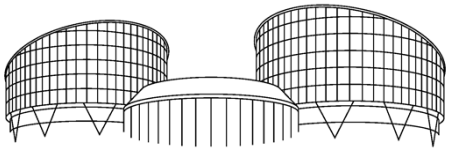

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF M.L. v. SLOVAKIA

(Application no. 34159/17)

JUDGMENT

Art 8 • Respect for private life • Dismissal of action against tabloids, which published unverified tawdry statements on, and pictures of, applicant's son, a priest convicted of sexual offences, years after his death • Domestic court failure to carry out balancing exercise on Articles 8 and 10 rights • Failure to assess relevant elements and available evidence • Intrusive information on son's intimate sphere of private life and publication of picture, not justifiable by general interest considerations

STRASBOURG

14 October 2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of M.L. v. Slovakia,

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

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 34159/17) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms M.L. ("the applicant"), on 5 May 2017;

the decision to give notice of the application to the Slovak Government ("the Government");

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 21 September 2021,

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

INTRODUCTION

1. The present case concerns the protection of the applicant's private and family life in defamation proceedings that the applicant instituted against several newspaper publishers which had published articles about her deceased son, accompanied by pictures of him.

THE FACTS

2. The applicant was born in 1948 and lives in Čierne Pole. She was represented by Mr P. Kerecman, a lawyer practising in Košice.

3. The Government were represented by their co-Agent, Ms M. Bálintová, from the Ministry of Justice.

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

5. The applicant's late son, who had been a Roman Catholic priest, had been convicted, in 1999, of sexual abuse and threatening the moral education of young people (on account of having attempted to have non-consensual oral sex with a minor boy) and, in 2002, of disorderly conduct (on account of having had consensual oral sex with an adult man in a public place). Those criminal convictions had become spent (*zahladenie*)

in 2001 and 2003 respectively, because the applicant's son had complied with the conditions of his conditional sentence subject to a probationary period. He died in 2006.

6. Two years after the applicant's son's death, between March and May 2008, three tabloid newspapers published articles about his conviction for sexual abuse and a possible link between it and his supposed suicide. The articles were entitled "Priest confessed to abuse of minor boys. Secret of priest's suicide", "Priest abused Roma boys. He confessed before his suicide", and "Protected priests. The Church provided a guarantee to get a paedophile priest out of prison". The articles asserted that before his supposed suicide the applicant's son had confessed to his acts and his bisexual orientation; that the bishop to whom he was subordinate had been informed of the criminal charges, following which the Church had offered a guarantee of his good behaviour; and that by virtue of that kind of guarantee, the applicant's son had either been released, not put in detention, or not convicted. The articles, one of which was accompanied by pictures of the applicant's son, mentioned his full name and many details of his private and intimate life, some of which related to the distant past, which were described in expressive terms and presented as stemming either from the criminal files or from the statements of people who had been approached by the journalists (including two of the applicant's son's victims, the above-mentioned bishop, a former mayor and some of the applicant's son's former parishioners).

7. On 27 August 2008 the applicant instituted proceedings against the publishers of the three newspapers, seeking post-mortem protection of her late son's personal integrity on the basis of Article 15 of the Civil Code, as well as protection of her own personal integrity on the basis of Article 11 of the Civil Code. She argued that although her son had confessed to the offence of disorderly conduct, he had never done so with regard to sexual abuse; that one of his purported victims had retracted his accusations of abuse; and that both convictions had become spent. She further asserted that she was not aware of any guarantee offered in the proceedings against her son, that no such information appeared from the relevant decisions and that her son had died as a result of drug intoxication and medical negligence. In the applicant's view, the articles contained many false and misleading allegations which did not correspond to the criminal courts' findings, and contained disproportionate value judgments characterising her son as a criminal and his acts as "disgusting paedophile orgies", the aim of which was to cause a sensation and increase the newspapers' sale figures. The applicant claimed that those allegations and judgments interfered with both her late son's and her own privacy rights; moreover, since their publication she had faced adverse reactions and questions from her neighbours and people who had known her son, which significantly affected her period of mourning and contributed to a deterioration in her health.

