

The London School of Economics and Political Science

Defamation, Privacy and Freedom of Expression.

A Socio-Legal Study of the Interplay between the Slovak
Personality/Goodwill Protection Regime and Journalism, 1996-
2016

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Abstract

The maintenance of reputation and privacy and the protection of freedom of expression are vitally important both for individuals and for society in any democracy. The purpose of defamation and privacy regimes is to find an appropriate triangulation of the rights and interests of plaintiffs, defendants and the general public. This is pursued through a system of legal rules, remedies, defences and procedural requirements. Despite the enormous value of reputation, privacy and expression, it is surprising how little is understood regarding whether and the extent to which the law – as understood by the principal protagonists and applied by courts – shapes the motivations of plaintiffs and defendants in order to achieve an appropriate accommodation between the competing interests. This is particularly true in respect of the new Central and Eastern European democracies.

This thesis seeks to address these limitations in our knowledge. Taking the example of Slovakia between 1996 and 2016, it provides a systematic, holistic, fine-grained, empirical analysis of the interplay between the laws of defamation and privacy and freedom of expression in the context of journalistic speech. The thesis investigates from the viewpoint of the principal protagonists whether, to what extent and how the defamation and privacy regime triangulated the individual and social interests in reputation, privacy and expression. It employs a socio-legal approach and draws on an analysis of statutes, case-law, media reports and fifty-three semi-structured interviews with media managers, professionals, plaintiffs, lawyers and experts. The study examines the extent to which and how the regime provided plaintiffs with instruments to defend their reputation and privacy against unwarranted attacks and remedy the suffered harm; prevented unwarranted harm and protected the public interest in the availability of truthful information by creating a *benign* ‘chilling effect’ on irresponsible journalism; and prevented powerful individuals and/or entities from abusing the law and producing an *invidious* chilling effect on important, warranted reporting concerning their activities.

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Section 1: Introduction

Chapter 1: Triangulation of Reputation, Privacy and Freedom of Expression

1.1 Introduction: The “Vicious Spiral” of the Slovak Defamation and Privacy Regime’s Interplay with Journalism

My research interest into the effects of defamation and privacy laws in the context of journalistic speech in Slovakia was sparked in 2010-2011. I investigated the impact on editorial freedom of the 2008 Press Act (Act No. 167/2008 Coll.), the adoption of which prompted widespread protests from the press as well as domestic and international human rights organisations (Belakova 2011, 2013a). The critics of the Act had rejected the government’s argument that the newly-stipulated correction and reply provisions sought to strike a fair balance between freedom of expression and personality/goodwill rights.¹ They feared that the vague and broad provisions might constrain editorial freedom by “flooding” the pages of the press with replies and/or corrections, particularly from politicians seeking free publicity. The Act’s critics also forewarned of a potentially detrimental effect on public debate as journalists might hesitate to publish contentious information for fear of monetary sanctions imposed for non-publication of corrections and/or replies (Belakova 2013a). Despite the apparent intentions of politicians to obtain free publicity or even muzzle the press, the research found that the provisions did not constrain editorial autonomy unduly or deter media professionals from publishing contentious information. As one senior editor put it, ‘the law has brought some fear’, but since the press were able to reject an overwhelming majority of requests ‘a normal, creative working atmosphere’ was preserved in the newsrooms (cited in Ibid., 209).

The interviewees among editors, publishers and experts argued that since the mid-2000s there was a growing trend for high-profile politicians and senior members of the judiciary to bring civil defamation actions for substantial damages against the media

¹ The Slovak legal system recognises the concept of general personality rights that belong to every natural person and include his/her physical integrity, personal freedom, honour, dignity, reputation and privacy. Reputation of legal entities is protected under the goodwill provisions (see Chapter 5).

which affected journalistic speech much more significantly than the provisions of the Press Act. Media professionals believed that the ordinary courts' bias towards personality protection for influential plaintiffs, and/or lack of independence were permitting such litigants to abuse the law, muzzling critical reporting of their conduct whilst enriching themselves (Belakova 2013a). According to the then Chair of the Slovak Association of Press Publishers, personality protection lawsuits 'became the outright most serious threat for us' due to the 'sometimes crazy' non-pecuniary damages awards in tens-of-thousands of euro. He believed that as publishers had learnt to work with the Press Act, political, business and wider elites recognised that they had other, 'more threatening and liquidating' means to muzzle the press.² According to a senior editor, 'the most serious [interference with freedom of expression] are personality protection lawsuits because they involve big money. It is a total attempt to get the media into a box to make them obey'.³ Between late 2008 and mid-2010, various international and domestic human rights monitoring organisations also observed this trend as part of the increasing pressures on press freedom in the country (Mesežnikov, Kollár, and Vašečka 2010, 486-7; Freedom House 2011; IVO 2009, 2010; IPI 2009; BDHRL 2009, 2008).

According to interviewees, the behaviour of leading public functionaries, motivated by court decisions in their favour, was unique in comparison to that of their counterparts not only in Western Europe but also in neighbouring countries. The starkest contrast was in relation to the situation in the Czech Republic where identical provisions of substantive law had applied for decades,⁴ but where politicians seldom won defamation disputes against the media and, if awarded, monetary compensation tended to be 'more or less symbolic' (Šimečka 2009, 2). As one publisher argued, 'personal enrichment or an attempt to attack the media's economic foundation' instead of suing only in unequivocally justified cases and pursuing moral satisfaction or remedy of factual inaccuracies, was 'a Slovak or Balkan ... specialty'. In his opinion, such abuses of law did 'not occur westwards of [Slovak] borders', as Czech politicians sued

² Interview with Miloš Nemeček, Bratislava, 27 September 2010.

³ Interview with Matúš Kostolný, Bratislava, 23 September 2010.

⁴ Until 2014, when the Czech Republic adopted a new Civil Code, civil actions for defamation and privacy infringements were regulated by the relevant provisions of the 1964 Civil Code adopted by the former Czechoslovakia.

‘demonstratively’ and ‘vigorously’, but they did it to ‘prove that [they] were in the right’.⁵ The chairwoman of the Slovak Syndicate of Journalists claimed similarly that when suing for almost identical articles published by sister outlets in the two countries, plaintiffs tended to claim moral satisfaction and symbolic damages in the Czech jurisdiction in contrast to the substantial monetary compensation claimed in the Slovak jurisdiction.⁶

Media professionals and international observers (IPI 2009; BDHRL 2009; Freedom House 2010), raised concerns that even a small number of large lawsuit losses could threaten the financial stability of most outlets and that the financial risks might, in the medium term, have a detrimental effect on public discussion. They feared that journalists would no longer be willing to pursue contentious stories about leading public figures even if they believed them to be accurate and in the public interest. As one editor suggested, if journalists realised their articles had led to large damages awards, it was extremely likely ‘that at a point in time they would start self-censoring and making concessions just to avoid similar trouble’ (cited in Belakova 2013a, 212). It was suggested that the mere threat of a lawsuit might ‘chill’ journalistic speech as reporters might wish to spare themselves the emotional distress associated with litigation. As another editor put it, pre-publication litigation threats were a form of ‘psychological blackmail’ that subconsciously made journalists write about the contentious issue ‘in a slightly softer way in case the outlet gets sued’, even when they were certain about the veracity of their claims. As the editor explained, reporters might think that they would eventually succeed if sued, however, they ‘would be dragged through courts for ten years. That is nothing pleasant’ (cited in Ibid., 211).

The issue of equality before the law was also raised during the course of my research as respondents perceived that ordinary courts not only valued ‘preserving a politician’s personal reputation more highly than the public’s interest in the truth’ (BDHRL 2009), but also more highly than the reputation and personality rights of ordinary citizens. One commentator found it ‘literally revolting’, particularly in comparison to compensation received in cases of serious physical harm, that one of the highest representatives of the country and the judiciary gained tens-of-thousands of euro

⁵ Interview with Miloš Nemeček, Bratislava, 27 September 2010.

⁶ Interview with Zuzana Krútka, Bratislava, 26 September 2010.

in lawsuits against the media.⁷ Other interviewees were also under the impression that ordinary courts perceived ‘reputational damage as multifariously larger than damage to health’, even when compared with cases where a person died or suffered life-long consequences.⁸ A later study analysing ordinary courts’ decision-making in high-profile politicians’ disputes against the press similarly concluded that ‘either some courts respect reputations of politicians and judges more than life and health of common citizens or it gives an impression of hypocritical collegiality with public officials and public figures’ (Wilfling and Kováčeková 2011, 54).

While perceptions of an undesirable ‘chilling effect’ on truthful journalistic speech in matters of public interest and inequality before justice between public and private claimants were raised, the study also revealed a further paradox regarding the operation of the Slovak personality/goodwill protection regime. Following the adoption of the 2008 Act, it became even more difficult than previously for ordinary citizens to defend their reputations against abuses of freedom of expression in the press. The reluctance of editors to publicly admit mistakes and publish corrections or clarifications (Chmelár 2007; Šípoš 2007b), intensified as a result of the mutual suspicions and hostility between the governing elites and the press. Publishers actively resisted their publication, perceiving correction/reply requests from politicians and business elites as attempts to get unlimited access to publicity and to ‘chastise commercial media somewhat or get them under control’.

As a senior editor acknowledged, the conflict escalated to such an extent that newsrooms tended to ignore all claims, including those which merited a reply or correction to redress unwarranted personality rights’ violations (Belakova 2013a, 210). Claimants, whose reputation and privacy rights were seriously injured as a result of poorly verified or sensationalist articles, consequently had no alternative to litigation to defend their rights. Many did not pursue litigation for publication of corrections/replies as this involved a protracted process that rendered the remedy ineffective or even counter-productive. This had detrimental effects not only on their reputational and privacy rights, but also for the public that received incorrect, misleading and sensationalist information,

⁷ Interview with Branislav Ondrášik, Bratislava, 28 September 2010.

⁸ Interview with Gabriel Šípoš, Bratislava, 27 September 2010. See also Prušová (2009).

as some of the media professionals also admitted (see also Šípoš 2007b; SPW and DBM 2008). Alternatively, injured parties were forced to take equally protracted civil personality protection action, which at least allowed them to claim larger damages but which contributed to the fear experienced by journalists.

The research thus painted a picture of a defamation and privacy regime that was in danger of descending into a “vicious spiral” of deleterious consequences for all the protected interests that the regime tried to balance. In this apparent vicious spiral, in contrast to an optimal functioning defamation and privacy law, the media felt under threat from civil actions brought by leading figures from the spheres of politics, the judiciary and business; plaintiffs seemed unequal before the law and in their ability to effectively protect and vindicate their reputational and privacy rights. Instead of hard-hitting stories bringing the powerful to account, the public received poorly verified, misleading, trivial and sensationalist information. The research further suggested that the unintended consequences of the defamation and privacy regime were a result of numerous factors other than the substantive legal provisions, including procedural rules, perceived emotional and financial costs of litigation, interpretation and application of the law by courts, and the motivations, interactions and mutual relationships between the principal protagonists (Belakova 2011, 2013a). This thesis sets out to investigate this vicious spiral that the Slovak defamation and privacy regime in the early 2010s apparently risked descending into. This study seeks to investigate, from the viewpoint of the principal protagonists, the extent to which the Slovak defamation and privacy regime descended into the vicious spiral between 1996 and 2016. It aims to provide a rich, empirically-grounded study of the interplay between the Slovak defamation and privacy regime and journalism. It specifically looks at the ability of the regime to find an appropriate balance between the protected interests at its heart.

This chapter sets the empirical problem within the existing theoretical understanding of the optimal operation of defamation and privacy regimes and the existing academic research into the interplay between defamation and privacy laws and journalism. The chapter outlines the general purpose of defamation and privacy laws in the context of journalistic speech, explores the values that the law strives to protect, and introduces the principal protagonists of defamation and privacy regimes in the context of journalism. It distinguishes three specific objectives that defamation and privacy regimes seek to achieve. The chapter then identifies the limits in our knowledge of the subject and outlines how the thesis attempts to address these and what contribution will be made to

our understanding of the relationship between defamation, privacy and freedom of expression in the context of journalism.

Slovakia's legal system is based on continental Roman law with historical influences of German and Austrian legal traditions (Školka 2011b, 12). Slovakia is a party to the European Convention on Human Rights (ECHR) and Slovak judges are thus bound to consider the European Court of Human Rights' (ECtHR) case-law in their decision-making. The focus of the following paragraphs will therefore be on the optimal operation of defamation and privacy regimes, as understood under the Convention. Given its predominance in judicial and academic discussions on this topic, the following chapters will also heavily draw on common law (especially England and Wales) and US scholarship, with major differences between defamation and privacy laws and their operation in England and Wales, US and Slovakia clearly stated.

1.2 The Aims and Principal Protagonists of Defamation and Privacy Regimes in the Context of Journalism

The essential purpose of a defamation and privacy regime is to deter harm to reputation and privacy resulting from unwarranted speech and in the last resort to provide the injured party with a means to redress the harm suffered (Barendt 1999, 112-115; Hanna and Dodd 2012, 238; Parkes et al. 2013, Chapter 1; Mullis 2010b, 15). The enormous value of reputation and privacy has been universally recognized and protected for centuries in both domestic and international law.⁹ Privacy and reputational rights have long been recognized and protected strongly in many civil law countries (Barendt 2005, 198), including Slovakia, often under the umbrella of 'personality rights'. Personality rights essentially refer to a group of rights that 'protect the dignity, the emotional and

⁹ The Universal Declaration of Human Rights (UDHR) (in Article 12) and the International Covenant on Civil and Political Rights (ICCPR) (in Article 17) recognize the right to legal protection against interferences with privacy, as well as attacks against individual honour and reputation. The right to respect private and family life is also guaranteed in Article 8 ECHR. Under the now well-established case-law of the ECtHR, in most cases, the right to reputation is subsumed under Article 8 alongside privacy rights (see Mullis 2010b, 18-20; Barendt et al. 2013, 363-368).

psychological integrity, and the inviolability of a person'. They may afford general protection to privacy and private life; protect individuals from the dissemination of truthful information about their private life, afford them control over the use of their image as well as protection of reputation (Article 19 2016, 5). Many jurisdictions, including Slovakia and England and Wales, also grant reputational protection to corporate entities.

Inevitably, any defamation and privacy regime designed to protect reputation and privacy against harm from unwarranted publication will necessarily constrain another well-established, universal human right anchored in international human rights law, and in constitutions of most countries around the world: freedom of expression.¹⁰ Since none of these competing rights is an absolute right, in their design and application modern democratic defamation and privacy regimes aim at striking an appropriate balance between them (Parkes et al. 2013, Chapter 1; Barendt et al. 2013, 361; Mullis and Scott 2012b, 25; Article 19 2016, 3; Barendt 2005, 205; Mullis 2010b, 28).

According to philosophers like Habermas (1984, 1987, 1992, 1996) and Dewey (2008), legal protection of individual rights is not derived from the fact that they are immutable possessions of individuals, but from the fact of society. Dewey wrote (2008, 373) that individual rights' value primarily lies in 'the contribution they make to the welfare of the community'. One could therefore argue alongside Mullis and Scott (2012a, 4 – 5) that an appropriate accommodation or balance between the conflicting interests in any democratic society can only be achieved by a defamation and privacy regime that includes 'an appropriate valuation of the individual and social importance' of the right to freedom of expression, on the one hand, and reputation and privacy, on the other. Most modern defamation and privacy regimes therefore seek to find an appropriate triangulation of the individual rights and public interests in reputation, privacy and expression.

Different legal regimes take different approaches to the balancing exercise, with consequences for the operation of the defamation and privacy regime in the context of

¹⁰ Articles 19 of the UDHR and the ICCPR recognise the right to freedom of opinion and expression, including freedom to seek, receive and impart information and ideas. Article 10 ECHR stipulates that '[e]veryone has the right to freedom of expression', including 'freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'.

journalism. Defamation and privacy regimes can also gradually become re-centred over time as policymakers and/or courts reassess the balance.¹¹ There are two broad approaches to constitutional balancing of freedom of expression with reputation and/or privacy (Barendt 2005, 205; Milo 2008, 7–8). The ECtHR and most European jurisdictions, including those of Slovakia and England and Wales, weigh the competing interests in a case-by-case, ‘*ad hoc*’ way within the framework of general principles. Courts resolve the conflict between the rights by assessing for each case the magnitude of the harm to the plaintiff’s rights against the importance of the particular publication. The below discussion will primarily revolve around this approach.

The US is a prime example of a jurisdiction that has undergone radical re-balancing of its defamation and privacy regime. From the traditional common law approach that largely balanced the competing interests in an *ad hoc* way, in the seminal 1964 *New York Times v. Sullivan* case,¹² the US Supreme Court developed the so-called ‘categorization’ approach or the ‘definitional balancing technique’ to ‘formulate categorical rules differentiating between speech protected by the first amendment and speech subject to governmental restrictions and regulation’ (Schauer 1978, 687). The US Supreme Court’s reasoning stemmed from its appreciations of the imperfections of the legal process (Barendt 2005, 206). The Court recognised the inherent uncertainty of all litigation and the errors it might lead to – in the context of defamation litigation those are ‘an erroneous limitation of protected speech’ or ‘an erroneous overextension of freedom of speech’ (Schauer 1978, 687-688). Applying the comparative harm principle, the Court reasoned that wrongful limitation of speech, which, in contrast to reputation (and privacy), is constitutionally protected under US law, is, *a priori*, the more serious error because it could deter legitimate speech on matters of public concern (Ibid., 701).

To remove this ‘chilling effect’ of defamation law, during the 1960s and 1970s, the US Supreme Court formulated precise legal rules pertaining to the status of the plaintiff, the nature of speech and damages awards. In *New York Times v. Sullivan*, the Court introduced into constitutional law a federal rule that ‘prohibits a public official

¹¹ For a discussion of re-centring of the English defamation regime in the past three decades see Mullis and Scott (2012b).

¹² *New York Times v. Sullivan* 376 US 254 (1964).

from recovering damages for defamatory falsehood relating to his official conduct, unless he proves that the statement was made with “actual’ malice” – that is with knowledge that it was false or with reckless disregard of whether it was false or not’.¹³

Such definitional approach to balancing secures greater clarity and predictability of decisions, as clear rules are stipulated for future disputes without the need to further weighing of interests. By reflecting the preference for errors made in favour of protecting speech, it enables judges to give more weight to speech as is the case under *ad hoc* balancing (Nimmer 1968, 935; Milo 2008, 7-8; Barendt 2005, 205). However, it is rather rigid and risks deserving claimants, whether public officials or private individuals, not being able to vindicate their reputation and protect their privacy, as had largely been the case in the US between the 1970s and 2000s, at least (Anderson 1992, 1-14; London 1993, 10-16).¹⁴

While it might be appropriate to use such approach in jurisdictions where one or more of the competing interests are subordinated to another, like in the US, it is inapplicable in jurisdictions where all rights have equal standing and constitutional protection as in Slovak law or under the Convention (at least since 2008 as will be discussed below). There, the *ad hoc* approach must be used (see Barendt 2005, 225). The following paragraphs explore the individual and social values of reputation, privacy and free expression before the chapter moves to describing the aims of an optimal defamation and privacy regime which constitutionally protects all the competing interests.

1.3 Individual and Social Value of Reputation

The past two decades have seen a flurry of academic interest in the value of reputation (Gibbons 1996; Solove 2007; McNamara 2007; Milo 2008; Rolph 2008; Craik 2009; Howarth 2011b). Reputation refers to ‘the perception of a person by others, or the esteem in which he or she is held in society’, and is thus to be distinguished from a person’s

¹³ Brennan J. in 376 US 254, 279-80 (1964).

¹⁴ For a critical assessment of the post-*New York Times v. Sullivan* regime see, for instance, the edited volume by Soloski and Bezanson (1992).

character (Barendt 1999, 115). The law protects this relational value of reputation. Given its long history, reputation cannot be easily understood as a unitary concept but as encompassing a plurality of values. In the most influential academic discussion of reputation, Post (1986, 692) characterised it as a ‘mysterious thing’, the importance of which rested on the values of honour, dignity, and property. As Post admitted, none of these conceptions can entirely explain why reputation is protected by defamation law, but each of them throws light on some of its features. Milo (2008, 42) argued that it was ‘better that the influences of property and dignity, and to a lesser extent, honour are acknowledged’ because it would be ‘too optimistic to expect reputation to be fully explained by only one justification’.

The conception of reputation as honour understands it as an attribute of the social rank or position which is conferred on individuals whether they have earned it or not. Historically, it played an important role in law as it was assumed that judges, for instance, deserved a high reputation solely by virtue of their social position, and a verbal attack on them lowered their standing in society (Mullis 2010b, 24).

The justification of reputation as property best explains why some legal systems, including the Slovak and English ones, confer protection on corporate reputations. Since personal and corporate reputations are typically hard-won as a result of considerable effort, they are protected by the law. Otherwise the result of those efforts would be undermined and personal exertion and labour would be disincentivised. Lord Bingham stated in *Jameel v. Wall Street Journal Europe SPRL*,¹⁵ ‘the good name of a company, as that of an individual, is a thing of value. A damaging libel may lower its standing in the eyes of the public and even its own staff, make people less ready to deal with it, less willing or less proud to work for it’.¹⁶

Most judicial and scholarly discussions of reputation view it as an integral part of the dignity of each individual and thus as an essential aspect of personality. Under this conception, reputation is deemed worthy of protection as a safeguard of either an individual’s autonomy and/or the stability of social relations (Weaver et al. 2006, 3). In

¹⁵ *Jameel v. Wall Street Journal Europe SPRL* [2006] UKHL 44, [2007] 1 AC 359, [2006] 4 All ER 1279, [2007] EMLR 14.

¹⁶ *Jameel v. Wall Street Journal Europe SPRL* [2006] UKHL 44, at 26.

the former case, dignity is understood as inherent in every human being. By virtue of their humanity, persons are entitled to be treated as worthy of respect. The right to reputation thus ‘aims to protect individuals from being reduced to the status of mere objects, rather than being viewed as autonomous subjects’, whereby ‘[p]ublication of false statements, or expressing opinions on the basis of false facts’ demonstrates ‘a lack of respect for a person’s moral integrity’ (Milo 2008, 35). The latter conceptualisation of dignity sees it as being contingent on one’s membership of a particular community. For Post (1986, 710), ‘our own sense of intrinsic self-worth, stored in the deepest recesses of our “private personality” is perpetually dependent upon the ceremonial observance by those around us of rules of deference and demeanor [sic], thereby protecting the dignity of its members’. Denied that esteem, a person’s intrinsic sense of his/her own self-worth and dignity is reduced. The value protected by law is thus the ‘respect (and self-respect) that arises from full membership in society’ (Ibid., 711). Reputation in this sense is ‘both a private and a public good’ (Milo 2008, 35) as it simultaneously safeguards against the loss of dignity associated with exclusion from the company of one’s fellow human beings and reinforces societal norms.

It is thus easy to understand why reputation would be crucial for sociality or for the formation and maintenance of social relationships, as Howarth has argued (2011b, 849). One of the key functions of reputation within society is to help form and maintain social bonds. Since our judgments of self-worth are primarily affected by the perceived level of esteem that we think other members of our community hold for us, a defamatory publication can have a detrimental impact on an individual’s level of self-worth and his or her ability to engage in community. As explained by Justice Cory in *Manning v. Hill*,¹⁷

reputation is the “fundamental foundation on which people are able to interact with each other in social environments”. At the same time, it serves the equally and perhaps more fundamentally important purpose of fostering our self-image and sense of self-worth.

Reputation has another social function. It is crucial for democratic self-government as ‘an investment in social capital and as signalling an individual’s trustworthiness to others’ (Weaver et al. 2006, 3). As Lord Nicholls noted in *Reynolds*,

¹⁷ *Manning v. Hill* (A-G for Ontario, interveners) (1991) 126 DLR (4th) 129 Can SC at 117.

apart from being ‘an integral and important part of the dignity of the individual’, reputation ‘also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for’. Once tainted by an unfounded allegation in the media, it could be damaged forever, especially if the individual had no opportunity to vindicate his/her reputation. When this happens, according to Lord Nicholls, ‘society as well as the individual is the loser’ because far from being solely ‘a matter of importance only to the affected individual and his family’, safeguarding an individual’s reputation is also ‘conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad’.¹⁸

1.4 Individual and Social Value of Privacy

The concept of privacy has been subject of vigorous scholarly debate since the publication of Warren and Brandeis’s (1890) seminal article. Commentators have proclaimed privacy to be ‘essential to democratic government’ (Gavison 1980, 455), key to ‘our ability to create and maintain different sorts of relationships with different people’ (Rachels 1984, 292), and critical for ‘permitting and protecting autonomous life’ (Rössler 2004, 1). Despite the intense interest in and the almost universal consensus on the importance of protecting privacy, there remains a lot of confusion regarding its value. It is widely considered that ‘the voluminous literature on the subject has failed to produce a lucid or consistent meaning of the concept’ (Wacks 1993, xi).

Drawing on Warren and Brandeis’s article, Prosser (1960) discerned four types of harmful activities remedied under the tort of privacy: intrusion in a person’s solicitude, or private affairs; public disclosure of embarrassing private facts about a person; publicity that places a person in a false light in the public eye; and appropriation of a person’s name or likeness for their own advantage.

A recent systematic attempt at conceptualising privacy for contemporary times was

¹⁸ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC at 201.

made by Solove (2008, see also 2002, 2003, 2006). Like other scholars before him, Solove conceptualises privacy as having a social value that lies in ‘the benefits it confers on society by enhancing and protecting certain aspects of selfhood’. According to Solove, a theory of the value of privacy thus ‘requires a theory of the relationship of the individual to the community’ because privacy does not protect individuals ‘merely for their sake but for the sake of society’ (2008, 92). Besides protecting individuals, privacy facilitates relationships between individuals, which are essential for family life, social engagement and political activities (Solove 2008, 93).

In Solove’s conceptualisation, privacy is understood pluralistically as a set of protections from a multitude of problems or activities. The value of privacy is thus not uniform, but ‘varies depending on the nature of the problem being protected against’ (2008, 100). There are four principal categories of privacy problems: i) information collection, including surveillance and interrogation; ii) information processing, including aggregation, identification, insecurity, secondary use and exclusion; iii) information dissemination, including breach of confidentiality, disclosure, exposure increased accessibility, blackmail, appropriation and distortion; and iv) invasion, including intrusion and decisional interference (Ibid., 101-170). Among these, the most relevant privacy problems in the context of journalistic speech are disclosure, exposure and intrusion.

Disclosure entails the revelation of truthful information about a person which results in reputational harm. Protecting against disclosure can advance individual autonomy and democratic self-government (Solove 2003), as the risk of disclosure can deter persons from engaging in activities that further their own self-development, and might inhibit criticism of aspects of public life. As a substantial part of communication essential for democratic participation occurs in ostensibly private conversations, guarantees of privacy enable individuals to communicate with others they trust. The threat of disclosure might thus alter what has been said in private conversations about matters of public interest and/or prevent people from associating with others. Disclosure can also destroy anonymity, which might sometimes be critical for the reading and consumption of ideas, and/or jeopardise a person’s security as the disclosed information might be used by others to cause him/her harm. Disclosure protections also guard against irrational judgments based on stereotypes or misinformation (Solove 2008, 140-146).

Similarly, Scott (2010, 574) argued that ‘in the context of harms caused by publication, it is most often interference with [the] instrumental interest in informational

privacy that is at issue (although occasionally, direct invasion of privacy – such as trespass or covert surveillance – may have been necessary to obtain the information concerned)’. Invasion of informational privacy involves publication of sensitive personal information, which might cause direct harm in terms of pressure on an individual brought by other members of society. Indirectly, it may also damage one’s sense of personal dignity, trigger a perceived reputational loss, quash confidence or self-esteem in the individual’s dealings with others and produce a feeling of loss of control for the injured party.

Exposure in Solove’s (2008, 146-149) conceptualisation involves revealing information about another person’s nudity, grief, health or bodily functions. Even though doing so would not affect the injured party’s reputation, it can often cause severe embarrassment, debilitating humiliation and loss of self-esteem. This is because exposure involves attributes and activities that people have long been socialised into concealing and thus strips people of dignity. Hence, the need for protection of privacy and the prevention of exposure arises from the need to safeguard social relationships and people’s ability to participate in society.

Intrusion encompasses invasive actions that disrupt one’s tranquillity or solitude, often motivated by a desire to gather and disclose information. The harm suffered lies in the interruption of one’s activities through the unwanted presence or activities of another person. A typical example of intrusion in the context of journalism is the conduct of paparazzi (Ibid., 161-165).

1.4.1 Individual and Social Value of Freedom of Expression

The central importance in a democracy of freedom of expression is universally recognised. Theories of freedom of expression suggest that speech is worth protecting because it is vital for the working of a democracy, enables the attainment of truth and is an aspect of human self-fulfilment or autonomy. The different arguments emphasize the interests in democratic societies of either the speaker, the audience, the wider public (this is not always identical with the interests of the recipients of expression) or a combination of those (Barendt 2005, 6).

The dominant theory of freedom of expression is the view of citizen participation in a democracy associated with the writings of Alexander Meiklejohn (1965). The

purpose of expression from this perspective is to serve democracy in enabling the formation of public opinion on political questions. Since democracy denotes popular sovereignty, its citizens, as the ultimate decision-makers, must be well-informed and receive a wide variety of views to be able to make intelligent political choices and hold the government to account. Freedom of expression thus performs two main functions: the informative and the critical one (Lichtenberg 1987, 337). Freedom of expression allows the flow of information necessary for the electorate to make informed decisions and for politicians to learn the former's interests. The latter function of free speech, delegated to the press in particular, is that of a watchdog, which provides independent criticism and evaluation of the performance of elected officials so that they continue to act in the public's best interest. One might argue alongside Barendt (2005, 23) that the argument from democracy recognises that speakers such as politicians or political commentators, as participants in the political process have important interests in freedom of expression. However, it is clear that this predominant view of freedom of expression primarily stresses the interests of the recipients in receiving information and ideas in order to enable individuals to make their political choices.

The argument from truth also attaches particular importance to the interests of recipients when it states that ideas, as well as information, should be freely discussed in order to enable society to discover the truth.¹⁹ Classical theorists like John Stuart Mill²⁰ argued that anyone might contribute to the search for truth and that valuable contributions to discovering truth come in many forms and that even fallacy has its place in the search for truth. Therefore, if the proscribed expression is truthful, the public is deprived of the truth itself. If it is objectively false, the public is denied the ability to discover the truth through a free exchange of competing views. Another form of the argument from truth associated with Justice Holmes – the 'market place of ideas' theory – claims that 'the best test of truth is the power of the thought to get itself accepted in the competition of the

¹⁹ As Barendt (2005, 7–8) observed, in the myriad versions of the argument from truth, truth is considered either as an autonomous and fundamental good, or as a prerequisite for progress and development of society. While some theories assume that the truth is a coherent concept and that particular truths can be discovered and justified, other relativist theories contest such conception of truth.

²⁰ See Mill's classic essay *Of the Liberty of Thought and Discussion*.

market’.²¹

According to the justification from autonomy, freedom of expression is an integral element of each individual’s right to self-development and fulfilment. Restrictions on what we are allowed to express constrain our personality and its growth. This is because the right to express beliefs and political attitudes epitomises what it is to be human (Barendt 2005, 13). The fundamental value of freedom of expression lies in our ability to communicate our thoughts to others, making a mark on the world (Lichtenberg 1987). The speaker’s interest seems paramount if the value of freedom of expression is linked to fundamental rights to self-fulfilment and development. The rights and interest of recipients of speech were once emphasised by Scanlon (1972), who argued that a person is only autonomous if he/she is at liberty to weigh up for him/herself the arguments for different courses of action that others propose. In Scanlon’s early view, restricting expression is harmful to the interests of the audience who need to enjoy access to ideas and information in order to make up their own minds and act upon them. Scanlon (1979) also argued that the interests of the speaker lie in his/her ability to bring ideas and propositions to the attention of a wide audience.

The ‘classical’ arguments presented above stress that freedom of speech should be protected from government interference because individuals have a strong interest in its exercise. There are positive aspects to free speech as numerous commentators, including Lichtenberg (1987), Raz (1991), and more recently Kenyon (2014), as well as the ECtHR²² have acknowledged. Raz (1991) argued that there is a general public interest in the disclosure of political information, regardless of whether individuals wish to participate in political discussion or vote. According to Raz, political expression represents a public good of living in a democracy. Central to Raz’s argument is a belief in pluralism, i.e., the value of diverse ways of life which may be conflicting and clash, but which tolerate each other (Raz 1991, 321-323). Implicit in Raz’s argument is what Lichtenberg (1987, 334) called the ‘multiplicity of voices principle’ by which ‘the purposes of freedom of speech are realised when expression and diversity of expression

²¹ *Abrams v. US*, 250 US 616, 630-631 [1919].

²² For a brief overview of positive free speech principles in ECtHR jurisprudence, see Kenyon (2014, 393-95).

flourish’. According to Lichtenberg, this is the second principle justifying freedom of expression. It is complementary to what she termed the ‘noninterference or no censorship principle’, denoting that ‘[o]ne should not be prevented from thinking, speaking, reading, writing, or listening as one sees fit’.

This positive conception of free speech implies that an absence of government restrictions on expression is insufficient. The ECtHR acknowledged that affirmative government action may be required to protect freedom of expression. In *Özgür Gündem v. Turkey*, the Court stated, ‘Genuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals’.²³ Empirical research also demonstrates that some form of positive government action can be valuable for supporting public interest in freedom of expression (for an overview, see Kenyon 2014).

It follows from the above discussion, as Lichtenberg (1987, 334) wrote, ‘[a]ny monistic theory of free speech, emphasizing only one of these values will fail to do justice to the variety and richness of our interests in free speech’. This has widely been recognised by international law and in numerous constitutions around the world, which guarantee protection to freedom to impart as well as receive information and ideas. It has also been recognised by the ECtHR and domestic courts across Europe. In *Steel and Morris v. United Kingdom*, the ECtHR held that ‘[f]reedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment’. Freedom of expression is, according to the ECtHR, ‘applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”’.²⁴

In modern democracies, the media have a central role to play in promulgating information on matters of public interest and as public watchdogs who investigate and report the abuse of power, holding the state and the powerful to account. It has therefore been widely recognised that the law should protect the media’s freedom from abuses of

²³ *Öztürk v. Turkey* [GC], No. 22479/93, ECHR 1999-VI, §43.

²⁴ *Steel and Morris v. the United Kingdom*, No. 68416/01, ECHR 2005-II, §87.

defamation and privacy laws by the powerful who might wish to muzzle the press. The ECtHR, for instance, repeatedly held that the principles relating to freedom of expression ‘are of particular importance as far as the press is concerned’, otherwise ‘the press would be unable to play its vital role of “public watchdog”’.²⁵

To say media freedom should be protected does not mean that the law should entitle the media to publish any speech or provide them any wider immunity from legitimate restrictions on their right to freedom of expression than is accorded to any other person (Lichtenberg 1987, 332-33; Mullis 2010b, 31; Barendt 2005, 418). While media organisations can help enable public access to important information and participation in debate, it is not a given that media freedom will always serve the public’s freedom of expression. The exercise of media freedom can, in some instances, go against the societal interests in protecting free speech (Fenwick and Phillipson 2006, Chapter 1; Phillipson 2013). As Justice Tugendhat J argued in *JIH v. News Group Newspapers Ltd*,²⁶ ‘it is not to be assumed that news publishers are always concerned to protect the Art 10 rights of the public’. Gibbons (1998, 28) similarly observed, ‘the media may want to claim that their interests are identical with protection of free speech, but often their association with truth and participation in a democracy is only incidental’. Media freedom is only an ‘instrumental’ human right (Barendt 2005, 422), or ‘instrumental good’ (Lichtenberg 1987, 332), which should be protected only if it promotes the values of freedom of expression. As O’Neill (2002, 4) argued, ‘[a] free press is not an unconditional good. It is good because and insofar as it helps the public to explore and test opinions and to judge for themselves what to believe’.

Under the Convention and most European jurisdictions, law thus only confers protection on such journalistic speech that communicates information on matters of public interest. These are not necessarily the matters the public finds interesting. The German Constitutional Court held that a tabloid publication is not entitled to freedom of expression protection for an unfounded story infringing a person’s privacy rights, which contributes nothing valuable to public debate,²⁷ and one could argue nothing to the search

²⁵ *Observer and Guardian v. the United Kingdom*, 26 November 1991, Series A No. 216, §59(b).

²⁶ *JIH v. News Group Newspapers Ltd* [2010] EWHC 2818 (QB) at 61.

²⁷ *Soraya*, 34 BVerfGE 269, 283-4 (1973), <http://www.servat.unibe.ch/dfr/bv034269.html>

for truth (Barendt 2005, 417). While the public interest is often crucial for balancing the competing rights in defamation and privacy disputes, and features as an important part of journalistic ethics codes, it has been characterised as ‘a hazy and subjective concept’ (Townend 2014, 73) that lacks ‘one firm definition’ or ‘a universally-understood “shorthand” description’ (Morrison and Svennevig 2002, 1, 4). In *Reynolds*, Lord Nicholls noted that ‘[p]ublic interest has never been defined’. Citing Lord Denning’s definition developed in *London Artists Ltd. v. Little*²⁸, Lord Nicholls argued that it is not to be confined within narrow limits: ‘Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest’. Lord Nicholls introduced the responsible journalism standard in UK law when he argued that the common law did not ‘seek to set a higher standard than that of responsible journalism, a standard the media themselves espouse’.²⁹

Lord Hobhouse further clarified in *Reynolds* that freedom of expression and public interest did not encompass the freedom to communicate misinformation, as ‘[t]here is no human right to disseminate information that is not true’ and ‘[n]o public interest is served by publishing or communicating misinformation’.³⁰ Their Lordships thus recognised that the media’s freedom of expression cannot be wholly unrestricted even with respect to coverage of matters of public interest or ‘political information’. Even then, the rights of the press should be balanced against the individual rights and the public’s interests in reputation, privacy and freedom of expression based on the circumstances of the case, in particular emphasis should be on whether, when publishing the impugned statements, the press acted responsibly. The common law *Reynolds* defence was abolished in the law of England and Wales by the Defamation Act 2013 and replaced by the ‘publication on a matter of public interest’ defence (Section 4), which no longer mentions the reasonable journalism standard. Nonetheless, it still remains appropriate for discussions of triangulation of the competing interests in expression, reputation and privacy. This is the case not least because there is still no agreement among legal scholars on what the

²⁸ *London Artists Ltd. v. Little* [1969] 2 QB 375, 391.

²⁹ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC at 202.

³⁰ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC at 238.

difference in wording signifies for judicial practice (see, e.g., Mullis and Scott 2014, 89-91).

The concept of “duties and responsibilities” inherent in the exercise of freedom of expression under Article 10 of the Convention remains cited by the ECtHR.³¹ The Court held, for instance, in *Bergens Tidende and Others v. Norway* that ‘Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern’. ‘By reason of the “duties and responsibilities” inherent in the exercise of freedom of expression’, the Court continued, ‘the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism’.³²

In contrast, the US defamation regime post-*New York Times v. Sullivan* does not seek to foster responsible journalism. Its role is solely to prevent publication of falsehoods. Public plaintiffs must prove that the defendant published falsehoods about them while acting with ‘actual malice’. This entails proving that the publication communicates factual statements that are actually false, which the publisher believed to be so when publishing. The plaintiff therefore must prove the publisher was actually aware of the falsity of the published statements, or at least that he/she had a ‘high degree of awareness’ of the publication’s ‘probable falsity’ and recklessly disregarded that danger (Kenyon and Dent 2004, 12). The plaintiff must prove this with ‘convincing clarity’, which is a substantially higher standard than the usual requirement in civil actions (Barendt 2005, 206; Dent and Keynon 2004, 12; London 1993, 5). Serious, erroneous factual allegations that journalists tried to verify without certainty about their veracity, but which they did not think were false, can thus be published with minimal legal risk. According to Barendt (2005, 207), US law precludes reputational vindication for public officials and punishment of extremely careless and irresponsible journalism. He illustrates

³¹ For recent cases emphasising journalists’ duties and responsibilities when exercising their freedom of expression, see, for instance *Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, No. 72562/10, from 22 February 2018, §61; and *Brambilla and Others v. Italy*, No. 22567/09 from 23 June 2016, §55.

³² *Bergens Tidende and Others v. Norway*, No. 26132/95, ECHR 2000-IV, §53.

his point on a case of a newspaper, which mistakenly published a report that a candidate for local office was facing perjury charges when in fact it was his brother who had been indicted, but which was nevertheless not held liable for defamation.³³ Moreover, value judgments under the US law are only actionable if they contain ‘false facts’.³⁴ Therefore, a mere publication of someone’s opinion that does not convey false facts, however expressive and harmful to one’s reputation, is not actionable (Keyon and Dent 2004, 14). The extent of protection for opinion under US law thus goes beyond the scope afforded to it under Convention law.

