

Strasbourg, 16 mars 2005

CONF/JUGES (2005) Slovenia

**2<sup>nd</sup> EUROPEAN CONFERENCE OF JUDGES**

**“JUSTICE AND THE MEDIA”**

**National report**

**prepared by  
the delegation of Slovenia**

## 1. INTRODUCTION

The protection of human rights is guaranteed in the Constitution of the Republic of Slovenia (the Constitution),<sup>1</sup> which was promulgated on 23 December 1991. The new Constitution contains an extensive chapter on the protection of human rights and fundamental freedoms, and is applied directly. Human rights may only be restricted by the Constitution and statute, and by the rights of others (Article 15 of the Constitution).

In connection with the media, Article 39 of the Constitution is important; it guarantees the free expression of thought, speech and public appearance, of the press and of other forms of public communication and expression. It allows anyone to freely collect, receive and disseminate information and opinions, and similarly gives anyone the right to obtain information of a public nature for which they have a well-founded legal interest under law, except in cases determined by statute. This right is not, of course, of an absolute nature but is restricted by the rights of individuals enshrined in the Constitution, in particular Article 35, which enables protection of the right to privacy and personal rights.

The Republic of Slovenia has also ratified international legal documents of the United Nations which protect human rights, and in 1994 the European Convention on the Protection of Human Rights and Fundamental Freedoms with protocols (ECHR)<sup>2</sup>. In the hierarchy of legal documents, ratified and promulgated international conventions are ranked above laws and other regulations, and are applied directly. Concerning the rights and obligations of the media to provide information and protection of the right to respect for personal and family life, it is therefore necessary to make particular mention of texts and case law in connection with Articles 8 and 10 of the ECHR.

## 2. PUBLIC NATURE OF HEARINGS AND JUSTICE

Article 24 of the Constitution refers to the public nature of court proceedings, laying down that hearings must be public and verdicts passed publicly, with exceptions being determined by statute. More precise regulations are found in the Court Rules,<sup>3</sup> which lay down that courts must inform the public of their work, decisions and viewpoints at press conferences and in publications. Courts therefore have specially appointed people responsible for public relations and people authorised to give out information of a public nature. In addition to this, courts publish on noticeboards the annual programme of judges' work and the timetable of main hearings, panel sessions, etc. Various procedural laws also lay down that main hearings are of a public nature, e.g. the Criminal Procedure Act,<sup>4</sup> the Civil Procedure Act<sup>5</sup>, and various other laws.<sup>6</sup> Procedural acts contain more detailed provisions on the public nature of main hearings, which are open to all adults. In exceptional cases the judge may exclude the public from an entire or part of a public hearing for reasons of official, business or personal secrecy, public order or

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<sup>1</sup> URS, Official Gazette, no. 33/91 and constitutional acts promulgated in Ur. l. RS, nos. 42/97–69/04.

<sup>2</sup> ECHR, Official Gazette, no. 33/94 – International Agreements, no. 7/94.

<sup>3</sup> Court Rules, Uradni list RS, no. 17/95-138/04.

<sup>4</sup> ZKP, Uradni list RS, no. 96/04 (official consolidated text).

<sup>5</sup> ZPP, Uradni list RS, no. 36/04 (official consolidated text).

<sup>6</sup> e.g. the Personal Data Protection Act (ZVOP), Uradni list RS, nos. 57/01–86/04.

morality, as well as for the maintenance of order.<sup>7</sup> The law also lays down closed hearings for some legal proceedings, e.g. criminal proceedings against minors, civil proceedings in status-related cases (divorce, determination of paternity and maternity, the removal of contractual capacity, etc.).

Despite that fact that hearings are public, no visual, audio or audio-visual recording is permitted. The president of the Supreme Court may exceptionally allow part of a main hearing to be recorded.

### 3. PROTECTION OF HUMAN RIGHTS

Protection of human rights is guaranteed in various legal spheres: in the area of public law, and in criminal and civil law areas.

