

Damages in civil defamation cases in Slovakia: Analysis and trends¹

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I. Introduction

The objective of this present analysis is offer a brief general overview of current trends in civil defamation cases in Slovakia with a particular focus on the amount of non-pecuniary damage that courts award to plaintiffs. This analysis focuses primarily on cases involving media outlets that were sued for defamation by public officials. It also includes cases in which media outlets were sued by private persons so as to compare the amount of financial compensation courts award to different types of plaintiffs.

In 2011, the civil association VIA IURIS carried out an analysis called “Freedom of expression and actions for the protection of reputation”.² At that time, many public officials (such as politicians and judges) frequently sued media outlets for publishing defamatory content that caused damage to their reputation. VIA IURIS observed that courts provided such plaintiffs with excessive protection and awarded them much higher financial compensation than common citizens. National legislation set no limit on financial compensation and no criteria for courts in determining adequate compensation. VIA IURIS pointed out at the time:

“[I]n their decision-making courts often did not take into account principles stipulated by the European Court [including the principle that] public figures must for example tolerate a higher level of criticism, value judgements enjoy a high level of protection, provocative statements, as well as exaggerations are protected, media have right to “excusable error”, etc.”³

Among the public officials noted for bringing defamation cases against the media were Róbert Fico, the current Slovak prime minister, and Štefan Harabin, a former justice minister (2006-2009) and later president of the Supreme Court. VIA IURIS estimated that courts awarded Harabin €314,242 in compensation for defamation between 2006 and 2013,⁴ and awarded Fico €235,294 between 2007 and 2013. In 2013, Fico decided to conclude all his cases and withdraw all remaining claims.⁵

In 2013, Tomáš Kamenec, an attorney with rich experience in defending media outlets in defamation cases, published a legal analysis entitled “Do courts endanger freedom of media?”⁶

¹ This report was commissioned by the Vienna-based [International Press Institute](#) (IPI) as part of its work examining the effects of defamation law on the media freedom in Europe. This report was produced in cooperation with the Slovak civil association [VIA IURIS](#).

² Kováčechová E., Wilfling P., *Sloboda prejavu a žaloby na ochranu dobrej povesti (Freedom of expression and actions for the protection of the personality)*, VIA IURIS- centrum práva občana, 2011, <http://www.viaiuris.sk/wp-content/uploads/2016/09/publikacia-sloboda-zaloby.pdf>.

³ Kováčechová E., Wilfling P., *Sloboda prejavu a žaloby na ochranu dobrej povesti (Freedom of expression and actions for the protection of the personality)*, VIA IURIS- centrum práva občana, 2011, <http://www.viaiuris.sk/wp-content/uploads/2016/09/publikacia-sloboda-zaloby.pdf>, p.54.

⁴ A part from media this included one case against General Prosecution of the Slovak Republic.

⁵ Tódová M. “Fico ide znovu žalovať médiá” (*Fico will again sue media*), *Denník N*, 27.04.2015, <https://dennikn.sk/114157/fico-ide-znovu-zalovat-media/>, seen on 10.04.2017.

⁶ Kamenec T., „Ohrozujú súdy slobodu médií?, Právna analýza vybraných faktorov v Slovenskej republike“ (*Do courts endanger freedom of media?, Legal analysis of selected factors in the Slovak Republic*), *Aliancia Fair-Play*, Bratislava 2013, <http://www.fair->

In this analysis he drew attention to various problematic aspects of courts' decisions in defamation cases.

Kamanec observed that Slovak first- and second-instance courts, when called on to resolve conflicts between, on the one hand, the right to freedom of expression guaranteed under the Slovak Constitution (Art. 26) and the European Convention on Human Rights (Art. 10) and, on the other, the right to protection of personality guaranteed under the Constitution (mainly Art. 19) and the Convention (Art. 8), failed to make constitutionally sustainable rulings. In particular, Kamanec argued, courts frequently gave unwarranted preference to the protection of personality. He further observed that judges failed to properly assess conditions under which the Slovak Constitution allowed for restrictions on the right to freedom of expression. According to Kamanec's analysis, Slovak courts' main problem lay in understanding the principle that a restriction on freedom of expression had to be "necessary in a democratic society". Kamanec considered this problem to be rooted in the culture and values of Slovak society. In this sense, he argued, if Slovak society wanted to progress in the construction of a liberal democracy, courts had to understand the value of free discussion on public affairs and of criticising public figures.⁷

