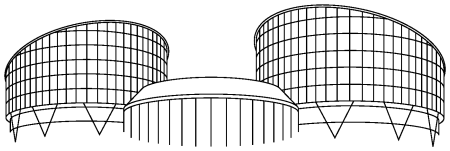

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MLADINA D.D. LJUBLJANA v. SLOVENIA

(Application no. 20981/10)

JUDGMENT

STRASBOURG

17 April 2014

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

In the case of Mladina d.d. Ljubljana v. Slovenia,

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

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 20981/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian company, Mladina d.d. Ljubljana ("the applicant company"), on 8 April 2010.

2. The applicant company was represented by Mrs N. Zidar Klemenčič, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Mrs N. Pintar Gosenca, State Attorney.

3. The applicant company alleged that its right to freedom of expression had been violated through the awarding of damages against it, by the domestic courts, for statements published in the company's magazine.

4. On 10 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, the private company Mladina d.d. Ljubljana, whose registered office is in Ljubljana, is the publisher of the weekly magazine *Mladina*.

6. On 16 and 22 June 2005 the National Assembly (hereinafter – "Parliament") examined a draft law on same-sex civil partnerships. At a later date it adopted the Registration of Same-Sex Civil Partnerships Act (hereinafter – "the Act"). During the parliamentary debate on the issue, certain deputies of the Slovenian National Party (hereinafter – "the SNP"), which opposed legal recognition of same-sex partnerships, took the floor in order to express their disagreement with the proposed draft.

7. On 27 June 2005 the *Mladina* magazine published a one-page article entitled "Registration of Same-Sex Civil Partnerships Act adopted", with the standfirst: "Right-wingers full of pride, but according to non-governmental organisations the Act is not consistent with the Constitution", summarising the parliamentary debate preceding the adoption of the Act. The first three paragraphs of the article read as follows:

> "Last week, the second reading of the proposed Act on the registration of same-sex civil partnerships ended up as a crash course in narrow-mindedness, pervaded by a Stone Age mentality. Our elected representatives were so keen to reject amendments to the draft [and the] actual rights of same-sex oriented citizens that they decided to pass the Act at the third attempt within one single parliamentary session. On Wednesday, the Act came to fruition, the outcome being 44 votes to 3 ...
>
> The SNP's gunslingers ... shone brilliantly during the explanation of their votes. [B.Z.] spouted forth all the same stupidities as at the previous reading (such as that the Act was completely unnecessary, that the Act had been extorted by marginal groups, that there were other groups which merited the legislature's priority), and touched on the objections against his use of words such as 'faggots' and 'lesbians' a week ago. He stated: '*Where I come from, we call them "faggots" and "lesbians"; in Primorska* [a region in Slovenia], *they are called "kulotini" and in Ljubljana they are "gays". I am not someone who would change his way of speaking just because he has come to Ljubljana. In Štajerska* [another region in Slovenia], *we simply have faggots and lesbians.*'
>
> [S.P.], also from the SNP, assured with a playful smile that there was probably not a single person in the assembly hall who wished for the '*fruit of their loins to declare themselves to be what we are voting on today, with our rights ... in other words, none of us would want to have a son or a daughter who would opt for this kind of marriage*'. If our homeless people could follow the breadcrumb trail to Finland or even further, let these ladies and gentlemen also go there to marry. But the biggest victims of this law would be the children of such a marriage: '*Just imagine a child whose father comes to pick him up from school and greets him with "Heeeeey, I've come to take you hoooooome! Have you got your coat on yet*?' He accompanied this brilliant remark with a coffeehouse imitation which was probably supposed to clearly illustrate some orthodox understanding of a stereotypically effeminate and mannered faggot, whereas in reality [what it illustrated was] just the typical attitude of a cerebral bankrupt who is lucky to be living in a country with such a limited pool of human resources that a person of his characteristics can even end up in Parliament, when in a normal country worthy of any respect he could not even be a janitor in the average urban primary school."

8. In the second half of the article, the author first described the responses of other parliamentarians to the SNP members' speeches, and in the last two paragraphs concluded with the views on the newly adopted Act

expressed by the non-governmental organisations advocating for the rights of same-sex couples, which mainly deplored the fact that the Act accorded a very limited set of rights to these couples. It ended by reporting the announcement by the representatives of these organisations that they would be challenging the newly adopted Act before the Constitutional Court.

9. On 26 August 2005 the SNP member S.P. brought an action before the Ljubljana District Court for defamation of his honour and reputation against the applicant company, claiming that he had suffered severe mental distress due to the offensiveness of the article. He claimed that the depiction of him as "cerebral bankrupt" was objectively and subjectively offensive, its sole intent being to belittle him.