8. In the framework of the above-mentioned proceedings, the Michalovce District Court obtained the observations of all of the parties and heard the applicant, her relatives, the defendants' representatives and several witnesses. The relevant records show the following information.

9. The mayor whose quotes were referred to in one of the articles denied having spoken to any newspapers.

10. The authors of the articles mainly stated that they could not remember concrete sources or details, and that they had essentially based the articles on the Internet and other media, on the criminal file, and their personal communication with the bishop and unidentified people living in the parishes concerned, whose statements were deemed to be an expression of their opinions needing no verification. The journalist M.K. referred to a very good source who had provided him with a written document, and to a police record concerning the questioning of the applicant's son; he claimed to have verified the authenticity of the written document but did not remember any details. M.K. asserted that he had also contacted police spokespersons and had sent an email to the bishop's office, but he was not sure whether he had saved their exchange (it is not clear from the file whether M.K. complied with the District Court's request to submit a copy of that exchange). According to the journalist, the story was unusual and interesting, and he had wanted to inform people that even in such a case, the Church had protected the convicted priest and had not removed him; he had wanted to point out in some way the situation within the Church.

On the other hand, the journalist M.B. asserted that she had not wanted to discuss or assess the situation within the Church but to provide a forum for people's reactions to the serious facts concerned. She stated that all the facts that she had mentioned in the article would have been confirmed by the bishop.

As to the question of the basis for the value judgment alleging that the applicant's son had committed suicide, probably under the weight of a bad conscience, the journalist A.H. replied that she did not remember whether she had had any support for that information and, if she did, where it had come from.

11. According to a report by the bishop's office, requested by the court and dated 4 October 2011, that office had not received any questions concerning the applicant's son from the journalist M.K. or from any other newspapers.

12. By a judgment of 2 May 2012, the District Court ordered each of the defendants to publish a formal apology to the applicant for having published untrue allegations about her late son, but dismissed her financial claims. The court stated that the applicant's son's criminal convictions were indisputable and that although they had become spent, that legal fiction could not be considered absolute since there were situations where those convictions could still be taken into account. The court further considered that the

applicant's son's criminal prosecution had been of public interest and that the journalists had been entitled to cover the facts that undeniably appeared from the criminal files.

However, the applicant's application had to be partially granted because the articles contained untrue allegations, concerning, *inter alia*, the guarantee offered by the Church, which had interfered with the applicant's late son's personal integrity. Those allegations were mainly based on a record of the applicant's son's statement before an unidentified authority, of which only a partial copy had been submitted and which had not proved to be authentic since it did not correspond to any record from the criminal proceedings; the allegations were also based on the statements of other persons interviewed by the journalists, for the dissemination of which the defendants bore objective responsibility.

On the other hand, it had not been objectively proven that the applicant's own integrity or dignity had been affected, given that she had not lived with her son, who had worked a long way from where she lived. Even if the applicant's son had been entitled to non-pecuniary damages, which was not the case here owing to his reprehensible behaviour, that right was of a personal character and could not be transferred to the applicant, hence the dismissal of that part of her action.

13. The applicant appealed, mainly challenging the decision not to order an apology for the publication of the pictures of her late son or any non-pecuniary damages. An appeal was also lodged by the defendants.

14. On 17 September 2013 the Košice Regional Court quashed the District Court's judgment, on the ground that the decision ordering the defendants to publish an apology to the applicant was not supported by the evidence. In its view, the District Court should have assessed whether the facts described in the articles reflected what had really happened, instead of examining the authenticity of the copy of the record of the applicant's late son's statement. Therefore, the District Court's judgment had lacked comprehensive reasoning.

