DERECHO A LA LIBERTAD DE EXPRESIÓN

Caso Klein contra Eslovaquia. Sentencia de 31 octubre 2006 (JUR 2007\257855)

PROCEDURE

1. The case originated in an application (no. 72208/01) 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 Slovakian national, Mr Martin Klein ("the applicant"), on 28 June 2001.

2. The applicant was originally represented by Mr J. Hrubala, a lawyer practising in Banská Bystrica and Bratislava. On 8 May 2003 he appointed Ms Z. Dlugošová, a lawyer practising in Bratislava, to represent him in the proceedings. Prior to that date Ms Dlugošová had been charged with the preparation and filing of the application on behalf of Mr Hrubala.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. The applicant alleged that his right to freedom of expression had been violated as a result of his conviction for the publication of an article.

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

5. By a decision of 8 November 2005 the Court declared the application admissible.

6. The Government, but not the applicant, filed further written observations on the merits of the case (Rule 59 § 1).

(…)

B. The Court's assessment

45. The applicant's conviction for publication of the above article amounted to an interference with his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. It had a legal basis, namely Article 198 of the Criminal Code, and it pursued the legitimate aim of protection of the rights of other persons whose religious feelings, as the Slovak authorities concluded, had been offended by the applicant's article.

46. It is not for the Court to assess whether the criminal courts correctly applied the relevant law. Its task in the context of the present application is to determine whether the interference in issue was justified in the particular circumstances of the case, that is whether it was "necessary in a democratic society" within the meaning of the second paragraph of Article 10.

47. The Court has underlined the importance in a democratic society of the freedom of expression on many occasions. While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane.

The test of whether the interference complained of was "necessary in a democratic society" requires the Court to determine whether it corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued (the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference), and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10.

48. The Court notes the applicant's argument that his article had been a reaction to the Archbishop's statement, broadcast in the main evening news bulletin of a public TV station, and which he had considered to be contrary to the principles of a democratic society and, in particular, freedom of expression. The fact that it was published in a weekly journal aimed at intellectually-oriented readers is in line with the applicant's explanation that he had meant the article to be a literary joke with ideas and associations to the film "The People vs. Larry Flynt" which he had not expected to be understood and appreciated by everyone. The journal was then published with a circulation of approximately 8,000 copies.

49. The Court is not required to assess the journalistic quality of the article although it notes that it contained slang terms and innuendoes with oblique vulgar and sexual connotations. Similarly, the determination of the point at issue does not require the examination of whether a sufficient factual basis existed for the impugned statements directed at the person of the Archbishop.

50. The applicant was convicted of the offence of "Defamation of nation, race and belief". The first-instance court concluded, inter alia, that he had defamed the highest representative of the Roman Catholic Church in Slovakia and had thereby offended the members of that church. The applicant's statement that he wondered why decent members of the church did not leave it had blatantly discredited and disparaged a group of citizens for their Catholic faith. That view was

upheld by the court of appeal which found that, by the contents of the published article, the applicant had violated the rights, guaranteed by the Constitution, of a group of inhabitants of the Christian faith.

51. The Court does not accept this conclusion. In particular, in his article the applicant sharply criticised the person of Archbishop J. Sokol following the latter's call, in a TV broadcast, for the withdrawal of both the film "The People vs. Larry Flynt" and the poster accompanying that film, and for action to be taken against the persons who had acted contrary to the law in that context. The applicant's strongly worded pejorative opinion related exclusively to the person of a high representative of the Catholic Church in Slovakia. Contrary to the domestic courts' findings, the Court is not persuaded that by his statements the applicant discredited and disparaged a sector of the population on account of their Catholic faith.

52. The fact that some members of the Catholic Church could have been offended by the applicant's criticism of the Archbishop and by his statement that he did not understand why decent Catholics did not leave that Church since it was headed by Archbishop J. Sokol cannot affect the position. The Court accepts the applicant's argument that the article neither unduly interfered with the right of believers to express and exercise their religion, nor did it denigrate the content of their religious faith (see also, mutatis mutandis, Giniewski v. France referred to above, § 51).