10. On 20 September 2005 the applicant company replied that it considered its actions to have been lawful, as a balance had to be struck between S.P.'s right to honour and reputation and its own right to the freedom of expression. It invoked the standards and case-law of the European Court of Human Rights regarding the freedom of the press to impart information on matters of public interest. The applicant company considered that S.P.'s statements in the parliamentary debate had amounted to an insulting attack which degraded homosexuals, and hence the criticism published in *Mladina*. Nevertheless, the critical article had not been aimed at belittling S.P. as a person, but constituted a reaction to his own extreme statements in similar terms.

11. On 28 February 2006 the Ljubljana District Court held an unsuccessful settlement hearing.

12. On 16 May 2006 another hearing was held at which the court heard S.P., who stated that he had not offended anyone with his remarks, nor had he wished to do so. He had taken the offensive remarks in *Mladina* as an attack on his character and had been very hurt by them, especially as he had become the subject of ridicule in his local community.

13. On the same date, the Ljubljana District Court handed down its judgment, in which it partially upheld S.P.'s claim and ordered the applicant company to pay him damages in the amount of 700,000 Slovenian Tolars (2,921.05 euros (EUR)). The applicant company was also ordered to publish the introductory and operative part of the judgment in *Mladina*. The remainder of S.P.'s claim was dismissed. The court acknowledged that the applicant company had had the right to publish critical comments on S.P.'s conduct in the parliamentary debate; however, the term "cerebral bankrupt" had referred to his personal characteristics and was therefore objectively offensive. In the court's opinion, the use of such offensive language did not simply serve the purpose of imparting information to the public. Moreover, the description in the article did not constitute a serious criticism of S.P.'s work.

14. As to S.P.'s conduct, the court held that the gestures he had used to mimic the behaviour of a homosexual man were simply reminiscent of

gestures made by actors to convey the idea of homosexuality. The court neither found S.P.'s speech and conduct to be offensive to homosexuals, nor considered it to have been aimed at promoting prejudice and intolerance against them. It held that S.P. had merely expressed his opinion, which, wrong as it might have been, was not to be regarded as extreme and thus justifying the treatment in the impugned article.

15. Both parties appealed against the judgment before the Ljubljana Higher Court.

16. On 24 January 2007 the Ljubljana Higher Court dismissed the applicant company's appeal. It upheld S.P.'s appeal in respect of the text to be published in *Mladina* informing the public of the judgment, but dismissed his claim for greater damages. The Higher Court upheld the District Court's finding that the statements in the impugned article constituted an offensive judgment of S.P.'s personality which he was not required to endure. The court further held that, even assuming that S.P.'s speech had been offensive to homosexuals, that did not justify the applicant company's crude response aimed at him personally.

17. On 10 November 2007 the applicant company lodged a constitutional complaint with the Constitutional Court. It claimed, *inter alia*, that the impugned article was to be considered a political satire in which the author had merely expressed his opinion on S.P.'s conduct in a public parliamentary debate. It further maintained that the words "typical attitude of a cerebral bankrupt" had not been aimed at S.P. as a person but at his mimicking of the gestures allegedly typical of homosexual men.

18. On 10 September 2009 the Constitutional Court, by a majority of six votes to three, dismissed the applicant company's complaint, holding that the lower courts had struck a fair balance between its freedom of expression and S.P.'s personal dignity. The court acknowledged the broad boundaries associated with the freedom of the press, especially when reporting on matters of great public interest, but found on the facts of the case in issue that the lower courts had appropriately applied the criteria resulting from their own case-law and the case-law of the European Court of Human Rights. The court dismissed the applicant company's assertion that the criticism in question had not been aimed at S.P. as a person but at his mimicking of homosexuals, concluding that the average reader would understand the remark as an assessment of S.P.'s intelligence and personal characteristics.

19. It also dismissed the applicant company's argument that the article was to be regarded as a satire, as it was evident from the text that it was intended to inform the public about the content of the parliamentary debate and to express a critical opinion of the speeches of the individual deputies. As regards the applicant company's argument that the offensive statement had been a response to S.P.'s own offensive remarks, the Constitutional Court acknowledged that in such cases sharper criticism might be

permissible, but only if there was a sufficient factual basis for it. As the court found no substantive connection between S.P.'s speech and the assessment of his intellectual abilities, it concluded that the criticism was not justified. In the Constitutional Court's view, the impugned article and its author's offensive characterisation of S.P. had not contributed either to people being informed or to a socially responsible public discussion on the position of homosexuals.