15. By a new judgment of 24 February 2014 the District Court dismissed the applicant's action and ordered her to pay the costs incurred by the defendants. It observed that, as a parish priest, the applicant's son could not be treated as an ordinary person whose personal integrity required higher protection, but rather as a public figure expected to be more tolerant to criticism. As the criminal prosecution of the applicant's son had been of public interest, and with regard to cases of sexual abuse by clergymen that had occurred in the past and the attitude of the Roman Catholic Church to them, the court found that the journalists had been entitled to cover the facts that undeniably appeared from the criminal files, and they had been entitled to publish the applicant's late son's picture in accordance with Article 12 § 3 of the Civil Code. While it was true that the articles had also relied on

other sources, the court considered that, seen in the light of the applicant's son's conviction, those sources could be deemed credible.

In particular, as to the copy of the record of the applicant's son's statement submitted by one of the defendants, the court considered that the reason why that record did not appear in the criminal files was that it had probably been made before the opening of the prosecution of the applicant's son. In any event, the facts described in that record were not considered to be fabricated because they corresponded to the facts on the basis of which the applicant's son had been convicted. The court further noted that the bishop's office had denied receiving questions from any newspapers, and it had not been proven that the bishop had offered a guarantee on behalf of the applicant's son; nevertheless, it appeared from the attitude of the bishop's office that they had attempted to help the applicant's son as much as possible.

16. In a subsequent appeal, the applicant mainly challenged the District Court's failure to duly respond to all her arguments as well its erroneous findings reached without the submission of any new evidence. In her view, the court had also failed to distinguish between allegations of fact and value judgments and to carry out a proportionality test.

17. On 3 June 2015 the Regional Court upheld the judgment of the District Court, except for the decision on costs, which was quashed and remitted back to the District Court (the final decision on that issue was delivered, in the applicant's favour, on 17 May 2017). It considered that the dismissal of the applicant's action was based on correct factual and legal findings, and subscribed to the District Court's opinion that the facts described in the articles, including those emanating from sources other than the applicant's son's criminal convictions, could be considered credible.

18. The applicant challenged the Regional Court's judgment by way of a constitutional complaint, alleging a violation of her rights under Articles 6 and 8 of the Convention, recapitulating her previous arguments and referring to the relevant criteria established by the Court's case-law. She further claimed that the Regional Court had failed to give a duly reasoned decision and had reached arbitrary conclusions which were not supported by credible evidence.

19. On 8 February 2017 the Constitutional Court declared the complaint inadmissible as manifestly-ill founded. It found that the Regional Court had duly dealt with the applicant's arguments and that its findings were sufficiently reasoned and acceptable from a constitutional point of view. It further reiterated that, pursuant to its established case-law, a general court could not bear "secondary liability" for a violation of fundamental rights and freedoms of a substantive nature unless there had been a violation of procedural rules. As no violation of any procedural rule had been established, the whole constitutional complaint had to be dismissed as manifestly ill-founded.

RELEVANT LEGAL FRAMEWORK

20. The right to protection of a person's personal integrity is guaranteed by Articles 11 et seq. of the Civil Code (Law no. 40/1964 Coll., as amended). The relevant provisions are summarised in the Court's judgment in *Radio Twist a.s. v. Slovakia* (no. 62202/00, §§ 33-36, ECHR 2006-XV).

21. In addition, Article 15 of the Civil Code provides that after the death of an individual, the right to protection of his or her personal integrity may be asserted by his or her spouse or children or, if there are no spouse and children, by his or her parents.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that the dismissal of her action against the newspaper publishers amounted to a violation of her right to respect for her private life, as guaranteed by Article 8 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

A. Admissibility

23. It is clear from the Court's case-law (see *Hadri-Vionnet v. Switzerland*, no. 55525/00, § 51, 14 February 2008, with further references; *Editions Plon v. France*, no. 58148/00, § 46, ECHR 2004-IV; and *Putistin v. Ukraine*, no. 16882/03, § 33, 21 November 2013), and the Government accepted, that dealing appropriately with the dead out of respect for the feelings of the deceased's relatives falls within the scope of Article 8 of the Convention.

