European Court of Human Rights: MAC TV s.r.o. v. Slovakia

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Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 28 November 2017, the European Court of Human Rights (ECtHR) delivered its judgment in MAC TV s.r.o. v. Slovakia, which concerned the fining of a broadcaster over a television programme's commentary on the death of the late President of Poland. The case involved MAC TV, which operates two private television channels, and broadcasts the television programme "JOJ PLUS". During an episode of the programme broadcast in April 2010, following the fatal plane crash in which the President of Poland, Lech Kaczynski, had been travelling, a commentary was delivered entitled "Compassion in Accordance with Protocol". The commentary included the statement that "Jews, homosexuals, liberals, feminists and left-oriented intellectuals are bitterly sorry for the death of a man who represented an extreme Polish conservativism, and who was a symbol of a country where people who are not white heterosexual Catholic Poles were born as a punishment. I am sorry, but I do not pity Poles. I envy them."

Following the broadcast, the Broadcasting Council initiated administrative proceedings against MAC TV under section 19(1)(a) of the Broadcasting and Retransmission Act, which stipulates the protection of human dignity. The Broadcast Council found that the broadcaster had breached its obligations under the Broadcasting Act, in that the manner of processing and presenting the content of the commentary had interfered with the dignity of the late Polish President, and imposed a fine of EUR 5,000. In particular, the Broadcasting Council concluded that the manner in which the commentator had presented his opinion - that is to say his lack of regret for the Polish President's death - had contravened the duty to respect his human dignity. Moreover, the degree of sarcasm and irony in the broadcast commentary had been so high that its content and the manner in which the author's opinion had been presented had dishonoured the late President. The Broadcasting Council's decision was ultimately upheld by the Supreme Court. MAC TV then lodged an application with the ECtHR, claiming a violation of its right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) The ECtHR first noted that the Broadcasting Council's decision had constituted an interference with the applicant company's right to freedom of expression, had been prescribed by law under the Broadcasting Act, and pursued the legitimate aim of the protection of the reputation or rights of others (the Court held that it was not required to reach a general conclusion on whether or not the interference created by a measure

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concerning a deceased person's reputation pursued a legitimate aim). Thus, the main question was whether the interference was "necessary in a democratic society".

Firstly, the ECtHR emphasised that under Article 10 ECHR, very strong reasons were required to justify restrictions on political speech. Secondly, the ECtHR noted that the applicant's reaction to the political governance of the late President and his political conservatism gave rise to a matter of public interest, and the late President, as a public figure, was subject to wider limits of acceptable criticism. Thirdly, the ECtHR noted that the domestic authorities had essentially based their conclusions predominantly on the closing remarks in the commentary ("I am sorry, but I do not pity the Poles. I envy them"). However, in this regard, the ECtHR reiterated that one criterion of responsible journalism is that it should recognise the fact that it is the commentary (or article) as a whole that the reporter presents to the public. The ECtHR held that the domestic authorities' assessment was narrow in scope, and had not been conducted within the wider context of the commentary. The Court considered that the impugned commentary, seen within its context, could not be understood to have constituted a gratuitous personal attack on, or insult to Lech Kaczynski. While it had contained a sarcastic tone that had been unsympathetic to the political ideology of the late President, it had remained within the acceptable degree of stylistic exaggeration used to express the journalist's opinion concerning the political views that the late President had represented. The Court reiterated that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. Thus, the Court considered that nothing in that commentary suggested that the applicant company had overstepped the limits of freedom of expression tolerated under Article 10 ECHR by using a sarcastic tone and ironic language. The Court concluded that the domestic authorities had failed to demonstrate that the interference with the applicant company's Article 10 rights had been necessary, and that there had accordingly been a violation of Article 10. In addition, the ECtHR awarded the applicant company EUR 5,000 in respect of pecuniary damage, EUR 5,850 in respect of non-pecuniary damage, and EUR 6,900 in costs.

Judgment by the European Court of Human Rights, Third Section, case of MAC TV s.r.o. v. Slovakia, Application no. 13466/12 of 28 November 2017

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