The Supreme Court of the Republic of Slovenia has to date ruled on a number of occasions that an affected person may choose between various legal remedies, and that a claim for the payment of pecuniary damages is allowable not only when such a person has exhausted all other possible measures, such as laying a criminal charge or demanding publication of a correction or reply in civil proceedings.

In the criminal area, the most common proceedings instituted against the media are for insults (Article 169 of the Penal Code<sup>8</sup>) or defamation (Article 171 of the Penal Code). These types of offence are not normally prosecuted by a state prosecutor but in private actions. In the 1990s such actions were fairly common; however, with convictions rarely being passed, they have become increasingly less common, with civil-law sanctions being largely enforced in such cases. Since in civil judicial practice the principle has been enforced that a journalist may, without checking, publish facts that he has learned of at a press conference held by a state body, disputes do come before the administrative court based on an assertion that the conference was not held in the correct manner.

#### 3.1. Protection in the civil area

In the civil area, where the protection of basic rights between formally related subjects is concerned, various forms of legal protection are guaranteed.

##### 3.1.1. The right to correct published information and the right to reply to such published information

is already guaranteed in Article 40 of the Constitution, and is more precisely determined in the Public Media Act.<sup>9</sup> Since the Slovenian arrangement is somewhat different from the arrangement in other countries, let me explain that what is called the right to correction in Slovenia is probably what others know as the right to reply.

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<sup>7</sup> see Articles 293–297 of the Civil Procedure Act (ZPP), Uradni list RS, no. 36/04 (official consolidated text).

<sup>8</sup> KZ, Uradni list RS, no. 95/04 (official consolidated text).

<sup>9</sup> Uradni list RS, no. 35/2001.

According to Articles 26 to 41 of the Mass Media Act, the right to free correction applies to:

- anyone (natural person, legal person or official body) whose rights or interests have been affected,
- if s/he demands it within 30 days of publication,
- if the content of the correction is such that it states facts and circumstances by which the affected person impugns or essentially completes statements in the published text,
- if the text of the correction is not disproportionately longer than the published announcement to which it refers.

A correction must be published without changes, in the same or an equivalent place in the publication. No commentary or response to this correction may be published below it.

The right to reply according to the provisions of Articles 42 to 44 of the Mass Media Act is intended to ensure the public interest in objective, all-round and timely information as one of the crucial conditions of democratic decision-making in public affairs. This is a right of readers, viewers or listeners to appeal, and it is not necessary that they be affected by the information.

### 3.1.2. The right to preventive measures

is envisaged in the Obligations Act (OZ)<sup>10</sup>, Article 10 of which contains a general provision prohibiting the causing of damages. This right is more precisely determined in:

- Article 133, which determines a request to remove the risk of damage. It allows everyone to request that sources of danger that threaten them or an unspecified circle of people with greater damage be removed. The court may pass appropriate measures to prevent damage or alarm from arising, or to remove the source of danger of damage; if the performance of lucrative activities is involved, compensation for damage and other justified measures may be determined; and
- Article 134, which determines a request to stop violation of personal rights through which it is possible to request that acts that violate the inviolability of human personality, personal and family life, or any other human right, be halted.

### 3.1.3. The right to compensation for damage

is appropriate when the violation has already been committed. The Slovenian legal system provides compensation for material damage and compensation for immaterial damage. Compensation for immaterial damage is, by its nature, satisfaction. Satisfaction can be of a pecuniary or non-pecuniary nature.

Non-pecuniary satisfaction is regulated in Article 178 of the Obligations Act, which is entitled 'Publication of a judgement or correction' and reads:

*If there is a violation of a personal right, a court may order the publication of the judgement or correction at the cost of the injurer or may order that the injurer revoke the statement by which the violation was committed, or do anything else by which it is possible to achieve the purpose achieved by compensation.*

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<sup>10</sup> Uradni list RS, no. 83/2001.