Just as the rights of the public and the media can come into conflict, so can the rights of media organisations and individual media professionals. An owner directing an editor to take a particular editorial line or keeping a particular topic out of the paper could be considered as an exercise of the owner’s freedom of expression or as an interference with editorial freedom (Barendt 2005, 418). It is often very difficult to determine who enjoys the right to freedom of expression in the media context, and indeed there might be ‘no single right answer to the resolution of [such] conflicts’ as Barendt argued (2005, 443).

1.4.2 The Role of Law and the Principal Protagonists

It is apparent from the discussion above that the maintenance of reputation and privacy and the protection of freedom of expression are vitally important both for individuals and for society in any democracy. This is perhaps even more the case during the turbulent and uncertain times of democratic transition and consolidation, that is a state where the democratic constitutional and intuitional framework is accepted by all political actors (e.g. Linz and Stepan 1996, 3), which Slovakia went through in the studied period. The purpose of defamation and privacy regimes is therefore to find an appropriate triangulation not only of the rights and interests of plaintiffs and defendants but also those of the wider public. This is primarily pursued through a system of legal rules, remedies,

³³ The case of *Ocala Star-Banner Co v. Damron* 401 US 295 (1971). See Barendt (2005, 207, footnote 38).

³⁴ See *Milkovich v. Lorain Journal Co* 497 US 1 (1990).

defences and procedural requirements that seek to condition the behaviours and cost-benefit calculi of would-be plaintiffs and defendants. In the last resort, the legal regime provides a means for resolving potential disputes among the rights and interests of plaintiffs, defendants and the wider public.

While the law seeks to protect the rights and interests of the wider public, the public remains on the sidelines of the operation of the defamation and privacy regime. The principal protagonists are to be found among those actors who participate in defamation and/or privacy disputes, i.e. the plaintiffs and would-be plaintiffs, the defendants, and the lawyers on both sides. In modern democracies, the plaintiffs are found among the persons and entities who become subject of a publication that impinges on their reputation or privacy, while defendants are typically – although not-exclusively – found among media organisations. Cases that reach court are therefore concerned, in the first instance, with the rights and interests of particular categories of litigants. The legal arguments offered by such persons will necessarily represent a narrower range of perspectives than that which would be presented on behalf of the broader public. Hence, there is a danger that the law might become skewed in favour of “repeat players”, and under-representative of the public interest. It falls upon judges and other decision-makers to ensure that the broader context is reflected in the determination of disputes and the development of legal understandings.

1.4.3 Unintended Consequences of the Law

Given the complexities and conflicting interests at play, finding an appropriate triangulation in a system where all the interests enjoy constitutional protection, is not a simple task for policy-makers and judges. There is something ‘artificial’ about the metaphor of triangulation or balancing of rights, as Mullis and Scott observed. It implies that there is ‘some single, natural outcome to be found by the application of reason’ in every instance. However, since freedom of expression and respect for reputation and privacy are ‘incommensurable goods’, there is ‘no easy equation for the exchange of a proportion of one for a given amount of the other’ (Mullis and Scott 2012b, 43). There is indeed no single perfect solution to resolving the conflict between the competing interests.

Defamation and privacy disputes can be viewed as, what Fuller (1978) termed, ‘polycentric’ problems that ‘involve many affected parties and a somewhat fluid state of affairs’. Intervention in such situations can have ‘complex repercussions’. Fuller (1978, 369) likened this kind of situation to a spider’s web: ‘A pull on one strand will distribute tensions after a complicated pattern throughout the web as a whole. Doubling the original pull will, in all likelihood, not simply double each of the resulting tensions but will rather create a different complicated pattern of tensions’.

Policy-makers and judges therefore often walk a tight rope as a small change might unsettle the whole balance within the defamation and privacy regime and even the best intentioned actions may have unintended consequences. The ramifications of these can only be assessed in retrospect after the protagonists have experienced the repercussions. Moreover, even a carefully designed defamation and privacy regime may possibly lead to unintended consequences for any or all of the protected interests since laws operate in a context that may change over time, and because human behaviour is often unpredictable.

Inappropriately designed and applied legal rules governing defences, costs, processes and remedies might allow misuse of defamation and privacy law by powerful individual and/or corporate plaintiffs who wish to preclude investigative journalism. For fear of incurring litigation costs, the media and journalists might be deterred from publishing important, legitimate comment on the powerful plaintiffs’ conduct, products or ideas. Such deterrence, or ‘chilling effect’, is detrimental for media organisations’ and journalists’ individual right to freedom of expression. More importantly, a legal regime that permits such **invidious chilling effects** on journalistic speech is ‘socially dysfunctional’ (Mullis and Scott 2012a, 6), as public debate and the public’s right to receive truthful information on matters of general interest that enables informed choice, will be seriously hampered.³⁵

The concept of the chilling effect of defamation law has been increasingly employed by academics (e.g. Schauer 1978; Barendt et al. 1997; Townend 2014; Kenyon

³⁵ The exact meaning of the chilling effect depends on the jurisdiction. *Invidious* chilling effect refers to different phenomena under the Convention and US law. These differences will be discussed in more detail in Chapter 2.

2010; Kenyon and Marjoribanks 2008b; Boies 1994; Forer 1987; Garoupa 1999; Hansen and Moore 1990) and practitioners (see, e.g. Dill 1993), and was a major theme of the discussions preceding the adoption of the 2013 Defamation Act in England and Wales (Glanville and Heawood 2009; see also Mullis and Scott 2009). The chilling effect on debates on matters of legitimate public interest is also of central concern to courts worldwide, including the ECtHR. According to the ECtHR, such chilling effect, which is present where a person engages in ‘self-censorship’³⁶ due to fear of disproportionate sanctions, ‘works to the detriment of the society as a whole’.³⁷

A defamation and privacy regime that does not grant appropriate remedies, safeguard plaintiffs’ access to justice, deal with the alleged falsity of the impugned publication, or offer legal certainty, provides plaintiffs – whose rights were harmed by unwarranted attacks in the press and whose livelihood often suffered as a result – little redress. Such ‘curtailment of individual rights’ (London 1993, 3) might stem from the fact that they are effectively denied access to justice (Mullis and Scott 2014, 109), have little chance of success (London 1993; Anderson 1992, 24-25; London 1993), are deterred from pursuing a claim (Kenyon 2007, 228), or get little vindication if the reasonable publication/public interest defence conceals the fact that the truth of the impugned publication has never been proven (Mullis and Scott 2012a, 7).

The effects of such a regime are detrimental for society in several respects. First, the knowledge that they would not be able to defend their reputation against defamatory accusations might deter worthy individuals’ participation in public debate and public life (Anderson 1992, 28–30). As Judge Loucaides argued in his concurring opinion in *Lindon, Otchakovsky-Laurens and July v. France*, uninhibited debates on public issues, ‘may be suppressed if the potential participants know that they will have no remedy in the event that false defamatory accusations are made against them’.³⁸ Moreover, ‘false accusations concerning public officials, including candidates for public office, may drive capable persons away from government service, thus frustrating rather than furthering the political process’.

³⁶ *Vajnai v. Hungary*, No. 33629/06, ECHR 2008, §54.

³⁷ *Cumpăna and Mazăre v. Romania* [GC], No. 33348/96, ECHR 2004-XI, § 114.

³⁸ Concurring opinion in *Lindon, Otchakovsky-Laurens and July v. France*, [GC], Nos. 21279/02 and 36448/02, ECHR 2007IV, §11.

Secondly, such a regime fails adequately to secure the public interest in provision of accurate information on matters of public importance, as some falsehoods are never challenged, and others never corrected (Mullis and Scott 2012a, 6–7). Given the ‘public appetite for scandal’, such a regime would most certainly encourage ‘the journalism of scandal’ (Anderson 1992, 30; also Barendt 2005, 202), as in the absence of credible legal restraints, the media would be free to publish defamatory or privacy intrusive information about plaintiffs whose legal standing effectively precludes them from succeeding and/or those who are unable to access justice. As Lord Hobhouse explained in *Reynolds*, ‘[t]he working of a democratic society depends on the members of that society being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society’.³⁹

Lastly, in the long term, such a regime leads to the loss of credibility of traditional journalism as the public has no guarantee of the accuracy of media reports (Barendt 2005, 202). Already in the early 1990s, Anderson (1992, 31) decried ‘depreciation of truth in public discourse’ as a major social cost of the actual-malice rule. The harm done to the functioning of a democratic society as a consequence of such inadequate triangulation of the individual and public interests in reputation, privacy and expression has been poignantly demonstrated by the recent crisis in public information, including declining trust in traditional media and dissemination of misinformation or “fake news” online (see, e.g., LSE Truth, Trust & Technology Commission 2018).

1.4.4 Three Specific Objectives of an Optimal Defamation and Privacy Regime

A defamation and privacy regime under the Convention that properly triangulates constitutionally protected individual rights and public interests in reputation, privacy and freedom of expression, must effectively perform three interconnected tasks. First, it ought to safeguard injured parties’ access to justice and provide them with adequate instruments to defend their reputation and privacy rights against unwarranted attacks in the press. Access to effective redress safeguards the plaintiff’s ability to engage in society, and the

³⁹ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC at 238.

public interest in quickly receiving corrected information enabling people to make an informed choice about whom to trust in the social, professional and political contexts.

Secondly, a coherent defamation and privacy regime should prevent unwarranted harm to reputation and privacy rights, and protect the social interest in the availability of reliable information on matters of public interest by creating a *benign* ‘chilling effect’ on irresponsible journalism and promoting responsible journalistic practices.⁴⁰ As explained by Judge Loucaides in *Lindon, Otchakovsky-Laurens and July v. France*, ‘the suppression of untrue defamatory statements, apart from protecting the dignity of individuals, discourages false speech and improves the overall quality of public debate through a chilling effect on irresponsible journalism’. ‘The prohibition of defamatory speech’, Judge Loucaides added, ‘also eliminates misinformation in the mass media and effectively protects the right of the public to truthful information’.⁴¹ As Cheer (2008, 92) observed, the adjective *benign*, ‘does not relate to the effects *per se*, but to the overall acceptability of them’. The actual effects of the law ‘can be and are intended to be significant, because damages awards, sometimes quite large ones, can encourage responsible media behaviour by punishing and deterring irresponsibility’.

Lastly, to secure the media’s and journalists’ right to freedom of expression and the public’s right to reliable information on matters of collective importance, the regime must prevent abuses of defamation and privacy laws by powerful individuals and/or corporate entities who wish to prevent the media from publishing important, warranted reporting concerning their activities. The law thus strives to prevent an *invidious* chilling effect on responsible journalism and consequent undesirable effects on the public interest in information.

⁴⁰ As discussed above, the US law does not seek to promote responsible journalism, only to prevent publication of lies. The meaning of a *benign* chilling effect under US law therefor differs to the one used throughout this thesis. The difference will be further explored in Chapter 2.

⁴¹ Concurring opinion in *Lindon, Otchakovsky-Laurens and July v. France*, [GC], Nos. 21279/02 and 36448/02, ECHR 2007IV, §11.

1.5 Existing Knowledge of the Relationship between Defamation and Privacy Laws and Journalism

Despite the enormous value of reputation, privacy and expression, it is surprising how little is understood regarding whether and the extent to which the law – as perceived by protagonists and applied by courts – shapes the motivations of both plaintiffs and defendants in order to achieve an appropriate accommodation between the competing interests. Researchers themselves have recognised that there is room for more systematic, empirically-informed, grounded research that would provide a more sophisticated account of whether and how the law shapes the motivations of plaintiffs and defendants in order to achieve an appropriate triangulation between the competing interests. Over a decade ago, Kenyon (2001, 546) argued that defamation law ‘remains an area that deserves greater attention from researchers, and from their funders’. More recently, Townend (2014, 303) called for ‘further examination of the subjectivities and complexities at play in freedom of expression negotiations and disputes by gathering new empirical material and building on past research’.

There are two main reasons for the lack of systematic empirically-informed research into the interactions between reputation, privacy and expression in the context of journalism. Firstly, researchers are missing a suitable conceptual framework that would allow for analysis of how law conditions the behaviours and cost-benefit calculations of the principal protagonists within a legal regime that involves balancing of the competing private and public interests (further discussed in Chapter 2). Secondly, there are inherent methodological difficulties in investigating effects of the law on human behaviour, and reliable data is rarely available (see Chapter 3). Our understanding of the workings of defamation and privacy regimes had therefore long been based on little more than anecdotal evidence and assumptions about protagonists’ intentions and behaviour. Schauer (1978, 730), the author of the pioneering theoretical discussion of chilling effect admitted, ‘while the chilling effect concept appears to be premised upon predictions or assumptions about human behavior [sic], no evidence has been proffered to justify those predictions’. Discussing the deterrent effects of the actual malice clause for individuals’ willingness to participate in public life, Anderson (1992, 30) admitted that these effects were ‘all speculative’. According to Anderson (*Ibid.*), so was the chilling effect on speech as the constitutional law of libel rested ‘on the unproven assumption that failure to protect

those who report on public life will tend to deter news reporting and commentary’. Kendrick forcefully argued that given the difficulties ‘to establish either the presence or the absence of a chilling effect, let alone to measure the extent of such an effect’, the US Supreme Court ‘has founded the chilling effect doctrine on nothing more than unpersuasive empirical guesswork’ (2013, 1675, 1684).

In the past three decades, there have been several notable attempts at systematic, empirical research into the interplay between defamation and privacy laws and journalistic speech in common law countries and the US. These included research by Weaver et al. (2006) in the context of US, English and Australian defamation law, Kenyon and colleagues’ (e.g. Kenyon 2010; Kenyon and Marjoribanks 2008b; Kenyon and Marjoribanks 2005; Marjoribanks and Kenyon 2004) investigation of the US, Australian, Malaysian and Singaporean jurisdictions, Cheer’s (2008, 2006, 2005) examination of defamation and the media in New Zealand, and studies of defamation law in England and Wales by Barendt et al. (1997) and Townend (2014). However, these were predominantly interested in investigating the viewpoint of the media. There have been many fewer investigations from the plaintiffs’ viewpoint. The most prominent one has been the Iowa Libel Project focusing on the US (Bezanson, Cranberg, and Soloski 1987; Bezanson 1986; Bezanson, Cranberg, and Soloski 1985). This is now thirty years old and the developments in the law and its effects on protection of reputation and privacy since the late 1980s have not been systematically studied.

No major research project exploring the effects of the operation of defamation and privacy regimes on all the private and public interests at its core from the viewpoint of both defendants and plaintiffs has been attempted to date. The lack of research on civil law countries, let alone new democracies in Central and Eastern Europe, is also astonishing. Systematic, empirical studies of the interplay between reputation, privacy and expression in the new Central and Eastern European democracies are highly desirable and timely, as media scholars have drawn some sweeping conclusions about the abuses of the law by powerful individuals leading to *invidious* chilling effect of the law on freedom of expression in the region. Writing about criminal defamation, Gross (2002, 75-6) argued that ‘the dubious definitions of “defamation”, and particularly of “insults” to individuals, have the potential “chilling effect” of curbing any criticism or *bona fide* reporting of wrongdoing on the part of elected or appointed public officials and civil servants’. Sükösd and Bajomi-Lazar (2002, 14) claimed that ‘attempts to introduce suppressive libel laws’ in CEE ‘posed threats to freedom of speech in general, and for

professional journalists in particular’. However, in a recent, small-scale investigation of the perceptions of Slovak investigative journalists, Hanák (2016) found little evidence of the chilling effect of criminal defamation law. Despite these contradictory arguments, the author of this study is not aware of a major empirical research project into the relationship between defamation and privacy laws and journalism in the region.

1.6 Contribution

This thesis seeks to address these limitations in our knowledge. It does so by taking the example of Slovakia between 1996 and 2016 and providing a systematic, holistic, fine-grained, empirical analysis of the interplay between the laws of defamation and privacy and freedom of expression in the context of journalistic speech. This thesis presents the **first major empirical study of these interactions in a civil law country**. It is original in setting the research in a **young Central and Eastern European democracy**. Covering a period of twenty years during the crucial years of Slovakia’s democratisation, the thesis sheds light on the complex problems involved in implementing a fair, certain and effective defamation and privacy regime that is able to balance the competing interests in freedom of expression on the one hand and privacy and reputation on the other. As such, the study provides important new insights into the workings of the defamation and privacy regimes, not only in consolidating democracies.

The original contribution of this study to our knowledge lies in presenting a **holistic picture** of the triangulation by a legal regime of the competing interests. In contrast to existing studies, which have tended to explore the effects of the law on a single interest, most frequently freedom of expression, from the viewpoint of one party to the disputes, this project is more ambitious in investigating the law’s ability to safeguard all the protected interests, i.e. those **of plaintiffs, defendants as well as the general public**. This thesis investigates from the viewpoint of all the principal protagonists whether, to what extent and how the defamation and privacy regime – as applied by courts – triangulated the individual and social interests in reputation, privacy and expression. Employing a socio-legal approach, the study explores not only the legal but also the various contextual factors at play. Drawing on an analysis of statutes, case-law, media reports and fifty-three semi-structured interviews with media managers, professionals,

plaintiffs, lawyers and experts, the study examines the extent to which the Slovak personality/goodwill protection regime i) provided plaintiffs with effective instruments to defend their reputation and privacy against unwarranted attacks and remedy the suffered harm; ii) prevented unwarranted harm and protected the public interest in the availability of truthful information by creating a *benign* ‘chilling effect’ on irresponsible journalism; and iii) prevented powerful individuals and/or corporate entities from abusing the law and producing an *invidious* chilling effect on important, warranted reporting concerning their activities.

Drawing on Habermas’s theory of ‘discursive democracy’, new institutionalism and previous socio-legal studies of defamation regimes, the study develops an innovative conceptual framework for investigating how laws condition the behaviour and cost-benefit calculi of the principal protagonists in legal regimes that seeks optimal triangulation of the competing private and public interests in reputation, privacy and freedom of expression. The conceptual framework is flexible enough to be applicable in common and civil law countries relating to any legal regime that seeks to balance competing protected interests in the context of public discourse, including hate speech, data protection or regulation of social media platforms.

The study also opens up the black box of the chilling effect. It considers why the effects of the law on private and public interests in freedom of expression are felt and manifested more pronouncedly in some legal contexts than in others, even where the laws are similar. By exploring the manifestations, mechanisms and particular factors present in the Slovak case, this study contributes to our understanding of the workings of the chilling effects of defamation and privacy laws beyond the case at hand. The key effects of the prevalence of clientelism in society in general and in the judiciary in particular, and the new conceptualisation of chilling effects based on their harmfulness for the public interest in freedom of expression provide new possible avenues for future research into the relationship between reputation, privacy and freedom of expression.

1.7 Conclusion

This chapter introduced the empirical problem at the heart of this thesis, situated it in the context of current academic knowledge and presented the theoretical underpinnings of

the empirical analysis that ensues in the following chapters. Before turning to the findings chapters (6-9), the remaining two chapters in **Section 1** will outline the conceptual framework and the research design that underpin this study. Drawing on new institutionalism and Habermas's contribution to the theory of 'discursive democracy' (1984, 1987, 1996), **Chapter 2** outlines the conceptualisation of modern democratic society that informed the theoretical understanding of the interplay between the defamation and privacy regime and expression in the context of journalism. The chapter reviews the existing socio-legal studies investigating the effects of the law on the rights of plaintiffs and defendants to produce a conceptual framework that will allow for an investigation into how the perceived fairness, certainty and effectiveness of the regime, combined with various contextual factors, affects the motivations and behaviour of the principal protagonists and the ability of the legal regime appropriately to triangulate the conflicting interests.

Chapter 3 explains the case selection; discusses the inherent methodological difficulties in studying the effects of laws; explicates how and why qualitative, socio-legal research into the motivations, beliefs, perceptions and experiences of plaintiffs, plaintiff lawyers, media professionals and managers, and defendant lawyers was carried out; how the interview evidence was contextualized by documentary analysis, and how the data obtained was analysed.

Section 2 provides the necessary socio-political and legal contexts for the findings chapters. **Chapter 4** introduces the key socio-political developments in Slovakia in the studied period. After introducing Slovakia's constitutional set-up, it explores the country's complicated road to democratic consolidation and links it to the prevalence of clientelism, corruption and informality in society and the developments in the media environment and journalistic culture. The chapter then presents a quantifiable picture of the personality/goodwill protection regime between 1996 and 2016 and its principal protagonists among plaintiffs and defendants. **Chapter 5** examines the aims and assumptions of the relevant substantive and procedural rules and investigates the extent to which they safeguarded fairness, certainty and effectiveness of the personality/goodwill protection regime.

Section 3 presents the empirical findings of the study. **Chapter 6** explores the principal protagonists' experiences with the adjudicatory practice of courts and their perceptions about the fairness, certainty and effectiveness of the regime. Chapters 7, 8 and 9 investigate how the principal protagonists' perceptions about the legal regime

combined with contextual factors affect the cost-benefit calculations of the plaintiffs and defendants, and thus affect the ability of the personality protection regime to find an appropriate triangulation of the competing interests. **Chapter 7** addresses the extent to which and how the law provided plaintiffs with appropriate means to defend their reputation and privacy rights. **Chapter 8** investigates the extent to which and how the law deterred unwarranted attacks by creating a *benign* chilling effect on irresponsible journalism and promoting responsible journalistic practices. **Chapter 9** examines the extent to which the regime prevented abuses of the law by powerful plaintiffs and *invidious* chilling effects on media and journalists' freedom and thus undesirable effects on the public interest in expression.

Chapter 10 in **Section 4** draws empirical and theoretical conclusions, and reflects on the avenues for future research.

Chapter 2: The Law and the Cost-benefit Calculi of Principal Protagonists – A Conceptual Framework

2.1 Introduction

In Chapter 1, I argued that defamation and privacy regimes seek to regulate the behaviour of would-be plaintiffs, plaintiffs, defendants, including media organisations and media professionals, and their lawyers in an attempt to find an appropriate triangulation between the private and public interests in reputation, privacy and freedom of expression. I further argued that in triangulating the competing interests in the context of journalism, defamation and privacy regimes seek to achieve three specific objectives: to protect reputation and privacy interests from abuses of freedom of expression by the media; to produce a *benign* chilling effect and promote responsible journalism; and to prevent the law being abused by powerful individuals or companies who wish to deter negative, but legitimate coverage, of their actions. I have also argued that no regime will be able to fully achieve all these objectives in each case, as one of the competing constitutionally protected interests will have to be restricted to a certain extent to protect the others. When investigating to what extent and how the Slovak defamation and privacy regime triangulated the private and public interests in reputation, privacy and expression, the analytical focus must be on to what extent and how it conditioned the behaviour of the principal protagonists in achieving the three specific objectives.

Researchers wishing to investigate the interplay between defamation and privacy regimes and journalism in the context of democratisation and their ability to shape principal protagonists' actions to achieve desirable effects face the hurdle of a lacking suitable analytical framework. Although independent media are thought to be pivotal for democratisation, and *vice-versa* (e.g., Merkel 1996), save a few exceptions (e.g. O'Neil 1998), they have been largely ignored in democratisation studies which have tended to focus on elites and institutional design (e.g., Przeworski 1991; Elster, Offe, and Preuss 1998) or the democratic character of existing regimes (e.g. Diamond and Morlino 2005). While communication studies have explored media transformation in the region, most of the research of the first two decades after the fall of communism had been largely descriptive, examining implementation of normative standards and the struggles for

media freedom or prescribing policy alternatives (e.g., Gross 2002; Paletz et al. 1995; Jakubowicz 1995, 2006). Since the 2000s, researchers have increasingly emphasised the need for more analytical and systematic research into media transformation (e.g. Voltmer 2006; Sparks 2009), with some notable attempts including volumes edited by Gunther and Mughan (2000), Voltmer (2006), Hallin and Mancini (2012), Downey and Mihelj (2012) and Zielonka (2015) to mention just a few. Like previous studies of defamation and privacy regimes in the West these do not offer a comprehensive analytical framework for investigation of whether and how law shapes the behaviour of all the principal actors in a given legal regime.

This chapter develops a unique conceptual framework for investigating the complex interplay between defamation and privacy regimes and journalism that can be used by researchers exploring the interactions between the law and journalism in other public discourse contexts. It draws on new institutionalism, Habermas's conceptualisation of law in modern societies, news production studies, studies of the relationship between media and politics, and political communication and media system approaches. In this framework, the law is understood to be a social institution that is formulated, enacted, interpreted and applied in mutual strategic interactions between the principal protagonists located at different levels of society. These mutual interactions occur within their structural, cultural and international contexts. A change within these interactions, in legal rules or in the context may re-centre the regime and have unintended consequences for any or all of the protected interests.

With this conceptualisation of the law and its operation in mind, the chapter reviews the existing socio-legal studies investigating the effects of the law on the rights of plaintiffs and defendants to identify the mechanism of the cost-benefit calculations involved in the plaintiffs' decision to sue and editorial decisions to publish or not to publish certain information, which lie at the heart of the operation of defamation and privacy regimes. Attention is paid to the mutual relationships between the principal protagonists, as well as to the legal and contextual factors that have been said to affect the calculi.

2.2 Conceptualisation of Law and its Operation in Modern Democracies

Drawing on new institutionalism and Habermas's (1984, 1987, 1996), conceptualisation of 'discursive democracy', law is understood in this thesis as a dynamic social construct that structures, constrains and enables the behaviour and mutual interactions between actors operating at different levels of society.⁴² In Habermas's (1996, 81) ideal-typical conceptualization, law is the means by which citizens transpose collectively and democratically agreed values to the economic, political and cultural frameworks structuring their lives. Law becomes 'a kind of "transmission belt" that picks up structures of mutual recognition that are familiar from face-to-face interactions and transfers these, in an abstract but binding form, to the anonymous, systematically mediated interaction among strangers' (Habermas 1996, 448).

The actors – both individuals and organisations – operate either in the lifeworld or the system, each of which encompasses conceptually different forms of social activity (Habermas 1984, 1987). The lifeworld comprises the familial and public spheres within which civil society operates. It functions as a forum for communicative rationality in which individuals and organisations pursue collective development of consensual norms. The system, comprised of the political, economic and legal subsystems, encompasses those self-regulating sectors of society in which decisions are guided primarily by instrumental rationality, involving strategic calculations to achieve their objectives.⁴³ The legally constituted institutions of government within the political subsystem are responsible for the formal transposition of the collective political will into law. While arguably part of the system, the media can be understood as the main communication channel or bridge between the lifeworld and the system. This dichotomy provides a useful categorization of actors for analytic purposes. It is, however, not ultimate. The system remains grounded in the lifeworld context. Systemic actors may therefore sometimes act based on communicative rationality.

While the law seeks to constrain and enable the principal protagonists' behaviour,

⁴² I developed this framework in my previous works (Belakova 2013b, 2013a).

⁴³ Note that in Habermas's original conceptualisation, legal actors are part of the political subsystem.

it is simultaneously a social institution which is formulated, enacted and interpreted in mutual strategic interactions between the principal protagonists within the given legal regime. Far from being explicit, authoritative and static, laws are often ambiguous, contested, socially constructed and replete with unintended consequences. Enforcers, lawyers and target populations have to ‘negotiate the meaning of the law in each application’ (Suchman and Edelman 1996, 932). Eventually, a provisional working agreement on what the law “is” and what it “requires” may emerge. Actors’ behaviour within the given legal regime is strategic in that the choices they make depend not only on their understanding of the law but also on their expectations about the behaviour of other actors. These are based on actors’ past experiences with institutions and other actors and their interpretations thereof (Howard 2003, 19). Habermas’s (1987, 196) model is sufficiently flexible to recognise the possibility of ‘colonisation of the lifeworld’ by systemic instrumentalism – or that law can be subverted by systemic actors in pursuit of their objectives, resulting in unintended consequences, such as *invidious* chilling effects.

The conceptual framework suggests that in addition to the ‘law-on-the-books’, any investigation of the interplay between a defamation and privacy regime and journalism therefore must focus on the interests, experiences and mutual relationships between the different social actors whose behaviour defamation and privacy law seeks to regulate. Within a defamation and privacy regime, political, economic and legal actors are expected to figure as plaintiffs and would-be plaintiffs. It is envisaged that economic actors – businesspeople and companies – pursue profit maximisation and value their reputations. They may have legitimate interest in protecting it against unwarranted attacks by the press through legal means. Some may attempt to preclude negative reporting of their actions by embroiling the media in costly litigation for warranted action. The ability of political actors – including elected politicians and public officials – to perform well in their roles depends on the public’s receiving truthful information about their actions. This may necessitate pursuit of legal action in order to correct spurious publication. However, they may attempt to deflect justified criticism of their conduct and performance in the media through threatening or pursuing litigation.

Legal actors of interest for this study are lawyers and judges.⁴⁴ Lawyers are expected to be motivated to provide the best service to their clients – plaintiffs and/or defendants. Their interactions with their clients shape the operation of defamations and privacy regimes (Marjoribanks and Kenyon 2004, 8; Townend 2014) and might contribute to or hinder the ability of the regime to achieve its three specific objectives. Lawyers may become plaintiffs themselves.

While judges have been largely ignored in non-US socio-legal studies of defamation regimes, they are of immense importance for investigations of the interplay between expression, reputation and privacy because they interpret and apply the law in defamation and privacy disputes. The US Supreme Court recognized in *New York Times v. Sullivan*⁴⁵ that if weighing the strength of the conflicting interests is left to the discretion of courts, freedom of expression interests might be subordinated to the interests in reputation and privacy, as judges might place undue emphasis on the particular harm suffered by the plaintiff (Barendt 2005, 205, 226; Schauer 1987, 695). Similarly, Eady J.⁴⁶ highlighted in the context of privacy claims the risk of personal prejudices of judges tainting legal judgments with personal attitudes inherent in the balancing of the competing rights (see Mullis and Scott 2012b, 43).

American legal scholarship has also long recognised that judges are influenced in their decision-making by political and ideological considerations, their individual values, career advancement or the legal community's approval (e.g., Segal and Cover 1989; Ducat and Dudley 1989; Ashenfelter, Eisenberg, and Schwab 1995; Baum 1997; Yates and Whitford 1998; Segal and Spaeth 1998; Steffensmeier and Britt 2001; Miles and Sunstein 2008). Scholars in civil law countries similarly argued that far from mechanically applying 'a set of complete, self-explanatory, pre-existing legal rules' judges have to invent concrete legal rules (Shapiro 1981, 155), while they are subject to a great deal of discipline by their supervisors, who control their promotion prospects (Ibid., 151), and influence of their individual attitudes, beliefs, and values (e.g., Annus

⁴⁴ In Habermas's original conception, judges and lawyers are part of the political subsystem.

⁴⁵ *New York Times v. Sullivan* 376 US 254 (1964).

⁴⁶ *CC v. AB* [2006] EWHC 3083 (QB), at 27.

and Tavits 2004). Researchers also observed the prevalence of ‘the politicization of judging’ (Goldstein 2004, 614) in the second wave of democracies of Latin America – a tendency of political parties or factions to turn to prosecution in court as a way of eliminating political opponents (Guarnieri and Pederzoli 2002) or media critical of their policies (Maravall 2003).

In addition to being arbiters of defamation and privacy disputes, judges might become plaintiffs if unlawfully attacked in the media or they may want to abuse the law to intimidate the media from further reporting on their actions.

Drawing on previous socio-legal studies of defamation and privacy regimes (Bezanson, Cranberg, and Soloski 1987; Barendt et al. 1997; Weaver et al. 2006; Kenyon 2010; Kenyon and Marjoribanks 2008b; Kenyon and Marjoribanks 2005; Marjoribanks and Kenyon 2004; Cheer 2008; Townend 2014), media organisations and media professionals are expected to figure as defendants in the defamation and privacy regime. As businesses generating profit by targeting audience and advertisers, the media may be engaged in reckless, sensationalist journalism. At the same time, media organisations and professionals may also view themselves as watchdogs holding the powerful to account. As discussed in Chapter 1, as audiences, civil society actors, encompassing individuals and their voluntary organisations (see, e.g., Ekiert and Foa 2011), are dependent on provision of important reliable information (e.g. Meiklejohn 1965; Lichtenberg 1987). They are not expected to be frequently active as plaintiffs but their activities or campaigns may influence the operation of the law and the interactions between plaintiffs and defendants.

Because the cost-benefit calculations of the principal protagonists take place under conditions of uncertainty with limited information, they are not expected to act purely rationally in the pursuit of their own interests (Black 1997). Drawing on news production studies (Cottle 2003; Schudson 2005), media systems (e.g. Hallin and Mancini 2004; Voltmer 2008, 2012) and political communication studies (e.g. Pfetsch 2004), and studies of the relationship between politics and the media in new democracies (e.g. Zielonka 2015; Stetka 2012; Stetka and Örnebring 2013; Örnebring 2012) the actors’ calculus and resulting actions within the defamation and privacy regime are expected to

be shaped by the structural, cultural and international context in which they take place.⁴⁷ The structural context encompasses formal legal, economic and political institutions, technological change and media political economy factors, such as market size and competitiveness. The cultural context is understood to operate at the level of ‘personal commitment’ and at the level of the society’s ‘cultural code’ (Mihalikova 2006, 188). The former embodies personal values and beliefs, self-perceptions and thought patterns (see also Pfetsch 2004, 345).⁴⁸ The latter encompasses the shared informal norms, values, beliefs, myths and traditions in society, including political and journalism cultures. Protagonists’ interactions are also influenced by the international context, particularly the country’s international legal obligations (Schudson 2005, 178; Hallin and Mancini 2004, 41–44). Legal regimes also respond to changes in the broader environment in which they operate. Democratisation is expected to trigger a process of renegotiating the power balance between the actors, often resulting in conflicts (Veltmer 2006, 16). The particular constellation of the institutional constraints of transition, alongside cultural trajectories thus establish particular pathways that might affect the regime’s ability to optimally triangulate the competing interests at its core.

Other empirical studies of the interplay between journalism and defamation and privacy laws that sought to systematically examine the mechanics of the chilling effects of the law followed similar conceptualisations of contextual factors. Kenyon and colleagues argued that ‘[r]elationships between defamation and journalism can be illuminated by exploring how organisations are embedded in institutional contexts’ (Kenyon and Marjoribanks 2008a, 383) and that ‘the concept of a chilling effect could be placed within a wider context’ (Kenyon 2010, 442). Drawing on Cottle’s (2003) conceptualisation of journalism practices as social processes influenced by the interaction of organisational and cultural contexts and the broader political economy, in their research, Kenyon and colleagues explored the interactions of micro-level workplace

⁴⁷ For instance, Downing (1994, 2–3) argued already in the early 1990s that to understand post-communist media, scholars ‘need to steer away from media-centric explanations’ and ‘acknowledge the specificity of each nation’ and ‘relate media to a series of processes and institutions in these nations, such as economic forces, international relations, the State, political movements, and cultural production as a whole’.

⁴⁸ In the context of sociological approaches to news production, scholars have asserted that journalists will quickly become socialised into the culture and routines of their organisational setting and alter their own values ‘in accordance with the requisites of the organisations’ (Epstein 1973, xiv).

practices, meso-level organisational and editorial cultures, and macro-level contexts of regulatory, technological and competitive environments (Kenyon and Marjoribanks 2005; 2008a).

Drawing on Benson's (2009, 413) argument that publications in a given country 'are arguably affected to a similar degree by both political field influences (state regulations, reporter relations with their information sources, etc.) and by the internal logic of the journalistic field as expressed in the dominant formats of organising and presenting the news', Townend (2014) investigated the relationship between the political, legal and journalistic fields in its national and global contexts. Townend (2014, 283) argued for the value of the networked media ecosystem approach advanced by Anderson (2010, 2013a, 2013b), which focuses on the effects of the law within the context of the 'continually shifting relationships between actors, organisations and news objects', for contextualising research of defamation and privacy related law and regulation and journalistic practice.

Investigation of a defamation and privacy regime thus conceptualised implies not only examination of the internal legal norms of the legal regime, or the law-on-the-books, but also of the perceptions, experiences, motivations and mutual interactions of the principal participants within the regime in their particular structural, cultural and international contexts. These interactions may reaffirm or alter the dominant understanding of law, and thus contribute to changes in its operation (Marjoribanks and Kenyon 2004, 8). The conceptual framework does not assume that legal change will produce instantaneous re-centring of the regime because the emergent local standards or practice and interpretation are an endogenous product of evolving social interactions set in particular structural, cultural and international contexts (Belakova 2013b, 161). The regime's operation is expected to change only gradually, as cognitive and normative beliefs become increasingly institutionalised (Edelman and Suchman 1997, 498).

2.3 Investigating Protection of Reputation and Privacy

To understand to what extent the law is able to accommodate individuals' and the public's legitimate interests in protection of reputation and privacy in the context of journalistic speech, who uses the law to defend their rights against the media, why they sue and what

objectives they pursue must be examined. It can then be assessed whether, and if so how, the law deters legitimate plaintiffs from seeking legal remedy for reputation and privacy harm and thus prevents the public from learning about the truth and deciding for itself whom to trust. Analysing plaintiffs' motives is crucial to evaluate the extent to which they were able to attain their goals and therefore to what extent, the legal regime protected their rights from their viewpoint. On that basis, research can make judgments about the regime's ability to safeguard the public's interest in protection of reputation and privacy.

2.3.1 Would-be Plaintiffs' Cost-benefit Calculus

The review of the literature suggests that would-be plaintiffs will decide to sue, if they see litigation as the least costly and simultaneously most effective instrument to achieve redress to the reputational and privacy harm suffered. The most comprehensive study of plaintiffs' motives to date, the Iowa Libel Project (ILP) suggested that for defamation plaintiffs, the most important characteristics of alternatives to litigation were their promptness, fairness, resolution of underlying dispute concerning falsity and publication of the result (Bezanson 1986, 802). A fair and prompt reputational vindication and setting the record straight is also in the best interest of the public as they need to learn the truth, or hear the response of the injured party quickly. In the absence of effective alternative means to secure redress, would-be plaintiffs pursue litigation, unless the potential costs of doing so are prohibitive. In the latter instance, the injured party might be deterred from protecting their rights so leaving the public misinformed.

2.3.1.1 Legal Considerations

The plaintiffs' cost-benefit calculus is expected to be shaped by legal considerations, in particular by the probability of success in obtaining the desired remedy speedily. According to the literature, the primary motive of defamation plaintiffs is to achieve quick vindication through publicly setting the record straight. In their proposal for reframing of defamation law in England and Wales, Mullis and Scott (2012a, 23) argued, 'discursive remedies afforded quickly are often the primary outcome that claimants seek'. Similarly, the ILP concluded that because for most defamation plaintiffs, the key interest was in the underlying falsity of the impugned statement, they 'desire[d] a prompt and fair process

for publicly setting the record straight’ (Bezanson 1986, 806). Overly drawn-out proceedings are expected to impede the plaintiffs’ ability ‘to obtain adequate timely redress’ (Article 19 2000, 9), and might deter some plaintiffs from suing.

While the legal process always suffers from a certain level of uncertainty, it should be predictable enough for the parties to be able to make an informed decision about the costs and benefits of their contemplated action. Vague and ambiguous defamation and privacy laws (Article 19 2000, 4, 2016, 6), jury trials (e.g., Barendt et al. 2013, 361) and *ad-hoc* approaches to balancing the protected values in judicial decision-making resting on such uncertain concepts as the public interest (Mullis and Scott 2012b, 55–56) have been observed to increase legal uncertainty within the system. This uncertainty, makes it inherently hard to predict with any degree of confidence the outcome of a dispute and might deter some deserving would-be plaintiffs from suing. Mullis (2010a, 11) forewarned that the uncertainty associated with the application of the ultimate balancing test necessitated by developments in ECtHR’s jurisprudence that recognised reputation as protected under Article 8 of the Convention, would ‘in all probability make it difficult for both claimant and defendant lawyers to predict the outcome of any case’.

It has been suggested that low probability of success in judicial terms might not be decisive in some plaintiffs’ decision to sue. According to traditional legal assumptions, a media-friendly regime, which offers little opportunity to achieve legal remedy, might discourage would-be plaintiffs from bringing suit. The post-*New York Times v. Sullivan* US defamation law was designed to do this by introducing the actual malice clause. The Supreme Court sought to prevent a potential *invidious* chilling effect on legitimate journalistic speech on issues of public concern by discouraging (undeserving) public plaintiffs from suing (Anderson 1992; Schauer 1978). It has been suggested that in the 1980s, only ten percent of plaintiffs were successful in US courts (Bezanson, Cranberg, and Soloski 1985, 215). Nonetheless, the ILP found that public plaintiffs continued to sue the media because litigation was perceived to be the most effective means to achieve reputational protection.