24. The Court further considers that the effect of the statements made in the articles in question about the applicant's son rose above the "threshold of severity" required by the Court's case-law (see *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018); thus the applicant's private life has been affected to a degree attracting the application of Article 8. That provision is therefore applicable in the circumstances arising in the present case.

25. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

26. The applicant argued that the domestic courts had misapplied the relevant criteria established by the Court's case-law and had failed to achieve a fair balance between the competing rights at stake. Considering that the question of whether the disseminated information was of public importance could only be assessed on the basis of objective criteria, she observed that neither the subjective perception of the journalists, nor the fact that priests' misconduct had been at that time subject to public discussion, gave any justification for disseminating false statements and inappropriate value judgments concerning her son.

27. The applicant further emphasised that her son had been a simple parish priest until his death in 2006, hence he had no longer been active in public life at the time of the publication of the articles and could thus not have been considered a person of public interest; moreover, his criminal convictions had occurred a long time ago, and the time interval that had passed had weakened any potential interest of the public in receiving such information. Nor could the involvement of the Church in her son's case be considered a matter of public concern, as maintained by the Government, since her son had never been in custody and it had not been proven that any guarantee had been offered on his behalf by the Church.

28. In the applicant's view, not only did the articles fail to pursue any legitimate aim but their tabloid style and striking language (for example "secrets of a man in a cassock", "shocking information", and "disgusting paedophile orgies") clearly indicated that their authors' purpose was to shock, meet deadlines and increase sales figures. Also, unlike in *Putistin* (cited above), the articles in question were directly concerned with her late son's private and sexual life, his criminal convictions and the reasons for his death, and had identified him using his full name and picture. Although the applicant had not been directly mentioned, the articles and the subsequent negative reactions to them by the people around her had had significant detrimental effects on her, particularly as she was known to be the mother of the deceased, bore the same family name as him, and lived in the village mentioned in the article.

29. Lastly, the applicant challenged the Government's argument that the journalists had tried to verify the information provided by sources other than the criminal files, and had acted in good faith. Referring to the records of the court hearings (see paragraph 8 above), she noted that the journalists had merely asserted that they had believed, or did not remember, their sources, and that the journalists' statements concerning their contacts with the bishop's office and a mayor had not been proved to be true. Moreover, the authenticity of the only document submitted by the journalists, that is a copy

of a record of her late son's questioning, which the courts had regarded as key evidence, was doubtful.

30. The Government submitted that the domestic courts had duly applied the relevant criteria formulated by the Court and had struck a fair balance between the applicant's and the newspaper publishers' rights. In their view, it followed from the journalists' statements before the courts that they had considered the information published to be a matter of public concern and that they had attempted to verify by different means the facts provided by their sources. The Government were themselves of the view that, in so far as the articles related to the moral profile of a Roman Catholic priest, that is a person in the public eye, and to the Church's attitude to him, they constituted a contribution to a debate of public interest, and that the journalists' conduct could be regarded as being bona fide.

31. The Government further argued that, although the applicant's approach as a mother was understandable, she had mainly complained of disrespect to the memory of her son, which demonstrated her bias.

32. With regard to the time interval between the applicant's son's criminal convictions and death, and the publication of the articles, the Government contended that it followed from the Court's case-law (the Government cited *Éditions Plon*, cited above, § 53) that the more time that had elapsed, the more the public interest in an open discussion prevailed over the interest in protecting the rights of the deceased person.

33. Lastly, the Government argued that the applicant, who had not been mentioned in the articles in dispute, had not been directly affected by them, although their impact and effect on her was admittedly greater than in *Putistin* (cited above). The articles had contained only the facts which were deemed significant for assessing the applicant's son's morals and which had originated mainly from his criminal convictions or the statements of third persons; as such, their content was not unacceptable.