Since that time, the situation has slowly moved in a positive direction. Slovak courts now appear to produce better-reasoned decisions and to be more aware of the need to carefully assess the conflict between freedom of expression and personality rights. They also take into greater account the standards anchored in the jurisprudence of the European Court of Human Rights (ECtHR). As a consequence, the protection awarded to public officials against defamation in the media has become less excessive, with less exaggerated financial compensation. Still, much depends on particular judges and courts, so not all decisions contain exemplary reasoning, and some continue to give excessive protection to personality rights.

Here, in addition to the influence of European jurisprudence, it is also necessary to highlight the very important role that the Constitutional Court of the Slovak Republic and the Supreme Court of the Slovak Republic have played. When it comes to defamation, both courts have established very progressive jurisprudence that favours greater protection of freedom of expression as compared to the past. In 2014, a Supreme Court decision in a defamation case (no. 6 Cdo 169/20118) was named as the "judicial decision of the year" by a jury of experts.⁹ In this case, daily SME was sued by Vladimír Lexa, a former minister, over an article that highlighted the apparently suspicious acquisition of his property. Lexa disputed the article as inaccurate. The ruling in the case was considered as instructive because it underlined that "freedom of political discussion is at the core of the conception of a democratic society".¹⁰ The

play.sk/system/resources/W1siZiZlsljwMTQvMDcvMDEvMThfMTNfMDhfNTg4X09ocm96dWp1X3N1ZHlfc2xvYm9kdV9tZWRpaS5wZGYiXV0/Ohrozuju_sudy_slobodu_medii.pdf, seen on 05.05.2017.

⁷ Kamenec T., „Ohrozujú sudy slobodu médií?, Právna analýza vybraných faktorov v Slovenskej republike“ (*Do courts endanger freedom of media?, Legal analysis of selected factors in the Slovak Republic*), Aliancia Fair-Play, Bratislava 2013, http://www.fair-play.sk/system/resources/W1siZiZlsljwMTQvMDcvMDEvMThfMTNfMDhfNTg4X09ocm96dWp1X3N1ZHlfc2xvYm9kdV9tZWRpaS5wZGYiXV0/Ohrozuju_sudy_slobodu_medii.pdf, seen on 05.05.2017.

⁸ https://www.etrend.sk/fileadmin/user_upload/etrend/dokumenty/lexa_petit_press.pdf

⁹ The award is organized by the magazine TREND and the Open Society Foundation. Experts and members of the public can submit nominations..

¹⁰ Petková Z., „Judikát roka je o slobode prejavu“ („Judicial decision of the year concerns the freedom of expression“), Trend, 02.04.2014, <https://www.etrend.sk/trend-archiv/rok-2014/cislo-13/judikat-roka-je-o-slobode-prejavu.html>, seen on 10.04.2017.

Supreme Court ruled that lower court decisions in favour of Lexa (the second-instance court awarded him €7,000) had violated the publisher’s right to freedom of expression.

In decision no. II.ÚS184/2015-66 from 11 November 2015, the Constitutional Court considered the case of a judge from the Specialised Criminal Court who sued daily SME for writing about his leisure activities. Specifically, the article highlighted the fact that the judged hunted for free. The district and regional courts, and even the Supreme Court, ruled that daily SME should apologise to the judge. The Constitutional Court, however, found that doing so would violate the paper’s right to freedom of expression. Notably, while the lower courts and the Supreme Court stated that criticism of the private activities of judges – as opposed to criticism of professional activities – does not enjoy greater legal protection, the Constitutional Court declared that even the private lives of judges may be a focus of criticism and that leisure activities such as hunting may be the subject of legitimate media interest. Moreover, the Constitutional Court awarded the publisher €3,000 in compensation in light of the previous obligation to publish apologies to the judge. This decision was also praised by numerous experts and selected as the “judicial decision of the year 2016” by a jury of experts.¹¹

An additional noteworthy case is the Constitutional Court’s ruling in case no. I. ÚS 408/2010¹² from 16 June 2011, in which the court considered the case of a judge who sued a media outlet for defamation over coverage of his controversial communist past. In its ruling, the Constitutional Court made a very interesting statement: “In lawsuits where a judge seeks the protection of personality, and more significantly also considerable financial compensation, there arises the legitimate problem of ‘one judge judging another judge’, with the increased risk of possible corporate behaviour of the representatives of judicial power, which (with repeatedly doubtful or insufficiently reasoned conclusions) may endanger the legitimacy of the entire judiciary.”