2.3.1.2 Benefits

Most plaintiffs are expected to use civil litigation because they perceive they have no effective alternative to redress reputational or privacy harm. The ILP found that those

plaintiffs whose lawyers had suggested alternative non-legal remedies saw them as ‘unsatisfactory means to restore their reputation when compared to litigation’ (Bezanson 1986, 800). The ILP argued that the ‘complex calculus of plaintiffs’ motives’ goes far beyond the assumptions of the law, as the objectives plaintiffs seek need not necessarily be achieved through the final judicial result in their case. The researchers found that plaintiffs did not sue to vindicate their reputations through the formal judicial resolution of the dispute or to obtain monetary compensation for their harm with the exception of a relatively small group of largely private citizens and businesspeople. While desirable, ultimate judicial victory was not a necessary precondition to meet public plaintiffs’ objective of correcting what they perceived as falsehoods. In the light of the unlikelihood of formal victory, they saw the act of initiating suit, independent of its result, ‘as an effective and public form of reply or response’ (Bezanson, Cranberg, and Soloski 1985, 228) that was more effective than a public statement refuting the contested statement (Bezanson 1986, 798). Public plaintiffs viewed litigation as ‘a means of self-help and legitimation of their claim’ of falsity (Ibid., 807) that effectively redressed their reputational harm. The other main objective of litigation pursued particularly by public plaintiffs who had contacted the media for alternative remedy before action, was vengeance or punishment of the media which was also largely attainable regardless of the judicial outcome.

2.3.1.3 Costs

The literature suggests that the financial costs of litigation are critical in many plaintiffs’ decision to sue, particularly in the common law system where they are generally much higher than in civil law jurisdictions. In the context of defamation law in England and Wales prior to the adoption of the 2013 Defamation Act, it was claimed that the cost of litigation was ‘prohibitive for many prospective claimants’ (Mullis and Scott 2012a, 10). Contingency fees arrangements (CFAs) and hence litigation were only open to those would-be plaintiffs who satisfied the lawyers’ risk management regimes (Ibid.). In the absence of legal aid, some injured parties were effectively denied access to justice to vindicate their reputations (Mullis and Scott 2014, 109). If some journalistic errors remain unchallenged, the public remains misinformed and the social interest in reputation, privacy and expression is badly served.

In contrast, it has been suggested that public plaintiffs in 1980s US used litigation to vindicate their reputations, because it was ‘cheap’ for them to sue. They experienced the lowest litigation costs and found it easier to engage lawyers on CFAs than private plaintiffs (Bezanson, Cranberg, and Soloski 1985, 228). Anderson (1992, 24) argued, ‘[m]any if not most, private plaintiffs cannot afford to litigate unless they recover presumed damages’. In contrast, the ILP found that since the hourly fee basis tended to be modest, most private plaintiffs were able to pay litigation costs (Bezanson, Cranberg, and Soloski 1985, 228).

Any investigation into the extent to which a defamation and privacy regime protects reputational and privacy interests, therefore needs to examine the procedural rules governing financial costs of litigation, the availability of fee waivers and lawyer fee arrangements. In addition to the rules, it has to explore the actual costs faced by would-be plaintiffs before action, and how these influence their decision to sue and whether some plaintiffs might be denied access to justice.⁴⁹

Litigation experience has been described as ‘frustrating’ for many plaintiffs (Soloski and Bezanson 1992, viii). A US commentator argued that despite the fact that defamation law’s objective was to protect reputation ‘[t]he few plaintiffs who succeed resemble the remnants of an army platoon caught in an enemy crossfire’ (Sack 1980, xxvi). It might be expected that the risk of suffering further emotional harm might deter some potential plaintiffs from suing.

When deciding to sue, would-be defamation plaintiffs have to consider the risk that the truth of the impugned statement will be confirmed during proceedings. The risk is highest in systems where legal action focuses on the truth of the challenged statements, and where judicial discovery is likely to be prompt. According to Bezanson et al. (1985, 230), the prospect that the alleged falsity of the impugned statement cannot be established is ‘perhaps the greatest deterrent of an unwarranted libel claim’. However, such deterrents might not exist within defamation regimes that rarely address the truth of the challenged statements, or do it with great delay. The ILP found that such systems might encourage plaintiffs who seek to legitimate an unwarranted claim of falsity (Ibid. 230-33).

⁴⁹ Having reviewed the available evidence of the cost of defamation proceedings in England, Howarth (2011a) concluded ‘the reality is that we know little about the costs of libel cases’.

2.3.1.4 Contextual Factors

The review of the literature showed that the plaintiff's relationship with their lawyers and with the media might play an important role in their decision to sue. Lawyers may potentially play an important role in the plaintiff's decision to file a suit as they advise on litigation risks, the probability of success and any available alternative remedies to civil action. They might overestimate or underestimate the claim's chances of success and thus either deter or prompt a would-be plaintiff to sue (Anderson 1992, 32; also London 1993). The ILP found that, in contrast to private plaintiffs and businesspeople, with most public plaintiffs, the lawyer had 'little influence on the ultimate decision to sue, other than to facilitate it' (Bezanson 1985, 228).

The ILP suggested that the media and their response to the plaintiff's before-action claim might play an important role in his/her decision to sue. The ILP described a 'a complex dynamic' between public plaintiffs and media-defendants, where plaintiffs felt angry and upset by the media's indifference, arrogance or insensitivity towards their claim (Bezanson 1986, 803). By reinforcing and sharpening their emotions and confirming their views that the lawsuit was the only available means to vindicate their reputation, public plaintiffs' post-publication experience with the media provided 'a powerful driving force' in their decision to sue (Bezanson, Cranberg, and Soloski 1985, 229). Instead of diverting complaints from litigation, the media's reaction 'propel[led] them to court' (Bezanson, Cranberg, and Soloski 1987, 29).

2.3.2 A Regime's Ability to Protect Reputation and Privacy

The ILP indicated that even a defendant-friendly regime might be able to effectively protect reputational interests of a large number of plaintiffs, as long as it safeguards their access to justice. Despite the fact that the overwhelming majority of ILP respondents lost and most felt frustrated by the judicial process, the majority believed that they achieved meaningful vindication. Moreover, virtually all claimed that, knowing what had happened, they would sue again if faced with a similar situation (Bezanson 1986, 799). Plaintiffs seemed most frustrated with the protracted nature, cost and unfairness of the judicial process, i.e. its failure to recognise their objectives and respond to them. For most losing plaintiffs, litigation achieved reputation-oriented objectives, including reputation

defence, deterrence of further defamatory publications, and the receiving of support from family and friends. Only a small minority of the losing plaintiffs who thought legal action attained something, mentioned vengeance (Bezanson, Cranberg, and Soloski 1987, 154–56).

The ILP suggested that the ability of a defamation and privacy regime to protect individual interests might differ between private and public plaintiffs. ILP's private plaintiff-respondents reported the highest degree of dissatisfaction with their litigation experience, in particular with their lawyers and their ability to achieve judicial victory and monetary compensation. They were also most likely to pay for legal representation and least likely to consider litigation as an attractive means of obtaining redress for the harm suffered. According to the authors, private plaintiffs were 'directly and effectively discouraged by the rules and results of the legal system' (Bezanson 1986, 799). Public plaintiffs, in contrast, seemed generally satisfied with their lawyers, less frustrated by proceedings and more likely to be satisfied with litigation as an instrument of legitimating their claim of falsity, and thus vindicating their reputation. They did not seem significantly affected by the rules and results of proceedings, which were designed to discourage them from suing. The researchers thus concluded that in actual practice civil action 'serve[d] different purposes than those set for it by the legal regime and apparently serve[d] those purposes effectively' (Bezanson 1986, 800).

2.4 The 'Chilling' Effects of Law

The 'chilling effect' concept is crucial for our understanding of whether and how the law influences defendants' behaviour in seeking an appropriate triangulation of the individual and public interests in reputation, privacy and expression. To be analytically useful, the differences in the meaning of the concept that are partly jurisdiction dependent, and the complexities and subjectivities behind it need to be unpacked.

The 'chilling effect' metaphor, implying a mostly 'negative deterrence of communication: that a person or [an] organisation is made physically colder by inhibiting the exercise of their right to free expression' (Townend 2017, 73) has been widely used

in various communication contexts.⁵⁰ A leading commentator on US defamation law, Frederick Schauer (1978, 689) argued, ‘the very essence of a chilling effect is an act of deterrence’. An activity, e.g. publication of journalistic speech ‘is chilled if people are deterred from participating in that activity’. The chilling effect of law thus implies a restriction on a media organisation’s or an individual’s exercise of freedom of expression, which impacts the public’s right to receive information. Although a media organisation’s or an individual’s decision not to pursue certain behaviour may be influenced by a wide range of stimuli, ‘in law the acknowledged basis of deterrence is the fear of punishment’ and the uncertainty surrounding the legal process, which might lead to an erroneous punishment of a lawful action (Ibid., 698, 694). The risk of civil action for defamation or privacy intrusion for large damages is said to have the potential to deter a media organisation or a journalist from publishing a story (Barendt et al. 1997, 190).

2.4.1 *Benign and Invidious Chills*

The ‘chill’ on expression may mean an outright obstruction of the media’s or journalists’ right to freedom of expression. However, this is not always so as the media may decide to publish the information in an altered form rather than not at all. Townend (2017, 74) explained, ‘the metaphorical suggestion of temperature suggests a scale of deterrence from cool to freezing’. Academic discussions recognize typically a dual typology of chilling effects: *benign* and *invidious* chilling effects.

Although the concept is widely used pejoratively, the very purpose of defamation and privacy laws is to chill socially harmful expression. Such chill on media and journalists’ freedom is desirable for the protection of reputation and privacy and for the public interest in expression. Schauer (1978, 690) defined this desirable or ***benign chilling effect*** as ‘an effect caused by the intentional regulation of speech or other activity properly subject to governmental control’. This concept of chilling effect is applicable where speech is the regulated activity, but where that speech is not legally protected. The

⁵⁰ For an overview of the historical origins of the concept see Schauer (1978, 685–87) and Townend (2014, 48–49). For a discussion about its application in different communication contexts see Townend (2017, 74–77), for a discussion about its application by courts in various jurisdictions see Cheer (2008, 65–89).

potential imposition of civil damages as a remedy for reputational harm caused by malicious or negligent publication of defamatory falsehoods, is expected to deter media organisations or individuals from publishing such material. Any chilling effect on such illegitimate speech is permissible, and indeed, the intended result of the defamation and privacy regime. In her study of defamation in New Zealand, Cheer (2008, 3, 63) argued that all defamation laws are designed to chill speech to the extent that protecting reputation will at times necessitate prevention of publication or payment of damages and that therefore ‘some chilling effects are permissible and indeed, desirable’. The meaning of what constitutes a *benign* chill is dependent on the given jurisdiction’s understanding of the private and public interests in reputation, privacy and expression and the approach to balancing it takes. As discussed in Chapter 1, while under Convention law and most European jurisdictions, the aim of defamation and privacy law is to chill irresponsible journalism and the resulting harmful expression, the US law does not seek to prevent irresponsible journalism, only publication of known falsehoods.

According to Schauer (1978, 690), law has an *invidious chilling effect* ‘when any behaviour safeguarded by the [US] Constitution is unduly discouraged’ by it, even if the law is ‘not specifically directed at that protected activity’ (Ibid., 693). In the context of US defamation law, the chill occurs if a ‘sanction aimed at punishing the publication of defamatory, factual falsehoods causes the suppression of truth or opinion’ (Ibid., 693). The danger of the *invidious* chill lies in the fact that truthful, important information on a matter of public interest will be withdrawn or, as Schauer claimed, ‘that something that “ought” to be expressed is not’. This is because some individuals or media organisations ‘refrain from saying or publishing which they lawfully could, and indeed, should’, ‘deterred by the fear of punishment’ (Ibid., 693). This is harmful not only for the organisations’ or individuals’ right to freedom of expression, but even more for society.

While the distinction between *invidious* and *benign* chilling effects is vital for analytical purposes and for our understanding of the extent to which the defamation and privacy regime triangulates the competing interests, in the Convention law context, it is often difficult to determine where to draw the line between them. There is little agreement in academia or in jurisprudence. Cheer (2008, 64) observed, ‘most definitions of the chilling effect converge on the understanding that defamation law has the potential to produce both acceptable and unacceptable censorship of speech’. Yet, commentators disagree not only ‘on what might amount to unacceptable censorship’ but also on ‘the extent of unacceptable censorship in fact’.

Given the aims of post-*New York Times v. Sullivan* US law, Schauer draws the line based on the truth of factual statements and factual basis of opinion. Schauer's analysis and the interpretation of the line between *benign* and *invidious* chilling effects of defamation law under US law is relatively straightforward. In contrast, according to the established Convention law suggests that there is no public interest in publication of all truthful information and the dividing line between *benign* and *invidious* chilling effects are based on the public interest and whether journalists acted in accordance with their duties and responsibilities (see Chapter 1). The ECtHR, Dent and Kenyon (2004) and Barendt et al. (1997, 189) understand undesirable chilling effects as those which hinder media reporting on stories of political or public interest. Yet, the interlinked concepts of public interest and responsible journalism are hazy, lacking universal understanding (see Chapter 1). Townend (2017, 75) pointed to the subjectivities of the chilling effect demonstrated in the House of Lords ruling in *Jameel*,⁵¹ where Lord Bingham held that 'the weight placed by the newspaper on the chilling effect' was 'exaggerated'. Referring to a 'disproportionately chilling effect upon freedom of speech', Baroness Hale, in contrast, was more understanding of the defendant's argument.

Cheer's (2008) and Townend's (2014) research confirmed that journalists, bloggers and lawyers themselves are often unsure about the desirability or undesirability of the law's effects on expression. As a lawyer-respondent in Cheer's study (2008, 63) stated, '[t]here is a chilling effect arising from our defamation laws in New Zealand. Whether it is inappropriate is another question. I am not totally convinced it is inappropriate...'. The perception of the desirability or undesirability of a chilling effect thus seems to depend on the person's understanding of the relationship between the conflicting values at the heart of any defamation and privacy regime or their understanding of what is entailed in responsible journalism practices. However, as Kenyon and Marjoribanks (2008a, 372) observed, '[t]he concept of "responsible journalism" has had no stable or assured status, within journalistic, social and academic realms'. Justice Eady J also recognised in *Jameel*,⁵² that the terminology of 'responsible

⁵¹ *Jameel v. Wall Street Journal Europe SPRL* [2006] UKHL 44, at 21 and 154.

⁵² *Jameel v. Wall Street Journal Europe SPRL* [2004] EWHC 37 (QB), at 17.

journalism', on which the *Reynolds* defence was founded 'is imprecise and suggests to some people that the test is ... subjective'.

2.4.2 Classification of the Chills by their Manifestations

To be able to detect chilling effects empirically, researchers need to be aware of their various manifestations. Barendt et al. (1997, 191–94) provide a two-way classification that recognises 'direct' and 'structural' *invidious* chilling effects. The direct chill can be characterised as a 'conscious inhibition or self-censorship within the organisation' during the processes of editing and 'legalling'. It occurs when media content is 'specifically changed in light of legal consideration'. Most often, these changes take the form of 'omission of material the author believes to be true but cannot establish to the extent judged sufficient to avoid an unacceptable risk of legal action and an award of damages'. This type of chilling effect might consist of passages being 'rewritten to alter meaning, remove an innuendo, or recast statements of fact into those of opinion' (Barendt et al. 1997, 192).

The structural chilling effect does not involve alteration of a specific article or programme. It is 'deeper, and subtler' and operates in a 'preventive manner: preventing the creation of certain material', as 'particular organisations and individuals become taboo due to defamation risk', and 'certain subjects are treated as off-limits, minefields into which it is too dangerous to stray'. The authors (1997, 192) explain, '[n]othing is edited because nothing is written in the first place'. Such 'preventive self-censorship' is harmful for the public interest in expression because it reduces the range of topics of vital importance available for public scrutiny.

Barendt et al. (1997, 193) recognise a secondary type of the structural chilling effect which manifests itself in the nature of the language used, as it is 'safer to write opaquely or make comment than to engage in clear and hard-edged investigative journalism'. According to the authors, writing in these terms is harmful for good journalism because it 'interposes a greater distance between the writer and the particular state of affairs he purports to describe, and can only reduce the credibility of his expressions of opinion in the mind of a thoughtful reader'. They acknowledge, however, that the idea that the style of journalism has been moulded by legal consideration is 'empirically untestable' (Ibid., 193).

A ready classification of *benign* chills that could inform the empirical investigation in this study is missing because previous research was predominantly dedicated to the undesirable chills. It can be expected that *benign* chills are also manifested during the editorial process with desirable implications for reputation, privacy and the public interest in expression. Barendt (1999, 112–13) suggested that the law ‘encourages, or compels the media to be careful in its reporting’, ‘imposes a degree of discipline on the media’, and ‘civilises the standards of public discourse’, as outside Parliament and courts ‘we are not free simply to say or write what we might like about another person, unless we can prove the truth of our statements’.

Explicitly or implicitly, studies of *invidious* chilling effects on news production identified certain *benign* chills of defamation law. Marjoribanks and Kenyon (2004, 10) argued in the Australian context that ‘defamation does figure in the minds of news producers, both in terms of journalistic practice and in terms of costs’ and that journalists and media lawyers sometimes recognised a positive effect of the law. Cheer concluded that New Zealand defamation law ‘does not produce excessive chilling effects although clearly it does produce some’ (2008, 231). These were manifested in the steps media took to ‘avoid carelessness where possible’ in the belief that care and responsibility could preclude most problems arising from defamation. Such steps included legal training and story vetting by senior editors and lawyers (Cheer 2008, 149). Weaver et al. (2006, 147) found that England’s defamation laws did ‘have one positive effect’ in encouraging media organisations ‘to make sure that their reporting was even-handed’.

According to the existing research, the direct *benign* chill might be manifested in non-publication of unwarranted or truthful, but privacy intruding material in light of specific legal considerations,⁵³ delaying publication until claims can be better supported (Weaver et al. 2006, 167), small alterations to material to ‘maintain accuracy and fairness’ and toning down opinion pieces without the loss of the message (Cheer 2008, 149), or rewriting articles to provide ‘balanced’ coverage (Weaver et al. 2006, 147, 166). Privacy laws are expected to produce a structural *benign* chilling effect in that media professionals

⁵³ A lawyer-respondent in Cheer’s study, who was ‘not totally convinced’ that the chilling effect arising from New Zealand defamation law was ‘inappropriate’, could not recall ‘an occasion when a newspaper or television did not publish if it had the evidence required to publish’, implying that nonpublication of unwarranted speech had indeed occurred.

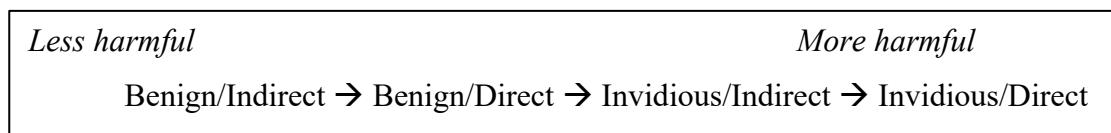
will not venture to certain topics that are not in the public interest, concerning, for instance, individuals' private and family life.

Marjoribanks and Kenyon's research (2004; 2008a) also suggests that for journalists working for leading press outlets preserving journalistic standards and their and their organisation's professional status might be reinforced by legal requirements. However, where professional values are strong, the law's effect on news production might be secondary or non-existent. The authors observed about the Australian and US regimes, 'While the law plays a role in setting standards, and in shaping what is included and what is not included', there was a strong 'perception on the part of journalists, in particular, that it is their professional standards and their professional status that is more significant' (2004, 18).

2.4.3 Classification of the Chills by Their Harmfulness for Media Freedom

Drawing on the conceptualisations developed by Schauer (1978) and Barendt et al. (1997), Townend (2017, 78) proposed a classification of manifestations of the law's chilling effect on a scale rated by their harmfulness to the media's freedom of expression. Townend recognised four types of chills: 'direct *benign*' (where 'a specific threat of legal action deters illegitimate speech'); 'indirect *benign*' ('where a broad concern about legal action deters illegitimate speech'); 'direct *invidious*' (where specific threat of legal action deters legitimate speech'); and 'indirect *invidious*' ('where a broad concern about legal action deters legitimate speech'). According to Townend's scale (Figure 2.1), an *invidious* and direct chill is the most harmful to a publisher's freedom of expression, while an indirect *benign* chill is the least harmful in that respect.

Figure 2.1 Harm to Freedom of Expression Caused by Different Types of 'Chilling Effect'



Source: Townend (2017, 78).

Given that media freedom is understood in this study only as an instrumental freedom in as much as it serves the public good (see Chapter 1), a systematic classification

of chilling effects based on their harmfulness to the public interest in expression is vital for our understanding about the effects of defamation and privacy law and its ability to triangulate the conflicting interest in reputation, privacy and expression. This thesis strives to contribute to the efforts to create such a classification.

2.4.4 The Mechanics of the Chilling Effect of Defamation and Privacy Laws

Research has demonstrated that the chilling effect might be perceived with different intensity by different media organisations and individuals within the same defamation and privacy regime. Barendt et al. (1997, 183) found that while ‘all branches of the media’ were ‘concerned about the implications of libel law for their activities’, there were ‘significant differences in the level of this impact’. Townend (2014, 289) argued, ‘the climate is not universally chilly for publishers in England and Wales; it can be more confidently described as hazy, with some people feeling the cold more than others’. According to Schauer (1978, 694), media professionals and publishers might be deterred from publishing speech because they fear the punishment or other detriment resulting from doing so. The larger the fear felt by the organisation or individual contemplating publication, and the smaller its perceived benefits, the more likely it is that publication will be deterred. The fear grows with the risk of incurring harm stemming from the operation of the defamation and privacy regime. However, the amount of fear generated within the given regime will be perceived to varying extent by different media organisations and professionals according to the benefits of publication and a number of contextual factors (Schauer 1978, 697).

2.4.4.1 Harm Caused by Litigation and Litigation Threats

It has been reported that the greatest harm media organisations and professionals face from litigation is material (Barendt et al. 1997, 190), and includes costs of potential damages, ongoing legal costs of vetting and costs of defending action. ILP observed, ‘[a] growing fear among the media is that large damages awards and extensive litigation costs will have a chilling effect on the media’s willingness to report controversial news stories’ that may result in ‘undesirable limits on the public’s ability to receive the news’ (Bezanson, Cranberg, and Soloski 1985, 217).

Commentators, campaigners and the media have argued that the potential of having to pay large damages awards is the greatest danger of defamation and privacy law (e.g. Soloski and Bezanson 1992, viii; Glanville and Heawood 2009, 5; Schauer 1978, 696-697). The fear and deterrent effect is said to be largest in jurisdictions where the law allows for disproportionately large damages to be imposed by judge or jury, even if they are not a frequent occurrence (Article 19 2000, 15-17; Barendt et al. 2013, 361). Anderson (1992, 17) explained that the imposition of damages payment by a first instance court 'exact[s] a financial penalty' because until overturned they represent 'contingent liabilities on the defendant's balance sheet', jeopardising the defendant's ability to secure financing or acquire or be acquired by another company. Moreover, '[e]ven a remote possibility of suffering a catastrophic loss is sobering', and the apparent high stakes might have a stronger effect than the actual loss experience'. Media professionals might fear loss of employment or 'forfeiture of future employment opportunity' (Schauer 1978, 697). The ongoing cost of legal advice might be another 'major expense' and a 'big factor' in organisational management (Marjoribanks and Kenyon 2004, 10).

It has been suggested that in some common law jurisdictions, the costs of defending legal actions might exceed the potential damages awards and are thus the major source of the chilling effects. Soloski and Bezanson (1992, viii) argued that 'the real economic impact' of US defamation law on the media in the 1990s was 'the high cost of defending seriously litigated suit'. Even if the plaintiff was unlikely to prevail, the costs were 'detering the media from pursuing or publishing controversial stories of public importance'. According to Anderson (1992, 18), for the majority of US media, 'the prospect of having to pay the costs of defending' was 'the most relevant source of the chilling effect'. Several commentators suggested that the often prohibitive cost of defending legal action in England and Wales had a chilling effect on the media (Glanville and Heawood 2009, 5-10; Mullis and Scott 2012a, 10; Barendt et al. 2013, 363, footnote 14). Because traditionally, publishing was seen as a profit-making venture, Schauer (1978, 698) argued that 'a simple attack on the pocketbook will often be sufficient' to chill journalistic expression.

Being sued for defamation or privacy invasion poses a risk of reputational harm to the organisation or individual and might increase the fear of litigation. Schauer (1978, 697) argued that the degree of potential harm caused by publication is significantly increased if reputational harm, loss of friendship or damage to one's social standing is involved. According to Schauer (1978, 700), media professionals and organisations risk

the ‘harm that flows from the popular conception that one who is charged, even if acquitted, is not entirely free from culpability’. Glasser (2009, xi) suggested that even if vindicated, a reporter who was sued or whose article attracted a dispute might experience damage to his/her relationships with colleagues within the newsroom and damage to his/her professional standing. Glasser cited a reporter, claiming that ‘you don’t end up a hero’ because ‘[t]he way journalists look at you after being sued is never the same’.

Media professionals face the risk of incurring other non-material costs involved in securing a successful judicial determination, including the time spent preparing and maintaining a defence (Schauer 1978, 700), and ‘the emotional toll’ of litigation (Glasser 2009, xi). Marjoribanks and Kenyon (2004, 10) found that costs related to the involvement in preparing for a defamation action, which precluded media professionals from journalistic work might be perceived as ‘debilitating’. Glasser (2009, xi) claimed that participation in litigation is a ‘gruelling and abusive experience’, which can scare journalists, shake their confidence for a long time even if eventually successful. This is because during the trial, their competence and training as reporters is being questioned, which might make them feel ‘picked apart’ or ‘naked’. Schauer (1978, 700) observed that ‘there is a heavy price to pay for simply being in the position to have to explain, or defend’, particularly if individuals have to demonstrate the lawfulness of their conduct publicly.

2.4.4.2 The Risk of Incurring Harm

The literature review suggests that when deciding whether to publish certain information or not, media organisations, media professionals and their lawyers consider the risks it poses. The risk analysis is based on the defendants’ and their lawyers’ perceptions about the operation of the defamation and privacy regime and focuses on the likelihood of a suit being brought; the likelihood of being found liable; and the likelihood of being embroiled in protracted proceedings.

The likelihood of being sued

It has been argued that media organisations and professionals assess the chances of being sued for the contemplated publication based on their perceptions of the subject of the story and his/her propensity and relative ability to litigate and succeed. Numerous studies

(Barendt et al. 1997, 174, 188; Weaver et al. 2006, 144–46, 169–71) indicate that ‘the local knowledge’ as coined by Marjoribanks and Kenyon (2004, 17; also 2008b), is a significant factor in the editorial decision. Media tend to be more careful when reporting serious allegations about litigious individuals or entities who have the financial resources to bring a successful legal action or tie the organisation up in lengthy proceedings. Some might even avoid reporting the activities of such individuals or entities altogether. Barendt et al. (1997, 174, 186) suggested that the Scottish media perceived lesser chilling effect than their English counterparts due to the ‘different attitude to defamation action and the absence of a large number of wealthy potential plaintiffs’. The traditionally plaintiff-friendly English defamation regime has been considered as allowing unmeritorious plaintiffs to abuse the law to intimidate the media by threatening lengthy and costly litigation (Weaver et al. 2006, 144–46; Barendt 1999, 112–113; Milo 2008, 2; Glanville and Heawood 2009, 4, 8). Barendt et al. (1997, 190) argued that the media might be ‘concerned by the legal cost of defending an action brought by a wealthy and persistent litigant’.

In contrast, the media may be encouraged to publish unwarranted allegations about plaintiffs whom they perceive to be unlikely to sue. Weaver et al. (2006, 178) found that the UK and Commonwealth approach to litigation costs allowed the Australian ‘media to run roughshod over impecunious defendants’ and turned them into ‘bullies in regard to small people’. According to Mullis and Scott (2012a, 10), before the availability of CFAs, many relatively impecunious plaintiffs were vulnerable to unwarranted attacks in the media as the ‘rule of thumb’ regarding evaluation of the legal risk of publication was based on the claimant’s means.

The literature review implies that media-defendants assess the risk of being sued based on their experiences with and their perceptions about the rate and nature of pre-publication notices, post-publication claims and lawsuits. The larger the number of claims and suits and the more serious their nature, the greater the risk of harm stemming from contemplated publication, and the higher the likelihood of the chill. Hansen (2000) found that US newspapers that had been sued or threatened with a defamation suit in the past five years scored significantly higher on the chilling effect scale than those who had not. The possibility of high damages awards as a result of jury trial or the availability of presumed, punitive or exemplary damages might encourage more litigation and thus risk higher costs (Barendt et al. 1997, 163–64; Weaver et al. 2006, 160).

The likelihood of being found liable

When making their decision to publish, the media are said to consider the risk of being found liable and bearing the associated costs. The greater the risk, the greater the likelihood that publication will not take place.

It has been argued that the traditionally plaintiff-friendly common law of defamation exercised a chilling effect because the defences of justification, fair comment, and privilege failed to ‘adequately safeguard the interests of the media (and the public) in freedom of expression’ (Barendt et al. 1997, 190). Schauer (1978, 695–98) explained that the uncertainty in the adjudicatory practice concerning freedom of expression stemmed from the ‘peculiar problems of vagueness’ of legal principles and the imperfections of the legal system, which posed a great risk that ‘[t]he facts may be incorrectly determined’ or applied. As a result, it was impossible to predict litigation outcomes with a high degree of certainty or to have confidence in the lawfulness of the contemplated speech. The uncertainty surrounding defamation and privacy regimes exacerbates the risk of incurring harm through litigation, which may make the media less willing to publish potentially defamatory information (see, e.g., Barendt et al. 2013, 362; Mullis and Scott 2012b, 26–27). The resulting chill does not necessarily need to be *invidious*. Since borderline speech is most likely to be erroneously determined as unlawful, the *invidious* chill is most likely to occur in relation to such borderline expression (Schauer 1978, 696).

Barendt et al.’s (1997, 186, 188) study documented the uncertainty perceived by media organisations and professionals, as virtually every respondent ‘emphasised the lottery aspect attached to this area of law’ and ‘[e]very media lawyer testified to the difficulty of justifying allegations in court, and their constant need to bring this point home to journalists and editors’. Another source of uncertainty for English media, according to Barendt (1999, 120), was ‘the absence of an agreed definition of what amounts to defamatory imputation’ as this made the application of the various legal tests ‘unpredictable’ and to some extent limited the media’s ‘freedom to poke fun at celebrities and satirize politicians’. The ‘unpredictability of jury awards and their disproportionate size in relation to the level of compensation for personal injuries’ has also been a source of complaints from the media (Ibid.).

The uncertainty stemming from the ultimate balancing test required when two constitutionally protected rights come into conflict has been acknowledged by other commentators as well as courts. Lord Nicholls admitted in *Reynolds* that the balancing principles introduced therein might lead to ‘unpredictability and uncertainty’, in

borderline cases as the outcome of a court decision ‘cannot always be predicted with certainty when the newspaper is deciding whether to publish a story’. ‘This uncertainty, coupled with the expense of court proceedings’, Lord Nicholls recognized, ‘may “chill” the publication of true statements of fact as well as those which are untrue’. However, Lord Nicholls also issued a number of guidelines on the basis of which journalists, and the court could determine whether the standards of ‘responsible journalism’ have been met. These should thus make any practical problems for the media ‘manageable’.⁵⁴

It has been suggested that media-friendly defamation and privacy regimes like the post-*New York Times v. Sullivan* US system tended to ‘create significant incentives for superficial journalism and disincentives for serious journalism’ (Marshall and Gilles 1994, 171), encouraging the media to sensationalise and publish unwarranted claims about plaintiffs perceived as unlikely to prevail in a lawsuit (Anderson 1992, 30-31; London 1993, 10-11). Weaver et al. (2006, 257–58) also reported that among US editors and journalists ‘the perception of shoddy journalism’ was ‘relatively common’ and appeared ‘particularly evident when the media cover[ed] political campaigns’.

It is, however, less clear from the literature how the inherent uncertainty within defamation and privacy regimes like those in Slovakia and England and Wales post-*Reynolds* that employ the *ad hoc* balancing approach to adjudication might affect the perceptions of the *benign* chill and the law’s ability to promote responsible journalism. This issue will be investigated in this study.

Likelihood of protracted proceedings

Delays in proceedings can have an undesirable impact on freedom of expression by rendering it stale, according to the ECtHR (McGonagle 2016, 47). Unduly drawn-out cases increase the financial and emotional litigation costs and thus increase the probability of an *invidious* chilling effect (Article 19 2016, 16).

⁵⁴ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC, at 202.

2.4.4.3 Benefits

Schauer (1978, 697) argued that the ‘benefit of the contemplated conduct can outweigh the costs and reduce the fear’ of defamation. The benefits of publication might be both financial and non-financial.

Visions of financial gains might outweigh the expected losses because of commercial considerations (Schauer 1978, 697). Barendt et al.’s (1997, 183) and Weaver et al.’s (2006, 146–47) findings seem to suggest that, at times, English tabloids knowingly published sensationalist articles carrying high liability risk because they had the potential to bring in so much additional revenue that profits increased even after defamation costs were paid. However, the tabloids in Weaver et al.’s study (2006, 147) rejected such claims as ‘ridiculous’ because litigation risks were too large and it was difficult to predict which articles would prompt significant circulation increases. Schauer (1992, 1335) similarly argued that ‘the economics of information are such that the production of most single items of news information bring, especially for a newspaper, small financial benefits’. Schauer claimed that publication of any information carries a much greater risk of harm than potential benefit because once published it cannot be monopolised and because each article ‘brings a miniscule economic benefit to the publisher’ but may nevertheless result in a legal liability (Ibid.).

The literature suggests that publishers and media professionals might take litigation risk as part of doing business and the potential costs a price worth paying for higher principles or reputational reasons. Schauer (1992, footnote 24, 1329) suggested that the possible explanation for some editors’ proud denials that ‘the threat of libel actions has no effect on their editorial judgments’ might be explained by the publisher’s ‘willing[ness] to pay for certain principles’ like editorial freedom. Publishers may also believe that ‘certain editorial aggressiveness sells more papers’ or for financial or non-financial reasons highly value ‘a certain kind of newspaper reputation’. Weaver et al. (2006, 146) suggest that some English media might have considered defamation ‘as simply a cost of doing business, and therefore might have engaged in more robust reporting despite the threat of liability’. Media professionals and/or publishers may be ‘personally committed to the transmission of a particular message’. While such intangible benefit is impossible to quantify, it might play an important role in their cost-benefit calculations (Schauer 1978, 698).

2.4.4.4 Contextual Factors

Schauer's (1978, 698-701) ground-breaking conceptualisation of the chilling effect recognised that the perceptions of the chill depend on a myriad of contextual factors. Kenyon et al.'s and Townend's research represent notable efforts to examine and systematise these factors. Nevertheless, there is scope for further research. This study responds to Townend's (2014, 301–2) call for researchers to investigate the factors that contribute to or reduce media organisations' or individual's perceptions of the chill. There have been a number of contextual factors influencing the perception of the chilling effect discussed in the literature to date.

Size and financial strength of organisation

The deterrent effects of the law have been found to depend on the size and financial strength of media organisations. Even if publishers were willing to insulate their editorial departments from litigation pressures and implement measures to promote more responsible practices, they might not possess the necessary resources. Cheer (2008, 231–33) concluded that defamation law did not produce excessive chilling effects on the New Zealand media backed by strong foreign ownership, as they were able to effectively manage defamation risks by implementing measures promoting responsibility. Cheer (2008, 209), however, acknowledged that the generally high costs of proceedings might lead to uncertainty and a chilling effect on small media enterprises. The Australian and American respondents in Marjoribanks and Kenyon's study (2004, 11, 16), who denied any undesirable chilling effects, recognized that they worked for 'resource rich organisations, and that libel law, and the costs associated with it, may be more of a consideration in smaller media organisations'. They had confidence in the ability of their organisation 'to manage defamation, which they took to mean finding a way to get a story into print'. Barendt et al. (1997, 183–84) found that in contrast to the financially secure national press, smaller regional English papers' editorial decisions were more likely to be influenced by litigation fear because even a modest amount paid in damages and/or legal costs would necessitate cuts to the editorial budget or even bankruptcy.

Ownership and organisational culture

The media organisation culture can influence the degree of fear felt by media professionals. Traditionally, Western media publishers tended to be 'venerable

newspaper families' who perceived publishing as a mission and valued editorial freedom above profits (Schauer 1992, 1331–32). As a result, they might have been willing to insulate the newsrooms from financial pressures of defamation and privacy litigation. In contrast, shareholders of media organisations under public corporate ownerships might be less interested in goals of journalistic integrity. Barendt et al. (1997, 184) suggested organisation culture prompted some media organisations, particularly broadcasters, to be more responsible in material preparation and lawyer involvement at an early stage of programme development. Marjoribanks and Kenyon (2004, 18) found that professional standards and organisational status might hinder or promote the law's ability to uphold responsible journalism. Their experienced journalist-respondents employed by self-defined quality print media saw it as 'a professional obligation to their readership to uphold standards'.

The 'human factor': personality traits and values

While the theory of the chilling effect assumes that editorial decisions will, to a large extent, be a product of a rational cost-benefit analysis, Schauer acknowledges the importance of the 'human factor' or individual values and predispositions. 'Assuming a given degree of fear, and a given quantum of benefit, certain individuals will in fact be deterred while others will not'. The varying amounts of deterrence in situations where all other factors are identical will be caused by the different degrees of risk-aversion in individuals (Schauer 1978, 698).

Journalism culture, civil society and political opposition

Kenyon (2010, 441) argued that when investigating chilling effects on public speech in non-democracies or young democracies, researchers should, among other legal and contextual factors, consider the influence of journalism practices, the style and level of civil society activism and political opposition. While 'consensus-building media' might refrain from pursuing investigative journalism, independent 'adversarial media' might, despite liability risks, be more willing to expose abuses of power (444-445). In the context of the very similar Malaysian and Singaporean defamation law and litigation practices, Kenyon suggested that the historical and current extent of civil society and political opposition were key to understanding the different influence on journalistic practices (445-446).

Role of lawyers

Several studies suggested that the role of lawyers might be pivotal to explain the perceptions of the chilling effect. Townend (2014, 292) argued that ‘lawyers play an important enabling as well as inhibiting role’ within the editorial process. Barendt et al. (1997, 185) observed that while in-house lawyers tended to share the culture of their employer, deny acting as censors and emphasise the co-operative nature of their work with reporters, external lawyers may take a more legalistic stance and be perceived as restricting expression. Marjoribanks and Kenyon (2004, 16–17) found that the relationship between the newsroom and lawyers was predominantly one of partnership, striving to get information out, but also suggested that conflicts might arise when lawyers try to restrict publication. Challenging the conventional wisdom that the source of chilling effect was the financial cost of defamation, Hansen’s study (2000) of US newspapers found that frequency of lawyer review was ‘the best predictor of chilling effect’.

Newsroom relationships

Townend (2014, 299–300) suggested that in addition to direct and indirect legal threats, researchers should pay attention to other factors, including the relationships within the newsroom and the position and experience of the reporter, as the journalist’s track record may affect whether the editor has complete confidence in the report needed for a legal defence.

International context

Townend (2014, 282) found that ‘the national context was still key’ as media lawyers and online and print journalists remained largely ‘preoccupied by litigation and legal frameworks in England and Wales despite working for publications operating in a global publishing environment’.

2.5 Conclusion

This chapter presented an original conceptual framework to inform a study of a defamation and privacy regime’s triangulation of the private and public interests in reputation, privacy and freedom of expression. Most modern defamation and privacy

regimes strive to condition the behaviour of plaintiffs and defendants in achieving its three main, interconnected aims: protection of reputation and privacy, promotion of a *benign* and prevention of an *invidious* chilling effect.

Drawing on Habermas's theory of 'discursive democracy' and new institutionalism, the chapter advocated conceptualising the law as a social institution that strives to constrain and enable the behaviour of individuals and entities. Law is understood as being formulated, enacted, interpreted and applied in mutual, strategic interactions between social actors that take place in their structural, cultural and international contexts. Therefore, an investigation of the intended and unintended effects of a legal regime must pay attention not only to the law-on-the-books and its application by courts but also to the cost-benefit calculations of its principal protagonists when they operate within the regime. The examination of their cost-benefit calculi must focus on the mutual relationships between the principal protagonists and the structural, cultural and institutional contexts in which they occur. The conceptual framework is of particular value for this study because it provides focus for the research and identifies the principal protagonists among social actors, but is sufficiently flexible to permit the exploration of new contextual and legal factors that might shape the triangulation at the heart of defamation and privacy regimes.

The chapter further scrutinised the concept of the chilling effect, exploring its different typologies and manifestations to assist in the empirical investigation. The literature review showed that the perceptions about the desirability or undesirability of the chill of defamation and privacy law under Convention law is subjective, depending on the understanding of responsible journalism and public interest. The chapter identified that there are gaps in our understanding of the practical manifestations of the *benign* chilling effect of the law and the harmfulness of the chill to the public interest in freedom of expression. This study seeks to address these limitations in our knowledge.