The reasons invoked for the interference in issue are therefore too narrow and are insufficient.

53. The applicant was convicted on the basis of complaints filed by two associations, and the Archbishop as an injured party against whom the article was directed withdrew from the criminal proceedings and publicly pardoned the applicant. Given that the applicant in his article criticized exclusively the person of the Archbishop, and irrespective of the nature of the penalty imposed, his conviction of the criminal offence of defamation of other persons' belief was in itself inappropriate in the particular circumstances of the case.

54. For the above reasons, and despite the tone of the article referred to in paragraph 49 above, it cannot be concluded that by its publication the applicant interfered with other persons' right to freedom of religion in a manner justifying the sanction imposed on him. The interference with his right to freedom of expression therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. It thus was not "necessary in a democratic society".

55. It follows that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 28,084 Slovakian korunas8 (SKK) in compensation for pecuniary damage. That sum comprised SKK 10,000 for his legal representation in the criminal proceedings in issue, SKK 2,284 for the applicant's travel expenses related to his participation at court hearings in Košice, SKK 800 corresponding to the costs of the criminal proceedings which the applicant had been obliged to reimburse and SKK 15,000 corresponding to the pecuniary penalty imposed. As regards the last-mentioned sum, the applicant claimed it so that he could reimburse the company which had paid it on his behalf.

The applicant further claimed EUR 90,000 in compensation for damage of a non-pecuniary nature. He submitted that he had suffered stress as a result of his prosecution, that he had experienced difficulties in finding suitable employment following his conviction and that his social status had been harmed. As a result, he suffered from bouts of depression, insomnia, hypoactivity and anxiety and he had to consult a professional psychiatrist.

58. The Government argued that (i) the pecuniary penalty imposed had been paid by a private company and not by the applicant himself, (ii) the applicant had not shown that he had incurred the sum related to his travel expenses and (iii) the claim related to legal representation in the domestic proceedings and their cost fell to be examined under a separate head together with other costs and expenses incurred by the applicant.

As regards the alleged non-pecuniary damage, the Government contended that it was exaggerated.

59. The Court notes that the sum corresponding to the pecuniary penalty imposed on the applicant had been paid on his behalf by a private company on 10 December 2002, and that that company has been in liquidation since 15 January 2005. The applicant has not explained under which circumstances the payment was made and he does not allege that he is under any legal obligation to return that sum to the company. In these circumstances, the Court dismisses this part of the claim for pecuniary damage. As regards the claims related to legal representation in the domestic proceedings and their cost as well as the claim concerning travelling expenses, they fall to be addressed under the head of "Costs and expenses" below.

The Court further finds that, as result of his prosecution and conviction, the applicant suffered damage of a non-pecuniary nature which is not sufficiently compensated by the above finding of a violation of Article 10 of the Convention. Making its assessment on an equitable basis, it awards him EUR 6,000 in this respect.

B. Costs and expenses

60. The applicant claimed EUR 4,860 in respect of his legal representation before the Court. In accordance with the contract which he had concluded with Ms Dlugošová, that sum covered also the period during which the applicant had been formally represented by Mr Hrubala.

61. The Government argued that Ms Dlugošová represented the applicant from 8 May 2003. Any award should therefore relate only to the period subsequent to that date. They further stated that compensation should be granted only for the costs which can be said to be reasonable as to the quantum.

62. Having regard to the documents before it, the Court grants the applicant EUR 350 in respect of his costs and expenses related to the domestic proceedings. That sum corresponds approximately to the claims which the Court decided to examine under this head (see paragraph 59 above).

As regards the claim related to the costs of the proceedings under the Convention, the Court, on the basis of the documents before it, awards the applicant the sum claimed, namely EUR 4,860.

C. Default interest

63. The Court considers it appropriate that the default interest 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. Holds that there has been a violation of Article 10 of the Convention;

2. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 5,210 (five thousand two hundred and ten euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY Nicolas BRATZA

Registrar President