2. Selected judgments

For the purpose of this research, we examined judicial decisions contained on the official website of the Ministry of Justice of the Slovak Republic,¹³ in the legal database ASPI and on the website otvorenesudy.sk (website created by Transparency International Slovakia).

Decision	Financial Award	Background
<i>Judge of District Court in Michalovce v. PEREX, a.s.</i> (owner of daily Pravda) ¹⁴ Regional Court of Bratislava, 23.11.2016, 3Co/565/2014	Award to plaintiff: €10,000 (requested amount: €331,939.19)	A judge of the District Court of Michalovce sued PEREX for an article in the daily Pravda on a fraud attempt against an insurance company in which the judged, together with other

¹¹ Petková Z., “Judikár roka 2016: Sudcov možno kritizovať aj za to, čo robia vo voľnom čase” (“Judicial decision of the year 2017: Judges may be criticized even for what they do in their free time”), Trend, 14.04, 2016, <https://www.etrend.sk/trend-archiv/rok-2016/cislo-15/sudcov-mozno-kritizovat-aj-za-to-co-robia-vo-volnom-case.html>, seen on 10.04.2017.

¹² https://www.ustavnysud.sk/documents/10182/992328/51_11a.pdf/9f70f1b3-5db0-40c4-bb76-2c0e5c36b429

¹³ <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>

¹⁴ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/fab298de-ada6-42ad-b342-ae04147bac70%3A2f7bb3af-9f54-4748-b094-83de36ecec07>

		persons (executor and attorney) were alleged to have participated. First-instance court did not award any financial compensation.
<p><i>Judge of District Court in Michalovce v. Company 7 PLUS s.r.o</i></p> <p>District Court of Rožňava, 29.02.2012, 12C/87/2007¹⁵</p> <p>Regional Court of Košice, 14.02.2013, 5Co/164/2012</p>	<p>Award to plaintiff: €20,000 (requested amount: €165,969.59)</p>	<p>An article in the weekly magazine Plus 7 dní had presented the plaintiff as one of the key persons together with an executor and an attorney who allegedly participated in insurance fraud. The article also contained photos of the plaintiff, his house and his car, which he claimed was violation of his personality rights.</p>
<p><i>Public prosecutor c. company 7 PLUS, a.s.</i></p> <p>District Court of Bratislava¹⁶ 24.06.2015, 24C/270/2014</p>	<p>Award to plaintiff: €5,000 (requested amount: €160,000 euros)</p>	<p>Plaintiff sued 7 PLUS, a.s. over an article in which the authors described the plaintiff as being connected to the Slovak mafia.</p>
<p><i>Unidentified Attorney v. PEREX, a.s.</i>¹⁷</p> <p>District Court of Čadca, 26.02.2015, 4C/203/2011</p>	<p>Award to plaintiff: €16,000 (requested amount: €50,000)</p>	<p>Plaintiff sued daily Pravda over articles that connected him with a corruption case linked to the political party SDKÚ.</p>
<p><i>Director of special primary school v. Petit Press</i>¹⁸</p> <p>District Court of Spišská Nová Ves, 11.12.2014, 8C/78/2011</p>	<p>Award to plaintiff: €2,000 (requested amount: €20,000)</p>	<p>Plaintiff sued Petit Press over an article published in Korzár accusing her of inappropriate behaviour and disturbing neighbours at night.</p>

¹⁵ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/f31d3060-8167-4b68-bd14-e775f33d8d4d%3A72fac380-bc31-428f-8abb-24b142367db0>

¹⁶ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/45f80df2-ae04-485a-ab5f-3816cbf817e0%3A1398332b-ddfc-4206-94e8-5f4592cc5378>

¹⁷ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/4dfbfef9-9555-4f4d-bfd3-4f76a7a9146b%3A2ee81901-ef3f-476d-8b1e-915e70751a5f>

¹⁸ <https://otvorenesudy.sk/decrees/2109065?l=sk&q=v%C3%BD%C5%A1ka+n%C3%A1hrady+nemajetkovej+ujmy+ochrana+osobnosti+a+sloboda+prejavu>