The chapter reviewed previous empirical studies of the interplay between defamation and privacy laws and journalism and identified the legal and contextual factors that have been said to influence the cost-benefit calculi of plaintiffs and defendants when deciding whether to sue or publish, respectively. The literature review confirmed that when making their decisions that ultimately affect the triangulation of the conflicting interests at the heart of the regime, the principal protagonists are to a large extent influenced by legal considerations. Principal protagonists' perceptions of what could be

called **fairness**, **certainty** and **effectiveness** of the given defamation and privacy regime seem of vital importance.

The fairness of a defamation and privacy regime denotes that a fair balance is struck between the private and public interests in reputation or privacy and freedom of expression when these come into conflict. While none of the rights is absolute and will, under certain circumstances, have to give way to another right, a regime that is seen as overly plaintiff- or media-friendly will not be considered fair. A fair regime also has to preserve adequate access to justice for all parties (Mullis and Scott 2011, 17; 2014, 108-109; Parkes et al. 2013, Chapter 1) and safeguard against abuses of law (Article 19 2000, 2, 5-6; Mullis and Scott 2009, 180-181).

The triangulation of the competing interests in the law-on-the-books and its interpretation and application by courts must also provide an appropriate level of certainty for the parties, both in terms of certainty about outcomes, levels of potential sanctions and certainty about the lawfulness of their contemplated conduct. High levels of uncertainty might, among other things, deter plaintiffs from pursuing an action and defendants from publishing legitimate speech in the public interest.

The perceived effectiveness of a legal regime is also crucial. The speed with which disputes are resolved and the availability of different legal instruments are particularly influential.

The design of any defamation and privacy regime is closely interconnected with the interpretation and application of the law by courts. While intimately interlinked, the law-on-the-books and judicial decision-making are not identical analytical categories. Statutes might remain virtually unchanged, but the balance in adjudicatory practice might shift towards one of the protected interests and away from another, as in England and Wales in the decade before the adoption of the Human Rights Act (see, e.g., Mullis and Scott 2012b, 26–28). Therefore, while it might seem artificial, the fairness and certainty anchored in the statute book and adjudicatory practice will be analysed separately in this study.

The literature review suggested that the relationships between the parties and their lawyers, among parties and within newsrooms were influential factors affecting the intended and unintended effects of the law. Media political economy, organisational culture, journalism and political culture together with personal values and beliefs of media professionals were identified as contextual factors to which investigations of the

chilling effects of defamation and privacy laws should pay particular attention. They will guide the empirical investigation in this study.

Before examining the socio-political context in which the Slovak personality/goodwill protection regime operated during the studied period and introducing its principal protagonists in Chapter 4, the next chapter introduces the research strategy, design and data collection and analysis methods employed in this study.

Chapter 3: Research Strategy, Design and Methods

3.1 Introduction

This study investigates the interplay between the laws of defamation and privacy and journalism. It seeks to examine to what extent and how the Slovak defamation and privacy regime between 1996 and 2016 – as applied by courts – triangulated the individual and social interests in reputation, privacy and expression, from the viewpoint of the principal protagonists. This chapter outlines the research strategy, design and methods of data collection and analysis employed in this study and their implications for its findings.

Drawing on new institutionalism and Habermas's conceptualisation of 'discursive democracy' (1984, 1987, 1996), law is understood in this thesis as a dynamic social institution that constrains and enables the behaviour and mutual interactions between the principal protagonists within the given legal regime. The defamation and privacy regime seeks to regulate the behaviour of would-be plaintiffs, plaintiffs, defendants, including media organisations and media professionals, and their lawyers, in its effort to find an appropriate accommodation between the private and public interests in reputation, privacy and freedom of expression. Law is formulated, enacted and interpreted in mutual strategic interactions between the principal protagonists. These interactions take place in and are conditioned by their specific international, political and social contexts. Changes in the law-on-the-books, in the adjudicatory practice or the wider context in which defamation and privacy laws operate may lead to unintended consequences for any of the protected values. Investigation of a defamation and privacy regime thus conceptualised implies not only examination of the internal legal norms of the legal regime, or the law-on-the-books, but also of the perceptions, experiences, motivations and mutual interactions of the principal participants within the regime in their particular international, social and political contexts.

In order to answer the research question posed by this study, I adopted a socio-legal approach and employing the historical institutionalism method conducted a multi-method, qualitative, longitudinal case study of the operation and effects on reputation, privacy and freedom of expression of the Slovak defamation and privacy regime between 1996 and 2016 in civil disputes involving traditional media-defendants.

The chapter presents the research approach and the elements of the case study research design. It explains the case selection, the focus on disputes involving traditional media-defendants and sets its temporal boundaries. Placing this study within past empirical socio-legal studies of the interplay between defamation and privacy laws and journalism, the chapter explicates how a combination of semi-structured interviews, documents and archival records is the most suitable combination to address the methodological issues inherent in investigating the effects of laws and answering the research question posed by this study. The chapter then describes how the data was collected and analysed through a combination of thematic, legal doctrinal and descriptive statistical analyses. It concludes with a reflection on the ethical, political and personal considerations involved in the study of the interplay between defamation and privacy laws and journalism and their ramifications for the findings of this thesis.

3.2 Socio-legal Approach

The understanding of law as a social institution that operates in a specific context necessitated the adoption of an empirical, socio-legal approach which combined social science methods with doctrinal legal analysis. Socio-legal studies have been characterised as ‘an approach to law’ that ‘covers empirical analysis of law as a social phenomenon’ (ESRC 1994; cited in Hunter 2012, 2; emphasis in original). It ‘embraces disciplines and subjects concerned with the law as a social institution, with the social effects of law, legal processes, institutions and services and with the influences of social, political and economic factors on the law and legal institutions’ (SLSA 2009, 1). It has been argued that a social-legal approach is indispensable for ‘revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution systems and the impact of legal phenomena on a range of social institutions, on business and on citizens’ (Genn, Partington, and Wheeler 2009, 1).

The socio-legal approach is not prescriptive but covers a wide range of empirical research methodologies (Hunter 2012, 1-2; Economides 2014, 261; Colson and Field 2016, 286-87; SLSA 2009, 2). Acknowledging the limitations of any single methodology in explicating the operations of laws in context, the socio-legal approach often combines the methodologies of traditional legal doctrinal research with those of social science.

Practitioners of socio-legal work emphasise that an understanding of how laws regulate human behaviour requires a firm understanding of the ‘black letter law’ in that particular context (Cownie 2004, 55). On its own, doctrinal legal research, which involves an analysis and interpretation of the internal norms of a legal regime (Kroeze 2013, 47; van Hoecke 2011, 3) is unable to provide an adequate understanding of the intended and unintended effects of defamation and privacy laws on reputation, privacy and expression. A doctrinal legal analysis may, for instance, conclude that a defamation and privacy regime properly triangulates the competing interests, while the empirical analysis shows the reverse. Nonetheless, doctrinal legal research is key for providing context for the empirical analysis of the triangulation at the heart of the regime. It is employed in this study to underpin the findings of the systematic qualitative inquiry into the perceptions, motivations, experiences and interactions of the principal protagonists of the Slovak defamation and privacy regime.

3.3 A ‘Longitudinal Deep Case Study’

The law in this study is conceptualised, following historical institutionalist approaches, as a social institution that operates in interactions between the principal protagonists of the legal regime over time and in particular international, political and social contexts. Historical institutionalism as a method involves tracing the interactions of institutions, ideas and agents (or interests) over time (Bannerman and Haggart 2015, 9), while simultaneously examining the mechanism and processes underlying institutional stability and change over time (Thelen 1999). In this context, a process is understood as ‘a sequence of individual and collective events, actions, and activities unfolding over time in context’ (Pettigrew 1997, 338), whilst mechanism denotes ‘a set of plausible hypotheses that could be the explanation for some social phenomenon ... in terms of interactions between individuals and other individuals, or between individuals and some social aggregate’ (Schelling 1998, 32–33). When explaining human behaviour, focusing on mechanism means focusing on motives (Gerring 2001, 196).

Historical institutionalist research usually employs ‘a qualitative, longitudinal, deep case study’ research design (Bannerman and Haggart 2015, 10). This involves selecting the case study and time period, identifying the institution and protagonists to be

studied, identifying mechanisms that strengthen or weaken the institutions, and establishing who gains and who loses during a period of change. Such change could include change in the law, adjudicatory practice, journalism and political culture, mutual relationships between different protagonists or the international, economic or political context, resulting in re-centring of the defamation and privacy regime and in intended and unintended consequences for any of the protected interests.

To take account of such complex macro-, meso- and micro-processes, the researcher must take into account that a specific cause may produce divergent outcomes depending on the context, and that a single outcome may result from several different paths. The complexity of the operation of defamation and privacy regimes in the context of journalism requires sensitivity to ‘informal routines and formal institutions *over time*, attending to path dependency, as well as to the fact that institutions contain conflicting forces that can be a source of instability’ (Ibid., 2015, 15). This study is interested in investigating the extent to which the Slovak defamation and privacy regime triangulated the private and public interests in reputation, privacy and freedom of expression over time and it therefore pays particular attention to ‘the temporal dimension of social processes’ (Pierson 2004, 4). While the emphasis on historical contingency precludes broad generalisations, it is a powerful tool to use when learning how the legal regime interacts with contextual factors in a specific context and over time in producing effects on human behaviour and thus fulfilling the aim of this study.

Case studies are ideal for illuminating relationships connecting a particular cause with an outcome. Given their sensitivity to data and theory, they can ‘provide the intensive empirical analysis that can find previously unnoticed causal factors and historical patterns’ (Achen and Snidal 1989, 167). Case studies are particularly suitable for research that requires sensitivity to contextual factors and inner complexities of phenomena. While contextualisation poses a risk of ‘descriptive excess’ (Lofland and Lofland 1995, 165), it is vital for explaining actors’ behaviour (Bryman 2004, 281), which lies at the heart of this investigation.

The findings of my previous research (Belakova 2011, 2013), as discussed in Chapter 1, suggested that Slovakia represented an extreme case of the interplay between defamation and privacy laws and journalism. It has been argued in the literature that the underlying causal relationships, particularly in difficult-to-measure phenomena, as the effects of the law unquestionably are, are more easily identifiable in an extreme case (Gerring 2001, 217). The risk of a “vicious spiral” of deleterious consequences for all the

competing interests at the heart of the Slovak personality/goodwill protection regime, was striking in comparison to the apparently qualitatively different situation in the Czech jurisdiction. It implied Slovakia is a particularly revelatory case.

The study focuses on civil personality/goodwill protection disputes involving traditional news media-defendants and their online portals as opposed to online media. The logic behind this selection was that during the studied period, traditional news media combined with their associated online portals were the main sources of political and economic news for the citizens.⁵⁵ They also represented the majority of defendants in personality/goodwill protection disputes as plaintiffs took infringements in traditional news media much more seriously than those occurring in online media and blogs.

Legal regimes operate over time and in changing contexts. The re-centring of the regime is expected to have intended and unintended consequences for the protection of the competing interests in reputation, privacy and freedom of expression. A diachronic research design, which examines the changing contexts, multiple levels of causation, as well as sequences and differences between one period of time and another, is best suited to capture these. By examining the developments in a single case over time and paying attention to variation within that case the researcher can often observe or simply intuit, a complex causal relationship at work (Gerring 2001, 215).

The temporal boundaries of this study were chosen to minimise the risks posed by selecting too short or too long a period of investigation (Bannerman and Haggart 2015, 10). The year 1996 was chosen because I reasoned that it would take around three years for the first personality/goodwill protection disputes filed after the founding of Slovakia to be completely resolved. The endpoint of the studied period was 1 July 2016 when a new procedural code – the Code of Civil Dispute Procedure (Act No. 160/2015 Coll., CCDP) – came into force. This Code had the potential to contribute to changes in the operation of the regime. A 20-year-long period appeared sufficiently long to permit the

⁵⁵ Throughout the studied period, television remained the main news source of Slovak citizens at above EU-average levels (e.g. European Commission 2002, 2003, 2011, 2012, 2015). Online media gradually overtook print and radio as a principal news source. Nevertheless, by 2015 only about a fifth of citizens used the Internet as their primary news source for national political affairs (European Commission 2015, 7). The finding of the 2017 *Reuters Digital News Report* survey (Kluknavska 2017, 91) suggest that online media, including social media, overtook television as the main source of news for younger, educated Slovaks. As this was an online survey, the consumption habits of people who are not online might be underrepresented.

observation of trends in the regimes' triangulation of the competing interests and the isolation of the key legal and contextual factors that shape the triangulation process.

The research question posed by this study necessitates comparison. Within-case comparison and limited cross-case comparison are involved. The views of the principal protagonists are compared and contrasted throughout this study in order to provide a holistic picture of the personality/goodwill protection regime's triangulation of reputation, privacy and freedom of expression. The effects of the law on different types of plaintiffs, defendants and speech are compared and contrasted. This approach has the potential to illuminate the factors and relationships that shape the interplay far better than using the viewpoint of only one of the parties to the disputes. Comparison across time is employed when examining participants' views about the trends in the operation of the regime. The study involves cross-case comparison with comparing and contrasting the adjudicatory practice in Slovakia against ECtHR case-law. Cross-case comparison can be found in Chapters 7, 8 and 9 when protagonists draw comparisons concerning plaintiffs' motivations to sue and the effects of the regime for freedom of expression with the situation in the Czech jurisdiction.

3.4 Data Collection and Analysis Methods

The focus of this thesis is to explain the processes and mechanisms through which the Slovak defamation and privacy regime conditioned the behaviour of the principal protagonists in trying to achieve its intended effects (see Chapter 1). This implies adoption of a largely qualitative approach, where researchers 'study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them' (Denzin and Lincoln 2005, 3). Qualitative research has great empirical and analytical explanatory power concerning phenomena that are investigated 'through the eyes of the people being studied', when the emphasis is on context and process and when the research objective requires flexibility regarding explanatory variables (Bryman 2004, 273–90). On the other hand, qualitative approaches often suffer from self-reporting bias (Kendrick 2013, 1679) or the inability of study participants to articulate their perceptions, motivations and specific experiences (Townend 2017, 77-8).

Quantitative empirical research into effects of the law, in contrast, has very limited

explanatory power and suffers from an inherent shortage of reliable defamation and privacy litigation data (Bezanson, Cranberg, and Soloski 1987, 237-240; Townend 2014, 31-32; 2017, 77-78; Barendt et al. 1997, 36-38; Kendrick 2013, 1676-77). Observing trends in litigation rates, for instance, is unreliable as the number of disputes filed might bear little relation to the amount of expression that is actually chilled. Some disputes are never filed because publication never occurs. Low litigation levels can therefore signal a repressive regime as well as a permissive one (Kendrick 2013, 1676-77). Litigation rates also do not explain the effects of a regime on reputation and privacy protection. While quantitative content analysis of judicial decisions might offer valuable insights into adjudicatory practice and correlations between damages awards and litigation trends (see, e.g., Kitajima 2012), it is silent about the potential chilling effects and their nature. Comparative quantitative content analysis of news content is a crude proxy for the *invidious* chilling effect as the chill might be manifested in modification of journalistic content rather than outright suppression of publication (Kendrick 2013, 1678).

Quantitative data and analysis is useful for context and to check on participants' self-reported views even if its value is limited when viewed in isolation. Most past studies of the interplay between defamation law and journalism therefore employed mixed data collection and analysis methods. The Iowa Libel Project (Bezanson, Cranberg, and Soloski 1987, 240) employed quantitative content analysis of reported defamation and privacy cases, defamation insurer claims and questionnaire data. The findings drew on thematic analysis of in-depth interviews with media professionals and lawyers. In their seminal study of defamation and journalism in England and Wales, Barendt et al. (1997) combined defamation writ records with questionnaire data and evidence obtained through semi-structured interviews with editors, journalists and lawyers.

Weaver et al.'s comparative investigation into the effects of defamation law on political speech in English, Australian and US media involved a combination of comparative doctrinal reading of case-law with analysis of semi-structured interviews with editors, journalists, producers and lawyers. In several studies of the interaction between news production and defamation, Kenyon and colleagues (Marjoribanks and Kenyon 2004; Kenyon and Marjoribanks 2005; Kenyon 2010; Kenyon and Richardson 2006; Kenyon 2007) adopted a comparative approach combining doctrinal legal research and mixed empirical methods, including analysis of semi-structured interviews with editors, journalists and lawyers, observations and legally focused content analysis of court files and news articles.

Cheer (2008, 2006, 2005) examined the interplay between defamation and journalism in New Zealand through content analysis of two postal surveys of media professionals and lawyers combined with analysis of interviews with defamation practitioners. Having analysed the survey data through descriptive statistics, Cheer corroborated the findings through content analysis of archival court records. In her study of the interaction between journalistic practice and defamation and privacy laws in England and Wales, Townend (2014) analysed legal documents, news coverage, archival court records, conducted semi-structured interviews with media lawyers and administered online surveys to journalists and bloggers.

This study also employs a combination of methods of data collection and analysis. It primarily draws on thematic analysis of fifty-three semi-structured elite interviews with media managers, journalists, senior editors, plaintiffs and lawyers. The findings of the qualitative interview analysis are contextualised and complemented by evidence gathered from a wide range of documents and archival records analysed using doctrinal legal methods, thematic analysis and descriptive statistics.

3.4.1 Semi-Structured Elite Interviews

This thesis seeks to understand the ways and extent to which the Slovak defamation and privacy regime, operating in its social, political and journalism environment contexts, conditioned the behaviour of plaintiffs, defendants and their lawyers in triangulating the private and public interests in reputation, privacy and freedom of expression. Semi-structured interviews, defined as ‘a conversation with a purpose’ (Kahn and Cannell 1957, 149) are a particularly suitable data collection method for this study because they allow the researcher to ‘get inside the heads’ of people, explore phenomena from ‘their point of view’ (Silverman 2013, 201) and ‘ensure that the relevant contexts are brought into focus so that situated knowledge can be produced’ (Mason 2002, 62).

The interviews for this study can be characterised as elite interviews, that is, semi-structured interviews with respondents belonging to an elite (see, e.g., Dexter 1970; Richards 1996; Tansey 2007; Morris 2009; Mikecz 2012). An elite denotes a ‘group in society considered to be superior because of the power, talent, privileges etc [sic] of its members’ (Welch et al. 2002, 613). A definition of an elite is inherently relative (Welch et al. 2002, 613) because elites cannot be neatly defined as a homogenous group (Rice

2010, 71) and because elite status is embedded in time and place (Harvey 2010, 195). It ultimately depends on the research objectives. Following scholars who argued that elite interviews differ from non-elite interviews in that the respondent possess expertise (e.g. Dexter 1970, 5-7; Flick 2009, 165-66; Harvey 2011, 433), I use the term to describe participants on the basis of their privileged knowledge and ability to best answer the research question posed by this study rather than to describe elites *per se*.

It has been suggested that elites prefer being interviewed, as opposed to responding to questionnaires, because interviewing signals their status and allows them to articulate and explain their views (Aberbach and Rockman 2002, 674). Elite interviews are a particularly valuable method when examining 'dynamic, context-dependent and interactive phenomena' (Welch et al. 2002, 612), which the interplay between defamation and privacy laws and journalism unquestionably is. This thesis investigates the motivations of plaintiffs, would-be plaintiffs and defendants in the context of the law. Elite interviews are the most appropriate data collection method because asking is the only way to learn about people's motivations (Johnson 2001, 272). Elite interviews allow the researcher to elucidate the events and activities that occur outside of media coverage (Lilleker 2003, 208). The understanding that a defamation and privacy regime operates within mutual interactions between its principal protagonists underpins this study. Semi-structured interviews provide the best data for understanding the relations between social actors and their situation (Gaskell 2000, 39), or among actors themselves.

By allowing investigators to ask focused, theory-driven questions of key actors in the processes of interest (Tansey 2007, 767), elite interviews enable the gathering of highly specific, research objectives-relevant data. As interviews yield detailed data in quantity (Marshall 2006, 101), they enable the researcher to understand the context and establish the atmosphere of the area under investigation (Richards 1996, 200). Elite interviews can yield not only 'the much needed context or color [sic]' (Goldstein 2002, 669) but also provide chronology and exclusive insider information, as has been the case for this study. Elite interviews facilitate data validity by offering interpretations of direct participants (Aberbach and Rockman 2002, 674). The method is flexible enough to explore novel explanations and to probe and clarify ambiguities within the data. Interviews offer potentially a novel analytical lens through which to understand the interplay between defamation and privacy laws and journalism.

Data gathered from a particular social or professional group possesses collective explanatory power that is more than the sum of its parts. According to Gaskell (2000, 44),

‘It is in the accumulation of insights from a set of interviews that one comes to understand the life worlds within a group of respondents’. Similarly, Elliott (2005, 28) has argued that interviews with even a ‘relatively small sample of individuals may produce evidence that is considered to provide an understanding of the inter-subjective meanings shared by the whole of a community’. Semi-structured interviews are therefore the most suitable data collection method for this study that seeks to gain detailed understanding of perceptions, attitudes, values and motivations of social actors in particular contexts (Bryman 2004, 319).

3.4.1.1 Limitations of Semi-Structured Interviews

Interviews provide a great wealth of information, but risk data inconsistencies and inaccuracies caused by participants’ memory lapses (Tansey 2007, 767), mood on the day, inability to verbalize their views, or lack of time. Townend’s research (2014, 300) showed that influences on a decision not to publish ‘are not easily documented and even within one institution interpretation of the factors that deterred production or publication may vary dramatically between different individuals’. This is because ‘[d]eterrence may be connected to deeply buried legal and/or social concerns which are never even shared with colleagues, let alone documented formally’. Moreover, ‘journalists may not even be conscious of the reasons they were deterred from pursuing a story’.

Individuals’ desire to ‘appear nobler and better than they actually are’ (Berger 2011, 149) or “settle scores” with adversaries in disputes may also result in their reporting through ‘distorted lenses’ (Gaskell 2000, 44). Elite interviews are prone to (conscious or unconscious) manipulation on the part of interviewees who are adept at not answering questions and presenting themselves in the best possible light (Harvey 2011, 438). Townend (2017, 78) argued in relation to investigating chilling effects that ‘[t]he overall methodological challenge is that one is seeking to prove a negative – or a counterfactual – and looking for evidence that may reflect badly on those “chilled” or “chilling”’. The self-reporting or social desirability bias may thus be reflected in media professionals’ reluctance to admit that they sacrificed journalistic principles for fear of litigation. In contrast, they may wish to exaggerate the effect of the law with the aim of downplaying other less noble considerations that informed a decision to pull or revise a story (Kendrick

2013, 1679). Powerful plaintiffs may also be unwilling to reveal the actual motivations behind their decision to sue, where it may put them in a negative light.

Interview data is further at risk from the unintended use of leading questions and letting the informants know too much about the research agenda and working hypotheses (e.g. Harvey 2011, 438). This particularly applies when the respondents are well-informed, speaking in professional mode and are keen to establish for themselves the nature of the research at the start of the interview.

I adopted several strategies to mitigate these methodological limitations. I set the interview length at one hour to allow for building trust and penetrating the respondents' defences. The interview guides were designed to ensure that the research was conducted systematically and critically (see Patton 2002, 343–46). Four different topic guides were used in this study, covering questions and subject areas pertaining to media professionals and managers, defendant lawyers, plaintiff lawyers and plaintiffs (Appendix 3, 4, 5, 6). The interviews included open-ended and closed questions. They were flexible enough to provide room for probing and clarification, and facilitate an 'extended conversation' (Berger 1998, 55) in whatever order suited the respondent around key issues related to their experiences and perceptions of the law. Although based on the theoretical framework, the interview guides were designed to ensure that the questioning did not explicitly refer to key concepts informing this research. Therefore, journalists and editors were asked in general terms about the effects of legal considerations on their work rather than whether they experienced a chilling effect of the law. This also applied to the wording of the email invitation, the consent form and the preamble to the interviews. During the interviews I took care to remain neutral without disclosing my hypotheses (Ibid., 61).

To minimise the risk of social desirability bias, I offered participants the option for their responses not to be attributed. This allowed plaintiffs and lawyers in particular to be more candid in their responses. Regarding issues that could reflect badly on the respondents, such as killing stories due to legal considerations, in addition to questions about their experience with such practices, I asked about their knowledge about prevalence of such practices in other newsrooms or in general. To mitigate the inconsistencies in respondents' answers, I asked them to draw on specific disputes and examples to illustrate their points. The participants were thus less likely to make too general comments, invent material or deviate too far from the topic. Moreover, I assumed an active interviewing position (Holstein and Gubrium 1995) and asked for explanations,

probed and challenged the informants' responses. While listening attentively to let the respondents know I valued their time and knowledge, I stayed alert, returned to important issues and politely questioned their responses (see, e.g., Britten 1995, 253). I confronted high-profile plaintiff lawyers with the views of defendants about the disproportionate damages claims of their clients.

Rather than treating participants' responses as the objective "truth" about the interplay between personality/goodwill protection law and journalism, I viewed them as social constructs that revealed their perceptions and opinions at the time of the interview in the way they wished to put them in the public domain. During the interpretation stage I was watchful not to take the responses at face value (Mason 2002, 64; Hennink 2011, 132) but rather tried to reflect on all the known influences and limitations. To fill some of the gaps in interviewees' accounts or to mitigate the consequences of inaccuracies due to memory lapses, where possible, I compared and contrasted interviewees' responses against other participants' answers, against media accounts, court decisions, statistical data obtained from official sources and internal media organisations' records, and previous studies. The interviews with different sets of defendant actors also provided some correction against the social desirability bias, as journalists often provided contrary views on the chilling effects to media managers and editors. Conducting interviews with all the parties to the disputes and their lawyers also allowed for examination of some of the key concepts from diametrically opposed perspectives.

3.4.1.2 Sampling

Interview data was collected between March 2013 and March 2017. A phased approach to data collection was adopted. Initial background interviews with experts were followed by interviews with defendants and their lawyers. Interviews with plaintiffs and their lawyers were conducted in the final fieldwork phase. In total, this study draws on fifty-three interviews with fifty-three respondents.⁵⁶ Forty-eight were conducted in person, one

⁵⁶ In addition to the fifty-three interviews analysed in this thesis, I conducted ten brief interviews with judges who had experience with adjudication of personality/goodwill protection disputes involving media-defendants. These interviews provided context to the plaintiff and defendant interviews and were not thematically analysed or cited in the findings chapters.

over Skype and four by email. One was a joint interview with two respondents. I interviewed one participant twice. I had no prior personal or professional relationship with any of the interviewees.

I employed purposive, non-probability sampling, in which ‘logic and power lies in selecting information-rich cases for in-depth study’ (Layder 1998, 46). This research studied the variety of principal protagonists’ views and experiences with the defamation and privacy regime and how these conditioned their behaviour. The selection process was thus essentially strategic (Bryman 2004, 134) as it identified persons deemed most appropriate to answer the research question. The sample is not representative of the whole population. The selection of respondents between media professionals and defamation lawyers ensured that the sample had experience of working for all the major national news media outlets (see Chapter 5). The increased risk of selection bias and reduced generalisability to other contexts of purposive sampling was taken into account at the interpretation stage.

Expert interviews

The purpose of conducting interviews with legal and media experts, some of whom were also practitioners, was to gain better understanding of the relevant statutes and the context in which the law was applied, and to identify the principal protagonists and the relationships between them. With the assistance of the completed literature review and colleagues, I identified participants in both the Slovak and Czech jurisdictions. I conducted ten interviews. Six of these provided the background, sourcing recommendations regarding documentary sources and respondents. Two of these interviews also served as pilots for later interviews with media professionals and defamation lawyers. None were thematically analysed or quoted in this study. I analysed the other four interviews and included the relevant finding in the empirical chapters of this thesis. The interviews are also recorded in Appendix 2.

Defendant interviews

Based on the theoretical framework, I identified two sets of defendant-respondents: media managers, including senior editorial staff, and journalists with experience of personality/goodwill protection litigation, either as defendants or authors of contested material. I also wanted to obtain the views of lawyers with experience of defendant work. Three initial target lists were drawn up after researching media coverage, national media

outlet's websites and analysing media cases published on the Justice Ministry portal.⁵⁷ Invitations were sent to managers and/or senior editors at all national television broadcasters and newspapers (bar the Sports daily). I also invited editors-in-chief at magazines involved in investigative journalism. Invitations were sent to six highly experienced investigative journalists and political commentators and to five defendant lawyers. I also approached one of the experts previously interviewed.

During the field visit I initiated snowball sampling (see, e.g., Atkinson and Flint 2001, 3). I asked media managers, editors and journalists for details of their lawyers, and for suggestions of colleagues with experience of litigation. The snowballing technique helped to considerably extend the sample. One previously interviewed expert informant proved very helpful, providing access to some senior managers and investigative journalists.

I conducted interviews with thirteen media managers and/or senior newsroom editors. One of the respondents had solely worked in the Czech Republic, eleven in Slovakia and one had experience in both jurisdictions. The interviewees included managers from each of the national television broadcasters, from the only national business daily, the leading broadsheet, the most popular daily tabloid, the only commercial news agency and a leading economics magazine (see Appendix 2). Managers and editors at Spoločnosť 7 Plus who published the second most popular daily *Plus 1 deň* and the most popular weekly *Plus 7 dní*, the editors-in-chief of broadsheet *Pravda* and magazine *.týždeň* declined to be interviewed. Ten interviews with some very prominent investigative journalists and political commentators were conducted. All the respondents had either direct experience with personality/goodwill protection disputes as defendants, co-defendants or witnesses in proceedings. All were practicing print press journalists with over five years' journalistic experience. The sample included ten leading media lawyers. Six focused solely on defendant work; four also had experience with plaintiff work.

Plaintiff interviews

I compiled an initial list of plaintiffs and plaintiff lawyers after researching media coverage, court decisions published on the Justice Ministry website, and a sample of court

⁵⁷ <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>.

decisions obtained from ordinary courts. I sent invitations to some of the most litigious high-profile plaintiffs, their lawyers and other plaintiff lawyers who, according to the available documentary data, represented clients in multiple disputes. In the field, I invited defendant lawyers to recommend fellow counsels whom they had repeatedly encountered in court. I asked plaintiff lawyer-informants to contact their clients on my behalf with an invitation to participate in the study. I also used my social networks to access a regional plaintiff lawyer whom I identified as a counsel in several disputes held at a district court which had adjudicated several personality protection judgments. I interviewed eleven plaintiff lawyers, two of whom also had experience of defendant work. One worked in the Czech jurisdiction. I conducted six interviews with plaintiffs.

3.4.1.3 The Interviewing Process and Nature of Collected Data

All participants were contacted by letter, email or over the phone. The formal invitation to interview fitted on a single sheet of paper, and included the LSE logo, a reference to my ESRC sponsorship and LSE profile, a brief description of the study and topics I would like to discuss. It made clear that the interview could be conducted anonymously if required, that it would last no longer than an hour, and that during the time I was in the field, I would meet the respondent whenever and wherever was most suitable for him/her. I further suggested that if they were unable to meet in person, I was willing to arrange an interview over the phone or Skype, or send them my questions via email (see Hay-Gibson 2009). To those who requested it, I sent specific questions to be covered prior to the interview.

At the outset of the interview, participants were presented with the informed consent form, which they were asked to sign, indicating whether they wished their contributions to be attributed (Appendix 1). I ascertained how much time the interviewee was able to spare to prioritise themes (Mangen 1999, 118). The interviews were conducted in Slovak (or Slovak and Czech). All the journalists, media managers and senior editors went on record. Given the sensitive nature of personality/goodwill protection litigation, all six plaintiffs preferred to remain anonymous. Nine of the twenty-one lawyer-respondents did not wish to have their responses attributed. To maintain the conversation flow whilst capturing every detail so preventing loss of substantial pieces of information (Aberbach and Rockman 2002, 675; Mangen 1999, 117; Johnson 2001, 274;

Bryman 2004, 329), the Skype interview and face-to-face interviews were recorded unless the participants objected. One of the early expert interview recordings was lost due to a technological malfunction. I realised the issue at the end of the interview and immediately wrote down a summary, which the interviewee reviewed via email, adding extra notes of his own. I wrote de-briefing notes following each interview in order to reflect on the interview process and feed into the analysis (Wengraf 2001, 142-44).

The face-to-face and/or Skype interviews lasted between 36 minutes and two hours and five minutes, and were between 6,050 and 20,000 words. The interviews provided rich accounts of the respondents' perceptions, experiences, and the legal and contextual factors that combined in enabling and/or inhibiting the personality/goodwill protection regime to appropriately triangulate the conflicting interests. One of the plaintiffs – P06 – was originally interviewed for his expertise as a judge in personality/goodwill protection disputes. It transpired during the interview that he also figured as a plaintiff in one dispute. His views were included in the analysis. The data gathered from the non-recorded interviews was less voluminous, and contained few direct quotes. Nonetheless, the interviews corroborated the main themes emergent from the other interviews, providing unique examples. The email interview data was of varying quality. While some respondents provided very rich accounts, others were much more concise.

3.4.2 Documents and Archival Records

To mitigate the inaccuracies, gaps and potential biases within interview data, to identify litigation trends and to set the principal protagonists' views and experiences in context, this study employed a wide range of primary and secondary documents and archival records. It has been acknowledged in the literature that the written record is particularly valuable for increasing research validity through verification of information collected via other methods, particularly interviews (McNabb 2010, 397; Yin 1994, 81). Documentary evidence provides access to subjects difficult or impossible to reach via direct, personal contact (Marshall 2006, 125), is of non-reactive nature and thus minimises the self-reporting bias (Bryman 2004, 381). It is also well suited for analysis over time (Hakim 2000, 39), and can provide valuable data on the background and historical context (Marshall 2006, 107) and frequency of phenomena (Scott 1990, 4; Johnson 2001, 237).

Documents played an important part in every phase of this study: contributing to the identification of the key problem, the selection of interview participants, the augmentation and triangulation of the data gathered from the interviews, and the illumination of the interview findings. Five main types of documents were collected: legal texts and commentaries, court decisions, official statistical records, internal media organisations' records, media coverage and past studies.

Legal texts and commentaries

I read and re-read substantive and procedural rules under civil, criminal and media law, explanatory memoranda, legal commentaries and scholarly articles to understand the legal issues, identify legal expert-respondents, prepare for interviews, and investigate the extent to which the interests in reputation, privacy and expression were triangulated in the statute book. The legal commentaries were also used to complement the views of interview respondents on the adjudicatory practice of Slovak courts.

Court decisions

An extensive corpus of judicial decisions, including those of Slovak ordinary courts, the Supreme and Constitutional Courts and the ECtHR, was collected from multiple sources. In an early data collection phase, ordinary courts' decisions in personality/goodwill protection disputes delivered in 2011 and 2012 and published on the Justice Ministry portal⁵⁸ were used to identify the regime's principal protagonists. The acquired data complemented interviewees' perceptions about litigation trends in providing a quantifiable picture of the regime (see Chapter 5). Where possible, the decisions were used to identify specific defendants, plaintiffs and their representatives to be approached for interview.⁵⁹

I obtained a sample of final decisions in media personality/goodwill protection disputes by sending Freedom of Information (FOI) requests to all Slovak ordinary courts.

⁵⁸ From January 2012 all final decisions of Slovak ordinary courts were to be published at <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>. This database is continuously being expanded with new and past decisions.

⁵⁹ The officially published judgments are anonymised. However, the degree of anonymization varies depending on the meticulousness of responsible court administrators. It was therefore possible to identify several defendants, plaintiffs and/or their lawyers.

However, the sample was insufficiently representative to permit inferences about litigation trends to be drawn due to archiving issues. The sample was used to identify interview participants, particularly plaintiff lawyers, and to complement interview data related to selected litigious plaintiffs' decisions to sue and media-defendants' arguments presented in court in selected controversial cases repeatedly mentioned by informants.

Court decisions and petitions obtained from defendant lawyers, media organisations and judges were used to provide context and views of the parties to other high-profile disputes, unavailable through official channels. The corpus also included seminal decisions of the Supreme and Constitutional Courts, gathered from the courts' websites, published case-law collections (Vozár and Zlocha 2014; Vozár et al. 2015), and a professional legal search engine (Aspi). Together with Article 10 case-law of the ECtHR involving Slovakia, these were analysed to complement the respondents' views on the Slovak adjudicatory practice.

Official statistical records

To provide background for interviewees' views about litigation trends and contribute to a quantifiable picture of the personality/goodwill protection regime, I collected official statistical records on the number of adjudicated personality/goodwill protection claims by ordinary Slovak and Czech courts between 1995 and 2016.⁶⁰ The Justice Ministry did not keep records that distinguish between different types of personality/goodwill protection disputes or defendants, or on the number of submitted petitions or claims, the types of damages claimed or disputes' outcomes.

Internal media records

In the absence of publicly available records on litigation rates, remedies, results and defendant and plaintiff types, I approached the newsrooms and/or publishers of all the major national dailies, weeklies and television broadcasters with requests to provide their internal records about personality/goodwill protection disputes. The majority of media organisations did not keep detailed records or were unwilling to disclose them, even on

⁶⁰ Only part of the Slovak statistics were published. I obtained the data over a longer period through a FOI request.

an anonymous basis. Trend and Petit Press provided their records for analysis. However, as the organisations had advised and as transpired during analysis, the records were incomplete. The quantitative data obtained was thus not taken at face value, but treated as complementary to official data and interviewees' views. Some senior executives and editors had lists of disputes prepared by their lawyers for the interview and were able to cite some quantitative data.

Media coverage and past studies

Having studied the media coverage, non-governmental organisations' reports and past studies of Slovak courts' adjudicatory practice, I became well-versed in the defendants' public accounts of the issues surrounding controversial personality/goodwill protection disputes and/or threats, became acquainted with the dynamics of the relationships between public officialdom and the media and gained an understanding of longitudinal developments in the regime. This allowed me to better interpret interviewees' accounts and to extract from interviews the key themes and narratives. In the initial stages of the research, the media coverage and studies assisted with identification of the main protagonists, respondent selection and familiarisation with the most controversial disputes.

3.4.3 Data Analysis

The primary data analysis method was thematic analysis. Legal documents were analysed using doctrinal legal research techniques. Statistical records provided by the Justice Ministry and media organisations were content analysed, with findings presented using descriptive statistics.

3.4.3.1 Thematic Analysis

The focus of the analysis of elite interviews was on 'the substantive content' (Elliott 2005, 20). Thematic analysis was therefore selected as the most suitable method. The analysis approach was hybrid, where deductive, theory-driven codes were combined with inductive, data-driven ones (Fereday and Muir-Cochrane 2008, 4). This approach allowed

the integration of codes and themes derived from the literature review, with themes emergent directly from the data.

The interview guides were deductive as they incorporated the codes and themes originating from the literature review and conceptual framework (see Chapter 2). The interviews were semi-structured around these themes without being explicitly cited during interviews. The defendants' and lawyers' interview guides were devised first and gradually adapted as new topics emerged during the initial interviews. The plaintiff and plaintiff lawyer interview guides were then compiled utilising the post-interview notes and themes in the literature.

Once data collection had been completed, all the interviews were transcribed. The interview transcripts and email interviews were uploaded into NVivo and divided into six sub-folders: experts, journalists, media managers/editors, plaintiffs, defendant lawyers and plaintiff lawyers. Each subfolder was coded separately using its own coding framework. The coding frames were similar. The journalist interviews were coded first. The first round of coding was predominantly deductive, based on the topics included in the interview guides. During the first round of reading and coding I made use of memos, recording potentially significant new codes, quotes etc. Some of these were later incorporated into the emerging themes and analysis.

After all the interview transcript sub-groups underwent the first round of coding, the analysis became more inductive. The primary codes assigned were deliberately broad and their purpose was to signpost the parts of texts that dealt with certain topics. The second round of coding was inductive and rested on my re-reading the coded interviews and assigning new codes either by devising new ones, sub-dividing or merging existing ones. Among the new codes that appeared across all the interview sub-sets, was "media reluctant to admit mistakes". I also assigned new codes related to often-mentioned controversial disputes to segments of texts, among others "Bonanno", "Harabin v. Petit Press". As the coding continued, three main themes relating to the adjudicatory practice emerged: "fairness", "certainty" and "effectiveness". These were consistently present among all the sub-sets, and during the interpretation and write-up stages became frame for the study findings. In light of the importance of these themes within the interview data and their high explanatory value, I revised the conceptual framework and revisited the preliminary doctrinal analysis of the law-on-the books.

Among other themes that unexpectedly resonated in the interview data was the "between *benign* and *invidious* chill", denoting the subjective nature of respondents'

views on identical instances of non-publication. This was most clearly visible in the “Gorilla” case. The subjective nature of the chilling effect concept was highlighted in the literature by Cheer (2008, Chapter 4), but did not resonate as strongly as in my interviews. In a recent study of the relationship between defamation and privacy laws and journalism, which was published after the majority of the defendant interviews were conducted, Townend (2014, Chapter 2 and 301-302) also pointed out this issue.