2. The Court's assessment

34. The Court notes at the outset that the applicant can be regarded as having been directly affected by the articles in question (see also paragraph 48 below). Thus the present case requires an examination of the fair balance that has to be struck between her right to the protection of her private life under Article 8 and the newspaper publishers' right to freedom of expression as guaranteed by Article 10.

35. In exercising its supervisory function, the Court's task is to review, in the light of the case as a whole, whether the decisions taken by the domestic courts pursuant to their power of appreciation are in conformity with the relevant criteria laid down in the Court's case-law (see, among many other authorities, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-113, ECHR 2012; *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-95, 7 February 2012; and *Couderc*

and Hachette Filipacchi Associés v. France [GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts)). The Court has already identified a number of criteria in the context of balancing the competing rights, which include the following: contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the report; the prior conduct of the person concerned; the content, form and consequences of the publication; and, where appropriate, the circumstances in which photos were taken.

36. In the circumstances of the present case, the Court considers it appropriate to examine the applicable criteria, which are of relevance to the present case, in this specific order: how well known the person concerned was and the prior conduct of that person; the subject matter, content and consequences of the articles; and the contribution to a debate of general interest.

(a) How well known the person concerned was and the prior conduct of that person

37. The Court notes that, while alive, the applicant's son was not a well-known public figure or a high-ranking Church dignitary (see *Albert-Engelmann-Gesellschaft mbH v. Austria*, no. 46389/99, § 27, 19 January 2006). The domestic courts considered, nevertheless, that, as a parish priest, he could not be treated as an ordinary person but rather as a public figure expected to be more tolerant to criticism (see paragraph 15 above).

38. The Court further observes that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of, *inter alia*, the commission of a criminal offence (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, and *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, § 88, 28 June 2018). However, a criminal conviction does not deprive the convicted person of his or her right to be forgotten, all the more so if that conviction has become spent. Even if a person may indeed acquire a certain notoriety during a trial, the public's interest in the offence and, consequently, the person's notoriety, can decline with the passage of time. Thus, after a certain period of time has elapsed, persons who have been convicted have an interest in no longer being confronted with their acts, with a view to their reintegration in society. This may be especially true once a convicted person has been finally released (see *M.L. and W.W.*, cited above, § 100).

39. In the present case, it is true that the applicant's son's prior conduct led to him being the subject of criminal proceedings and being convicted. In the light of the Court's case-law cited above, this cannot, however, deprive him entirely of the protection of Article 8. Moreover, it is to be noted that the applicant's son was given a conditional sentence and complied with its conditions during the probationary period. Thus, the Court has to take into account that not only were the articles in question published

several years after the applicant's son's criminal convictions but also after those convictions had become spent (see paragraph 5 above).

(b) Subject matter, content and consequences of the articles

40. The Court has repeated time and again the distinction that needs to be made between statements of fact and value judgments (see, among many other authorities, *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015). It reiterates that even a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 and that the difference between a value judgment and a statement of fact finally lies in the degree of factual proof which has to be established (see, for example, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40, ECHR 2003-XI, and *Dyuldin and Kislov v. Russia*, no. 25968/02, § 48, 31 July 2007).

41. Furthermore, journalists are under an obligation to respect certain duties and responsibilities (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 97, ECHR 2004-XI). In particular, the right of journalists to divulge information concerning issues of general interest is subject to their acting in good faith and providing "reliable and precise" information in accordance with the ethics of journalism (see, for example, *Godlevskiy v. Russia*, no. 14888/03, § 42, 23 October 2008, and *Ageyevy v. Russia*, no. 7075/10, § 226, 18 April 2013).

42. Turning to the contents of the articles in question, the Court notes that the material was presented in a sensational and gossip-like manner, with flashy headlines (see paragraph 6 above) placed on the front pages, along with – in the third article – photographs of the applicant's late son. The Court finds that the allegations made by the tabloid press in respect of the latter were of a serious nature and were presented as statements of fact which had led to his criminal convictions, rather than value judgments.

43. In this context, the Court observes, first, that despite finding that the articles had also relied on sources other than the criminal files (see paragraph 15 above), the domestic courts did not draw a clear distinction between statements of fact and value judgments.