20. Constitutional judge C.R. submitted a dissenting opinion in which he referred to a climate of general tolerance towards intolerant and offensive statements against homosexuals. He further expressed the view that the lower courts had been biased and also that the Constitutional Court had failed to appropriately apply the standards of freedom of the press developed in the case-law of the European Court of Human Rights.

II. RELEVANT DOMESTIC LAW

A. The Constitution

21. The relevant constitutional provisions read as follows:

Article 15

(Exercise and Limitation of Rights)

"...

Human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by this Constitution.

..."

Article 34

(Right to Personal Dignity and Security)

"Everyone has the right to personal dignity and security."

Article 35

(Protection of the Right to Privacy and Personality Rights)

"The inviolability of the physical and mental integrity of every individual, his privacy and his personality rights shall be guaranteed."

Article 39

(Freedom of Expression)

"Freedom of expression of thought, freedom of speech and public appearance, freedom of the press and other forms of public communication and expression shall be

guaranteed. Everyone may freely collect, receive, and disseminate information and opinions.

..."

B. Applicable civil law

22. Article 179 of the Code of Obligations, which constitutes the statutory basis for awarding compensation for non-pecuniary damage, provides that such compensation may be awarded in the event of the infringement of a person's personality rights, provided that the circumstances of the case, and in particular the level and duration of the distress and fear caused thereby, justify an award. Moreover, where a personality right such as reputation is infringed, by virtue of Article 178 of the Code a court may order that the judgment be published at the respondent's expense, or that the impugned statement be corrected or retracted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant company complained that the decisions of the domestic courts had violated its right to the freedom of expression as provided in Article 10 of the Convention, which reads 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...

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 ... for the protection of the reputation or rights of others ..."

A. Admissibility

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

25. The applicant company pointed out that the Court had already found generally offensive expressions such as "idiot" or "fascist" to be acceptable criticism in certain circumstances. It emphasised in this regard that S.P., a parliamentarian at the time, was a public figure and that the article in issue, which concerned the legal regulation of same-sex relationships, had without a doubt contributed to a debate on an important matter of public concern.

26. With regard to the context of the controversial statement in issue, the applicant company argued, first of all, that the public debate on the legal acknowledgment of same-sex relationships was subject to constant unfavourable and often discriminatory remarks by right-wing parties, among them the SNP. In the applicant company's view, the impugned statement was a reaction to S.P.'s – and his colleagues' – discriminatory language and use of homophobic stereotypes. The applicant company considered it unacceptable that the domestic courts had been unwilling to expose the harmful stereotypes for what they were, and had instead used them to justify an interference with its right to freedom of expression. In its view, S.P. must have been aware that his conduct might expose him to harsh criticism by a large sector of the public. Moreover, having regard to the context of the article as a whole, it was of the opinion that the controversial value judgment nevertheless had a sufficient factual basis.

27. Further, even if the statement in issue could be regarded as objectively defamatory, it was an expression of the author's satirical style, as also acknowledged by the Government. Satirical illustrations of events, people and their statements had been used in many parts of the article, and not only in the paragraph concerning S.P. According to the applicant company, any reader would therefore have been aware that the author's comments contained a degree of exaggeration. In conclusion, the applicant company claimed that the domestic courts had failed to make a proper assessment of the context in which the statement in issue had been written and had disregarded S.P.'s own controversial behaviour. In the applicant company's opinion, they had therefore failed to strike a fair balance between its right to freedom of expression and S.P.'s right to reputation.

(b) The Government

28. The Government acknowledged that the award of damages against the applicant company constituted an interference with its right to freedom of expression, pointing out that the interference had a basis in law – Articles 178 and 179 of the Code of Obligations – and had pursued one of the legitimate aims referred to in Article 10 § 2 of the Convention, namely the

protection of the reputation or rights of others. As to the necessity of the interference, the Government argued that the domestic courts had carefully weighed the two conflicting rights, namely the applicant company's right to freedom of expression and S.P.'s right to reputation, with due regard to the fact that they could both only be exercised to a limited extent.

29. As regards the factors considered by the domestic courts in carrying out their balancing exercise, the Government stated, firstly, that the article in issue contained some inaccurate and misleading information. Among other things, the journalist had omitted to mention that S.P.'s imitation of a homosexual man picking up a child from school had been accompanied by an explanation to the effect that that child would be made to feel mocked and humiliated. In the Government's view, this last part of S.P.'s statement would have contributed to balancing the introductory part and shed a different light on it.