There were several codes and themes that did not appear as important as expected. Among these was “financial costs of litigation” in relation to plaintiffs’ decision to sue. The plaintiffs rarely mentioned the financial costs and it appeared infrequently in plaintiff lawyer data. While litigation costs in a civil law system are generally much lower than costs in a common law system, this was still a little surprising given the unavailability of CFAs or other no-win-no-fee arrangements combined with the high costs of proceedings in the 1990s and 2000s relative to average income (see Chapter 5).

Once the interviews were coded and the main themes established, I conducted thematic analysis on selected court decisions in some of the most frequently mentioned cases in the interview data, which were used to illustrate some of the arguments made in the thesis. The analysis focused on the infringement, the harm plaintiffs’ claimed to have suffered, the plaintiffs’ views on the objectives pursued by the defendants and on defendants’ counter-arguments.

3.4.3.2 Doctrinal Legal Analysis

Doctrinal legal analysis techniques were applied to the statutory texts, scholarly legal writings and the case-law of Slovak courts and the ECtHR. The texts were read and re-read in order to establish the meaning and value of personality rights, goodwill and the right to freedom of expression within the legal regime. Using deductive and inductive logic and analogical reasoning I analysed how the private and public interests in reputation, privacy and freedom of expression were balanced within black letter law. Where relevant, comparisons with standards entrenched in the ECtHR jurisprudence were made.

This analysis set the interview thematic analysis findings in context. The analysis of the interview data suggested the concepts of fairness, certainty and effectiveness as related to the law-on-the-books and the adjudicatory practice were of high explanatory

value. The legal texts and commentaries were therefore re-read and interpreted focusing on the extent to which and how the internal legal norms safeguarded fairness, certainty and effectiveness in personality/goodwill protection disputes involving media-defendants.

Legal analysis of the case-law of Slovak Constitutional Court in freedom of expression matters and the ECtHR Article 10 judgments involving Slovakia was also conducted to complement the thematic analysis of interview data relating to the adjudicatory practice of ordinary courts. The analysis focused on the standards prescribed in the case-law as to the norms and the ultimate balancing test pertinent to defamation and privacy disputes, and the Constitutional and European Courts' assessment of their application by ordinary Slovak courts.

3.4.3.3 Analysis of Justice Ministry and Internal Media Records

To set the participants' perceptions about litigation rates and trends in context, Justice Ministry statistical records, selected court decisions and available internal media organisations' records were analysed. The raw data obtained in differing formats was first inputted into Microsoft Excel datasets and coded. The datasets were then analysed using descriptive statistics, including frequency tables and diagrams. The analysis and interpretation of quantitative data within this essentially qualitative study allowed for visualisation of trends in litigation rates over a period of time. It helped to corroborate the thematic analysis findings and enabled inferences to be drawn about the effects of particular rule changes on the operation of the personality/goodwill protection regime.

3.5 Reflections on the Personal, Political and Ethical Considerations during Interview Data Collection and Analysis

The quality of data gathered through interviews is affected by the ethical, political and personal dimensions of the processes of material collection and its subsequent interpretation. The following section reflects on how they may have influenced the findings of this study.

3.5.1 Ethical Considerations

The conducted interviews were straightforward and open. Many complex ethical decisions (e.g. Hopf 2004; Kvale 2007, 21–32) were therefore not applicable to this study. Nonetheless, interviews that invite respondents to explicate their perceptions and experiences related to a contested issue as was the case with personality/goodwill protection disputes, involve certain ethical and political dimensions that the researcher must take into account. Openly discussing a sensitive matter such as newsroom practices or self-censorship that are not usually publicly debated or controversial to admit is inherently exposing. Having to recollect the harm suffered as a result of a defamatory publication and talking about experience of legal proceedings might be distressing. The subject matter is also politically sensitive in Slovakia where personality protection disputes brought by high-profile public officials are portrayed as attacks on freedom of expression. Moreover, media organisations might fear unknown future consequences for disclosing sensitive information including litigation costs. When collecting and analysing data it was therefore necessary to consider the ‘broader implications of research in terms of the impact it may have on society or on specific subgroups within society’ (Elliott 2005, 146).

The primary ethical concern was obtaining informed consent from participants. The initial invitation and the interview preamble clearly explained to the respondents the purpose of the research and their right to withdraw at any time. I also reassured the participants that their responses would be used solely for the purposes of my research and would not appear in the media. I established whether the interviewees wished their responses to be attributed or remain anonymous and asked them to sign a consent form (Appendix 1). Several interviewees, predominantly those who responded via email, ignored the consent form or did not indicate whether they wished to remain anonymous or not. In those cases, their responses were anonymised. I also anonymised the responses from those participants who requested their answers to remain non-attributed. For that purpose, I used a combination of letters and numbers, which indicated the interviewee group and number. L01, for instance, denoted a lawyer-participant.

During the interviews, particularly with plaintiffs and lawyers, I emphasised when asking about their experiences or the disputes and clients they represented that they need not disclose the information or might wish to talk in general terms, as my interest was in understanding the workings of the regime. While most interviewees were content to speak

openly about many potentially sensitive issues, several chose not to reveal certain details. One plaintiff-respondent chose not to disclose the amount of damages she requested. A lawyer representing a publishing house was reluctant to discuss in detail a particular controversial dispute when he learned that I was interested in interviewing the plaintiff. Another participant asked to go off record a couple of times during the interview when discussing certain figures and actions pertaining to a dispute he was involved in. One plaintiff and two plaintiff lawyers requested that the interviews should not be recorded.

The contested nature of the issues under investigation was also evident in the responses or non-responses from the individuals and media organisations approached who declined to participate. While journalists and media lawyers were generally approachable and happy to discuss their experiences and views, managers and senior editors from several newsrooms did not want to be interviewed. Management at Spoločnosť 7 Plus, which according to some accounts, had been involved in the largest number of disputes among Slovak media, declined my invitations. The founding editor-in-chief of *Plus 1 deň* advised ‘your questions concern internal and financial matters of the publishing house, which we do not present outwards. Similar requests in the past also received a negative response’.⁶¹ The editor-in-chief of *Pravda* did not have the requested information and was only willing to respond to general questions via email. Despite repeated approaches, the editor-in-chief at *tyždeň* failed to respond to my emails and messages, and refused to talk to me when I approached him at *tyždeň* offices, where I was interviewing another participant. *tyždeň*’s lawyer was unable to meet me and failed to respond to my questions sent via email.

High-profile, litigious plaintiffs (see Chapter 5) and/or their lawyers were also reluctant to ‘go public’ with their views. I first invited Štefan Harabin to participate in 2014, shortly before his term as Supreme Court President expired. Our meeting set up through the Court spokesman was cancelled at short notice. Harabin did not respond to my repeated email invitations or to my indirect invitation through his long-term lawyer, whom I interviewed in 2016. I contacted Robert Fico in 2014 and received a response from the prime minister’s office that his commitments did not allow him to participate. I contacted Fico indirectly, giving him a chance to participate, through his former lawyer,

⁶¹ Email communication with Nancy Závodská, 25 March 2014.

whom I had interviewed in 2016. However, he did not respond. I was unable to contact Ján Slota as he was no longer active in public life. Neither of the three lawyers approached who represented him in media disputes were interested in participating in this study. I was in contact with Judge Polka's wife, who acted as his solicitor in his personality protection disputes. Despite an original agreement to meet, due to clashing commitments, I was unable to interview her. She failed to respond to my questions sent upon her suggestion via email. She also advised that Judge Polka had suffered enough and would not be interested in discussing his experiences.

Ethical issues may also arise when selecting and presenting participants' responses or public statements because 'the published account is not an objective rendering of "reality", but it is the researcher's interpretation of the facts that is published for public view' (Morris 2009, 214). When thematically analysing the data and presenting the respondents' views I tried to understand their accounts in context and be sensitive to their and my positionality (McDowell 1998, 2143). Conclusions of any research cannot be based on the recollections of a single respondent (Lilleker 2003, 212). I therefore tried to give voice to all participants, compared and contrasted the views of the different protagonists on the same issue, and, where possible, cross-referenced the information obtained with other interviews, documentary sources, media coverage or secondary literature (Davies 2001, 77). The 'anxious defended subjectivity' on the part of interviewees, particularly among plaintiffs who might find questions around their dispute distressing, was considered during data interpretation (Wengraf 2001, 59). Attention was paid to the significance of unanswered questions and inarticulate or limited responses.

3.5.2 Personal Considerations: Positionality

Data quality further depends on a sound working relationship with interviewees, which is influenced by personal considerations such as the "insider/outsider" status of the researcher,⁶² his/her age and gender, and the resulting possible power imbalances between

⁶² According to Gair (2012, 137), the concept of "insider/outsider" status 'is understood to mean the degree to which a researcher is located either within or outside a group being researched, because of her or his common lived experience or status as a member of that group'.

the researcher and elite informants (e.g. Britten 1995, 252; Desmond 2004, 4-5; Smith 2006; Harvey 2010, 194; Mikecz 2012, 483-85). It has been argued that overwhelmed by the seniority gap and grateful for being granted the interviewee's time, researchers may become too deferential (Ostrander 1995, 143). Elites may attempt to dominate the interview by challenging the researcher's statements or talking about other issues than those asked about (Lilleker 2003, 211). While this could unlock new perspectives and interpretations, it could also go too far, leaving the researcher trying to steer discussion back on course. The position of a young female researcher may be exacerbated by her being considered even more junior in status than a young male (Welch et al. 2002, 621-22). The power imbalance, however, does not preclude the elite interview becoming a mutually enriching experience (Kvale and Brinkmann 2008, 31).

I tried to combine the elements of being both an insider and an outsider to gain the best possible quality data (Harvey 2010, 198) and to mitigate the impact of the power imbalances through several strategies. I was happy to answer respondents' questions about the research, and tried to establish common interests, academic or local allegiances and thus rapport (Richards 1996, 203). I was perceived as both an insider and an outsider during the interviews. As a Slovak national aware of the issues surrounding personality/goodwill protection, I was considered an insider. At the same time, as a doctoral researcher in media and communications at a UK university, I was an outsider as I was neither a media professional, a lawyer nor a plaintiff.

I approached the interviews with defendants and plaintiffs from the position of neutrality, explaining that I did not side with either of the parties to personality/goodwill protection disputes, but wanted to tell both their stories. At the same time, I showed empathy to and understanding of the issues they faced. This was particularly important when interviewing plaintiffs, who in the context of the portrayal of the disputes as an attack on media freedom, were often apprehensive at the outset of the interview. The plaintiffs seemed to have valued the professional interest of a serious researcher in their side of the story and provided honest responses.

All the interviews with journalists took place in informal settings outside their offices. This allowed for more conversational and reciprocal interviewing situations where I was able to probe and ask questions that potentially challenged their professional status without alienating them. I found the informants friendly, engaged and happy to help. Although the interviews with media managers and defamation lawyers mostly took

place in their offices, I also found the respondents open, supportive and their accounts very informative and candid.

The power imbalances were most visible in the interviews with some senior plaintiff lawyers. These interviews took place in an atmosphere of respect and distance. The fact that I was not a lawyer, a female and the interviewee's junior resulted in some patronising behaviour. However, as has been suggested in the literature (Harvey 2011, 434; Richards 1996, 202), advance preparation is key for the researcher's ability to project a positive impression in order to gain elite interviewees' respect. I took preparation for the lawyer interviews very seriously, researching the relevant substantive and procedural rules, their professional background and publicised cases they represented. I was thus able to pose qualified questions, answer their queries competently and engage them in an intellectual dialogue (Welch et al. 2002, 625). The situation between me and the respondents became closer to one of equals and the interviewees provided a rich account of their and their clients' experiences. Some even candidly disclosed specific borderline practices.

3.6 Conclusion

This chapter presented the socio-legal approach combining elements of doctrinal legal research with social science methods of data collection and analysis adopted in this study. It explained why this research strategy is well suited to answer the research question posed in this thesis. The chapter then outlined the qualitative, longitudinal deep case study research design used to address the research problem. The data collection and analysis methods using semi-structured elite interviews and documents were described. The limitations of the selected methods and the ways in which this study sought to address them were also presented. Lastly, I reflected on the ethical, political and personal consideration that affected collection and analysis of interview data and its quality.

The next chapter sets the findings chapters into their socio-political context. After introducing Slovakia's basic constitutional set-up, it explores the country's turbulent road to democratic consolidation and beyond, linking it to the prevalence of clientelism, corruption and informality in society, and developments in the media system and journalism culture. The second part of the chapter sketches a picture of the defamation

and privacy regime between 1996 and 2016 in numbers, presenting the regime's principal protagonists among defendants and plaintiffs.

Section 2: Socio-political and Legal Contexts

Chapter 4: Slovakia 1996-2016: Politics, Society, Media and the Personality/Goodwill Protection Regime in Numbers

4.1 Introduction

The conceptual framework that underpins this study suggests that the interactions between the principal protagonists of a defamation and privacy regime, which ultimately affect to what extent and how the given regime is able to triangulate the private and public interests in reputation, privacy and expression, take place in context. The socio-political, legal and international contexts are key for understanding these interactions. This chapter seeks to set the empirical findings relating to the operation of the Slovak personality/goodwill protection regime⁶³ between 1996 and 2016 (discussed in Chapters 6, 7, 8 and 9) in their socio-political context.

A small,⁶⁴ ethnically heterogeneous⁶⁵ Central and Eastern European parliamentary republic, Slovakia started its journey as an independent state in 1993 following the peaceful split of Czechoslovakia. By the end of the studied period, Slovakia was considered a consolidated, pluralistic democracy and one of ‘the most obvious economic success stories in post-communist Europe’.⁶⁶ Slovakia, however, represented a deviant example of democratic transition in Central Europe (Pridham 1999, 1222; Mihalikova 2006, 172). While the Czech Republic, Poland and Hungary moved from ‘transition’ to ‘consolidation of democracy’ in the early 1990s (Rupnik 2003, 17), Slovakia moved towards ‘a personal form of authoritarianism’ (Pridham 1999, 1226),

⁶³ Slovak legal system’s terminology for the defamation and privacy regime. See Chapter 5.

⁶⁴ In the studied period, Slovakia’s population remained stable at around 5.4 million inhabitants (Školkay 2017, 184).

⁶⁵ While statistics in this area are not overly reliable, it has been estimated that between 15 and 20% of Slovakia’s population belonged to an ethnic minority in the period under investigation. The Hungarian (estimated at around 500,000) and the Roma (estimated between 350,000 and 400,000) were the two most sizeable minorities (see <https://slovak.statistics.sk>; also Školkay 2011a, 13; Školkay et al. 2010, 5; Papp 2003, 161, footnote 87; Freedom House 2003).

⁶⁶ Slovakia’s national income (GDP) more than doubled between 1982 and 2014 and according to Eurostat, it was third in GDP per capita among CEE countries (Školkay 2017, 184, 202 footnote 38). In 2015, Slovakia was one of the fastest growing economies in the EU (Cunningham 2016, 2).

defying the so-called transition paradigm (see, e.g., Carothers 2002; Gans-Morse 2004; Bunce 1995) or hopes for a continuous and linear unfolding of democracy (Mihalikova 2006, 173). The country's 'chequered' (Pridham 1999, 1226) or 'zig-zag' (Szomolányi 1999) democratisation and the political elites' attitude to concentration of power and acceptance of criticism in public discourse was one of the primary causes for the fact that 'corruption, cronyism and illiberal politics remain[ed] significant, if not dominant, features of status quo', as one commentator put it (Cunningham 2016, 2). It also significantly shaped the media environment, journalism culture and the mutual relationships between politics, judiciary and the media which lie at the heart of the operation of the personality/goodwill protection regime in the studied period and can account for the prevalence of certain principal protagonists within the regime.

After outlining Slovakia's constitutional framework, the chapter discusses the country's key socio-political events since the fall of communism in 1989. These are then linked to the developments in the media system and journalism culture as well as to the quantifiable picture of the Slovak personality/goodwill protection regime, including rates of litigation and the principal protagonists.

4.2 The Constitutional Framework

Slovakia is a parliamentary republic with a president at its helm. The government is led by the prime minister (PM) who is appointed by the president following elections to the National Council of the Slovak Republic (parliament). The government is accountable for the execution of its duties to the parliament (Školka 2011b, 11), which has the right to recall it (Mesežnikov, Kollár, and Vašečka 2010, 480). Since 1999 the president is directly elected by popular vote, using a majority model with two rounds of voting (Mesežnikov, Kollár, and Vašečka 2009, 468). The President's powers in the domestic arena remain relatively limited.

The country's supreme legislative body, the parliament, is a unicameral chamber with 150 deputies elected by universal suffrage based on a proportional system for a four-year-term (Malová 2001, 365). Governments are typically coalition-based (Školka 2017, 185) with single exception of the majority government led by Robert Fico in 2012-2016. Slovakia's electoral legislation pertaining to parliamentary elections remained mostly

unchanged between 1990 and 2016 and commentators considered it ‘conducive to free and fair elections’ (Mesežnikov, Kollár, and Vašečka 2012, 497; also Freedom House 2003). While citizens were relatively active in Slovakia’s political life, membership of political parties was low with a declining tendency.⁶⁷

Slovakia has a three-tiered judicial system of ordinary courts that consists of the Supreme Court, regional and district courts. It is administered jointly by the parliament, president, the Justice Ministry, the Supreme Court and since 2002 the Judicial Council – the principal body of self-governance within the judiciary. The Justice Ministry appoints the chairpersons and vice-chairpersons of ordinary courts (Škol kay 2011b, 12–13; Mesežnikov, Kollár, and Vašečka 2010, 491). The Constitutional Court is an independent judicial organ protecting the Constitution. Its verdicts are legally binding. The right to appeal to the Constitutional Court regarding the unconstitutionality of laws and government regulations rests with parliamentary deputies (at least 30 are required to launch an appeal), the president, the cabinet, courts of justice, the State Prosecutor and the Public Defender of Human Rights (Ombudsman). Citizens and legal entities may turn to the Court if they believe their constitutional rights have been violated by a state organ. As a member of the Council of Europe Slovakia ratified all important international human rights documents. In the studied period, citizens were able to apply to the European Court of Human Rights if Slovak judicial institutions were unable to provide a remedy or take action (Mesežnikov, Kollár, and Vašečka 2009, 484, 492–93). Since 2004, the Slovak legal system recognised a specialist court to deal with cases of political and other serious corruption and organised crime. In 2009, the original Special Criminal Court was replaced by a weaker Specialised Criminal Court as the Constitutional Court declared it unconstitutional following an MP-led initiative (Škol kay 2011b, 12).

⁶⁷ Membership of political parties was estimated at 100,000 out of 4.2 million eligible voters in 2007 (Mesežnikov, Kollár, and Vašečka 2009, 487). Citizens who considered themselves members of parties represented in the parliament in 2011 numbered less than 50,000 (Mesežnikov, Kollár, and Bútora 2013, 522).

4.3 Slovakia's Democratisation Journey

Slovakia's democratisation path unfolded in three distinct periods: 1989 – 1993, 1993 – 1998 and 1998 onwards.

4.3.1 The Transition Years as Part of Czechoslovakia (1989-1993)

As part of the Czechoslovak federation Slovakia embarked on a complex transformation process, establishing the foundations of a democratic political regime and market economy. The process was directed from Prague and involved standard neoliberal reforms, including rapid liberalisation, restructuring and privatisation in the economic sphere, and transformation of institutions and procedures into organs of democratic state that would embody the principles of tolerance, compromise and plurality (Mihalikova 2006, 178).

The transformation posed serious challenges to the unity of Czechoslovakia as it impacted the Slovak economy much more negatively than the Czech one. Slovakia's heavy industry was difficult to restructure and/or privatise, the level of foreign investment was lower and unemployment rose much faster than in the Czech Lands (Ibid.). The two societies also held different attitudes to the market economy and reliance on the state. The Slovaks were more inclined to tolerate state interventionism than the Czechs, as they associated heavy industrialisation and state planning with economic and social growth. In contrast, for the Czechs, interventionist economic policies correlated with a sharp decline in economic growth in comparison to the pre-communist period.⁶⁸

The differing ideological perceptions and interpretations of the birth of Czechoslovakia and the two totalitarian regimes in their shared history (fascist and communist) and the historical legacy of the two nations' estrangement (Pridham 1999, 1226) also made redefining the common state institutions and emergence of a shared democratic culture rather difficult. The Slovaks, for instance, evaluated the communist

⁶⁸ By the late 1980s, the country's rank in GNP per capita fell from seventh place after the Second World War to the fortieth (Rupnik 2003, 20).

period much more positively than their Czech counterparts, as they experienced much milder political persecution during the normalisation period (Mihalikova 2006, 179).⁶⁹ Some also viewed the interwar Nazi puppet state with nostalgia as it constituted the first episode of Slovak independent nationhood.

Opportunistic and populist politicians were able to exploit the tensions that surfaced during the first chaotic and difficult years of democratic transition to further their political ambitions (Rupnik 2003, 21; Mihalikova 2006, 178). The differences between the two peoples escalated in the June 1992 elections, that were won by parties in both parts of the federation that fought on national lines, were unwilling to compromise and agreed on dismantling the common state without letting the people decide in a referendum, as it allowed them to maximise their respective power. Czechoslovakia ceased to exist on 1 January 1993.

4.3.2 The Authoritarian Turn (1993-1998)

The 1992 election not only opened the way for the division of Czechoslovakia. In the Slovak case, it also represented a turning point away from the ‘Central European model of transition to democracy’ to one unambiguously moving towards ‘nationalist brand of authoritarianism which thrived on an adversarial concept of politics’ and emphasised alleged external and internal enemies (Rupnik 2003, 17, 36). Between 1993 and 1998 Slovakia became increasingly characterised as a ‘tyranny of the majority’ (Bútora and Bútorová 1994, 84) or ‘illiberal’ democracy.⁷⁰ The period was marked by an intense ‘struggle over the rules of the democratic game’ (Rybář and Malová 2004, 38) and over ‘the country's future democratic character’ (Freedom House 2005).

Slovakia’s democratic consolidation was complicated by the concurrence of three types of transformation – political regime change, economic system transformation, and

⁶⁹ The period following Czechoslovakia’s invasion by the Warsaw Pact (1968-cca. 1987) characterised by dismantling of the liberal reforms of the so-called Prague Spring and restoration of the previous order.

⁷⁰ In his 1997 *Foreign Affairs* article, Fareed Zakaria (1997) included Mečiar’s Slovakia among the countries where free elections bring to power politicians who do not adequately respect the rule of law, the separation of powers and the protection of basic freedoms.

nation building (Pridham 1999, 1226). The transition to independent statehood proved to be relatively easy for the Czechs, as they inherited the federal institutions and could fall back on a pre-existing paradigm of liberal democracy and moderate politicians like the dissident president Havel. In contrast, the Slovaks had to build a new state and also form a national identity almost from scratch (Mihalikova 2006, 173; Papp 2003, 151). The task of nation building in an ethnically heterogeneous country further complicated the political transition since it raised issues and incited attitudes that did not easily accord with consensus formation and political pluralism. Therefore, whilst by 1993, Slovakia had all the necessary components of parliamentary democracy, the lack of elite consensus over the nature of Slovak nationhood and the democratic rules of the game created political instability (Pridham 1999, 1227; Papp 2003, 152).

This period was closely linked to the charismatic populist leader of the Movement for Democratic Slovakia (HZDS), Vladimír Mečiar, who, except for a nine-month interruption in 1994, had been in power since the foundation of independent Slovakia.⁷¹ While some concerns about the democratisation trajectory of Slovakia were raised in the first years of the country's independence, it was only Mečiar's victory in the 1994 election that started the era of Slovakia's democratic backsliding (Malová and Rybář 2003, 98; Krause 2003, 58; Pridham 1999, 1226). HZDS, a broad clientelistic movement characterised by nationalism, populism, and authoritarianism with voters belonging to the older, less educated, rural, and less reform-minded section of the population, formed a ruling coalition with the right-wing nationalist Slovak National Party (SNS) and the populist radical left-wing movement, the Association of Workers of Slovakia (ZRS) (Bútora, Bútorová, and Mesežnikov 2003, 52). The new government of 'unreconstructed former communists' (Samson 2001, 370) immediately set off on an authoritarian path (Schimmelfennig, Engert, and Knobel 2003, 502).

During the first parliamentary session the governing parliamentary majority took full advantage of its legal powers and legal loopholes to solidify its position within the parliament, semi-governmental control bodies and the civil service. Opposition parties were stripped of their membership of parliamentary committees with coalition party

⁷¹ Mečiar held three prime ministerial posts since the fall of communism: June 1990 – May 1991, June 1992 – March 1994, December 1994 – October 1998.

members placed in the maximum number of legislative, executive and public administration posts (Pridham 1999, 1227; Papp 2003, 152). While the exclusion of opposition parties from oversight of key executive institutions, including the intelligence service and the publicly-owned electronic media, was by and large within the remit of the law, the coalition went far beyond the still weakly embedded precedent defined by its predecessors to deliberately eliminate the potential for independent monitoring and horizontal accountability. By doing so, it changed the balance of power within the political system and, as Krause (2003, 60) put it, ‘edged across the line between effective administration and accountability violation’.

The government also sought to eliminate the potential for independent monitoring by institutions outside its constitutional scope and tensions between the legislative, executive and judicial organs became a permanent feature of the mid-1990s (Mihalikova 2006, 181). The coalition tried to remove president Michal Kováč, a former ally of Mečiar who dared to stand up to him. When it failed to get constitutional majority in parliament for his dismissal, the ruling parties used standard legislative means to limit his powers, and repeatedly ignored or personally and politically attacked Kováč to force his resignation. The conflict led to the abduction of the president’s son, allegedly perpetrated by the secret service, and the state authorities’ reluctance to investigate his disappearance (The Slovak Spectator 2002; Krause 2003, 61; Mihalikova 2006, 181; Rybář and Malová 2004, 43–44).

Mečiar’s government tried to discredit its opponents in parliament and civil society as ‘enemies’, ‘anti-Slovak’ or ‘anti-state’ elements (Bútorá, Bútorová, and Mesežnikov 2003, 55). These efforts began with opposition parties and expanded to include deputies who decided to leave the parliamentary majority. They culminated when the governing parliamentary majority unlawfully deprived a defecting deputy of his mandate and refused to comply with the Constitutional Court’s ruling that declared its actions unconstitutional (Krause 2003, 61-61; Rybář and Malová 2004, 46-49). Numerous government-inspired attempts to subvert autonomous elements of civil society like NGOs and independent media were also recorded (Pridham 1999, 1227). After annulling several unconstitutional laws passed by the parliamentary majority the Constitutional Court became another subject of the government’s verbal attacks and questioning of its powers (Krause 2003, 61; Bútorá, Bútorová, and Mesežnikov 2003, 56). Between 1994 and 1997, Slovakia passed the highest proportion of laws in the region

that violated the Constitution (Rupnik 2003, 28). The ruling coalition kept ignoring the judiciary's verdicts, pressurised and discredited judges in public.

With a stable parliamentary majority and independent institutions providing constitutional checks and balances considerably weakened, the Mečiar government was free to misuse executive agencies to punish its opponents, reward supporters and increase cohesion and loyalty within the executive. The ruling parties took control of the privatisation process that gave them access to substantial sums of money, and allowed them to develop dubious ties with organised crime figure and establish a system of patronage from which the politically connected benefitted (Bútora, Bútorová, and Mesežnikov 2003, 55; Mihalikova 2006, 180).⁷² Control over the public service broadcaster provided a means for limiting criticism of the coalition and to reframe public discussion in its favour. The government was also able to misuse the secret service for surveillance and intimidation of its opponents within politics, independent media and civil society. While the dramatic increase in politically-related violence triggered a series of investigations, due to government interference and use of blanket amnesties, these failed to produce a single formal indictment (Krause 2003, 62), and contributed to Slovakia's growing reputation as an illiberal democracy.

The government was hostile to autonomous rights of ethnic minorities, with the prime minister openly encouraging xenophobes with his statements (Schimmelfennig, Engert, and Knobel 2003, 506; Rupnik 2003, 29; Bútora, Bútorová, and Mesežnikov 2003, 55). Under Mečiar, Slovakia failed to pass language laws that would allow for dual names of towns and villages and bilingual school certificates. In 1997, Mečiar went so far in his rhetoric to propose a 'population exchange' to the Hungarian prime minister to 'facilitate the voluntary migration of ethnic Hungarians from Slovakia to Hungary and Hungary's Slovak minority to Slovakia' (cited in Kelley 2004, 117). The ruling elite's confrontational stance towards the Hungarian minority cast further doubt on the prospects of democratic consolidation at the societal level (Pridham 1999, 1227).

⁷² The government discontinued coupon privatisation launched by the federal government, redistributing property on the basis of direct sales to predetermined buyers (Mihalikova 2006).

The government slowed down the economic reforms initiated by the federal government. Its pursuit of 'government-inspired clientelism' and the political instability did not initially harm Slovakia's economic performance (Pridham 1999, 1226), which improved between 1994 and 1997, with the years 1994 and 1995 characterised by a revival of macroeconomic stabilisation. The strict monetary policy adopted in 1997 as a result of the growing budget deficit and the lack of transparency and side-stepping of laws by the government in the privatisation process hindered foreign investment and economic growth and contributed to renewed macroeconomic instability and high unemployment rate (Mihalikova 2006, 182).

The cabinet's 'corruption-based clasp on power' (Kelley 2004, 135) gave rise to a permanent conflict between the government and its critics. By the mid-1990s a clear political polarisation based on different value-orientations emerged (Bútora, Bútorová, and Mesežnikov 2003, 55) dividing the society into two camps. The first one, represented by the ruling parties and its cronies, was a grouping of national-authoritarian parties that pursued politics in a confrontational manner and preferred unilateral decision-making and enforcement to compromise and agreement. The second camp, comprised of the opposition parties from both sides of the spectrum, civil society and most of the independent media, was antiauthoritarian in nature with a strong democratic and European orientation (Mihalikova 2006, 180–81; Pridham 1999, 1227).

Mečiar government's 'majoritarian interpretation of democracy' (Malová and Rybář 2003, 104) led to increasing criticism of international actors. Despite its notable macroeconomic performance and the existence of institutional framework corresponding with parliamentary democracy, Slovakia was excluded from the first wave of Central and Eastern European countries invited to join the EU and NATO. According to the EU, the main problems of Slovakia's democracy were insufficient respect for the rule of law (including corruption and misuse of the secret service), treatment of ethnic minorities and political opposition, and instability of its institutions (Rupnik 2003, 28–29; Papp 2003, 146–47; Rybář and Malová 2004, 43; Freedom House 2011; Samson 2001, 364). While the government representatives dismissed the criticism as misinformed, downplaying the issues, denouncing meddling in the country's internal affairs and attacking the opposition for damaging Slovakia's image abroad, the opposition parties increasingly used international criticism of Mečiar's policies to internalise the democracy issue and mobilise electoral support (Pridham 2002, 213; Rupnik 2003, 30).

Mečiar's 'siege on Slovakia's democracy' (Krause 2003, 59) and its international criticism had also positive outcomes as citizens began to consider the issues of democracy with greater care, the understanding of the importance of political rights and the rule of law increased, and Slovakia recorded substantial growth of the non-governmental and media sectors. The media campaign and the NGO mobilisation activities were instrumental in increasing participation of first-time voters in the 1998 election. The fear of international isolation provided momentum for the public's backing of the reformist coalition of opposition parties (Pridham 1999, 1228; 2002, 214; Bútorá, Bútorová, and Mesežnikov 2003, 57-59; Malová and Rybář 2003, 105-106).

4.3.3 Democratic Consolidation and Beyond (1998-2016)

Slovakia's political development changed dramatically following the 1998 parliamentary elections in which Slovak citizens rejected Mečiar's authoritarian political tendencies, disrespect for the rule of law, confrontational nationalist policy towards ethnic minorities, nepotism, corruption and the intertwining of crime with politics (Bútorá, Bútorová, and Mesežnikov 2003, 51). The election brought to power parties committed to democratic consolidation and integration to EU and NATO, considered as virtually identical goals (Mihalikova 2006, 183). Notwithstanding fluctuations in the quality of democracy and occasional re-emergence of illiberal trends, the execution of power in Slovakia had not since departed from the basic constitutional framework (Mesežnikov, Kollár, and Vašečka 2009, 484). Since around 2003 Slovakia has been considered a stable, consolidated democracy that respected the rule of law and human rights.

Governments led by Mikuláš Dzurinda

The new coalition government led by Mikuláš Dzurinda consisted of ten parties that, despite the diversity of their ideological profiles, were all committed to democratic principles and shared the foreign policy orientation towards the EU and NATO (Malová and Rybář 2003, 107; Bútorá, Bútorová, and Mesežnikov 2003, 52). In contrast to Mečiar's government, half of the cabinet members had never belonged to the Communist party. For the first time since the foundation of Czechoslovakia, members of Slovakia's largest ethnic minority held ministerial posts (*Ibid.*, 60). While not uncontroversial, the inclusion of Hungarian party representatives in the coalition was perceived vital for the

country's political stability, the cabinet's ability to carry out political reforms to consolidate the democratic regime, and enhancing Slovakia's chances of EU accession (Rybář and Malová 2004, 53; Pridham 2002, 218).

The new coalition took a conciliatory stance towards the opposition parties, offering them a parliamentary deputy speakership and proportional representation in the committees, and other key semi-governmental control organs. It largely refrained from personal and political attacks on rival institutions prevalent during "Mečiarism" (Bútora, Bútorová, and Mesežnikov 2003, 61; Rybář and Malová 2004, 54; Malová and Rybář 2003, 108; Krause 2003, 63) and engaged in cooperation with civil society (Freedom House 2004; 2006). The government quickly undertook a diplomatic offensive abroad and the EU-Slovak cooperation regained momentum. The then European Parliament rapporteur on Slovakia commented on the changed atmosphere and ease of access to top government ministers: 'before the [1998] elections I was considered an enemy of the government; afterwards a great friend of Slovakia' (cited in Pridham 2002, 216).

Dzurinda's cabinet initially focused on those reforms that were key to the EU accession process (Malová and Rybář 2003, 108). Because Slovakia had been without a president for more than six months, the coalition parties agreed to amend the Constitution, and in 1999, the new head of state was elected in the first direct election. Rudolf Schuster, one of the ruling parties' chairman, beat Mečiar in the run-off and 'Slovakia's institutional system found renewed stability', as Rybář and Malová (2004, 54–55) put it. Further Constitution amendments created the institution of Public Human Rights Defender and strengthened the status of the Constitutional Court. A new judicial code and the Act on a Free Access to Information were adopted, and Slovakia's progress in improving press freedom was praised by international organisations (Bútora, Bútorová, and Mesežnikov 2003, 64).

The adoption of new minority legislation, denied in the previous period, substantially improved conditions for implementing ethnic minority rights (see Pridham 2002, 218; Malová and Rybář 2003, 108; Rybář and Malová 2004, 55; Bútora, Bútorová, and Mesežnikov 2003, 64; Mihalikova 2006, 184). Despite remaining residual tensions between ethnic Slovaks and Hungarians, which created scope for nationalist policies on both sides (Freedom House 2003), the new approach to minority rights and the inclusion of the Hungarian minority representatives in the government improved bilateral relations with the Hungarian government (Rupnik 2003, 42).

Dzurinda's government succeeded in transforming Slovakia's image abroad. The EU Commission concluded in October 1999 that the country fulfilled the basic political criteria for opening negotiations on EU accession, including institutional stability, the rule of law and respect for human and minority rights (Malová and Rybář 2003, 108). By mid-2001, Slovakia managed to catch up in the accession negotiations with its neighbours (Bútora, Bútorová, and Mesežnikov 2003, 64).

The cabinet redefined Slovakia's economic policy, reduced the external imbalance of the economy and stabilised public finances and the country's economic performance (Rupnik 2003, 42; Bútora, Bútorová, and Mesežnikov 2003, 64–65), which, in the early 2000s was comparable to that of its neighbours, exceeding the pre-transformation level by 1.5% (Mihalikova 2006, 184).

The irreversibility of these reforms and Slovakia's joining the EU and NATO depended on the ability of the political actors who initiated them to implement them after the 2002 election. Given the depth of the problems inherited from the Mečiar era, it soon became apparent that the post-1998 optimism relating to swift improvement in living standards was unrealistic. During Dzurinda's first term as prime minister unemployment increased from 14.5% in 1998 to over 18% in 2002, peaking at 20% in 1999, the health care and education systems continued to be plagued with problems, the crime rate remained high, and attempts at social inclusion of the Roma proved unsatisfactory. The ruling parties' constant disagreements, inability to combat corruption and an increasing number of reported cases of suspected new illegal or quasi-legal politico-economic relationships further undermined the government's credibility (Bútora, Bútorová, and Mesežnikov 2003, 51, 65; Mihalikova 2006, 184).

Despite the dissatisfaction with the government's belt-tightening and anti-corruption policies, public support for EU membership remained high (Bútora, Bútorová, and Mesežnikov 2003, 64). With Western actors openly signalling that Mečiar's re-election could jeopardise Slovakia's chances of joining the Euro-Atlantic structures, voters returned to power a coalition government of four centre-right, pro-reform parties led by Dzurinda. The election results were interpreted as a sign of the maturity of Slovakia's democracy (Mihalikova 2006, 185; Bútora, Bútorová, and Mesežnikov 2003, 66–67). Dzurinda's cabinet received a strong mandate to pursue extensive socio-economic reforms of the taxation and banking system which boosted Slovakia's attractiveness for foreign investors, increased its GDP and substantially reduced unemployment (Bútora, Bútorová, and Mesežnikov 2003, 65; Mesežnikov, Kollár, and

Vašečka 2009, 480). The government's complex anticorruption programme included creation of the Special Criminal Court and the Special Prosecutor's Office (Freedom House 2004; Mesežnikov, Kollár, and Vašečka 2009, 495).

Dzurinda's governments were characterised by a general respect for court rulings by public administration bodies, a lack of political pressures on judges and by considerable efforts to re-establish the rule of law. Dzurinda's tenures saw the launch of reforms aiming to modernise the judiciary, increase its effectiveness and curb the potential for corruption, including the introduction of institutions of judicial self-governance and a random computer case assignment (Freedom House 2003; 2004). Despite the regular questioning of the judiciary's efficiency and independence in the media, the period of Dzurinda's governments meant a considerable departure from Mečiar's era (Rupnik 2003, 41–42). In the course of five years, the pro-democratic forces managed to sufficiently eliminate the democratic deficits and deformations inherent from Mečiar's authoritarian rule and in 2004, together with other CEE countries, Slovakia joined the EU and became a full member of NATO.

Robert Fico's coalition government

The harsh social impact of Dzurinda governments' reforms, the public's unfulfilled expectations of living standards levelling with those in the West and publicised suspicions of clientelism between the ruling parties and economic interest groups (Freedom House 2004) reinvigorated nationalist, anti-reformist parties before the 2006 election (Mesežnikov, Kollár, and Bútorá 2013, 516). The composition of the new governing coalition led by the populist Robert Fico, who was seen in Europe as "Mečiar-light" (Mihalikova 2006, 185), sparked vivid debates in Slovakia and abroad. The greatest outcry concerned the fact that Fico's party Smer (Direction), self-declared social democrats that had openly criticised Dzurinda governments' reforms, formed a coalition with the SNS and HZDS – the two parties directly responsible for the 1994-1998 semi-authoritarian regime (Rupnik 2007, 18; Freedom House 2008; Mesežnikov, Kollár, and Vašečka 2009, 484–85). Observers questioned whether Slovakia's democratic consolidation was sustainable and whether the country would continue along the reform path (Freedom House 2007).

Declaring the goal of building a welfare ("social") state, Fico's coalition revised Slovakia's economic policy, halted the process of neo-liberal economic reforms, suspended privatisation of remaining enterprises with government investment and

pursued a policy of increased state interventionism (Mesežnikov, Kollár, and Vašečka 2010, 476). The government's term was characterised by its efforts to concentrate power, clientelism in appointments to government and public institutions, hostility to the independent press and increased ethnocentrism (Freedom House 2008; 2011; Mesežnikov, Kollár, and Bútorá 2013, 516). While state institutions were relatively effective and the political system remained stable throughout Fico's first term in office, the government's majoritarian interpretation of democracy, its propensity for party and personal interests over the public interest in filling top public institutions posts, attacks on media, independent control bodies, and the judiciary prompted commentators to talk about the 'deteriorating quality of democracy' (Mesežnikov, Kollár, and Vašečka 2010, 480), a 'populist backlash' accompanied by 'unscrupulous use of executive power' (Rupnik 2007, 19, 20) and 'persistent attacks on the legal institutions of liberal democracy' (Bugaric 2008, 191).