<p><i>Functionary of Police Corps v. MAC TV, s.r.o.</i>¹⁹</p> <p>Regional Court of Žilina, 29.09.2016, 10Co/37/2016</p>	<p>Award to plaintiff: €5,000 (requested amount: €7,000)</p>	<p>Plaintiff sued MAC TV for defamation over two news reports that portrayed him as organising trade in stolen wood.</p>
<p><i>Entrepreneur v. unidentified Slovak media</i>²⁰</p> <p>Regional Court of Bratislava, 16.01.2013, 4Co/47/2011</p>	<p>Award to plaintiff: €2,500 (requested amount not known as first instance decision is inaccessible, but regional court decision indicates requested amount was much higher than awarded amount)</p>	<p>Plaintiff argued the owner of a daily newspaper over an article portraying the plaintiff as having connections to the mafia.</p>
<p><i>Unidentified minor girl v. News and Media Holding, a.s.</i></p> <p>District Court of Bratislava V, 20. 11. 2015, 49C/120/2013²¹</p>	<p>Award to plaintiff: €2,000 (requested amount: €13,000)</p>	<p>Minor girl represented by her mother sued unidentified Slovak daily for publishing her photo in various articles.</p>
<p><i>Unidentified entrepreneur v. MARKÍZA-SLOVAKIA, spol. s r.o.</i></p> <p>District Court of Trebišov, 11C/210/2008²²</p> <p>Regional Court of Košice, 18.12.2013, 1Co/31/2011²³</p>	<p>Lower court awarded plaintiff €9,958. Regional court sent case back. Lower court then awarded €99,582²⁴ (requested amount: €99,582).</p>	<p>In one of its programmes dedicated to the investigation of cases of public interest, TV Markíza mentioned the plaintiff in connection with a corporate bankruptcy case. According to the journalists, the plaintiff was allegedly part of a group that fraudulently took advantage of the bankruptcy proceedings to enrich themselves.</p>

¹⁹ <https://obcan.justice.sk/content/public/item/eb393d8f-db72-4151-afc1-040604610131>.

²⁰ <https://obcan.justice.sk/content/public/item/2b343cd0-21ae-4153-8772-fcc0ca1ee5d4>.

²¹ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/60c31085-249e-48c5-b497-f9534a97fd1c%3A575f02aa-ede0-483f-a014-700fc15cece6>

²² <https://otvorenesudy.sk/decrees/2305492?l=sk&q=11C+210%2F2008>

²³ <https://obcan.justice.sk/content/public/item/20fdc409-dd30-4062-9e36-c5be8155a5ea>.

²⁴ In the first-instance judgment the district court awarded only €9,958. However after plaintiff and defendant appealed to the regional court, the latter considered this compensation as inappropriate and requested the district court to decide again on the material compensation. In its second judgement the district court decided on that compensation should be €89,624.

3. Analysis of selected judgments²⁵

In case number 24C/270/2014, a public prosecutor sued the company 7 PLUS, plc. over a defamatory article in which the authors described the plaintiff as a person connected to the Slovak mafia. The District Court of Bratislava V, when assessing the amount of compensation for non-pecuniary damage, applied standards drawn from the jurisprudence of the European Court of Human Rights (ECtHR). According to this jurisprudence, the highest levels of financial compensation are reserved for the protection of the right to life. In this sense, the district court recalled that the ECtHR in a case involving excessive use of force during arrest that led to fatal injuries awarded financial compensation for non-pecuniary damage of €20,000 (*Wasilewska and Kulacka v. Poland*). In the case of the murder of four family members during security operations, the ECtHR awarded €120,000 (*Abuyeva and others v. Russia*). The District Court accepted that interference with personality rights in the media had a broad reach, but stated that even when the dignity of a natural person is violated to a considerable degree, that person does not have the right to higher financial compensation than in a case of the violation of the right to life with fatal consequences. Based on these principles, the district court concluded that the compensation claimed by the plaintiff of €150,000 was excessive and exaggerated. The district court assessed that €5,000 was adequate compensation for the violation of the plaintiff's personality rights.