30. The Government emphasised that the incomplete representation of S.P.'s parliamentary speech had gone even further, as the article had contained rude and objectively defamatory remarks about S.P.'s character and his personal and intellectual characteristics. They maintained in this connection that even value judgments were required to have a sufficient factual basis. In the present case, such a basis was lacking. Thus, the mere fact that S.P. had opposed the proposed Act, albeit in a possibly unacceptable manner, did not allow any particular conclusion to be drawn about his personal or intellectual characteristics, even though he was a politician and a public figure and as such had to expect to be exposed to more criticism of his work than a private individual.

31. As regards the applicant company's argument that the critical article had been a reaction to S.P.'s inappropriate conduct, which had been ignored by the domestic courts, the Government pointed out that S.P.'s speech had in fact been subject to an assessment by the courts. The first-instance court had examined the video footage of S.P.'s parliamentary speech and had qualified it as an imitation of the gestures and speech of a same-sex-oriented male. According to that court, his words were not to be understood as promoting prejudice and inciting people against same-sex-oriented individuals, but rather as simply expressing his own, albeit negative, views on those individuals. Moreover, the article had been published five days after the parliamentary debate, so its author had had sufficient time to distance himself from the event and report on the debate in the manner duly expected of him.

32. Further, as to the applicant company's assertion that its article was satirical in style, the Government referred to the decision of the Constitutional Court, according to which, while certain parts of the article had been written in such a style, as a whole the aim of the article had been to inform the public about the parliamentary debate on the proposed Act, the participants in the debate, the voting, and so on.

33. In conclusion, the Government pointed out that the case involved no criminal prosecution, but only a civil claim for damages. S.P. had been awarded EUR 2,921.05 and the applicant company had been ordered to publish the introductory and operative part of the judgment in its magazine. In the Government's opinion, payment of damages and publication of the judgment could not be considered to be an excessive burden on the applicant company.

2. The Court's assessment

34. The Court considers, and this is not disputed between the parties, that the domestic courts' decisions complained of by the applicant company amounted to an "interference" with the exercise of its right to freedom of expression.

35. Such an interference will infringe the Convention if it does not meet the requirements of Article 10 § 2. It must therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in Article 10 § 2, and whether it was "necessary in a democratic society" in order to achieve those aims.

(a) Lawfulness and legitimate aim

36. The Court finds that the interference complained of was prescribed by law, namely Articles 178 and 179 of the Code of Obligations, and was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely, to protect "the reputation or rights of others".

(b) Necessity of the interference

37. It remains for the Court to consider whether the interference was "necessary in a democratic society".

38. 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 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). The Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). 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, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII).

39. In the present case, the applicant company published in its magazine an article harshly criticising S.P., who was at the time a parliamentary deputy, for his remarks and, in particular, conduct during a parliamentary debate on the legal regulation of same-sex relationships. The statement in issue was thus made in the press, which has been held by the Court to play an essential role in a democratic society. Although journalists are required to respect certain boundaries, in particular with regard to the reputation and rights of others, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI).

40. Moreover, the impugned statement was made in the context of a political debate on a question of public interest, where few restrictions are acceptable under Article 10 § 2 of the Convention (see, among many other authorities, *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV), and was directed against a politician. The Court has emphasised on many occasions that a politician must in this regard display a greater degree of tolerance than a private individual, especially when he himself makes public statements that are susceptible of criticism (see, among many other authorities, *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103; *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports* 1997-IV; and *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 30, ECHR 2000-X). In this connection, the Court reiterates that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, or in other words, somewhat immoderate statements (see *Lopes Gomes da Silva*, cited above, § 34, and *Mamère v. France*, no. 12697/02, § 25, ECHR 2006-XIII).

41. The Court notes that the domestic courts acknowledged the importance of the applicant company's freedom of expression and its right to publish critical comments about S.P. (see paragraphs 12 and 17 above). However, they were of the view that the characterisation of S.P.'s parliamentary contribution as "typical attitude of a cerebral bankrupt" constituted an offensive judgment of his personality and thus exceeded the boundaries of permissible criticism.

42. In the Court's view the reasons adduced by the domestic courts were relevant for the purposes of the necessity test to be applied under Article 10 § 2. It will next examine whether they were also sufficient.