44. This failure appears particularly salient in respect of the applicant's son's purported suicide, which could not have been mentioned in the criminal files (as it had happened after the convictions) and which the applicant had denied as being her son's cause of death (see paragraph 7 above). On this point, no conclusion was drawn from the very vague response of the journalist A.H. (see paragraph 10 above).

45. The Court further observes that many statements in the articles were presented in a way which made them appear to have been verified or confirmed by a credible source of information, be it a mayor or the bishop's office (see paragraph 6 *in fine* above). Again, the courts omitted to take account of the evasive answers of the journalists and of their inability to

adduce concrete evidence in support of their allegations (see paragraph 10 above). On the contrary, they concluded (see paragraphs 15 and 17 above) that, considered in the light of the applicant's son's conviction, the journalists' unidentified sources could be deemed credible, without attaching any weight to the fact that the bishop's office had denied having had any communication with the newspapers, and that the information about the Church having offered a guarantee on behalf of the applicant's son had been disproved.

46. Moreover, the Court is not convinced by the reasons that the District Court relied on to accept an incomplete copy of the record of the applicant's son's questioning as a credible source of information. It notes that if the statement given by the applicant's son before an unidentified authority had been made before the opening of the prosecution of the applicant's son, as assumed by the District Court, and had not been reflected in the convicting judgment, it had not been publicly available and the journalist in question should have been particularly careful in using it. However, the journalist was not able to provide the domestic court with any details as to how he had obtained that document or verified its authenticity (see paragraph 10 above).

47. In such circumstances, the Court finds that the domestic courts failed to carry out an adequate assessment of all the elements relevant to the matter and of the evidence available. Although the journalists must be afforded some degree of exaggeration or even provocation, the Court considers that the frivolous and unverified statements about the applicant's son's private life must be taken to have gone beyond the limits of responsible journalism (compare *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 77, 22 January 2013).

48. Lastly, the Court is ready to accept that the distorted facts and the expressions used must have been upsetting for the applicant and that they were of such a nature as to be capable of considerably and directly affecting her feelings as a mother of a deceased son as well as her private life and identity, the reputation of her deceased son being a part and parcel thereof (see *Putistin*, cited above, § 33, and *Dzhugashvili v. Russia* (dec.), no. 41123/10, §§ 27 and 30, 9 December 2014).

(c) Contribution to a debate of general interest

49. The Court reiterates that in the balancing of interests under Articles 8 and 10 of the Convention, the contribution made by photos or articles in the press is an essential criterion (see *Von Hannover (no. 2)*, cited above, § 109, with further references).

50. The Court has already accepted that articles focusing on similar topics, namely the discrepancy between the official positions of the Roman Catholic Church in respect of homosexuality, the private conduct of representatives of that Church and the question whether they lived up to their Church's proclaimed standards, contributed to a debate of general

interest (see *Verlagsgruppe News GmbH and Bobi*, cited above, §§ 75, 76 and 80, and *Rothe v. Austria*, no. 6490/07, § 55, 4 December 2012).

51. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to the techniques of reporting which should be adopted in a particular case (see, among other authorities, *Von Hannover*, cited above, § 102). That being said, the Court has already accepted that it is legitimate to use individual cases to highlight a more general problem (see *Eerikäinen and Others*, cited above, § 66).

52. In the present case, the Court can accept that the subject of sexual abuse by clergymen and the attitude of the Roman Catholic Church thereto, as identified by the domestic courts (see paragraph 15 above), was in the public interest, and that the criminal cases in respect of the applicant's son were selected as an example illustrating the problems involved.

