Regional Court upheld the part of the Košice 1 District Court's judgment of 3 July 1996 by which the applicant had been ordered to pay SKK 50,000, together with the statutory default interest, to the defendant in compensation for non-pecuniary damage. The Regional Court further dismissed the remainder of the plaintiff's action.

The judgment stated that the plaintiff had failed to submit reasons for his appeal. Accordingly, the Regional Court could review the first instance judgment only to the extent that it had been appealed against by the applicant. The Regional Court dismissed the claim that an apology be published in *Domino efekt* as (i) the editing rights had been transferred to a different person and the name of the weekly had changed and (ii) the plaintiff had failed to amend his action so that a judgment in this respect could be enforced. The Regional Court noted that the plaintiff had failed to specify which parts of the article published on 1 April 1994 interfered with his personal rights. The relevant part of the action was therefore also dismissed.

As regards the merits of the remaining part of the case, the Regional Court recalled, with reference to Article 10 of the Convention and the relevant provisions of the Constitution, that judges enjoyed special protection as regards the criticism of the way in which they exercised their function. This was dictated by the requirement of impartiality of judges. The latter could be jeopardised if the society tolerated unjustified criticism of a judge for a decision delivered by him or her.

The judgment further stated that the situation is different in cases when a judge makes public his or her intention to become involved in politics, and when the decision on a case to subsequently taken by such a judge is linked to the political views presented by him or her. By failing to withdraw from a case in such circumstances the judge concerned deliberately exposed himself or herself to the threat of criticism by the public, notwithstanding that the decision in question was lawful. The Regional Court therefore held that, when a judge decided to become involved in politics, he or she became a person of public interest and, as such, he or she no longer enjoyed special protection as regards the limits of acceptable criticism.

The Regional Court further found that the contested statements in the articles published on 12 August 1994 and on 16 June 1995 interfered with the personal rights of the plaintiff, whereby his dignity and the esteem for his person in society had been considerably diminished. The expressive character of the terms used was disproportionate to the aim pursued, namely the criticism of a judicial decision or the plaintiff's involvement in public life. Those terms clearly showed that the purpose of the statements was to offend, to humiliate and to discredit the criticised person. The Regional Court therefore concluded that the plaintiff was entitled to compensation for non-pecuniary damage which he had thus suffered.

On 19 April 1999 judge Š. filed an appeal on points of law. It was dismissed by the Supreme Court on 28 September 2000.

B. RELEVANT DOMESTIC LAW

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.

Pursuant to Article 13 (1), any natural person has the right to request that 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 when 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 complained under Article 10 of the Convention that his right to freedom of expression had been violated in the above proceedings.

THE LAW

The applicant complained that his right to freedom of expression had been violated. He relied on Article 10 of the Convention which provides 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."

The Government argued that the interference complained of had been in accordance with the provisions of Article 11 et seq. of the Civil Code and that it had pursued the legitimate aim of maintaining the authority and impartiality of the judiciary and also of protection of the reputation and rights of the judge concerned.

In the Government's view, the interference corresponded to an urgent social need, namely to protect the judiciary from unjustified statements and from exaggerated value judgments capable of undermining its authority. With reference to the reasons set out in the domestic courts' decisions the Government maintained that the principal aim of the statements in question had been to attack and offend a representative of the judiciary. Those statements did not contribute to a general debate on an issue of public interest.

Finally, the Government pointed out that the articles published in *Domino efekt* contained both value judgments which were exaggerated and statements of facts which had no factual basis. Considering their impact on the professional reputation of judge Š. but also on on the judiciary as a whole, the applicant exceeded the limits of permissible criticism in that he had permitted those articles to be published. The amount which the applicant was ordered to pay in compensation was lower than the amount originally claimed by the judge concerned. The Government concluded that the interference complained of was not disproportionate to the legitimate aim pursued and considered that the applicant's complaint was manifestly ill-founded.

The applicant maintained that the interference with his right to freedom of expression cannot be regarded as "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention. He argued, in particular, that the statements in question were value judgments which were based on facts. At the relevant time the judge concerned was included in the election list of a political party. As such, he was also a person of public interest and had to accept a wider scope of criticism in respect of his actions. The applicant contended that the purpose of the articles in question had been to criticise the fact that judge Š. decided on a matter linked to the past of Slovakia on which the political party which had included him on its list in the parliamentary election had specific views. The applicant denied that the purpose of the articles had been to offend or humiliate the judge concerned.

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.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President