43. In this regard, the Court reiterates that the domestic decisions must be reviewed in the light of the case as a whole, including the content of the comments held against the applicant company and the context in which it made them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). The Court agrees that describing S.P.'s conduct as that of a "cerebral bankrupt" who, in a country with less limited human

resources, would not even be able to find work as a primary school janitor, was indeed extreme and could legitimately be considered offensive. However, it is noted that the impugned remark was a value judgment, as acknowledged by the Government. It is true that in the absence of any factual basis even value judgments can be considered excessive. Nevertheless, in the present case the facts on which the impugned statement was based were outlined in considerable detail; with the exception of his concluding remark, S.P.'s parliamentary speech was quoted almost in its entirety, along with a mention of his accompanying imitation of a homosexual man. This description was followed by the author's commentary which, in the Court's opinion, was not only a value judgment, but also had the character of a metaphor. In the context of what appears to be an intense debate in which opinions were expressed with little restraint (see paragraphs 7 and 8 above), the Court would interpret the impugned statement as an expression of strong disagreement, even contempt for S.P.'s position, rather than a factual assessment of his intellectual abilities. Viewed in this light, the description of the parliamentarian's speech and conduct can be regarded as a sufficient foundation for the author's statement.

44. Moreover, the controversial statement was construed as a counterpoint to S.P.'s own remarks. In his speech, S.P. followed the line of other members of his party and portrayed homosexuals as a generally undesirable sector of the population, whether as children, same-sex couples or parents. In order to reinforce his point, he imitated a homosexual man through the use of specific gestures which, according to the domestic courts, were reminiscent of gestures used by actors to portray homosexuals. The Court, however, considers that S.P.'s imitation may be regarded as ridicule promoting negative stereotypes.

45. Lastly, the Court observes that, at least in the part which included the statement in issue aimed at S.P., the article matched not only the latter's provocative comments, but also the style in which he had expressed them. The author's critical opinions were coloured by a number of evocative, exaggerated expressions. Having already held that Article 10 protects both the content and the form of expression (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204), the Court considers that even offensive language, which may fall outside the protection of freedom of expression if its sole intent is to insult, may be protected by Article 10 when serving merely stylistic purposes (see *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 48, 21 February 2012).

46. In the Court's opinion the context in which the impugned statement was made, and the style used in the article were not given sufficient consideration by the domestic courts. Viewed in the light of these two factors, the Court considers that the statement did not amount to a gratuitous personal attack on S.P. Moreover, in this regard the Court also points out that political invective often spills over into the personal sphere; such are

the hazards of politics and the free debate of ideas, which are the guarantees of a democratic society (see *Lopes Gomes da Silva*, cited above, § 34).

47. In the light of the above, the Court considers that the domestic courts did not convincingly establish any pressing social need for placing the protection of S.P.'s reputation above the applicant company's right to freedom of expression and the general interest in promoting freedom of expression where issues of public interest are concerned. The Court thus concludes that the reasons given by the domestic courts cannot be regarded as a sufficient justification for the interference with the applicant company's right to freedom of expression. The domestic courts therefore failed to strike a fair balance between the competing interests. Moreover, this conclusion cannot be affected by the fact that the proceedings complained of were civil rather than criminal in nature.

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant company claimed 2,921.05 euros (EUR) in respect of pecuniary damage, the amount of the sum it had been ordered to pay to S.P. in the domestic proceedings. Moreover, it claimed EUR 10,000 in respect of non-pecuniary damage on account of damage to its reputation incurred as a result of the outcome of the domestic proceedings.

52. The Government did not raise any objection to the payment of the sum claimed with regard to pecuniary damage in the event that a violation of the Convention was found. However, they objected to the sum claimed with regard to non-pecuniary damage, arguing that it was excessive in view of the Court's case-law in similar cases.

53. The Court is satisfied that there is a causal link between the applicant company's claim in respect of pecuniary damage and the violation found. Hence, it considers it appropriate to award the applicant company the entire sum claimed with regard to pecuniary damage, plus the statutory interest applicable under domestic law, running from the date when the applicant company paid it (see *Tuşalp v. Turkey*, cited above, § 57). However, the Court considers that in the circumstances of the present case, the finding of

a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage.

B. Costs and expenses

54. The applicant company also claimed EUR 4,026.29 for the costs and expenses incurred before the domestic courts, and EUR 1,824 for those incurred before the Court.

55. The Government disputed the amount of costs and expenses actually incurred in the domestic proceedings. Moreover, they considered that the costs for legal representation were not supported by sufficient documents.

56. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the entire amount claimed by the applicant company in respect of the domestic proceedings and the proceedings before the Court.

C. Default interest

57. 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 10 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant company;

4. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,921.05 (two thousand nine hundred and twenty one euros and five cents), plus the statutory interest applicable under

domestic law, running from the date of that payment, and any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,850.29 (five thousand eight hundred and fifty euros and twenty-nine cents), plus any tax that may be chargeable to the applicant company, 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;

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

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President