The coalition pursued policies that contradicted the spirit of modern liberal democracy, demonstrating an interest in excessive power concentration not present since 1998. It adopted legislative measures aimed at strengthening its position in statutory organs of regulatory institutions, made extensive personnel changes at most ministries and other central state administration bodies. The majority of these changes were politically motivated, reflecting party loyalty or family ties rather than expertise, prompting commentators to claim that politicisation of civil service 'reached a critical point' (Bugaric 2008, 195). The ruling majority took steps to undermine parliamentary oversight of the executive by removing opposition representatives from parliamentary committees. It further marginalised the role of the opposition in the assembly by rejecting virtually all its legislative initiatives (see Freedom House 2007; 2008; 2011; Mesežnikov, Kollár, and Vašečka 2009; 2010). The coalition was aided in its efforts by President Gašparovič who against the constitutional principle of impartial governance described himself as an 'informal' member of Fico's party Smer (Mesežnikov, Kollár, and Vašečka 2010, 481).

The government repeatedly clashed with the opposition, businesses, civic initiatives, NGOs and the media (Freedom House 2008; Mesežnikov, Kollár, and Vašečka 2009, 481). Political discourse grew increasingly confrontational as the ruling parties' leaders called their critics 'enemies of the state' (Mesežnikov, Kollár, and Vašečka 2010, 481). Relations with ethnic minorities, particularly the Hungarians, suffered by the participation of the nationalistic SNS in cabinet (Freedom House 2007).

SNS's leader, Ján Slota, who had been characterised as 'an ultra-nationalist and right-wing politician', led a 'campaign of racist hate speech directed against the Hungarian and Roma minorities in Slovakia'. He proposed, for instance, sending the leader of the Hungarian party to Mars "without a return ticket" (Bugaric 2008, 196).

Rather than building on the anticorruption legislation of the preceding government, Fico's cabinet lacked a relevant anticorruption strategy, attacked control institutions and by openly pursuing state interventionism and clientelist policies in allocation of public funds created new opportunities for corrupt practices (see Freedom House 2008; 2011; Mesežnikov, Kollár, and Vašečka 2009; 2010). Shortly after assuming office, the government launched a campaign to abolish the Special Court and the Office of Special Prosecutor just as they had become effective in that fight (Bugaric 2008, 196; Freedom House 2007). According to commentators, party clientelism became 'the principal *modus operandi*' of Fico's coalition (Mesežnikov, Kollár, and Vašečka 2010, 492), epitomised by the numerous corruption scandals involving high government representatives broken by the media. Fico publicly argued that privileging projects proposed by persons close to ruling parties was acceptable and that comparable practices operated everywhere in the world (Mesežnikov, Kollár, and Vašečka 2009, 485) and remained reluctant to demand personal and political responsibility from officials suspected of nepotism and clientelism (Mesežnikov, Kollár, and Vašečka 2010, 492–93).

The government's illiberal tendencies were perhaps most noticeable in the judiciary. The Constitutional Court, which was called 'one of the success stories of the 1990s', found itself under pressure (Bugaric 2008, 194), as the appointment of politically loyal candidates put its impartiality in question (e.g. Mesežnikov, Kollár, and Vašečka 2009, 482). The Justice Minister Štefan Harabin actively resisted judicial reforms and applied aggressive measures against judges who criticised his or the judiciary's performance. Shortly upon his inauguration, for instance, Harabin removed several court chairpersons without satisfactory explanation. Judges and legal experts suggested that his decision was guided by political motives and grudges carried over from his earlier term as Supreme Court President (Freedom House 2007). As Supreme Court President and Judicial Council Chair between 2009 and 2014, Harabin continued to concentrate power and to adapt Slovakia's judicial system to fit his political and personal ambitions. His actions prompted some judges to claim that 'an atmosphere of fear had begun to settle over the judicial system' (Mesežnikov, Kollár, and Vašečka 2010, 491). The persistence of clientelistic networks loyal to Harabin and preferential treatment accorded to high-

profile politicians by judicial and government bodies were seen as undermining the principle of equality before the law (Ibid. 2010, 478, 492).

Iveta Radičová's government

The direction of politics shifted dramatically following the 2010 election that brought to power a new centre-right coalition government led by Iveta Radičová, the first female prime minister in Slovakia's history. In contrast to its predecessor that was considered by observers to have exploited rather than tackled corruption in public life (Mesežnikov, Kollár, and Vašečka 2012, 509), the cabinet's declared top priority was combating corruption, increasing transparency of state institutions and strengthening public control over the administration of public funds. It further pledged to enhance Slovakia's democratic character, fortify the operational stability of public institutions, increase the efficiency of public administration and reduce political pressures on independent media (Freedom House 2011, 9; Mesežnikov, Kollár, and Bútora 2013, 516).

Radičová's tenure was characterised by respect for constitutional checks and balances, upholding the principle of distribution of leading positions within parliamentary committees based on proportional representation, a markedly less confrontational political culture and a close cooperation with civil society. The government succeeded in changing the atmosphere within society and alleviating tensions in Slovak-Hungarian bilateral relations (Freedom House 2011; Mesežnikov, Kollár, and Vašečka 2012, 502). While the relations between the ruling coalition on one side and the parliamentary opposition and Harabin on the other remained confrontational, commentators observed signs of overall stabilisation and cooperation in the performance of democratic institutions (Mesežnikov, Kollár, and Vašečka 2010, 3, 13).

Radičová's government was commended for implementing 'an impressive number of legislative and administrative measures designed to increase transparency and public oversight of government spending and crack down on corrupt activities' (Mesežnikov, Kollár, and Bútora 2013, 529; 2014, 578). Shortly after taking office, it published information on all contracts completed by state administration organs under Fico's term and terminated or revised existing unfavourable contracts (Freedom House 2011). Public institutions became obliged to publish all public contracts online, hold tenders for high government public service positions. Electronic auctions for the purchase of goods and services for public administration were introduced (Mesežnikov, Kollár, and Vašečka 2012, 500). While the Radičová-led cabinet strived hard to reverse the

clientelist policies of its predecessor, reduce bureaucratic regulation to narrow the scope for corrupt opportunities, and pursued pro-market economic policy that precluded state involvement in the country's economy, its anticorruption accomplishments were overshadowed by a number of high-level corruption scandals (Mesežnikov, Kollár, and Bútorá 2013, 529).

Despite fierce opposition from Harabin and president Gašparovič, the coalition succeeded in adopting a number of legislative and administrative measures aimed at increasing the judiciary's transparency, professionalism and efficiency (Freedom House 2011, 13; Mesežnikov, Kollár, and Vašečka 2012, 497, 508). These included the obligation to release all final court rulings for publication on a dedicated website (SME 2012), introduction of open competition in selection of judges and court chairpersons, changes to appointment of Judicial Council members, more detailed asset declarations by judges (Terenzani 2012a) and a requirement for judges to pass a law exam every five years (Terenzani 2012b). Other actions aimed at improving the situation in the judiciary included the dismissal of district and regional court chairpersons regarded as Harabin's close associates for non-compliance with random assignment of cases, their courts' inadequate performance and their lack of trustworthiness (Vilikovská 2011). The government's actions towards the Supreme Court under Harabin clearly signalled that it was not willing to tolerate a partial and inconsistent application of law by the country's highest judicial authorities (Freedom House 2011, 13).

Radičová's government did not manage to see through all the envisaged reforms, as it collapsed in October 2011 after losing a no confidence vote in parliament after the coalition parties failed to reach consensus on the expansion of the European Financial Stability Facility.

Robert Fico's majority government (2012 – 2016)

After a series of smaller corruption scandals, the already weak centre-right coalition parties were further damaged in voters' eyes by the so-called 'Gorilla' corruption case which revolved around a purported intelligence service file. The file raised allegations of secret privatisation deals involving millions of euros in bribes paid to ruling politicians by the country's largest private equity firm, Penta, between 2005 and 2006 during Dzurinda's second government. The document's publication online and subsequent media coverage resulted in public outrage and in early 2012 in the largest public protests Slovakia had seen since 1989 (Mesežnikov, Kollár, and Bútorá 2013, 530).

The March 2012 election brought to power a majority government under the premiership of Fico. The new cabinet swiftly began to reverse the liberal socio-economic policies of the previous centre-right coalition, strengthening the position of the state in the economy and tightening market regulation. It quickly moved to dismantle the reforms to the pension, health care, social welfare and judicial systems initiated during the previous two years (Mesežnikov, Kollár, and Bútora 2013, 516, 519). Initially, at least, the government continued dialogue with civil society organisations (Mesežnikov, Kollár, and Bútora 2013, 516) and cooperation remained satisfactory (Freedom House 2011, 565). However, Smer deputies repeatedly showed disrespect to the Ombudswoman when she drew attention to Roma discrimination (Cunningham 2015, 605, 607, 611). The majority government demonstrated little willingness to cooperate with the parliamentary opposition. Instead, it strived to concentrate power in its hands, deliberately ignoring codified parliamentary procedures and sidelining independent institutions and the parliament. Smer deputies obstructed the work of parliamentary committees, blocked opposition-proposed legislation from discussion in the plenum and prevented extraordinary sessions convened by the opposition (see Mesežnikov, Kollár, and Bútora 2013; 2014).

In spite of proclaiming fighting corruption as one of its aims, Fico's government failed to propose a comprehensive anti-corruption strategy. The government filled important posts in state administration with persons with track-record of unethical behaviour in office or business and personal ties to Smer functionaries (Mesežnikov, Kollár, and Bútora 2013, 519). Smer fortified the primacy of an already well-developed network of clientelist partners in business, healthcare, and the courts, allowing nepotism, cronyism and non-transparent practices to persist in business, judiciary and the public administration (Cunningham 2016, 2). Abundant corruption cases involving high-profile public officials attracted media attention during Fico's second term (Cunningham 2015, 619; Mesežnikov, Kollár, and Bútora 2014, 579). As the prime minister was reluctant to investigate high-profile corruption cases, the resignation of the parliamentary speaker alleged of involvement in a corruption scandal in late 2014 was a critical milestone.

2014 saw other significant developments that contributed to the strengthening of the judiciary's independence. Arguably driven by the calculation that negative public perception makes Smer's long-term grip on power untenable (Cunningham 2017, 2), the government adopted a constitutional amendment that separated the posts of the Supreme Court President and Judicial Council Chair and sought to introduce new screening for

judges (Balogová 2014). Harabin, a long-standing ally of Fico's party and critic of judiciary reforms, infamous for cronyism and intimidation of judges (Cunningham 2015, 617), failed his bid for re-election for Supreme Court President and also lost his seat on the Judicial Council to a pro-reform candidate. Harabin's removal from the helm of the judiciary by fellow judges was interpreted by his critics as 'a clear yes for changes within the judiciary' and a 'positive signal for the public' that would contribute to increasing the judiciary's credibility (cited in Balogová 2014).

Fico suffered a surprise defeat in the 2014 presidential election when he lost the run-off to an independent candidate and a political novice. The election of Andrej Kiska prevented Smer from consolidating power and introduced alternative viewpoints to the illiberal discourse of Fico and his party as Kiska spoke against the government's policy regarding refugees, reiterated the importance of Slovakia's commitments to the protection of human rights and to the EU and NATO, and used his powers to confirm and dismiss judges to accelerate changes in the judiciary (Cunningham 2016; 2017).

2016: Signs of more changes on the horizon

The results of the March 2016 election signalled the population's dissatisfaction with the status quo, despite the fact that the country's economy continued to be among the top performers in the EU. The endless corruption scandals and the authorities' inability to successfully prosecute perceived wrongdoing saw 'ideologically hollow populist parties' and far-right extremists enter parliament (Cunningham 2017, 2). Smer's share of vote considerably declined, forcing the party into a coalition government and hindering its efforts at further consolidation of power. While Slovakia was not immune to the global and regional trends such as rise of extremism, Euroscepticism and disinformation campaigns, in contrast to its neighbours Hungary and Poland, its democratic institutions were relatively strong and positive trends of strengthening the judiciary's independence, the rising independence of the president's office and the Constitutional Court seemed to have solidified.

4.4 Prevalence of Clientelism and Corruption in Society

Corruption has been labelled as ‘one of the most critical problems of Slovakia’s overall post-communist transformation’ (Freedom House 2005). Corruption, clientelism and informal practices have deep roots and are tolerated by a large part of the Slovak public. Throughout the studied period, corruption, clientelism and cronyism in the public arena belonged to the most frequent topics of public discourse and fighting corruption had been a frequent focus of Slovak media, NGOs and international observers. Public opinion polls consistently ranked corruption as one of the most pressing social issues, trailing only unsatisfactory living standards, high unemployment (particularly in the 1990s and 2000s) and poor health care (e.g. Freedom House 2004; 2005; 2006; 2008; European Commission 2009a; 2014a; Transparency International Slovakia 2010b; Transparency International 2013; IVO 2014).

Corruption in Slovakia had two basic dimensions – institutional, concerning legislative, judicial, executive and political party actors, and non-institutional, involving deeply ingrained behaviour, views, customs, experience and cultural stereotypes of the general public. The public consistently perceived the health service, the judiciary, law enforcement and central and regional public authorities and political parties as the most corrupt among public institutions.⁷³ Giving and accepting bribes, nepotism, clientelism and giving and accepting gifts were considered the most frequent forms of corruption

⁷³ According to a 2004 opinion poll, Slovaks perceived corruption as especially widespread in health care, the judiciary, police, ministries, customs offices, schools, private firms and tax offices (Freedom House 2005). A 2006 survey conducted by the Public Opinion Research Institute of the Statistical Office of the Slovak Republic revealed that most citizens believed that corruption existed in health care (71%), the judiciary (38%), education system (31%), business (19%), the police (18%), district and regional authorities (16%), and the privatisation process (14%) (cited in Freedom House 2006). Slovak respondents in the Transparency International’s 2010 Global Corruption Barometer survey perceived the judiciary as the most corrupt institution (45%), followed by public officials (38%), businesspeople (37%), political parties (36%), parliament and legislature (28%), media (17%) (Transparency International Slovakia 2010b). 69% of Slovak respondents in the 2013 Global Corruption Barometer survey felt that the judiciary were corrupt or extremely corrupt, followed by public officials and civil servants (66%), political parties (64%), the health service (63%) the parliament/legislature (61%), the police (60%), the education system (39%) and the media (38%) (Transparency International 2013). More than half of the respondents in the 2013 Corruption Eurobarometer (European Commission 2014a, 3) thought that the abuse of positions for personal gain and giving or taking bribes was widespread in courts, political parties and in the public health sector.

(Freedom House 2005). In the public's view, corruption was a more pressing problem in the central government than at the local self-governance level (Freedom House 2006).

The prevalence of corruption on the non-institutional or personal level and the reluctance to report it led some commentators to argue that social values of the majority of the population 'seem to indicate problematic cultural traits in respect to rule of law' (Školkaý 2011b, 19; see also Transparency International Slovakia 2013). A relatively high proportion of Slovaks – around one fifth – admitted to paying bribes to public institutions throughout the studied period,⁷⁴ most frequently in the healthcare sector, registry and permit services and the judiciary.⁷⁵ Slovaks also belonged to the least willing citizens to report corruption, citing fear of retribution or lack of belief that reporting corrupt practices would have any practical impact.⁷⁶

While the third Mečiar government was accused of using clientelism and patronage as its main operating tools, Slovakia has been praised for having developed in the 2000s and early 2010s 'a progressive institutional framework for fighting graft and improving transparency in the public sphere' (Mesežnikov, Kollár, and Bútora 2014, 577). Nonetheless, the discrepancy between the legislative framework and the measures adopted by the Fico-led governments, the numerous documented corruption scandals of all the Slovak governments and the lack of successful prosecution of high-profile figures

⁷⁴ In a 2007 opinion poll, one in five respondents admitted to have given a bribe (Tettinger 2007). According to the 2013 Global Corruption Barometer survey (Transparency International 2013) one in five Slovak households admitted to paying a bribe to public institutions between September 2011 and September 2012, which was the third highest proportion of all respondents among all EU countries (Transparency International Slovakia 2013).

⁷⁵ According to the Global Corruption Barometer, a quarter of households that had any engagement with healthcare services in 2009 paid a bribe, for instance, followed by land services (15.8%), registry and permit services (15.6%), and courts (14.8%) (Transparency International Slovakia 2010b). 28% of Slovak households were reported to have paid a bribe to the healthcare service in 2012, followed by the registry and permit services (19%), the police (12%), land services (11%), education services (9%) and the judiciary (8%) (Transparency International 2013).

⁷⁶ According to the 2010 Global Corruption Barometer Survey (Transparency International Slovakia 2010b), only eight percent of Slovaks who were asked to pay a bribe in 2009 did report. The reasons for non-reporting corruption were the belief that it would solve nothing (31.5%) or fear of retaliation (25.9%). Slovak respondents in the 2013 Global Corruption Barometer were the third most reluctant among EU citizens to report corruption, trailing only the Hungarians and Latvians. Out of the over fifty percent of Slovaks who said that they would be unwilling to report corruption, 40% claimed that they were afraid of reporting it while 37% believed that it would have no impact (Transparency International Slovakia 2013).

investigated for corruption posed challenges to combating corruption.⁷⁷ Despite some signs of improvement, for instance in Slovakia's Corruption Perceptions Index (see Figure 4.1), corruption remained a serious problem according to commentators (Cunningham 2015), business people (Business Alliance of Slovakia 2015) as well as the public.⁷⁸ Until the end of the studied period Slovakia remained ranked among the most corrupt countries in the EU.⁷⁹

Figure 4.1: Slovakia's Scores in the Transparency International Corruption Perceptions Index 1996-2016

Year	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
Score	51	51	50	47	46	4.0	4.3	4.5	5.0	4.9	4.7
Global rank	54	50	54	61	62	66	59	56	52	49	49
Year	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	
Score	4.3	4.0	3.7	3.7	3.7	3.5	3.7	3.9	N/A	N/A	
Global rank	47	57	59	52	51	52	53	47	N/A	N/A	

Source: Transparency International Corruption Perception Index reports,

<https://www.transparency.org/research/cpi>.

Note: Between 2016 and 2012, the TIS CPI was measured on a scale of 0 (highly corrupt) to 100 (very clean). Between 2011 and 1996, the TIS CPI was measured on a scale of 0 (highly corrupt) to 10 (very clean).

⁷⁷ According to the 2010 and 2013 Global Corruption Barometer, only 12% and 9% of Slovak respondents respectively found the government's actions in combating corruption effective (Transparency International Slovakia 2010a; Transparency International 2013).

⁷⁸ 85% of Slovak respondents in the Corruption Eurobarometer considered corruption a major problem in the country in 2005, in 2007, 88% of Slovak were of that opinion, in 2009 the opinion was shared by 83% of Slovak respondents (European Commission 2009b; 2009a). In the last Corruption Eurobarometer conducted in the studied period, the proportion increased to 90% (European Commission 2014a, 3). According to a 2015 Transparency International Slovakia's survey, corruption was considered the most pressing social problem after unemployment and low unsatisfactory living standards. In comparison to the 2012 survey, the public's perceptions of corruption overall increased in all areas of public life (Transparency International Slovakia 2019).

⁷⁹ The 2016 Transparency International's Corruption Perceptions Index, for instance, ranked only Croatia, Hungary, Greece, Romania, Italy and Belgium as more corrupt EU countries than Slovakia. See https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

4.4.1 Public (Dis)trust in the Judiciary

Despite constitutional guarantees, the judiciary reforms embarked on by the reformist governments and international observers' reports of its satisfactory independence, the judiciary had been perceived as one of the most corrupt institutions. Public trust in the judiciary remained undermined throughout the studied period by the courts' inefficiency, exacerbated by a slow-moving backlog of cases, and a widespread public belief that the judiciary was plagued by corruption and nepotism (Freedom House 2003; 2004; 2005; 2006; 2007; Mesežnikov, Kollár, and Vašečka 2009; Mesežnikov, Kollár, and Bútora 2014; Cunningham 2015). Trust in the judiciary was further weakened by investigations into judges for accepting bribes (Freedom House 2006) and suspicions of politically-motivated decisions. Throughout the 2000s and early 2010s, Slovaks belonged to the EU citizens with the strongest belief that giving and accepting bribes and the abuse of power for personal gain was widespread in the country's courts (See Figure 4.2).

Figure 4.2: Slovaks' Beliefs in the Prevalence of Corruption in the Judiciary in the EU Context

Year	2005	2007	2009	2011	2013
% believe corruption in judiciary widespread	70	65	61	60	56
Countries with higher citizens' belief in widespread corruption in the judiciary	Greece Lithuania	Greece	Bulgaria Greece Lithuania Slovenia	Bulgaria Lithuania Slovenia	Bulgaria Slovenia

Source: Special Eurobarometer surveys No. 245, 291, 325 and 397 (European Commission 2006; 2008; 2009b; 2012b; 2014b).

The judiciary under Harabin became target of harsh criticism from the media, NGOs and judges. Harabin who served as Justice Minister between 2006 and 2009 and as Supreme Court President and Judicial Council Chair between 2009 and 2014 has been an extremely controversial figure in Slovak politics and judiciary (Mesežnikov, Kollár, and Bútora 2013, 527; 2014, 576). Harabin wielded enormous personal influence in the judiciary and had been accused of directly influencing high-profile rulings and concentrating power through manipulation of nominations and disciplinary proceedings to promote the career prospects of judges loyal to him and punishment of those who criticised his leadership and the problems in the judiciary (Mesežnikov, Kollár, and Bútora 2013, 528; European Commission 2014a, 4–5; Cunningham 2016, 8). In the late

2000s, suspicions and accusations of political bias and deliberate delays to adjudication by some judges of certain motions filed by opposition MPs and other critics of the ruling coalition led by Fico appeared (Mesežnikov, Kollár, and Vašečka 2009, 493; Freedom House 2011, 12). It was suggested, for instance, that the Constitutional Court's reluctance to adjudicate on a controversial law regulating highway construction might have been linked to the personal ties between the judge-reporter and Harabin.⁸⁰

According to commentators, the nepotistic selection of new judges was one of the key problems undermining public trust in the judiciary since Harabin took control of the Judicial Council (Mesežnikov, Kollár, and Bútorá 2014, 576). A study by Transparency International Slovakia found that in 2013, every fifth Slovak judge had a close relative employed in the judiciary (either in the court system or at the Justice Ministry), with judges in Eastern Slovakia having close family ties in the judiciary even more frequently (Šipoš and Spáč 2013).⁸¹

In 2010, 21 judges launched an initiative called *For an Open Judiciary* which advocated for improved transparency within the judiciary and criticised political meddling with judicial power, nepotism, deliberate delays in adjudication, unwarranted disciplinary actions, violations of ethical principles and diminished transparency in the judicial system (Freedom House 2011, 12). Throughout the early 2010s, the initiative attributed much of the personal and political responsibility for the judiciary's existing problems to Harabin and identified his resistance to reforms as a major reason for the judiciary's credibility crisis (Mesežnikov, Kollár, and Bútorá 2014, 576).

The judiciary's credibility crisis in the 2010s had been well documented in public opinion polls which consistently indicated that less than a third of Slovak citizens trusted the courts,⁸² with only one in five Slovaks trusting the judiciary in 2015 (Via Iuris 2015).

⁸⁰ The judge-reporter, Milan Ľalík, was former colleague of Harabin from the Supreme Court. The two were notorious for their concurrent views and friendly relations (Mesežnikov, Kollár, and Vašečka 2009, 493). Ľalík is also the husband of Harabin's lawyer who represented him in his numerous disputes with the media and was interviewed for this study.

⁸¹ Almost a third of judges working at the regional court in the metropolis of Eastern Slovakia, Košice, had a close relative working at a court in Eastern Slovakia. 20% of the Košice regional court judges had close relatives working at the same court.

⁸² According to polls conducted by the Institute of Public affairs, 26% of respondents had trust in the judiciary in 2011, compared to 28% in 2012 (IVO 2012). 31% of respondents in a Via Iuris poll trusted the judiciary in 2013 (SITA 2013), 22% did so in 2015 (Via Iuris 2015).

According to a 2012 survey by the Institute of Public Affairs, only 29% of experts expressed trust in courts and the judiciary, while 39% of judges reported lack of trust therein (IVO 2012, 3). Studies also revealed a link between the low trust in the judiciary and Harabin's performance,⁸³ high levels of corruption, length of proceedings and decisions' lack of fairness.⁸⁴

The ousting of Harabin from the helm of the judicial system by fellow judges meant a symbolic victory for those in politics and the judiciary who were working to assert judicial independence and rid it of politically motivated actors (Cunningham 2015, 604; 2016, 8). Following Harabin's departure and efforts to implement a more transparent judicial selection process, the public's confidence in the judiciary recorded a noticeable year-on-year increase in 2016.⁸⁵ However, problems with independence, inefficiency and nepotism remained a challenge for Slovak courts and the overall trust in the judiciary was still relatively low (Cunningham 2017, 8).⁸⁶

4.5 Media System Developments

Slovakia's turbulent democratisation also shaped the media system and journalism culture. This section presents the key developments and characteristics of the Slovak media market and journalism culture and introduces the lead media organisations in each segment.

⁸³ According to a 2013 survey, 69% of respondents did not trust the judiciary and 58% believed that Harabin's performance as Supreme Court President contributed to the lack of trust in the judiciary (SITA 2013).

⁸⁴ According to a 2016 survey, 85.6% of respondents thought that the level of corruption contributed to public's distrust in the judiciary, with 80.7% citing the length of proceedings, 78.4% the lack of fairness of decisions and 68.4% the judge himself or herself as reasons (Klobucký 2016, 2).

⁸⁵ A poll by Via Iuris (2016b) recorded an 11% increase in public trust in the judiciary between 2015, when 22% of respondents claimed they trusted the courts, and 2016, when 33% of respondents reported trust in the judiciary.

⁸⁶ According to survey by Via Iuris (2016a), a third of newly appointed judges between 2015 and 2016 had a close relative already active in the judiciary.

4.5.1 Media Market 1996 – 2016

Slovakia's media market was characterised by its small size,⁸⁷ a high penetration of foreign-language media and a high concentration of ownership. Since the late 1990s, all media, bar the public service *Radio and Television of Slovakia (RTVS)*⁸⁸ and the *News Agency of the Slovak Republic (TASR)*, were in private hands. There was no nationwide system of press subsidies with the exception of some support for publications for resident ethnic and cultural minorities (Štětka 2012, 6; Škol kay et al. 2010, 28). After the market entry of foreign media owners, partisan press disappeared (Brečka 2010, 11–12; see also Gross 2002, 64; Štětka 2013, 19–21).

Television and radio were historically the most popular media (Škol kay et al. 2010, 6), followed by the printed press.⁸⁹ Throughout this period, radio remained the most trustworthy medium and television the main news source for the public (Cunningham 2015, 613–14). Newspaper circulation declined sharply following the global economic crisis of 2008–9. From 2012, online media has challenged radio and the printed press as the dominant information providers and public agenda setters (European Commission 2012a, 2015) for the younger and more educated Slovaks (IAB Slovakia 2017; Kluknavska 2017, 90). The major commercial television, *TV Markíza*, the public service *RTVS* and key dailies and weeklies, particularly *SME* and *Trend*, have claimed the largest societal and political impact on the public sphere in terms of breaking and reporting on stories of public interest (Čikovský 2015; Galmišová 2015; Kernová 2013; Šípoš 2009). Citizen journalism had a limited societal impact unless its findings were further disseminated by some of the key legacy media, or opposition politicians (Škol kay 2017, 189).

⁸⁷ The market size was limited by the size and composition of the population.

⁸⁸ In 2011, the former public service broadcasters *Slovenská televízia* (Slovak Television - *STV*) and *Slovenský rozhlas* (Slovak Radio – *SRo*) were merged into one public service institution, *Rádio a televízia Slovenska* (Radio and Television of Slovakia – *RTVS*).

⁸⁹ In 2015, 80% of respondents of the Eurobarometer 84 survey watched television daily or almost daily; 56% listened to radio daily or almost daily; and less than one fifth read the press on a daily or almost daily basis (European Commission 2015, 6).

Broadcast media

The commercial television *TV Markíza* (Marquis) remained the market leader in terms of audience share since its inception in 1996. The other commercial station *TV JOJ* (established 2002), the public service television channels *Jednotka* (One) and *Dvojka* (Two), and the news-only channel *TA3* were the other available major channels. *Markíza* also continuously attracted the greatest share of advertising. Together with *JOJ* and *RTVS* it belonged to the principal offline news sources. The role of radio as an important news source declined after 2003, as commercial broadcasters adopted the music only format (Ondrášík 2010a, 122). The public service *Slovak Radio* with nine channels became the only network to offer any substantive public affairs and political discussion programming. The number of commercial radio stations fluctuated between twenty-five and thirty. *Slovak Radio* remained the most popular network, whilst the commercial *Radio Express* was the market leader among radio stations (Medialne.sk 2017; Kluknavska 2017, 91).

Printed press

The deregulation of print press publishing following the fall of communism led to an exponential growth in the number of titles (Brečka 2002, 50). Having peaked in 2000s, the number of national newspapers began to decline and for the majority of the period under consideration remained stable at seven. Late 2015 saw the number of newspaper titles increase to eight. While there were several attempts to establish party press in the 1990s, all established dailies claimed independence from political parties (Školokay et al. 2010, 9). The tabloid daily *Nový Čas* (New Time), with its focus on entertainment and sensationalism remained the most popular national daily since its inception in 1991 (Brečka 2002, 50; StratégieOnline 2016).⁹⁰ Its main rival was the tabloid daily *Plus 1 deň* (Plus 1 day) that entered the market in 2006. In 2011, the two tabloid dailies had between them double the circulation of the two quality dailies (Štětka 2012, 9) – the centre-left

⁹⁰ In the 2017 *Digital News Report*, for instance, 27% of respondents stated they used *Nový Čas* as their source of news, followed by *SME* (18%), *Plus 7 dní* (16%), regional or local newspapers (16%), *Pravda* (16%), *Plus 1 deň* (10%), *Hospodárske noviny* (7%), *Korzar* (7%) and *Denník N* (5%) (Kluknavska 2017, 91).

Pravda (Truth)⁹¹ and the centre-right liberal *SME* (We Are), which in the 2000s were characterised as ‘leaders of watchdog journalism in Slovakia’ (Školkay et al. 2010, 10). The national daily market further comprised the sport daily *Šport*, the financial daily *Hospodárske noviny* (Economy News, *HN*) and the Hungarian-language *Új Szó* (New Word). The quality centre-right liberal *Denník N* started publication in 2015.⁹² The regional print press was dominated by the publisher of daily *SME* – Petit Press – which published one of the two regional dailies *Korzář* (Corsair) and *MY*, a strong network of regional weeklies. There were only three weeklies to publish investigative stories – the long-term market leader, general interest/tabloid *Plus 7 dní* (Plus 7 days), the economic weekly *Trend* and the conservative magazine *.týždeň* (Week).

Online media

Growing Internet penetration prompted people to use online media as one of their main information sources. Slovaks predominantly used free news portals or newspapers’ websites. Since its 1996 inception, *SME*’s online version *Sme.sk* belonged to the online news media market leaders (Ondrášik 2010b, 31). Digital-born news portals *Topky.sk* and *Aktuality.sk*, outlets that provide diametrically different news – sensationalist, showbiz and crime news versus more serious news, commentaries as well as investigative stories – were the other leading online news media outlets (Kluknavska 2017, 91).

4.5.2 Journalism Culture 1996 – 2016

Slovak news media, like most of their CEE counterparts, never achieved complete independence from the constraining forces of the political and economic subsystems (Stetka 2012, 434-35). Given the high levels of politicisation in society during the transformation period, various political and business actors tried to instrumentalise news

⁹¹ *Pravda* began as a social democratic paper. Its editorial line became more mainstream following acquisition by foreign owners. It returned to its populist, left-leaning editorial line after another ownership change in 2010 (Šípoš 2010a).

⁹² Although I did not conduct any new interviews with journalists after 2014, the views of many *Denník N* reporters will be discussed in the following chapters as I interviewed them in 2014 whilst they worked for *SME*.

media in order to promote their particular interests.⁹³ The weakness, volatility and low levels of party loyalty and discipline characteristic of political parties in CEE grants the news media enormous power and importance being the key means to reach voters (Mancini 2015, 28-29; Bajomi-Lázár 2015, 6-7). Efforts of various political and business actors to manage the information disseminated by the media in order to shape public opinion by delivering desired and deterring undesired messages to voters thus remained, with varying degrees of intensity, a commonplace during the studied period. These efforts included media capture and colonisation (Bajomi-Lázár 2015, 2013), limiting access to official information, discrediting media organisations and professionals in the eyes of citizens, withdrawing advertisement, and instrumental use of personality/goodwill protection litigation.

Such attempts were most acutely felt by media professionals when the country was headed by nationalist-populist politicians like Mečiar and Fico who, according to Milan Kruml, ‘considered media as their enemies’ rather than legitimate watchdogs and whose political style was based on power politics rather than consensus seeking (Ondrášik and Škop 2011, 121). Political pressure on the media considerably subsided during the period in office of Dzurinda and Radičová and in the first half of Fico’s majority government.

The experience of political pressures shaped the emergent journalistic culture, which could be characterised as a hybrid of the ‘critical change agent’ and the ‘popular disseminator’ model according to the Worlds of Journalism Project classification (e.g. Hanitzsch 2011). While some journalists served as agents of the nation-building project pursued by Mečiar’s government, the majority of the profession preferred a more inclusive and democratic vision of the country, and became united in the fight for freedom of expression and the future of Slovak democracy (Kollár 2013a; Johnson 2012, 154-56; Gazda and Kulla 2011, 137-41). As one reporter put it, journalists became ‘political figures’ (cited in Metyková and Waschková Císařová 2009, 730) actively participating in the 1998 election campaign, which eventually helped to depose Mečiar. Having

⁹³ Hallin and Mancini (2004, 37) define instrumentalisation of the media as ‘the control of the media by outside actors – parties, politicians, social groups, or economic actors seeking political influence, who use them to intervene in the world of politics’.

discovered their power, some journalists, ‘started doing politics’ (Múdry 2013), striving to fashion the political and social reality (Múdry 2017; Kollár 2013a; Gazda and Kulla 2011, 139-41). The formative collective experience of the fight against Mečiar also led to a distinct bias towards neo-liberal ideas among journalists, or a ‘love affair with the right’, as Šimečka (2009, 3) dubbed it (also Ondrášik and Škop 2011, 121; Štětka 2012, 15; Múdry 2017), as young journalists became fixated on the false paradigm that equated freedom and civil liberties with neoliberalism. The post-1998 generation of journalists found a new enemy in the left-wing populist Fico who formed a government coalition with HZDS and SNS (Šimečka 2009, 3) that adopted the controversial 2008 Press Act and was suspected of clientelism and cronyism in allocation of public funds and running the judiciary. This love-affair lasted at least until the 2010 editorial line change at *Pravda*.

Proclaimed watchdogs in the press thus turned into campaigners (Mocek 2015, 114) who found a permanent enemy in the governing elites (Múdry 2017). This led to reporting on most political, judicial and business elites’ conduct that at times bordered on vicious, ‘boundless criticism’ (Múdry 2017, also 2013; Kollár 2013b) and conveyed the message that all politicians and most judges were corrupt and thus could not be trusted. Therefore, more often than not, the relationship between news media and political and economic subsystems was characterised by mutual animosity and open conflicts (Radičová 2013).

The other strand of Slovak journalism culture is the so-called ‘popular disseminator’, which emerged in the 2000s. Following the entry of foreign owners into the market in the late 1990s, in order to attract the largest number of consumers and advertisers, commercial media switched from potentially polarising political content to lighter infotainment genres, producing news that emphasised scandals, personalities, and verged on exaggeration, populism and scaremongering (Šípoš 2007b; Školkay et al. 2010, 6-7). In the light of the threat serious press faced from online news portals, they also succumbed to tabloidization and sensationalism (Kollár 2013a) as their websites started featuring clickbait.⁹⁴ Citing high costs and public’s lack of interest in the format,⁹⁵ by

⁹⁴ Sensationalised headlines which tempt the reader to click on the link to the story but turn out to be misleading (Frampton 2015).

⁹⁵ The perceived impact of personality/goodwill protection on investigative journalism is discussed in Chapter 9.

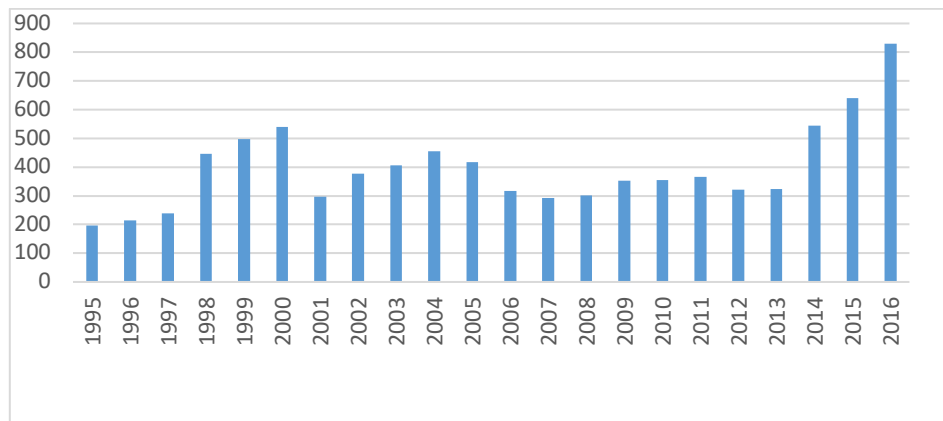
2010, all commercial televisions had axed their investigative programmes (Glovíčko 2010), instead launching special news formats informing exclusively about crime or show business (Školkaý et al. 2010, 15). Until 2015, when a new investigative team started work as part of the *Aktuality.sk* editorial room (Vagovič 2015), investigative journalism remained the exclusive domain of a handful of print press outlets and *RTVS*.

4.6 Quantifiable Picture of the Personality/Goodwill Regime

It proved impossible to present an objective, quantifiable picture about personality/goodwill protection litigation and success rates given the absence of a centrally-held statistical database containing the numbers and outcomes of disputes involving media-defendants. The statistics compiled by the Justice Ministry suggested that actions for violations of personality rights through publication in the media were relatively rare. Data on the number of petitions filed in personality/goodwill protection disputes were unavailable. However, the number of claims in these cases adjudicated by ordinary courts each year did not suggest unduly high rates of litigation (Figure 4.3). Between 1995 and 2016, the number of annually adjudicated claims ranged between 197 (in 1995) and 829 (in 2016).⁹⁶ To set these figures in context, in 2012 ordinary courts adjudicated 80,887 civil law cases that comprised 108,568 claims. In the same year, the courts decided 321 claims in civil personality protection disputes. The number of petitions filed annually might, of course, be higher than the number of adjudicated claims, as some petitions might never reach a final verdict. It should be noted that the data comprised absolutely all personality protection disputes, including disputes for personality rights' violations resulting from medical malpractice.

⁹⁶ The number of claims does not denote the number of disputes, which is generally lower, as each petition in civil personality/goodwill protection dispute might include several claims, including *actio prohibitoria*, action for restoration, and action for satisfaction (moral and/or monetary).

**Figure 4.3: Civil Personality Protection Claims Adjudicated by Slovak Courts
1995-2016**



Source: Author's calculations based on data provided by the Ministry of Justice of the Slovak Republic and the Ministry's Statistical Yearbooks found at <https://www.justice.gov.sk/stat/statr.htm>.

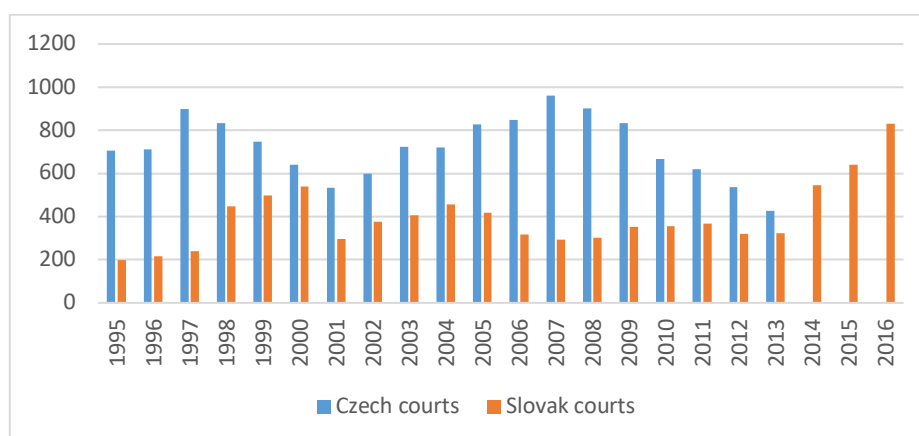
Of the 2011 and 2012 decisions published on the Justice Ministry information portal under the category “personality protection”, only 17.5% and 20% respectively involved media-defendants, including web portals not directly associated with traditional media.⁹⁷ While it is impossible to generalise solely from these figures, it would seem reasonable to conclude that media-defendants did not face undue levels of personality/goodwill protection litigation between 1996 and 2016. As observed by Rudolf Adamčík, one of the most experienced personality protection lawyers, the sharp rise in the number of adjudicated claims since 2014 can possibly be attributed to ordinary plaintiffs increasingly bringing cases involving medical malpractice. Some interviewees among defendants and their lawyers also believed that ordinary plaintiffs started to perceive litigation as a road to personal riches, encouraged by the significant damages awarded to politicians and judges (discussed in Chapter 6). Other interviewees suggested that the 2011 Press Act Amendment, which removed the option of claiming monetary compensation for unjustified rejection of corrections and replies, might have prompted

⁹⁷ Figures correct at of 25 January 2013. Since then, further court decisions might have been published on the portal. The dataset included 143 decisions made in 2011 under the “personality protection” category. Out of these, 25 involved media-defendants in 23 disputes for civil personality protection and two disputes for press correction or reply. The portal included a total of 250 decisions made in 2012 under the category “personality protection”. I identified media-defendants in 48 disputes, of which 41 were civil personality protection actions, six were press law actions and one was broadcasting law action. See <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>.

unsuccessful claimants to file civil actions for defamation rather than actions for publication of a correction or reply.