The non-pecuniary form of compensation is intended primarily for the protection of human rights of an immaterial nature by which it is possible to remedy a violation (at least to a major extent) by means of the subjective establishment of the previous state, which is intended to bring the injured party to the state in which he would be if the violation had not taken place. In the law, case measures are enumerated that enable compensation for damage in the immaterial area with a form of compensation which is nevertheless of an immaterial nature. Such a form of compensation is thus more appropriate than pecuniary, which enables compensation in other areas than the area of damages. Despite the aforementioned, it must be said that injured parties claim damages under this article in relatively few cases. They more frequently claim payment of pecuniary compensation, which is envisaged in Article 179 of the Obligations Act, which reads:

- (1) An injured party shall be entitled to fair pecuniary compensation for suffering physical pain, for suffering mental pain because of reduction of life activities, disfigurement, offence to good name and honour or violation of freedom or personal rights or the death of a near relative and for fear, if the circumstances of the case, and in particular the level of pain or fear and its duration, justify this, independent of compensation for material damage, and even if there is no material damage.*
- (2) The level of compensation for immaterial damage is dependent on the importance of the affected good and the purpose of this compensation, but may not support aspirations which are not compatible with its nature and purpose.*

#### 4. CONCLUSION

Even prior to the independence of the Republic of Slovenia in 1991, Slovenian courts often awarded pecuniary damages for immaterial loss because of physical suffering, fear, mental suffering or a reduction in quality of life, disfigurement, or the death or serious injury of a close relative. After the founding of the independent state and after adoption of the Constitution, which stresses the protection of human rights, judges are increasingly often faced with claims relating to violation of honour and reputation.

Claims for the publication of corrections or replies were judged until last year on the basis of the provisions of the Public Media Act (ZJG)<sup>11</sup>, which was slightly different; case law was also more restrictive. Courts thus often ruled that responsible editors' rejections of a demand for the publication of a correction, which often expressed primarily a claim for the public expression of a subjective opinion, were well-founded. Perhaps the reason for this is that one rarely encounters nowadays in the practice of the Supreme Court of the Republic of Slovenia requests for the publication of a reply or correction; and perhaps the reason for this is that we are aware that editors are more frequently publishing replies and corrections.

In connection with claims for the prevention of violations of personal rights and the setting of adequate compensation, I have studied the judicial practice of the Supreme Court of the Republic of Slovenia from 1991 onwards and can therefore make the assertion that actions brought on account of violations of honour and reputation have risen rapidly since 1991. Most of these

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<sup>11</sup> Ur. l. RS, no. 18/1994

actions have been brought against the printed media. Injured parties have requested that it be found that their honour and reputation have been violated and that the judgements or an apology be published; claims have even more frequently been for the payment of pecuniary compensation. The pecuniary damages awarded by courts in such cases amount to seven to eight times the average wage<sup>12</sup>; in more serious cases it exceeds ten average wages; and the highest damages awarded so far amounted to almost 20 average wages. This means that damages range from 6,000 to 15,400 euros.

When civil judges rule on actions, they often find that some media outlets are still committing grave violations of human rights; in such cases, adjudication is not problematic. The more serious-minded magazines and newspapers are already aware of the judicial practice formulated by the Supreme Court, which is why judges in borderline cases often find themselves faced with a request to find a balance between the right to privacy and the right to the free expression of an opinion. They then have to weigh the interests of the public and individuals, and to find a correspondence between the violation committed and the legal protection measure requested in the action. Judges are assisted in the sensitive weighing of interests by the judicial practice formulated by Slovenian courts of general jurisdiction. The Constitutional Court has also ruled in some cases (it is competent to rule only on whether a violation of human rights has been committed). The judicial practice of the European Court of Human Rights at the Council of Europe in Strasbourg is also welcome, as is the national judicial practice of courts from other countries, especially those that are members of the European Union.

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<sup>12</sup> At the beginning of 2005 the average wage in the Republic of Slovenia was 185,029 tolar, with 240 tolar being equivalent to 1 euro.