53. However, the Court is convinced that it was possible to inform the public adequately about the matter at issue by means which entailed less interference with the applicant's son's legitimate interests, namely by reporting only the facts accessible from the publicly available criminal files. In this context, the Court reiterates that there is a distinction to be drawn between reporting facts – even if controversial – capable of contributing to a debate of general public interest in a democratic society, and making tawdry allegations about an individual's private life. In respect of the former, the pre-eminent role of the press in a democracy and its duty to act as a "public watchdog" are important considerations in favour of a narrow construction of any limitations on freedom of expression. However, different considerations apply to press reports concentrating on sensational and, at times, lurid news, intended to titillate and entertain, which are aimed at satisfying the curiosity of a particular readership regarding aspects of a person's strictly private life (see, in particular, *Mosley v. the United Kingdom*, no. 48009/08, § 114, 10 May 2011). In the light of those considerations, the Court is of the view that the publication of additional, particularly intrusive information concerning the intimate sphere of the applicant's son's private life and the publication of his picture cannot be justified by any considerations of general interest.

54. Thus, the Court finds that, as well as being rather provocative and sensationalist, the articles in question could hardly be considered as having made a contribution to a debate of general interest.

(d) Conclusion

55. The Court considers that it was crucial in the present case that the domestic courts make a careful assessment of the presence and level of public interest in the publishing of the information in question, and that the domestic courts strike a balance between any such public interest and the

applicant's individual interests (see *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 3)*, no. 37986/09, § 83, 7 January 2014).

56. However, it follows from what has been said above that the domestic courts failed to carry out a balancing exercise between the applicant's right to private life and the newspaper publishers' freedom of expression in conformity with the criteria laid down in the Court's case-law.

57. In addition, as regards the procedural protection inherent in Article 8 of the Convention (see, for example, *Turek v. Slovakia*, no. 57986/00, §§ 111-13, ECHR 2006-II (extracts)), the Court observes that, in defence of her substantive rights under Article 8 of the Convention, the applicant lodged a complaint under Article 127 of the Constitution. However, the Constitutional Court dismissed that complaint on the basis of the premise, stemming from no more than its own decision-making practice, that no such remedy was available because no violation of the applicable rules of procedure had been established (see paragraph 19 above; see *Soltész v. Slovakia*, no. 11867/09, § 54, 22 October 2013, and *Ringier Axel Springer Slovakia, a.s.*, cited above, § 86). On this point, the Court considers that subjecting the constitutional review of the applicant's rights under Article 8 of the Convention to a violation of her procedural rights under Article 6 § 1 amounts to an excessive formalism which is not in line with the procedural safeguards stemming from Article 8 (see, *mutatis mutandis*, *V.C. v. Slovakia* (dec.), no. 18968/07, 16 June 2009).

58. The foregoing considerations are sufficient to enable the Court to conclude that, notwithstanding the margin of appreciation allowed to the domestic courts in this field, the State has failed to fulfil its positive obligations under Article 8.

59. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage for her mental suffering and feelings of injustice.

62. The Government contested the claim as being overstated and requested that, should the Court find any violation of the applicant's Convention rights, any just satisfaction be awarded in an adequate amount.

63. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

64. The applicant also claimed EUR 6,371.72 for the costs and expenses incurred before the domestic courts and the Court, including the translation costs.

65. The Government contested the claim since the applicant had failed to substantiate it by any document proving that she had paid for her legal representation or was under a contractual obligation to do so.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Under Rule 60 §§ 2 and 3 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents", failing which "the Chamber may reject the claim in whole or in part" (see *Zborovský v. Slovakia*, no. 14325/08, § 67, 23 October 2012).

67. In the instant case, the Court observes that the applicant did not substantiate her claim for the costs of legal services with any relevant supporting documents establishing that she was under an obligation to pay them or that she had actually paid. Accordingly, the Court does not award any sum on this account (see *Cumpănă and Mazăre*, cited above, §§ 133-34, and *Zborovský*, cited above, § 68).

68. On the other hand, the Court awards the applicant EUR 267 in respect of the translation costs, which the applicant supported by relevant invoices, plus any tax that may be chargeable to the applicant.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 267 (two hundred and sixty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Renata Degener
Registrar

Ksenija Turković
President