In case number 3Co/565/2014, the Regional Court of Bratislava recalled that the Slovak Civil Code does not establish limits regarding compensation for non-pecuniary damage. However, Section 13, paragraph 3 of the Civil Code does exhaustively lay out two criteria for determining the amount of non-pecuniary damages. The first criterion is that the more severe the infringement of rights in terms of intensity and duration, the higher the financial compensation should be. The second criterion is, broadly understood, related to the circumstances in which the unauthorised interference of the individual's personality rights occurred. The regional court underscored that these circumstances relate not only to the person who committed the violation, but also to the victim. This is meant to permit the judge to exercise discretion in determining the exact amount of financial compensation in accordance with the principle of justice, and to be flexible in reacting to the particularities of individual cases. The regional court also noted that courts must always draw their conclusions on the basis of a most complex picture of the factual situation and justify their decision with concrete aspects subject to review (R 13/2013 - Resolution of the Supreme Court of the Slovak Republic 4 Cdo 81/2011). In this particular case, the regional court did not accept the argument that compensation for defamation cases should be compared to financial compensation for serious crimes on the grounds that this comparison is not stipulated in law.²⁶

In case 4C/203/2011, the District Court of Čadca stated that the more severe the injury to a plaintiff's personality rights is, and the longer its effects are, the higher the financial compensation should be. This case related to an attorney who was portrayed as being connected to a particular political party (SDKÚ) and as a person acting on the edge of the law. The court, noting that the interference in the applicant's personality rights had caused serious adverse, permanent consequences in the applicant's professional, political and private relations, considered that moral satisfaction would be insufficient, i.e., that there was a need for adequate financial compensation. The court determined €16,000 to be an adequate amount and to satisfy a fair balance between reputation and freedom of expression (the plaintiff had requested

²⁵ In Slovakia there is in principle a two-instance court proceeding. First instance takes place on district level and second instance on regional level.

²⁶ <http://merit.slv.cz/KSBA/3Co/565/2014>

€50,000). In determining the amount of financial compensation, the court based its decision on the rules regarding the granting of non-pecuniary damages to victims of crimes. According to these rules, compensation is generally limited to 10 times the minimum wage of €352, i.e., €3,250. In the case of damage of physical harm or psychological trauma, the legal limit is €30,000 (see Act no. 215/2006 Coll. on the compensation of victims of violent crimes, e.g. rape). In this case, the District Court of Čadca, taking into account that the infringement of the plaintiff's rights was serious, long-lasting and of great intensity, awarded non-pecuniary damages in the amount of 4.5 times the general limit of €3,520, i.e., €16,000. The court also took into account that the plaintiff had misused the instrument of apology in manipulating and republishing false information about the plaintiff.²⁷ In this case, the regional court as an appeal court required the district court to justify its decision and base its conclusions related to financial compensation on particular legal provisions.

In case number 8C/78/2011, the principal of a primary school sued the company Petit Press over an article published in daily Korzár stating that the principal's alleged behaviour disturbed her neighbours at night. In deciding on the amount of financial compensation for the violation of personality rights, the District Court of Spišská Nová Ves assessed the extent to which the principal's esteem in the eyes of other citizens had decreased, her family and professional relations had deteriorated and her reputation and dignity had been damaged. Given that the extent of this damage was only partially proven, and that, in the court's view, compensation for the violation of personality rights should not be higher than the amount usually awarded to victims of crime, the district court awarded the plaintiff €2,000.

In case number 10Co/37/2016, a police officer sued MAC TV over defamatory statements in news reports that portrayed the officer as an organiser of a business trafficking in stolen wood. The Regional Court of Žilina confirmed the first-instance judgement. Although the plaintiff had requested €7,000, the regional court explained that €5,000 had been awarded because although the information published was misleading and defamatory, its negative impact on the plaintiff's professional sphere had not been proven. Moreover, the plaintiff had not used the possibility of responding to the defamatory declarations. The regional court followed the district court's reasoning that the level of financial compensation could not be equal to that provided in cases brought by officials against media outlets and particularly television stations with national coverage.