The number of claims adjudicated by Slovak courts did not seem excessive in comparison with the Czech Republic, where until 31 December 2013 personality/goodwill protection disputes were governed by identical provisions of the 1964 Civil Code. With approximately half the population of the Czech Republic, the numbers of adjudicated claims for most of the period did not exceed much above 50% of those in the Czech jurisdiction (Figure 4.4).

Figure 4.4: Civil Personality Protection Claims Adjudicated by Slovak and Czech Courts 1995-2013

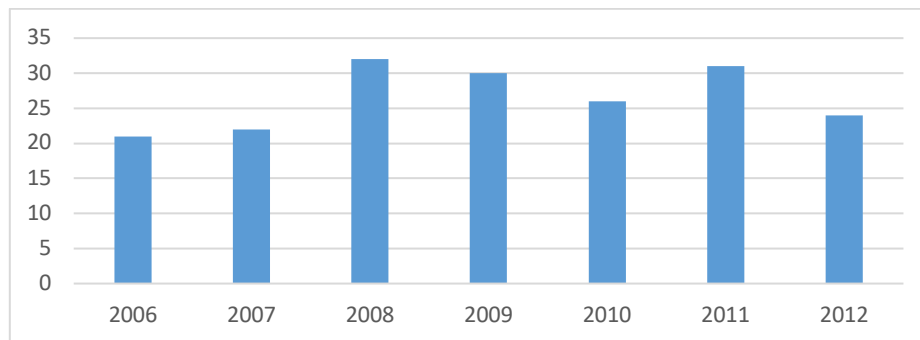


Source: Author's calculations based on data provided by the Ministry of Justice of the Slovak Republic, the Slovak Ministry's Statistical Yearbooks found at <https://www.justice.gov.sk/stat/statr.htm> and the Statistical Yearbooks of the Ministry of Justice of the Czech Republic <https://cslav.justice.cz/InfoData/statisticke-rocenky.html>.

The available official statistical data further seemed to suggest that between 2006 and 2012 goodwill protection litigation was much rarer than personality protection actions, with the numbers of adjudicated claims peaking at a mere 32 in 2008 (Figure 4.5).⁹⁸ It was impossible to distinguish what proportion of the defendants in those disputes belonged to media organisations.

⁹⁸ The Justice Ministry's statistical records on adjudicated goodwill protection claims only went back to 2006.

Figure 4.5: Goodwill Protection Claims Adjudicated by Slovak Courts 2006-2012



Source: Author's calculations based on data provided by the Ministry of Justice of the Slovak Republic.

4.6.1 The Defendants

It is impossible to state who the most frequent media-defendants in personality/goodwill protection cases in Slovakia were due to the absence of reliable official data. The analysis of cases adjudicated by ordinary courts in 2011 and 2012 suggested a predominance of national print media outlets among defendants. Ninety-five percent of the decisions in civil personality protection disputes against traditional media organisations (including their online versions), concerned national media organisations. Sixty-eight percent of the disputes involved print outlets, and 32% television broadcasters. Tabloid dailies and weeklies (42%) were the largest single category of defendants, followed by commercial television stations (32%) and women's magazines (11%). Eighty-one percent of the civil personality protection actions against media-defendants adjudicated in 2012 involved national outlets. Seventy-four percent of all lawsuits adjudicated in 2012 were brought against print media outlets, 23% against a television broadcaster and 3% against a radio broadcaster. The largest category of defendants were broadsheet dailies (32%), followed by tabloids (26%), and commercial television stations (13%).

4.6.1.1 Numbers of Disputes faced by Media Organisations

To corroborate the preliminary findings of the official data analysis, interviewees were asked about typical defendants. Media managers and professionals were also invited to comment on the approximate numbers of personality/goodwill protection disputes faced

by their outlet. Media executives, journalists, and their lawyers generally did not perceive the rate of litigation as excessive. However, the disputes actually resulting in a final judicial resolution, were ‘only the tip of the libel iceberg’ for Slovak media organisations and professionals, as Barendt et al. (1997, 46) put it in relation to national newspapers in England and Wales. It is also important to note that the respondents rarely distinguished between the different types of actions involving reputation and privacy protection, including civil action for personality protection, civil action for goodwill protection, actions for publication of correction or reply (under press or broadcasting law). As Zuzana Zlámalová, the former legal counsel at *Markíza*, explained, ‘it is very similar in terms of defence. ... Therefore, we used to take it all as personality protection disputes’. The numbers referring to claims and disputes cited below thus might include instances regulated by legal provisions other than civil personality/goodwill protection provisions.

The number of disputes filed against media organisations varied greatly and seemed to be directly connected to the nature and editorial character of the outlet. The interviews confirmed the preliminary findings of the above-discussed analysis. According to respondents, national media outlets attracted the overwhelming majority of personality protection actions given their reach and the weight plaintiffs ascribed to information published therein. The interviewees further suggested that despite diminishing circulation rates, print media outlets figured as defendants in personality/goodwill protection disputes more frequently than television or radio broadcasters. Five out of the six plaintiffs I interviewed also pursued legal action against national print publications – including a serious daily, a tabloid daily, and a tabloid weekly, with only one plaintiff suing a national television broadcaster. The interviewed plaintiff lawyers also predominantly mentioned cases against the press – particularly the tabloids and the leading daily *SME*. They also recollected disputes against *RTVS* and two serious magazines.

Given the more stringent impartiality and objectivity rules relating to broadcast news and public affairs programmes, the adoption of the all-music radio format by commercial radio broadcasters, and gradual withdrawal of investigative and citizen affairs programmes by commercial television stations, the apparent prevalence of lawsuits against the national press seemed unremarkable. The sensationalist focus of the tabloid press on the one hand, and the emphasis on investigative and exposure journalism retained by a handful of dailies, on the other, might further account for the national press’s seeming dominance among defendants.

Business press

The business press had the lowest litigation levels. According to *HN*'s deputy editor-in-chief, Filip Obradovič, the daily received a few – up to two press correction/reply requests per month – whereby the claimant made clear that legal action might follow, if rejected. Obradovič remembered three actual lawsuits during his seven years at the paper, all of which concerned commentaries because news items were ‘usually played out to the mutual benefit of both sides’. The editor-in-chief and co-owner of *Trend*, Oliver Brunovský, argued that articles ‘fortunately, do not very often’ lead to disputes, with *Trend* having had ‘a bare minimum of those disputes’. According to the list of *Trend*'s past personality protection disputes⁹⁹ I examined, the weekly was involved in ten actions, including civil and press law provisions. Out of these, five were personality protection actions, three goodwill protection actions and two were filed under press law. *Trend* also received solicitors' letters requesting corrections, replies, withdrawal of photographs or impugned information from the web, or publication of supplementary information. At the time of the interview, *Trend* had no active or pending personality protection disputes.

Tabloid press

Several respondents suggested that given their sensationalist agendas violating individuals' privacy, and the relatively low standards of journalism, the tabloid press attracted more lawsuits than all other outlets. According to one of the most experienced plaintiff lawyers, František Sedláčko, the most popular magazine *Plus 7 dní* probably had the most personality protection disputes because ‘they know how to do tabloid journalism, they do it well and therefore they automatically have the largest number of lawsuits’. Representatives of *Společnost' 7 plus*, the publisher of tabloids *Plus 1 deň* and *Plus 7 dní*, did not want to be interviewed. Nevertheless, Rudolf Adamčík, *Společnost' 7 plus*'s former legal counsel, and Andrej Schwarz, the lawyer for News and Media Holding (NMH),¹⁰⁰ confirmed that the outlets received numerous before-action letters,

⁹⁹ As Brunovský admitted there might be some cases missing as he was searching *Trend*'s records primarily for civil disputes for personality protection rather than goodwill protection.

¹⁰⁰ NMH acquired *Společnost' 7 plus*'s print outlet portfolio in late 2014.

reply/correction requests and complaints. Neither lawyer commented on the numbers of lawsuits.

Ringier Axel Springer's (Ringier) CFO, Martin Mihálik, and its legal counsel, Marek Benedik, confirmed that the most popular tabloid daily *Nový Čas* received numerous requests for press correction/reply. Unsuccessful claimants tended to file civil actions. Mihálik could recollect only some tens of disputes filed against Ringier in the years preceding the interview and believed that the number of active cases was falling year on year. Benedik similarly dismissed 'the legends about the number of disputes against Ringier', which were allegedly in their hundreds.

Leading political broadsheets

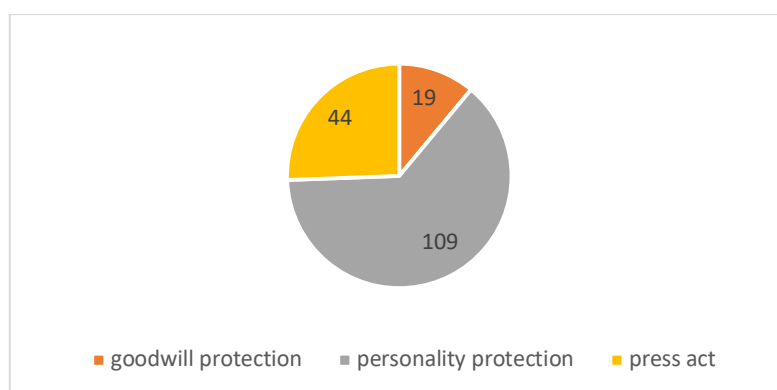
The interviews suggested that the leading political daily *SME*, which retained investigative and exposure journalism throughout the 2000s and 2010s, received relatively large numbers of post-publication complaints and was also exposed to comparably high litigation levels. Some respondents suggested that this was also true for daily *Pravda* before its editorial line change in 2010. In 2017, *SME*'s editor-in-chief, Beata Balogová believed she had to deal with at least one before-action request (including correction/reply requests) every week, with two to three requests received during some weeks. According to Lukáš Fila, *SME*'s deputy editor-in-chief until 2014, senior editors and reporters received various types of complaints over the phone or solicitor's letters, requesting alternative remedies for alleged violations of personality or goodwill rights.

Although press correction/reply requests were common – tens of them every year – Fila believed that 'not just anyone sends a before-action letter', estimating that *SME* received up to two per annum. In Fila's words, on average, the claims that led to 'actual disputes constitute small numbers – those that reach the proceedings stage are in single digit numbers each year'. Tomáš Kamenec, one of the leading defendant lawyers who represented Petit Press and other media organisations, similarly, did not think that the majority of the before-action requests shown to lawyers would end up in court. According to Petit Press's CEO, Alexej Fulmek, *SME* was involved in fifty to fifty-five active personality protection disputes at any given time. In early 2017, Balogová, confirmed the number of pending disputes as fifty (inclusive of civil personality/goodwill protection and press law actions).

Petit Press's disputes

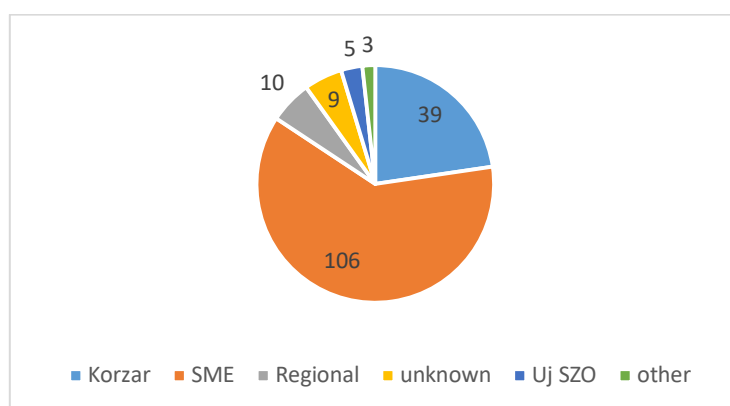
Petit Press provided the most comprehensive, albeit still incomplete, record of actions involving reputation and privacy protection initiated against the publishing house. As of 26 May 2014, Petit Press had faced 172 disputes. Almost two thirds of these concerned civil action for personality protection (109), 19 (11%) involved civil goodwill protection and 44 (26%) involved press law disputes (Figure 4.6).

Figure 4.6: Disputes involving Petit Press by Type



SME and its online version, www.Sme.sk, attracted over three fifths of all disputes, followed by the regional daily *Korzar*, involved in almost a quarter of all actions. Petit Press's regional weeklies *MY* were party to six percent (10), and the Hungarian daily *Uj Szó* to three percent (5) of all disputes. Two disputes involved preliminary measures to prevent publication of a book, one concerned a no-longer-existing outlet. In nine cases the outlet could not be identified (Figure 4.7).

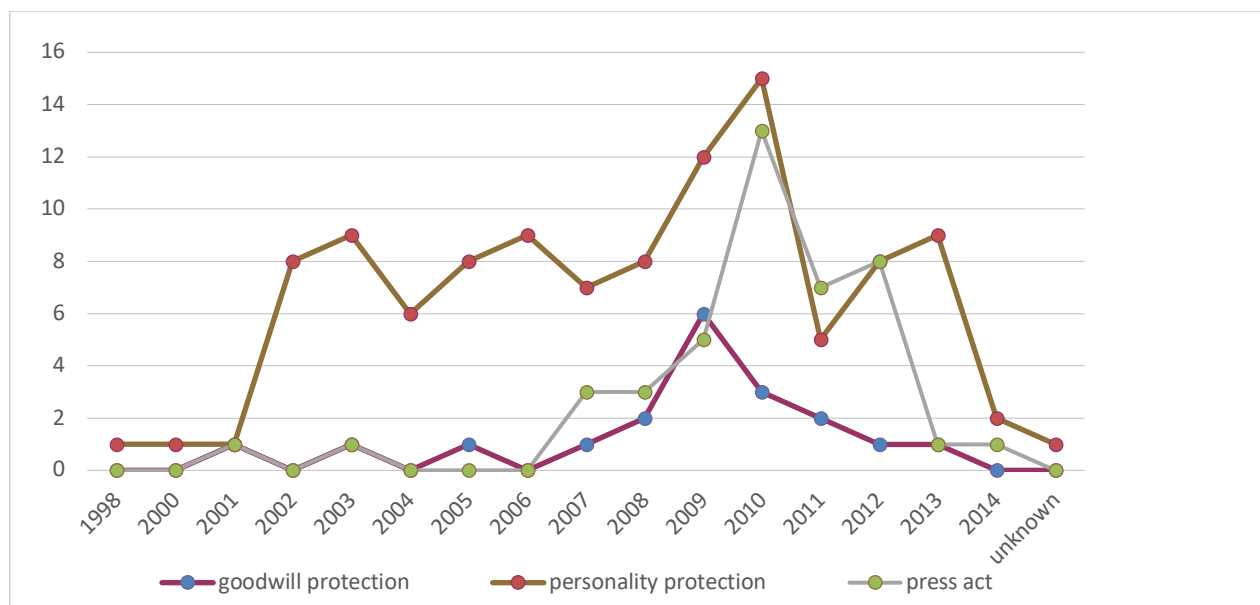
Figure 4.7: Petit Press's Disputes by Outlet



According to the available data, the numbers of actions filed against Petit Press varied considerably between 1998 and 2014 (Figure 4.8). Petitions for personality

protection peaked in 2010 (the last year of Robert Fico's first government), declined the following year, and picked up again in 2012 and 2013. Goodwill protection actions peaked in 2009, declining again in subsequent years. Press law petitions became more frequent from 2007 as the controversial Press Act strongly featured in public debate, peaking in 2010 and declining from 2011 following the Act's amendments affecting the availability of monetary compensation. While the incompleteness of the data does not allow for generalisation, it would seem that just over fifty percent of actions against Petit Press between 1998 and May 2014 originated in the period of Fico's first government (2006 – 2010). This increase in claims recoded between 2008 and 2010 is unsurprising, given the hostile relationship between the governing political elite and the neo-liberal, right-leaning press in the second half of the 2000s.

Figure 4.8: Petitions filed against Petit Press 1998-May 2014



Television broadcasters

Television stations faced varying amounts of litigation. The market leader *Markíza* was subject to most lawsuits. According to Zlámálová, the television station received numerous complaints and claims, typically requesting an apology and monetary compensation. *Markíza*'s head of news, Henrich Krejča, estimated that roughly ten percent of all before-action claims ended up in court. Zlámálová believed that around half of all claims forwarded to lawyers led to litigation. As confirmed by Zlámálová, in early 2014, *Markíza* had around sixty active disputes, half of which involved broadcasting law

corrections. Acknowledging that the public service broadcaster commonly received correction requests and before-action notices, Lukáš Diko, head of news at *RTVS*, argued that personality protection litigation was ‘very rare’. According to a list of disputes prepared by *RTVS*’s legal department, only one civil action was filed against *RTVS* between 2013 and 2014.

JOJ’s legal counsel, Peter Lukášek, admitted that the newsroom received complaints in emails or solicitors’ letters ‘relatively often’. However, he believed that within the news programmes of commercial televisions where the main ‘focus [was] not on serious information’, ‘a conflict between personality rights’ and freedom of speech was not apparent. As stated by *TA3*’s director for external affairs, Igor Čekirda, the news channel did not have ‘any fundamental number of these lawsuits’. According to a list of disputes prepared by *TA3*’s lawyers, the broadcaster most frequently faced actions under broadcasting law. *TA3* was involved in seven personality and one goodwill protection actions. Čekirda was also under the impression that the rate of litigation against the news channel had reduced in comparison to the past, or at least the organisation did not sense any increase. As Čekirda suggested, the relatively small number of disputes involving *TA3* and *JOJ*, might also be related to the withdrawal of the so-called ‘citizen affairs’ programmes which were particularly prone to attracting litigation. Recognising that this type of programming attracted complaints, albeit not necessarily lawsuits, Krejča confirmed that in late 2013, *Markíza* also withdrew its citizen public affairs *Lampáreň* as a self-standing programme. By 2010, all commercial televisions had axed their investigative programmes (Glovíčko 2010).

Other news media outlets

Other news media segments seemed to have a rather limited exposure to litigation. Pavol Múdry (2014) argued that as CEO of *SITA* news agency he received fairly often over-the-phone complaints from high-level politicians. The agency was usually able to withstand the various before-action requests. Múdry (2014) estimated that during his fifteen years at *SITA*, only ten lawsuits were filed or were impending. According to Tomáš Langer, whose law firm represented several media outlets, commercial radio broadcasters were minimally exposed to litigation throughout the 2010s.

4.6.1.2 Journalists' Exposure to Litigation and Pre-Publication Threats

Since the interviewed journalists were among the most prominent investigative reporters and political commentators, each experienced personality/goodwill protection litigation, either as a witness in proceedings or as defendant in the second-order. The most experienced and, arguably, daring Slovak investigative journalist of British origin, Tom Nicholson, for instance, recollected being involved in civil litigation at least ten times. Four journalists (Júlia Mikolášiková, Marek Vagovič, Nicholson and Zuzana Petková) were also involved in criminal defamation proceedings.

All interviewed journalists received warnings from subjects of stories approached for comment about potential civil action in case falsehoods were published about them. Such notices came from private persons and companies as well as from public officials and state institutions. Journalists argued that such warnings, or 'threats' in their parlance, happened routinely. According to some journalists, in the 2010s, threats of impending criminal defamation complaints became 'the latest fashion', as Petková put it. In contrast to the 1990s, threats of physical violence were much rarer. In freelancer Nicholson's words, 'it is common that they contact you or inform you in one way or another that they will file a criminal complaint or civil action. To call and threaten physical assault is quite rare'. Reporters were subjected to such threats over the phone, via email or in person.

Senior managers and media organisations' lawyers also, albeit less frequently, came across such pre-publication notifications. Krejča claimed that he encountered such complaints 'million times' from respondents 'over the phone, email [and] meetings in person'. Diko received such notices for investigative and citizen public affairs 'on average twice a month'. Brunovský confirmed that 'it occurs rather often' – once a month or once every two months – that the newsroom encounters 'such a conflict' with persons or businesses subject to reporting in *Trend*.

4.6.2 The Plaintiffs

Plaintiffs in personality protection disputes against the media tended to hold positions that placed them in the public eye, be more affluent than the average, be highly educated and aware of their rights and responsibilities of the media. Most of them could, under certain circumstances, be, according to Slovak and ECtHR's case law, characterised as

public figures or relatively public figures whose conduct was subject to legitimate reporting in the public interest. Only a minority belonged to private figures whose reputation was granted high levels of protection by law. Plaintiffs in goodwill protection cases also belonged to those legal entities that ought to bear more public scrutiny, including public institutions and state-owned firms as well as private companies, typically involved in public procurement or contracts with the state.

4.6.2.1 The Interviewed Plaintiffs

Three of the six plaintiffs interviewed were active judges at the time of the impugned publication; two of them had been known to the public through their appearances in the media. One had previously acted as a court chairman. The others were recognised in their professional and local communities and at the time of the alleged infringement had been employed in law enforcement, the legal profession and in journalism.

4.6.2.2 Client Portfolio of Plaintiff Lawyers

The interviewed lawyers represented public figures or relatively public figures primarily, particularly politicians or former politicians (national and local) and/or their relatives. Half of the lawyers also had extensive experience representing active judges and/or other legal professionals, including lawyers (advokát/ka), prosecutors, notaries and distrainers. Several lawyers worked on behalf of actors, sportsmen, TV presenters and/or their relatives. Others represented public officials or candidates for public office, businesspeople, and one firm represented a senior church dignitary. Only four lawyers had been involved in work for private individuals, including a victim of mistaken identity. Work for legal entities did not constitute a substantial part of the lawyers' work – only three reported representing a private company or a public institution.

4.6.2.3 Plaintiffs in Cases Involving Different Types of Media

The following section introduces the most frequent plaintiffs involved in disputes with different types of media.

Business papers

Unsurprisingly, claimants and plaintiffs in cases involving business publications such as *HN* and *Trend* were most commonly associated with private companies, businesspeople and public officials with links to public procurement and economic, monetary and/or social policy. According to *Trend*'s records, half of plaintiffs in all disputes involving the weekly (including press law disputes) were private companies. The plaintiffs in personality protection disputes included two cabinet members and private persons who in light of their actions became relatively public figures.

Tabloids

Tabloid publications were sued by public figures like celebrities, actors, singers, politicians, judges and other public officials, as well as by private individuals, including ordinary persons, healthcare professionals accused of malpractice or businesspeople. According to Benedik, given the editorial focus of *Nový Čas*, which strived 'to document ordinary life not just high politics', the overwhelming majority of disputes involving Ringier came from ordinary people. Other cases involved businesspeople, and a few high-profile politicians and judges. Mikolášiková also maintained that ordinary people and legal entities sued; 'it just doesn't get out that much – one is not informed about that ... to such an extent as when a politician or a public figure' files a lawsuit. According to Adamčík, politicians and other public officials belonged to the most frequent plaintiffs in disputes against *Plus 1 deň* and *Plus 7 dní*. As the papers' editorial focus evolved, lawsuits and/or claims from various celebrities, healthcare professionals and ordinary people became more frequent. The interviews confirmed that legal entities tended to litigate against tabloids in any case type, relatively rarely. Schwarz estimated that legal entities filed roughly fifteen percent of lawsuits against the NMH outlets he represented.

Commercial broadcasters

Commercial broadcasters attracted complaints and lawsuits from private individuals, public figures as well as legal entities. *JOJ*, according to Lukášek and Kubina, was sued by ordinary citizens, and public officials, including civil servants, police functionaries and distrainers. *JOJ* was not involved in any legal action with a politician because politicians tended to file unrelated complaints anonymously with the Broadcasting Council, according to Kubina, rather than suing, to punish the television. While Kubina mentioned handling complaints by large companies, Lukášek could not recollect an active

case involving an alleged breach of goodwill rights. According to the records provided by *T43*, the broadcaster was sued by one work agency, three judges, a police functionary, a murder suspect, and an electoral bribery suspect. The largest commercial television, *Markíza*, which withdrew its investigative and citizens' public affairs programmes later than its competitors, had disputes with public figures, including politicians, judges, prosecutors and police officials, ordinary persons, businesspeople, healthcare professionals as well as commercial subjects. According to Zlámalová, politicians predominated among *Markíza*'s claimants and plaintiffs in the 1990s and 2000s. From around 2009 ordinary people and business entities started to litigate more frequently.

Leading political papers, PSB and news agencies

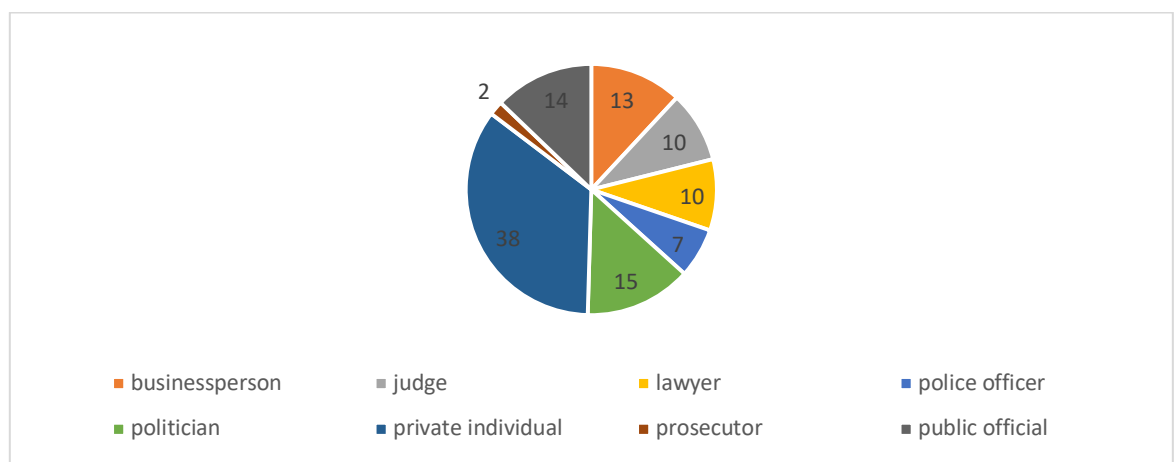
Political dailies *SME* and *Pravda*, public service broadcaster *RTVS* and *SITA* news agency most frequently received before-action claims and/or lawsuits from politicians, judges, prosecutors, lawyers and, often high-ranking, police officials and/or investigators. Other public officials such as university heads, civil servants and distrainers featured among plaintiffs to a lesser extent. Politics-focused press also received before-action letters and lawsuits from businesspeople and private companies. Ordinary individuals litigated very rarely against political papers. According to *Pravda*'s lawyer, Marek Ogurčák, the daily was sued by a mix of different plaintiffs, including criminal suspects, politicians and judges. Ogurčák could recollect less than a handful of lawsuits involving business corporations, and a few correction/reply requests from ministries. Fila similarly claimed that in the case of *SME*, plaintiffs were 'almost exclusively public figures' and that 'the absolute majority of all plaintiffs were found among 'politicians, judges or businesspeople linked to public [procurement] scandals'. Due to *SME*'s editorial focus, disputes with private individuals who could not be characterised as relatively public figures were very rare. *SME*'s Benediková similarly argued that she had 'never encountered a dispute where an ordinary person or citizen who was not publicly active would file a lawsuit against the publishing house'.

Plaintiffs in disputes involving Petit Press

According to Petit Press's records, public figures, including national and regional politicians, police officers, judges, lawyers, prosecutors and other public officials (including town mayors or public institutions leaders) comprised the majority (53%) of plaintiffs in civil personality protection disputes involving the publisher. Just over a third

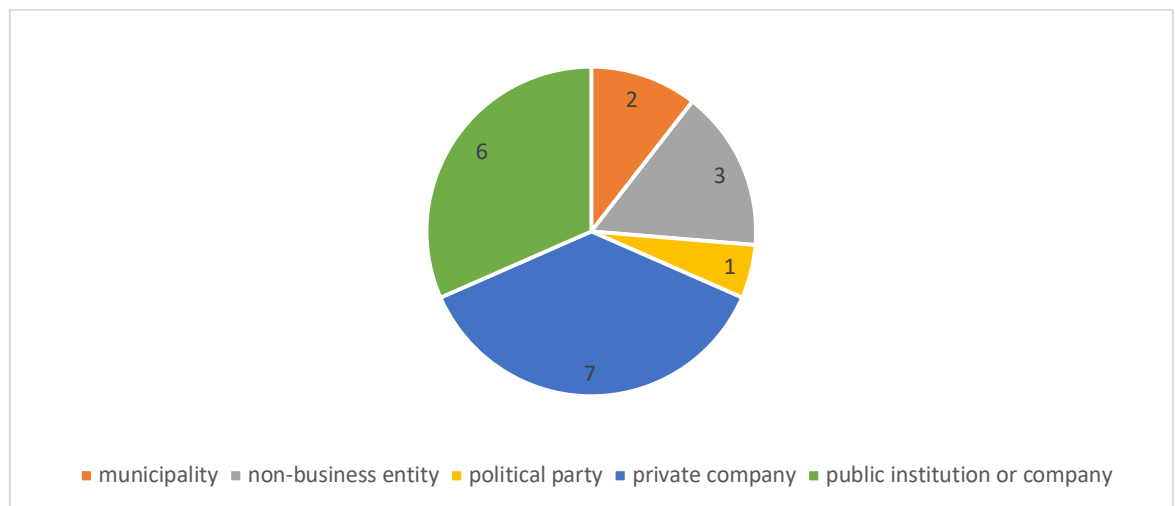
of all plaintiffs were not active in public life and were thus considered private individuals for analytical purposes. Twelve percent of all plaintiffs came from business (Figure 4.9). Such a relatively large proportion of private individuals among plaintiffs was unsurprising, in the light of the ownership by the publishing house of a network of regional outlets reporting on local issues. However, since the analysed data did not provide information about the impugned articles, it can be presumed that plaintiffs considered in the analysis as private individual and businesspeople were actually relatively public figures or local public figures under the law.

Figure 4.9: Plaintiffs in Personality Protection Disputes involving Petit Press



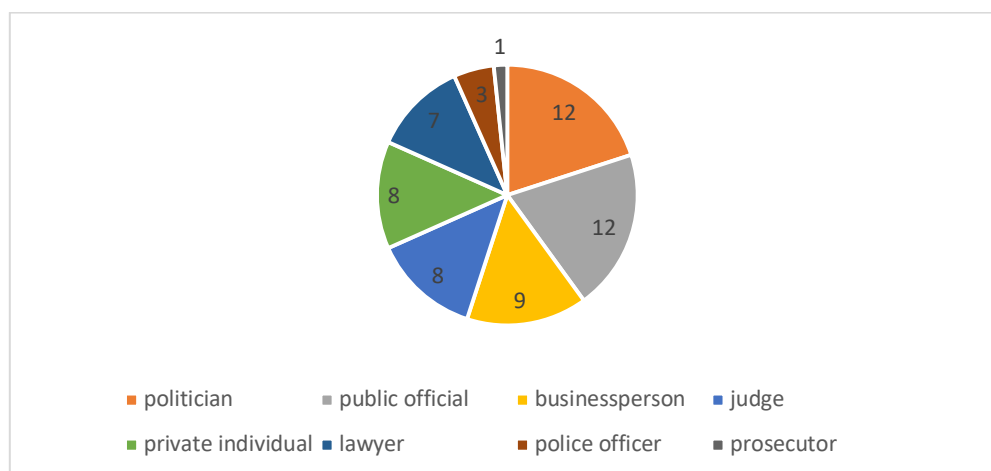
Plaintiffs in goodwill protection cases mostly belonged to private companies and other non-business entities, such as church organisations, professional organisations and NGOs. Private companies also comprised the single largest category of plaintiffs (37%), followed by public institutions or companies (32%). Petit Press also faced lawsuits from two municipalities and a political party (Figure 4.10).

Figure 4.10: Plaintiffs in Goodwill Protection Disputes involving Petit Press



In line with the perceptions of interviewees, the single largest groups of plaintiffs in personality protection disputes against *SME* were politicians (20%) and other public officials (20%), followed by businesspeople (15%), judges (13%), private individuals (13%), lawyers (12%), police officers (5%) and prosecutors (2%). Plaintiffs who could be characterised as public figures were thus involved in seventy-two percent of personality protection actions against *SME* (Figure 4.11). In contrast, sixty-nine percent of plaintiffs in personality protection disputes against the regional daily *Korzar* were private individuals and businesspeople. *SME* was also a defendant in eleven goodwill protection disputes, involving five public institutions or companies, four private companies, and two non-business entities.

Figure 4.11: Plaintiffs in Personality Protection Disputes involving *SME*



4.6.2.4 Particularly Litigious Plaintiffs

The perception of respondents was that there were certain particularly litigious persons among high-profile politicians and senior judges. The interviewed plaintiffs could not be characterised as particularly litigious, as only one of them had pursued multiple legal actions following repeated infringements. The mere presence of prolific plaintiffs may result in undesirable chilling effects on speech but do not allow for drawing conclusions about their motivations or effects on editorial autonomy and the information the public received about them.

Robert Fico, who had served as an MP since 1992 and as prime minister for three terms, was, between 2005 and 2009, probably the most notorious plaintiff in civil personality protection disputes with the media. His former lawyer, L01 estimated that Fico filed around fifteen defamation lawsuits against media-defendants. Cases against Trend Holding, Petit Press and multiple disputes with Spoločnosť 7 Plus¹⁰¹ had been widely publicised.

Štefan Harabin, the Supreme Court President (1998-2006, 2009-2014) and Judicial Council Chair (2009-2014) and Justice Minister in Fico's first government (2006-2009), was repeatedly mentioned by respondents. Widely believed to be one of the most sensitive and litigious plaintiffs, between 2003 and 2012, Harabin sued media organisations for publications related to his professional activities in at least five separate cases. Harabin also successfully sued Slovakia before the ECtHR for violations of his right to a fair hearing by an impartial tribunal (*Harabin v. Slovakia*). On behalf of the Supreme Court, Harabin also filed goodwill protection actions against two media organizations (TASR 2010; SITA 2010). Harabin was also infamous for recurrently sending before-action letters, requesting monetary compensation of 200,000 euro for reputational harm caused by reporting about an alleged transcript of a friendly phone call between Harabin and an alleged (and later convicted) Albanian mafia boss (Balogová 2013b; Minarechová 2013; Balogová 2009). In his capacity as Supreme Court President, Harabin also proposed out-of-court settlement of 200,000 euro to *Trend* for providing

¹⁰¹ Fico was involved in around ten disputes with Spoločnosť 7 Plus, according to some estimates (Košíček 2009b).

readers with ‘a false and highly distorted picture’ about the Court’s case allocation system (Trend 2010). Prior to commencing legal action against P. and *RTVS*, Harabin also requested an apology and monetary compensation of 400,000 euro in total (Kostelanský 2012).

Ján Slota, the former chairman of the nationalist Slovak National Party and mayor of a regional city (1990-2006), was, according to interviewees, another high-profile figure prone to sue the media. Between 1999 and 2009, Slota figured as a plaintiff in at least seven separate defamation disputes with various media organisations, including Ringier, the owner of *TV Markíza*, Petit Press, and *Spoločnosť 7 plus*.

Pavol Polka, a district court chair in the late 1990s, was mentioned as another prolific plaintiff. It was estimated that between 2000 and 2004, Polka filed fifty different personality protection lawsuits against various entities, including media organisations, Slovak Justice and Interior Ministries, the Slovak Republic, the Association of Slovak Judges and the Czech Republic, claiming between 3,319 and 663,878 euro in damages (SME 2002b; *StratégieOnline* 2002; Leško 2004). The media disputes concerned reporting about allegations of corruption and involvement in bribery of a Czech judge, for which criminal proceedings were initiated against Polka. Polka sued at least eight different media outlets, both before and after the criminal case against him was halted (Nicholson 2002). Múdry (2014) suspected that ‘Polka sued the entire media community in Slovakia ... He didn’t care – [he sued] one after another ... everyone who mentioned his name in the bribery case’.

Another judge, **Jozef Soročina**, was repeatedly cited by interviewees as particularly litigious. Between 2006 and 2008, Soročina filed at least ten different personality protection lawsuits against various media outlets and state institutions, including the Interior and Justice Ministries and the General Prosecutor’s Office (Jesenský 2008). All the disputes concerned allegations of fraud against Soročina, about which the then Justice and Interior Ministers briefed at a press conference (Lesná 2008). Having been acquitted by the courts, the judge sued at least five media organisations in at least seven different disputes for reputation rights violations, claiming damages of 663,878 euro against Petit Press alone (Tódová 2008a).

4.6.2.5 Public v. Private Plaintiffs

The apparent prevalence of public plaintiffs among my respondents, the interviewed lawyers' clients and parties to disputes with media-defendants is hardly surprising. It could be explained by the sampling method used and the awareness of rights and perceptions of harm caused by publication held by private and public plaintiffs. The composition of plaintiffs also largely reflected the topics and subjects the media found newsworthy. Lastly, the mutual relationship between political and judiciary elites on one side and the media on the other during the studied period could also account for the predominance of public officials among plaintiffs and claimants.

Interviewees selection

I conducted interviews with experienced lawyers based in the capital who had been involved in high-profile, widely publicised cases. I approached the lawyers whose names appeared in media coverage of high-profile cases. I also selected plaintiff lawyers based on an analysis of a sample of judgments heard before several district and regional courts I obtained following FOI requests. Respondents among plaintiffs were also selected based on media coverage of high-profile disputes or upon recommendation from interviewed lawyers.

Awareness of personality/goodwill rights and perception of harm

Legal respondents suggested that in contrast to public plaintiffs, ordinary citizens were typically unaware of their rights or not interested in defending their reputation and privacy. According to Lukášek, 'people are very little aware of their rights and the duties others have'. Therefore, 'they let unlawful infringements go unnoticed even if they could speak out'. Ivan Ikrényi, a plaintiff lawyer, believed that private individuals were often 'not even interested' in defending their rights. Ikrényi maintained that honour, dignity and a good name were 'perceived differently by people who already ha[d] a [certain] status from other people' because 'the latter first ha[d] to satisfy their other needs'. 'If your basic needs are not met', he argued, 'you are not interested in questions of your honour or dignity'. As will further be discussed in Chapter 7, most plaintiff lawyers did not consider that ordinary, relatively impecunious plaintiffs would face difficulties in accessing justice in relation to personality protection disputes. Several respondents believed that private individuals (and their lawyers) had increasingly become aware of

their personality rights and strived to protect them. This could partially explain the increase in claims adjudicated by ordinary courts recorded from 2014. In part, it could also account for the above-discussed change in claimants' composition seen by *Markíza*.

In contrast, persons who were highly recognisable in their communities and whose ability to succeed in their job depended on reputation, honour and good name such as politicians, public officials, judges, lawyers, sportspeople and artists, perceived the need to protect their personality more acutely than most private individuals. Many individuals and legal entities among plaintiffs had also invested a lot of resources into building their good name and naturally felt the need to protect their carefully-crafted public image. Legal professionals, businesspeople and entities, who were frequent plaintiffs in personality protection cases, also possessed the necessary legal knowledge or had large legal teams at their disposal to successfully protect their reputation and privacy against illegitimate interferences.

Newsworthiness and tabloidisation

The composition of plaintiffs largely reflected the subjects that the media were interested in. As explained by Sedlačko, 'ordinary citizens do not typically come into contact with the media'. While there had been cases of actual violation of private individuals' personality rights in the past, they remained 'really rare'. Therefore, according to Sedlačko, plaintiffs in personality protection disputes were 'either politicians or other public figures – judges, local politicians, [and] public institutions'. Similarly, according to Adamčík, a lawsuit from an ordinary person was 'a literal exception because the media are not that interested in ordinary citizens', unless involved in a tragic car accident, being a party to a dispute, implicated in alleged corruption or in a relationship with a public figure.

As discussed above, some tabloid publications and commercial broadcasters experienced an increase in the frequency of claims received from ordinary plaintiffs and a simultaneous decrease in litigiousness of public figures in the early 2010s. This trend could be explained by the increased tabloidization, introduction of news formats focusing on everyday crime, including car accidents, and a shift away from serious investigative journalism that took place during the 2000s.