In case no. 4Co/47/2011, the Regional Court of Bratislava considered a case in which an entrepreneur sued a media outlet for portraying him as having employed mafia practices. In this case, the regional court found that the plaintiff had requested excessive financial compensation without proof of corresponding extensive damage. In particular, the court stated that the plaintiff had not proven that his professional life had been adversely affected, as court testimony indicated that his companies were doing well and none of them had ended in bankruptcy. On the basis of this testimony, the court did consider as proven that the article's publication had lessened respect for the plaintiff in the eyes of the broader public and other entrepreneurs. This, in connection with the intensity of the interference, led the court to conclude that financial compensation was needed. Another factor taken into account when determining the amount was that the plaintiff brought the case three years after publication of the article. Moreover, the plaintiff did not attend the first four hearings and thus impeded a timely remediation of the negative impacts of illegal interference with the right to personality in the form of moral

²⁷ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/4dfbfef9-9555-4f4d-bfd3-4f76a7a9146b%3A2ee81901-ef3f-476d-8b1e-915e70751a5f>

compensation. In light of all these considerations, the Court determined €2,500 to be adequate compensation.

In case no. 1Co/31/2011, in which an entrepreneur sued TV Markíza for defamation over claims that he had participated in a bankruptcy fraud, the Regional Court of Košice considered that compensation of €9,958 awarded by the district court was inadequate. In its ruling, the first-instance court stated that the plaintiff was not a publicly known person, i.e., only persons connected to his private or professional life knew him, and as such the broadcasts did not have as great an impact on him as it would have had on politicians or celebrities. Moreover, the first-instance court considered that the consequences of the interference and especially of the health problems were not of such a high intensity to justify higher compensation. It also argued that the plaintiff was young and therefore had a chance to prove with his actions that the claims were untrue. The regional court dismissed these arguments and returned the case to the district court for a new decision on the amount of financial compensation.²⁸ In its new ruling, the district court declared that the plaintiff had become well-known through the whole country in a negative way due to the television broadcast. It noted that the plaintiff was not a publicly active figure but a common citizen. For private persons the limit of acceptable criticism concerning the private sphere is lower in comparison with politicians. It highlighted that politicians are under the control of the citizens who elected them and therefore accept that the media will report on their professional and private lives in a broader way. They must also be conscious that they have to accept a broader extent of criticism. As a private person, however, the plaintiff enjoyed a higher degree of protection regarding his personality rights.²⁹

Case no. 12C/87/2007 concerned a dispute between a judge of the District Court of Michalovce and the weekly magazine Plus 7 dní, which published an article claiming that the judge had enriched himself in a fraudulent affair. Together with the article the magazine published photographs of the judge, his house and his car, pointing out the judge's luxurious life and suggesting this was a consequence of the fraud. The first instance court awarded the plaintiff €20,000. The second instance court confirmed that judgement, noting that the plaintiff's demand of €165,969.59 was exaggerated despite the fact that the fraud claims were not confirmed in criminal proceedings and so were qualified as defamatory. The second instance court recalled Section 13 par. 2 of the Civil Code, which establishes the possibility of financial compensation in cases where moral satisfaction is not sufficient. The court noted that there was a need to distinguish interference with the right to honour, dignity and respect in society from violations of the right to privacy. In the case of privacy violations there is no need to prove that the violation damaged the person's respect or dignity. In the present case, the court found a violation of the right to privacy with a high degree of intensity, given that photos of the plaintiff and his house and car were published without his authorisation. The first-instance court also stated that even if photos illustrating private life of the plaintiff had not been published in the article, the court would have awarded the plaintiff financial compensation on grounds of defamation.

In determining the amount of financial compensation, the court took into account the fact that at the time of the article's publication several other media were reporting about the plaintiff, which decreased the intensity of the interference. That, however, the court said, did not mean that the defendant could continue violating the plaintiff's personality rights.

²⁸ <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/eb705837-5bb4-40ec-9688-cbd1df189d33%3A20fdc409-dd30-4062-9e36-c5be8155a5ea>

²⁹ <https://otvorenesudy.sk/decrees/2305492?!=sk&q=11C+210%2F2008>

4. Concluding remarks

In general, we can conclude that in determining the amount of financial compensation in personality rights cases, Slovak courts have to take into account two criteria stipulated in the Civil Code: the severity of the resulting non-pecuniary damage and the circumstances in which the unauthorised interference with the personality of victim occurred. These circumstances may emerge from both sides, i.e., the person who committed the interference and the person who suffered it. Insufficiency of moral satisfaction and the award of financial compensation is to be assessed with regard to the intensity, duration and extent of adverse consequences on the private, professional and public lives of the person affected.

From selected decisions we can see that Slovak courts nowadays better justify their decisions and more carefully consider the adequacy of financial compensation of defamation cases than in the past, as compared to the time when the last VIA IURIS study was carried out. Courts more frequently refer to the jurisprudence of the ECtHR, which requires stricter assessment of the conflict between freedom of expression and personality rights. Unfortunately, this does not always mean that courts draw from these principles correct conclusions that are constitutionally sustainable. However, more detailed reasoning helps to avoid arbitrary decisions, with the consequence that financial compensation in defamation cases involving the media is not as exaggerated as it used to be. Another positive development is that courts more frequently adhere to the principle that public figures and public officials (politicians, judges, etc.) have to accept a higher level of scrutiny and that even their private activities may be the object of legitimate media interest. Some courts also assess the amount of financial compensation in defamation cases in comparison to the amounts awarded for non-pecuniary damage suffered, for instance, by crime victims. These positive trends have also emerged thanks to the progressive jurisprudence of the Constitutional Court, and to a certain extent of to the Supreme Court, with reference to European standards.

Of course, there may exist exceptions where some particular courts or judges still do not apply principles expressed in the jurisprudence of the ECtHR or the Constitutional Court. We still may find cases where courts award exaggerated amounts of financial compensation to plaintiffs, as, for example, in case 11C/210/2008, where the plaintiff received €99,852. At times, well-established European principles that have been confirmed by the Constitutional Court may be denied and not applied by general courts. One example is the principle of the level of financial compensation in defamation cases in comparison with financial compensation for victims of violent crimes. Although this principle is not stipulated in Slovak legislation, it is legally binding for domestic courts. It emanates from European jurisprudence and has been confirmed by the Slovak Constitutional Court on various occasions.

Notably, the Constitutional Court, in its ruling no. I. ÚS 408/2010, referred to the case law of the ECtHR, according to which compensation for non-pecuniary damage must be reasonably adequate to the damage the reputation of the victim suffered (e.g., *Tolstoy Miloslavsky v. the United Kingdom*), and courts must base the amount of compensation on evidence indicating the intensity of the damage (e.g. *Flux v. Moldova*, *Steel and Morris v. the United Kingdom*). In this decision, the Constitutional Court stated that a Slovak regional court had failed to comply with ECtHR case law when the regional court stated that "[i]t is not ... possible that the court in awarding the amount of the compensation for non-pecuniary damage compares how judges proceeded in awarding of the compensation for non-pecuniary damage in other cases".

In this context, the Constitutional Court pointed out the ECtHR's ruling in *Público - Comunicação Social, S.A. v. Portugal*, according to which the amount of compensation in a particular case must take into account the amount of the compensation granted by the national courts in other cases of damage to good reputation. With respect to determining the amount of compensation for non-pecuniary damage, the Constitutional Court also drew attention to the ECtHR's decision in *Italehti and Karhuvaar v. Finland*. In that case, the ECtHR stated that in determining the amount of compensation for a violation of personality rights, courts should take into account the amount of compensation awarded for physical injuries or for the damage suffered by the victims of violent acts. According to this ruling, compensation for violating personality rights should not, without the existence of serious and sufficient reasons, exceed the maximum amount of compensation awarded for physical injuries or acts of violence. The Constitutional Court underscored these considerations in reference to the aforementioned case. It found that the amount of non-pecuniary damages awarded to the applicant – €25,000 – was disproportionately high and that even without regard to any conclusions on the merits of the case, the Constitutional Court concluded that the regional court had inadmissibly interfered with the applicant's right to freedom of expression and the right to free dissemination of information.

In light of these developments, we can conclude that, for instance, the court in case no. 3Co/565/2014, in not accepting the argument of inadequacy of compensation in comparison with financial compensation for victims of worst crimes, proceeded in violation of the principles stipulated in the jurisprudence of the ECtHR and of the Constitutional Court of the Slovak Republic.

Overall, in spite of the fact that rulings of Slovak courts in defamation cases are still far from exemplary and in some cases fail to apply fundamental standards set in European jurisprudence, we can nevertheless conclude that there has been progress in courts' reasoning. This has led to less exaggerated protection of personality rights and to smaller amounts of financial compensation for damage to reputation and, thereby, to a certain strengthening of the right to freedom of expression.



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