Antagonistic Relationship between the Press and Public Officials

The mutual animosity between political elites (and their patrons between businessmen) and judges on the one side and the media on the other, resulting from media professionals' experience of political pressures and politicians' and businesspersons' perceptions of unfair treatment in the media can also explain the prevalence of politicians, other public figures, including judges, and businesspeople among plaintiffs, particularly before 2010.

4.7 Conclusion

This chapter drew on the conceptual framework developed in Chapter 2, which argued that the law is a social institution the operation of which depends on the mutual interactions among the principal protagonists operating in the legal regime. These interactions need to be examined in its structural, cultural and international contexts. The uncertainties of democratic transition were expected to give rise to conflict that would affect the legal regime's ability to shape the principal protagonists' behaviour. In this chapter, I explored the socio-political context in Slovakia during the twenty-year-period under study, with a focus on the country's democratisation path, its power struggles and legacies for the developments in the country's media political economy, journalism culture and the mutual relationship between the principal protagonists. A quantifiable picture of the personality/goodwill protection regime in disputes involving media-defendants between 1996 and 2016 was presented and the regime's principal protagonists were introduced.

The chapter revealed an almost constant struggle for the rules of the democratic game among different state institutions, political elites and, with notable interruptions, the political and judicial elites on the one hand and the independent media on the other. These power struggles led to deep polarisation within the Slovak society, which had not been completely healed during the studied period. Its other legacy had been the prevalence of corruption and clientelism in society and the judiciary. It also shaped the developments in the media system. Most palpably it contributed to the hybrid 'critical change agent' and 'popular disseminator' journalism culture and adversarial relationship between political, business and judicial elites on the one hand and media professionals on the other, and, at times, instrumental use of the media by the owners.

Virtually all media organisations and professionals had experience of legal action or threat thereof. While the number of disputes outlets had been involved in varied, the rate of litigation in the studied period did not appear disproportionate. This was also true in comparison to the Czech Republic. On the example of the changes to eligibility for monetary compensation for non-publication of statutory discursive remedies, the analysis demonstrated the expectation of the conceptualisation of law used in this thesis that even a minor modification in legal rules can impact principal protagonists' behaviour.

Despite diminishing circulation and the rise of online media, national press, particularly the sensationalist, tabloid papers, and broadsheets, attracted the majority of legal actions. This was in line with the findings of past research (Barendt et al. 1997; Weaver et al. 2006; Cheer 2008). It was partly a factor of the more stringent impartiality and objectivity rules relating to broadcast news and public affairs. As commercial broadcasters gradually withdrew investigative journalism, the genre, which arguably attracted a large proportion of lawsuits, remained limited to the serious political and business press. The increasingly sensationalist character of the tabloid press accounted for the tabloid's frequent presence among defendants.

In line with the findings of the ILP (e.g., Bezanson, Cranberg, and Soloski 1985), the plaintiffs and would-be plaintiffs tended to be persons who most commonly appeared as subjects of media coverage, held positions reliant on having a good reputation, were relatively affluent, educated and possessed above-average legal knowledge. As suggested by the conceptual framework, the plaintiffs largely belonged to politicians, judges, public prosecutors, law enforcement officers, lawyers, businesspersons involved in state contracts or receiving public funds and other public officials. Only a minority of plaintiffs were private figures or legal entities. Goodwill protection plaintiffs largely belonged to public institutions, state-owned firms and private companies, typically involved in public procurement – all legal entities that ought to bear more intense public scrutiny.

A handful of high-profile, particularly litigious plaintiffs operated in the regime. They belonged to top politicians and judges who had a confrontational stance towards independent media that had been critical of their actions, style of governing and alleged clientelist practices. As suggested by previous research (Barendt et al. 1997; Weaver et al. 2006), the existence of particularly litigious persons might suggest a defamation and privacy regime actively discouraging speech on matters of public interest as journalists and media organisations wish to avoid litigation. This is to be explored in the findings chapters.

The composition of plaintiffs and the apparent prevalence of public figures among them during the studied period is consistent with findings of empirical studies conducted in the US and common law countries (Bezanson, Cranberg, and Soloski 1987; Barendt et al. 1997; Weaver et al. 2006). The chapter revealed an increase of disputes and press law claims towards the end of Fico's first government, suggesting the importance of the existing journalism culture and the mutual relationship between political, legal and economic sub-systemic actors and media actors for explaining the trends in the operation of defamation and privacy regimes. What did not transpire in other studies, was the large proportion of judges among plaintiffs. Given the perceived pervasive clientelism and political pressures within the judiciary during the studied period, the findings raised questions about the ability of judges to interpret and apply the law in a fair, certain and efficient way that would prevent abuses by powerful plaintiffs in the political, legal and economic subsystems.

Before exploring the adjudicatory practice of the Constitutional Court, ECtHR and ordinary courts, and the experiences of plaintiffs, media-defendants and their respective lawyers with the judicial process in personality/goodwill protection disputes in Chapter 6, the next chapter will examine the fairness, certainty and effectiveness of Slovak personality/goodwill protection regime on the statute book in the studied period.

Chapter 5: Fairness, Certainty and Effectiveness on the Statute Book

5.1 Introduction

In both the academic literature on the interplay between defamation and privacy law with journalistic speech and the public pronouncements of human rights organisations, stress is placed on the need for an appropriate triangulation of the competing private and public interests in reputation or privacy and freedom of expression in statutes and in adjudicatory practice (see Chapter 1). The conceptual framework that informs this study (see Chapter 2) suggests that, when making their decisions that ultimately affect the triangulation of the conflicting interests at the heart of the regime, the main protagonists are to a large extent influenced by their perceptions of the fairness, certainty and effectiveness the given defamation and privacy regime strives to safeguard in the law-on-the-books and in adjudicatory practice.

This chapter examines the constitutional and statutory protections of reputation, privacy and freedom of expression, and the extent to which the interests are triangulated in key substantial and procedural rules in civil defamation or privacy intrusion disputes through the lens of fairness, certainty and effectiveness. It provides context for the later investigation of the main protagonists' experiences and perceptions of judicial decision-making in Chapter 6.

The extent to which the law-on-the-books is perceived as fair depends on the importance and protection it affords to the competing values, for instance, whether each value enjoys a constitutional guarantee. This, in turn influences the approach to 'balancing' that is taken. The fairness of any defamation and privacy regime is also embedded in the way the competing interests are triangulated in statutory rules related to the standing of the parties, liability rules, the burden of proof, defences and the remedies available. Safeguards against abuse of law typically comprise substantive rules governing the requirements to establish a cause of action, the standing of plaintiffs, and the availability and level of damages. Procedural rules on court jurisdiction, fees and costs of litigation also play a key role in safeguarding against abuses of the law. Perhaps most importantly, the fairness of a defamation and privacy regime rests on its ability to provide

access to justice to all parties, particularly through procedural provisions regulating court jurisdiction and fees, the costs of litigation and the availability of legal aid.

Legal certainty stems primarily from a proper understanding by courts and the main protagonists of the protected conflicting values in disputes involving media-defendants. Without this, there is a risk that elements of law designed to defend an interest may in time prove misconceived and lead to unintended consequences and lesser protection for either of the fundamental rights (Article 19 2016, 6). Moreover, in order to enable publishers and reporters to predict with reasonable certainty the legality or otherwise of a particular action, the law must be unambiguous and clear, particularly in relation to the available defences. The rules should further provide reasonable certainty for all parties to be able to predict the outcome of litigation and the level of any potential sanction (Article 19 2000, 4).

The effectiveness of dispute resolution might be improved by statutes of limitation to file action or adduce evidence. The availability of discursive remedies like press/broadcasting correction, reply or apology is often also discussed in relation to making the defamation and privacy regime more effective in vindicating reputations and publicly correcting misrepresentations in the media (Mullis and Scott 2012a, 17-21; 2014, 107-08; Drgonec 2013, 112-16; 2008, 280-281; Koltay 2007; Youm 2007).

The chapter first outlines the constitutional and statutory protections of reputation, privacy and freedom of expression, examining their history and objectives. It then turns to explore the general principles applicable to balancing the private and public interests in reputation, privacy and expression when they come into conflict in civil disputes. A substantial part of the chapter analyses the key substantive and procedural rules intended to achieve fairness, certainty and effectiveness of the Slovak defamation and privacy regime in disputes involving media-defendants. Before setting out conclusions, the chapter briefly introduces the criminal personality protection and the discursive remedies available under media law.

5.2 Protection of Reputation and Privacy

Legal protection of the rights to reputation and privacy is anchored in the Constitution and the international treaties to which Slovakia is party. The Constitution and the Charter

of Fundamental Rights and Freedoms adopted by the former Czechoslovakia, constitute the ultimate basis for the protection of reputational and privacy rights of individuals and reputational rights of legal entities.¹⁰² Article 16 of the Constitution guarantees ‘the right of every individual to integrity and privacy’ that ‘may be limited only in cases provided for by law’. The rights of every person ‘to maintain and protect his or her dignity, honour, reputation and good name’; ‘to be free from unjustified interference in his or her private and family life’; and ‘to be protected against unjustified collection, disclosure and other misuse of his or her personal data’ are afforded in Article 19. Property rights, including goodwill, are guaranteed in Article 20. Reputation and privacy rights are also anchored in the European Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the Charter of Fundamental Rights of the European Union (CFR), all of which are part of the Slovak legal order with precedence over laws.¹⁰³ While the rights to honour and dignity are, under certain circumstances, protected under the right to the protection of private and family life under Article 8 ECHR,¹⁰⁴ in Slovak constitutional law they are understood as separate fundamental rights that pursue different aims. These different rights have roots in the concept of general personality rights, recognised in the legal order since 1964. Goodwill rights, which safeguard reputation of legal entities, fall under property rights.

To defend their personality, natural persons may choose between provisions of civil and criminal law. Legal entities’ goodwill is only protected by civil law provisions. Natural persons and legal entities may also use statutory discursive remedies for infringements in the media under broadcasting and press law. Depending on the characteristics and severity of the infringement, the injured party is free to use several provisions simultaneously (Kerecman 2003, 21; Cirák 1994, 62).

The (un)intended consequences of civil personality/goodwill protection actions involving media-defendants are the focus of this study. The following paragraphs examine how the private and public interests in reputation, privacy and expression are

¹⁰² There are only minor differences in the wording of the two documents. Therefore, only the stipulations of the Constitution will be discussed in this thesis.

¹⁰³ Since 1991, 1993 and 2009, respectively.

¹⁰⁴ For a discussion of the developments in ECtHR Article 8 case-law see Barendt et al. (2013, 363-68), Mullis (2010b, 18-20).

triangulated in substantive and procedural rules pertaining to these disputes.¹⁰⁵ The chapter also briefly discusses the relevant criminal and media law provisions as they may also influence the ability of the legal regime to triangulate the competing interests. The availability of statutory discursive remedies, for instance, might contribute to effective protection of individual and public interests in reputation and privacy as well as advance the public interest in expression (see, e.g., Mullis and Scott 2012a, 17-18). Unless narrowly stipulated, criminal law protections, on the other hand, might have a detrimental effect on the individual and public interests in expression.

5.2.1 General Personality Rights

Explicit provisions protecting citizens from defamatory statements and privacy infringements were first introduced into Slovak civil law with the adoption of the 1964 Civil Code (Act No. 40/1964 Coll.). That measure remained in force throughout the studied period.¹⁰⁶ In the relatively relaxed economic and political atmosphere of the 1960s, rather unusually, the communist legislators drew on the concept of general personality rights anchored in the Swiss and West German legal orders (Vondracek 1975, 281–82). Personality rights, which a priori belong to every natural person (Knap et al. 2004, 17; Vondracek 1988, 24), denote the rights protecting the various immaterial facets of a natural person's personality in its bodily and moral unity, such as his/her physical integrity, personal freedom, honour, dignity, reputation and privacy. The scope of personality protection as stipulated in Section 11 of the Civil Code is rather broad (see Appendix 9), extending to a natural person's i) life, health and body; ii) honour, reputation, dignity, and esteem in the eyes of fellow citizens; iii) name; iv) freedom of movement; v) image; vi) personal writings; vii) oral expressions; and viii) privacy, i.e.

¹⁰⁵ Between 1996 and 2016, actions for personality protection were governed by Sections 11-13 of the Civil Code and actions for goodwill protection by Section 19(b). The procedure in personality and goodwill protection disputes was governed by the 1963 Code of Civil Procedure (Act No. 99/1963 Coll., CCP). In matters of personality/goodwill protection, the CCP was replaced by the Code of Civil Dispute Procedure (CCDP) in July 2016 (Futej and Hric 2015).

¹⁰⁶ Since their introduction, the provisions were subject only to minor changes in the early 1990s, when obsolete sections were repealed and the right to monetary compensation for non-material loss was included.

his/her intimate domain, including inner feelings and thoughts (Vondracek 1988, 23; Knap and Švestka 1989, 69-71; Kratochvíl 1965, 56–63). The media are most frequently involved in civil disputes concerning protection of civic honour and dignity, protection of privacy or protection of one's image, writings and recordings of personal nature.

5.2.1.1 The Right to Honour and Dignity

Legal theory distinguishes between (civic) honour and human dignity, as they give rise to two separate fundamental human rights (Drgonec 2013, 186). A natural person acquires his/her honour when he/she becomes part of society and keeps it through his/her socially and morally appropriate life and behaviour. The meaning of one's honour changes and develops during one's life and varies between different professions and sections of society (Cirák 1994, 78). Human dignity, in contrast, belongs to every human being irrespective of his/her standing in society. However, honour, dignity and societal esteem are often subsumed within a single category in scholarly writings (Knap et al. 2004, 309) and judicial practice (Drgonec 2013, 187). Both legal theory and jurisprudence recognise the social value of civic honour and dignity and regard them as crucial for an individual's standing, self-assertion in society, and ability to create and maintain relationships with other members of society (Cirák 1994, 78; Fekete 2011, Volume 1:101). The law thus protects a person's personality only against such acts that violate his/her moral integrity by lowering his/her honour, dignity and esteem in his/her relations with other members of society, including social and professional relations, and therefore threaten his/her position and self-assertion in society (Vondracek 1988, 26; Kratochvíl 1965, 57-58).

5.2.1.2 The Right to Privacy

The primary purpose of the right to (personal) privacy is to preserve the private sphere of an individual's life that enables the individual to assert themselves in society (Fekete 2011, Volume 1:105; Knap et al. 2004, 334). The right offers protection to the inner intimate sphere of an individual, including his/her family life and close relationships with others (Cirák 1994, 97; Knap et al. 2004, 334). The private sphere covers an individual's life in the midst of his family and his friends. The intimate sphere comprises an individual's inner range of thoughts and feelings (Luby 1968, 781). Fekete (2011,

Volume 1:105) thus argued that protection of privacy subsumes ‘past and present experiences and affairs of a natural person, personal communications and correspondence, contacts, and protection of the intimate life and residence of a natural person (including a ban on taking photographs of a residence while simultaneously identifying its owner)’. The right protects a person against intrusions of his/her privacy irrespective of the manner in which they occur (Vondracek 1988, 30).

5.2.1.3 The Rights to One’s Image, Writings and Recordings of Personal Nature

Civil law guarantees a person the right to decide whether his/her image, video and audio recordings can be captured. As long as the person’s identity is unquestionable, protection is afforded to any image; the technology used, whether the image is a faithful depiction or a caricature, or whether it harmed the person’s honour or civic esteem is irrelevant (Drgonec 2013, 188). The law also explicitly states that a person’s portraits, photos, video and audio recordings of personal nature can only be produced and used with his/her prior consent (Kratochvíl 1965, 61; Doley and Mullis 2010, 1331).

5.2.2 Goodwill

Civil law has recognised legal entities’ right to their name and good reputation since 1992. Because the provisions bear many similarities with personality protection, some scholars regard goodwill as a pseudo-personality right. Yet, the law considers goodwill as a form of property as incorporated into Protocol No. 1 to the Convention (Drgonec 2013, 195) and constitutionally protects it as a property right. Goodwill subsumes certain moral and qualitative characteristics of a legal entity by which society evaluates it, including its trustworthiness, decency, esteem, reliability, professionalism, confidence in keeping trade secrets and obligations. Goodwill also comprises the moral profile and honesty of a legal entity’s statutory representatives and employees. Given that many legal entities rely on hard-won reputations to attract employees, investors and customers, and given the importance of corporate entities for the economy of most modern democracies, it seems appropriate for the law to allow them a remedy for serious reputational damage and for the public to learn about false allegations made against them (see, e.g., Mullis and Scott 2009, 179).

While the individual and societal values protected by goodwill are distinct from those protected by personality rights, largely the same rules apply concerning elements of a claim. The following paragraphs will thus, in general, refer to both types of action, explicitly stating if different provisions apply.

5.3 Protection of Freedom of Expression

The protection of personality and goodwill rights often clashes with the rights to freedom of expression and to receive information, which are entrenched in Article 26 of the Constitution and Article 17 of the Charter. Everyone has the right to express his or her opinion in words, writing, print, images or by other means and also seek to receive and disseminate ideas and information freely, regardless of state borders. No approval process for press publishing is required and censorship is prohibited. Freedom of expression is further guaranteed by Article 10 of the ECHR, Article 19 of the ICCPR and Article 11 of the CFR.¹⁰⁷ The Constitution enumerates a number of grounds, based on which freedom of expression and the right to information may legitimately be restricted. An admissible interference must be prescribed by law, pursue one of the listed legitimate aims, namely protection of the rights and freedoms of others, national security, public order, public health or public morals, and be necessary in a democratic society. In contrast to the Convention, the Constitution does not explicitly link the permissibility of restrictions to the existence of “duties and responsibilities” that govern the exercise of freedom of expression. Nonetheless, such a link must be presumed under an interpretation of the Constitution in accordance with Slovakia’s international obligations (Drgonec 2013, 54). Slovakia’s legal order thus complies with the internationally recognised constitutional principles concerning freedom of expression, whose importance in relation to defamation law has been emphasised by free speech campaigners (Article 19 2000, 3–4).

In contrast to the protection of reputation and privacy rights, at least in relation to natural persons, meaningful safeguards for freedom of expression have a much shorter

¹⁰⁷ The text of Article 26 of the Constitution is essentially a word-for-word translation of Article 19 of the Covenant.

history. Although freedom of expression has been constitutionally guaranteed since 1920, the geopolitical situation in the interwar period and the later establishment of two different totalitarian regimes meant that until 1989 freedom of expression was not respected in practice (Školkaý 1996, 62-66; Vozár, Valko, and Lapšanský 2009, 11; Vozár 2015, 18). As key changes establishing guarantees to freedom of expression were made in the early 1990s, it ceased to be of interest to lawmakers, who became pre-occupied with more pressing policy issues. It took the legislators fifteen years to adopt a modern press law, delineating the duties and responsibilities of the press. During the studied period, Slovakia thus lacked a coherent conception of the right to freedom of expression and its limits (Drgonec 2013, 386). Between the early 1990s and 2016, policy-makers and the Constitutional Court introduced into the legal order, on an *ad hoc* basis, various, and often contradictory, legal principles pertaining to freedom of expression that had been developed first in other jurisdictions. While there is no single justification for freedom of expression (see Chapter 1), without an appropriate understanding of the individual and societal interest in expression, there is a danger that its importance will not be inadequately appreciated by courts when it comes into conflict with reputation and privacy.

5.4 General Principles for Balancing the Conflicting Interests in Civil Personality/Goodwill Protection Disputes

In case of conflict between the constitutionally guaranteed fundamental human rights to reputation and/or privacy on the one hand and freedom of expression on the other, courts must strike a fair balance between all the protected values based on the circumstances of each individual case. The first two conditions pertaining to restrictions on freedom of expression stipulated by the Constitution – prescription by law and pursuit of a legitimate aim – are fulfilled in virtually all cases of conflict between the above rights. According to one of the most prominent constitutional legal scholars and a former Constitutional Court judge, Ján Drgonec, courts thus have to consider particularly carefully the third condition of “necessity in a democratic society”. A violation of the constitutional right to freedom of expression occurs when the interference is not necessary, regardless of the extent to which the conflictual protected interest was threatened or harmed (Drgonec

2013, 148–49). Drawing on the ECtHR case law, the Constitutional Court interpreted the condition of “necessity in a democratic society” as ‘the existence of a “pressing social need”’¹⁰⁸ when it stated that ‘the term “necessary in a democratic society” may be interpreted as a pressing social need to adopt a restriction on a fundamental right or freedom’. The Court added that a restriction is necessary if ‘the aim of the restriction cannot be achieved in any other way’ (PL. ÚS 15/1998, 40). The necessity of adopting a restriction on freedom of expression cannot merely be presumed, but must be proven. Mere negligence when establishing the actual presence of the necessity to restrict freedom of expression in the interest of other protected value constitutes a violation of the Constitution (Drgonec 2013, 153) and entitles the defendant to submit a constitutional complaint. Therefore, the courts must focus on the comparative importance of the specific rights that clash in each specific case, the justification for restricting each right must be taken into account and the proportionality test must be applied to each.¹⁰⁹ While none of the rights has precedence over the other, under the balancing formula of the German Constitutional Court, adopted by its Slovak counterpart (see Chapter 6), in case of doubts or equal weight of the competing rights, there should be presumption in favour of freedom of expression (Barendt 2005, 226).¹¹⁰

The following section examines how the competing interests are triangulated in substantive and procedural rules pertaining to civil personality/goodwill protection disputes.

¹⁰⁸ *Observer and Guardian v. the United Kingdom*, 26 November 1991, Series A No. 216, §59c.

¹⁰⁹ This is akin to the two-way balancing test applied by English courts in matters of conflict between rights protected under Articles 8 and 10 of the Convention. In *Re S (FC) (a child)* [2004] UKHL 47 (§17), Lord Steyn described ‘the ultimate balancing test’ as follows: ‘First, neither article has *as such* precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each’.

¹¹⁰ In contrast there is no presumptive priority in English law when Articles 8 and 10 of the Convention come into conflict.

5.4.1 Standing, Liability and Requirements of Action

The following section examines the rules governing standing, liability, the elements of a claim requirements and the statute of limitations to bring action.

5.4.1.1 Standing

The law offers protection to an individual's personality, regardless of his/her race, nationality or social status. The right cannot be inherited; it ceases to exist upon death of each person. However, the law grants the spouse and children, or parents of a deceased person the right to protection of his/her personality. Civil law does not offer any special standing to public officials, the state or state symbols. While ministers cannot exercise the right to personality protection in relation to statements directed against the government (MCdo 46/2000), as individuals they and other public officials are entitled to defend their personality against unlawful publication without any limits on their legal standing.

The law also grants protection to a legal entity's reputation. According to Drgonec (2008, 281–83), public authorities such as the government, the president, parliament and local administration authorities are not entitled to file an action for goodwill protection. It could thus be argued that the law recognises the vital importance of freedom of expression and open criticism of government and public authorities, entities which have sufficient means available to defend themselves from criticism (Article 19 2000, 6–7).

While identification by name is not necessary, the person or legal entity whose rights were violated can submit a civil claim as long as they can be clearly identified from the impugned statements (Kerecman 2009, 40; Vojčík 2010, 84). The law does not distinguish between libel and slander as the form of the infringement is irrelevant (Vondracek 1975, 285). Apparent anonymization of the subjects of stories published in the media through the use of initials instead of a full name does not remove liability as long as the injured party can be identified either from the context or pictures (Drgonec 2013, 194). In cases where the rights of several persons/entities were violated by the same statement, each of the injured parties can exercise their right to personality/goodwill protection independently of the others (Kratochvíl 1965, 64).

5.4.1.2 Liability

Liability falls on the media organisation as long as the statement's author was in its employment and (demonstrably) acted under instruction within his/her duties. If the author is a third party, possessing no legal relationship with the media organisation, legal action can be aimed directly against him/her (Kerecman 2009, 35, 106) or against both him/her and the media organisation (Círák 1994, 68).

5.4.1.3 Elements of a Claim

To establish a cause of action, the plaintiff is obliged to prove that the impugned statement concerned him/her and that the defendant was responsible for making it. In case of statements made in the media, it is sufficient to submit a copy of the impugned article or broadcast. The plaintiff also must prove that the defendant's statement was objectively capable of posing a threat to his/her status within his/her family, at work or in society, regardless of whether they were made intentionally or unintentionally, knowingly or unknowingly (Kerecman 2009, 108–9; Doley and Mullis 2010, 1331). Personality and goodwill rights postulate strict liability (Vojčík 2010, 84). Fault need not be proved nor mentioned in the petition or pleadings (Kratochvíl 1965, 57). The rationale for the absence of fault requirement is that the interference, even if done in good faith or innocently, still impairs personality/goodwill rights. Given the potential debilitating consequences, through strict liability the law aims to provide the injured party with a means to restore reputation or intimate sphere in all cases where they have been violated (Vondracek 1975, 285, 1988, 24). Strict liability also enables the public to learn about the true state of affairs. It might become an issue for free speech interests if no public interest defence is available for journalists.

Subjective perceptions are not decisive for determination of the meaning of the interference (Vondracek 1988, 27). An interference objectively capable of causing damage to one's personality/goodwill has to be of such intensity that every reasonable person in the plaintiff's situation would perceive it as a violation of his/her rights. While the law does not extend protection against trivial verbal insults, infringements in the media are generally considered to be objectively capable of causing considerable harm to one's personality/goodwill (Kerecman 2003, 36).

As prevention is one of the purposes of civil personality/goodwill protection (Cirák 1994, 66), to establish a cause of action, the mere fact that the impugned statement threatened a person's personality/goodwill rights is sufficient (Doley and Mullis 2010, 1330). The plaintiff does not need to prove the falsity or actual damage suffered. According to judicial practice, a threat to an individual's civic honour and dignity or an entity's goodwill is only present if the interference threatens the injured party's esteem and reputation in the eyes of other people (Cirák 1994, 65) and thus his/her relations with fellow citizens, standing and 'self-assertion' in society (Vondracek 1975, 288) or the legal entity's trustworthiness. An unlawful use of one's image or violation of privacy is able to cause non-material loss by itself.

For an interference to be actionable a causal link (nexus) between the infringement and the threat or damage caused to the injured party's personality/goodwill must exist. If damage to personality/goodwill does not occur, or one's personality or a legal entity's goodwill has not even been threatened as a result of publication, an unlawful infringement did not occur. This condition might be of particular importance if several media outlets simultaneously disseminate information about a person or entity, but if the information is treated differently by each outlet (Kerecman 2009, 42).

Actionable violations in the media thus usually belong to statements aimed at the personal and moral integrity of a natural person, capable of causing objective damage to his/her dignity and civic honour. Publication of untruthful statements regarding a person that diminish his/her moral profile, characteristics and actions in the eyes of society qualify as unlawful. According to the Supreme Court, unless proved by a court verdict convicting someone of a criminal offence, a public statement labelling someone a criminal represents a serious violation of personality protection that usually entitles the injured party to seek damages for non-material loss (R 45/2000). Disproportionate criticism – publication of value judgments that lack factual basis and objectively pose a threat to one's civic honour and dignity is also actionable (Doley and Mullis 2010, 1330–1; Kerecman 2003, 35). Public disclosure of truthful statements relating to a person's intimate or family life without prior consent is also unlawful. Production and use of photographs, illustrations, and audio or video recordings of an individual without prior consent – or unless used under the newsgathering licence and made in an appropriate manner – is equally unlawful. Recording and disclosure of one's personal conversations is also actionable.

5.4.1.4 Statute of Limitation to Bring Action

Actions relating to personality rights are not subject to a statute of limitation (Kerecman 2009, 109; Doley and Mullis 2010, 1331; Vondracek 1975, 294). The law allows the injured party protection against each new infringement caused by repeat publication, because regardless of the time that has passed since the original publication, or between the original and repeat publication, it can still be dreadfully damaging for a person's reputation. Simultaneously, the law recognises the concept of laches (Vondracek 1975, 294). Unreasonable delay in asserting one's claim may result in its dismissal. The time to bring an action for monetary compensation is limited to three years after the day the right could first have been exercised (Doley and Mullis 2010, 1331; Kerecman 2009, 109; Vozár 2015, 196). The law prevents actions being filed with undue delay. However, it is debatable whether after three years, the defendants would be able effectively to defend the claim as relevant evidence may no longer be available and the author might no longer be employed by the organisation. Indeed, most campaigners suggest that a year represents a more suitable period of limitation (Article 19 2000, 9; Glanville and Heawood 2009, 8-9).

5.4.2 Defences

The following paragraphs examine the defences available to the media and journalists. As a general rule, an interference made with the consent of the injured party, carried out while fulfilling one's legal duty or exercising one's statutory right, or permitted by law is considered justified and non-actionable.

5.4.2.1 Consent

The defendant is not liable if he/she can prove that the plaintiff gave prior consent to the contested statement or action.

5.4.2.2 Employee Acting beyond His/Her Duties

A publisher may avoid liability on the ground that the author of the defamatory or privacy violating statement acted beyond the scope of those duties vested in him/her by his/her contract of employment. In such a case, the journalist becomes liable for the impugned statement.

5.4.2.3 Fulfilment of One's Legal Duties

A person is not liable for expression of a subjective opinion concerning the plaintiff stated in the course of a judicial or administrative hearing in the role of a witness or expert, or submitted within a criminal complaint (Cirák 1994, 65–6; Doley and Mullis 2010, 1332).

5.4.2.4 Information Provided by Public Authorities

From 2008 when the new Press Act was adopted, publishers and news agencies have not been liable for the content of information provided by public authorities as long as its original content remained unchanged.

5.4.2.5 Statutory Newsgathering Licence

The use, without prior consent, of images, pictorial, and sound recordings for purposes of scientific research, artistic application and for purposes of newsgathering and reporting is allowed insofar as it does not impinge the legitimate interests of the person concerned. What represents legitimate interests is to be established by reference to reasonable standards, taking the circumstances of the individual case into account (Vondracek 1988, 31). The purpose of the statutory newsgathering licence is to promote speedy dissemination of news in accordance with the watchdog role of the media. Since journalistic products other than news are not privileged, any of the protected materials may be used within a different journalistic genre, such as current affairs, only with the concerned person's prior consent. Since the lines between news reports and other journalistic genres are blurred, however, it is not always easy to identify whether the media have acted within the statutory licence (see Drgonec 2013, 155–57).

The newsgathering licence does not apply to images and video recordings of judges. With the aim of safeguarding proper functioning of the judiciary, the Act on Judges and Lay Judges (Act No. 385/2000 Coll.) stipulates that ‘without the judge’s consent, it is not permitted to publish his/her face and residence’. The same applies to family members of the judge, if ‘required for an effective protection of the judge and his family, and if his family members agree’. A judge also has ‘the right for appropriate confidentiality of information about his/her person and his/her family’.

5.4.2.6 Truth

A defendant can avoid liability for the publication of defamatory factual statements by using the defence of truth. The placement of the burden of proof in relation to defamatory facts in personality/goodwill protection on the defendant is an expression of the importance attributed to personality rights. Nevertheless, some legal scholars have challenged the principle of the presumption of falsity in relation to disputes involving the media as being an incorrect interpretation of the law. In the interest of freedom of expression and of the press, they argue for reallocation of the burden of proof from the defendant to the plaintiff, or for sharing of the burden between the two parties (Holländer, 1993; Drgonec 2013, 293–95).

Even if founded on an incorrect interpretation of the law, the presumption of falsity in defamation disputes is an established standard in civil and common law jurisdictions around the world. The major exception to this standard is the US law. However, even there, the majority of states retain the presumption of falsity in cases involving private plaintiffs suing non-media defendants on matters of private concern. Australia, which conducted a major modernisation of defamation law in the 2000s, for instance, retained the presumption of falsity (Mullis and Scott 2009, 177). The ECtHR has also stated on several occasions that to place the burden of proof on the defendants was not a violation of Article 10 (see McGonagle 2016, 48). In line with the principle of responsible journalism, the rationale behind the presumption of falsity in defamation cases is that it is incumbent upon the defendant as the publisher of the allegedly defamatory statements to have verified the facts before publishing. The rule thus forces the publisher, when deciding whether or not to publish, to focus on whether the statement can be justified. If a potentially harmful claim cannot be justified, the unequivocal public

interest permitting its publication is difficult to identify. If such an allegation can only partly be justified or if provable facts support only an appeal for further investigation, then no statements that jump to wider conclusions should be published. As Mullis and Scott (2009, 177) have argued, '[w]ithout such a legal responsibility, speech would become cheap and the proper restraints placed on the media, or indeed any person, when making serious allegations would be undesirably loosened' While it might be difficult for the defendant to prove the truth of some allegations in court, particularly against powerful public plaintiffs, it is hardly the case – as proponents of the reallocation of burden of proof claim – that the plaintiff will always be better placed to demonstrate the falsity of the impugned statements (Ibid., 177).

What seems to be of more significance for a proper accommodation of the private and public interests in reputation, privacy and freedom of expression, is whether courts apply too rigid a standard of proof in relation to the truthfulness of published facts, particularly on matters of public interest.¹¹¹ The standard of proof required by ordinary courts and its effects on freedom of expression is examined in Chapter 6.

The fact that Slovak civil law poses strict liability and that a defence of good faith or reasonable publication is not recognised even when concerning publication on issues of public interest (Kerecman 2009, 35) might also disproportionately tilt the balance against free speech interests. On the other hand, as noted above, in the case of conflict between two constitutionally protected interests, the courts need to apply the proportionality test on the circumstances of the given case. They also must not act incompatibly with the Convention and, in reaching their decision, must take account of relevant ECtHR jurisprudence. The ECtHR, in contrast to Slovak civil law, has repeatedly affirmed that the media, when pursuing their watchdog function, should be able to apply a defence of reasonable publication on matters of public interest. The defence is available when information was published in good faith in the belief that it was in the public interest to do so and reasonable steps were taken to verify the information and, where suitable, to give the concerned person an opportunity to express his/her position (McGonagle 2016, 46).

¹¹¹ E.g. *Kasabova v. Bulgaria*, No. 22385/03, 19 April 2011, §61-62.

5.4.2.7 Lawful Criticism

Drawing on the ECtHR's case-law, Slovak legal order distinguishes between value judgments and factual statements. In *Lingens v. Austria*,¹¹² the ECtHR argued that while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The Court held that the requirement that the defendant prove the truth of an allegedly defamatory opinion violates his right to impart ideas as well as the public's right to receive ideas guaranteed by Article 10 of the Convention. As the Court has reiterated on numerous occasions, 'even a value judgment without any factual basis to support it may be excessive'.¹¹³ While the existence of the factual basis for a value judgment is a crucial consideration, the proportionality of a value judgment also depends on its nature and the circumstance of the case (McGonagle 2016, 26).

To prove the proportionality and thus lawfulness of impugned value judgments, the defendant can use the defence of permissible or truthful criticism. The primary criterion for the success of the defence is for the value judgment to possess a 'factual basis'. The defendant thus needs to prove that the criticism was sound and based on ascertained facts (Kerecman 2009, 109). The manner in which the value judgment was made is also of importance. Courts have found that criticism is allowed only if it does not overstep the limits of sound and fair comment and does not needlessly inflict distress, i.e., it must be proportionate. The concept of 'sound and fair comment' was developed long before any meaningful guarantees of freedom of expression existed, and it rather diverges from the established ECtHR case-law principles. Even criticism in the public interest must contain true and concrete facts in such a way that the reader or viewer can form his own opinion. Opinions which are not supported by facts, as well as opinions that contain abusive words, are inadmissible. Expressions like 'rogue', 'hypocrite', and 'unprincipled' cannot be considered sound and fair comment (Vondracek 1975, 287–89). In contrast, the ECtHR has repeatedly stated that in 'the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern', journalists may resort to 'a degree of exaggeration, or even

¹¹² *Lingens v. Austria*, 8 July 1986, Series A No. 103, § 46.

¹¹³ *Jerusalem v. Austria*, No. 26958/95, ECHR 2001-II, § 43.

provocation’.¹¹⁴ Such exaggeration or provocation, however, must not exceed the boundaries of Article 10.¹¹⁵ Nonetheless, as with the defence of reasonable publication, courts are required to find a fair balance in disputes that involve conflict between the private and public interests in reputation, privacy and freedom of speech and thus cannot apply the Civil Code provisions in isolation. Equally, they need to take account of established ECtHR law.

5.4.2.8 Publication did not Concern Plaintiff’s Intimate Sphere

The defences of truth and permissible criticism cannot be applied in relation to factual statements or value judgments that concern the plaintiff’s intimate or family life. To exonerate himself/herself of liability in respect of such statements (whether facts or value judgments), the defendant needs to prove that they did not impinge on the plaintiff’s intimate sphere (Holländer, 1993; cited in Drgonec 2013, 293). Given the devastating consequences that disclosure of intimate details might have on the injured party and the fact that the public typically has little interest in learning about such details, the stringency of the law in this respect seems appropriate.

5.4.2.9 Public Figure Defence

The Civil Code does not recognise exemptions in relation to the rights to the protection of honour, dignity and privacy of public figures. In 2001, the Constitutional Court introduced a distinction between public and private figures when it stated that when reaching an appropriate balance between the right to information and right to privacy, it was ‘accepted that public figures are subject to limits upon their private sphere, as a result of which the level of protection of their personality rights is proportionately reduced’ (II.

ÚS 44/2000, 8). The Court also found that public figures ‘must be aware that they will be subject to greater public scrutiny and will have to accept the exercise of the public’s right to information at least within the extent of the conduct of their constitutional or lawful powers in public, or in contact with the public’ (Ibid.). In their decision-making, ordinary courts thus ought to take into account the fact that the protection of honour, dignity and privacy of public figures is narrower than that of private individuals.

5.4.3 Remedies

Remedies are of crucial importance for properly balancing the individual and public interests in reputation, privacy and expression. Remedies available to plaintiffs for infringements with their rights should provide effective vindication to their reputations. They should also provide adequate compensation for the damage suffered by the injured party. This is established on a case by case basis. At the same time, remedies should not serve as a means of personal enrichment, as this could produce an undesirable chill on matters of public interest. Moreover, remedies should ensure that the public learns the truth.

Several different types of remedies for non-material loss (non-pecuniary damage), as well as monetary compensation for material loss (pecuniary damages) suffered as a result of the unlawful infringement are available to plaintiffs in personality and goodwill protection disputes. Plaintiffs may be awarded a combination of remedies. In reaching its decision in relation to remedies, the court must take into consideration the circumstances under which the infringement occurred (Vojčik 2010, 84).

5.4.3.1 Preliminary Measures

Courts may grant preliminary measures prior to trial upon application ‘if the situation of the parties must be temporarily adjusted or if it fears that the execution of the judicial decision could be endangered’ (CCP, Section 74). Courts are obliged to interpret all laws in accordance with the Constitution, including Article 26 (3-4) which stipulates that censorship shall be prohibited and that the right to freedom of expression may be restricted by a law only if necessary in a democratic society. In practice, due to the lack of a binding definition of censorship, courts do not dismiss motions for preliminary

measures on the grounds of incompatibility with Article 26(3), which, according to some legal scholars, is the only option a court has (Drgonec 2013, 81).

5.4.3.2 Actio Prohibitoria

The court may order the defendant immediately to refrain from unlawfully interfering with the plaintiff's rights. The plaintiff may claim not only the cessation of an action in progress but also interdiction of an action which the defendant threatens or attempts to commit (Vondracek 1988, 32). Since the court order is preventive in nature, the primary requirement for this type of action is that the interference is still occurring, that it has been repeated, or that there is evidence suggesting the risk of recurrence (Cirák 1994, 68; Doley and Mullis 2010, 1332).

5.4.3.3 Action for Restoration

The plaintiff may request the removal of the consequences of an unlawful infringement or the restoration to the previous state of affairs. The redress is to be carried out in a manner intended to match the form in which the violation occurred. The action is enforceable only if the consequences of the violation still exist and their removal is possible (Doley and Mullis 2010, 1332). Examples include an order for the return of a photograph or to retract untrue statements (Cirák 1994, 69; Vondracek 1988, 32).

5.4.3.4 Declaration of Falsity

The plaintiff may also seek an official judicial declaration as to the falsity of the defendant's defamatory statements (Doley and Mullis 2010, 1332).

5.4.3.5 Action for Satisfaction

If the above remedies are found insufficient given the gravity of the infringement, the plaintiff may also seek an award of appropriate compensation, or 'satisfaction' in the Slovak legal parlance. In an action for moral satisfaction, the defendant may be ordered

to publish an apology, a retraction or the court's judgment free of charge. As long as the defendant is unable to prove the lawful nature of the infringement, no further examination of evidence is necessary for the court to oblige him/her to apologise to the plaintiff (Kerecman 2009, 109), or to grant any of the above remedies.

A plaintiff may seek monetary compensation for non-material loss if moral satisfaction is deemed insufficient given the extent of the harm suffered by the plaintiff, particularly because his/her dignity and position in society has been considerably diminished, or if an award of moral satisfaction risked further diminishing the plaintiff's civic esteem (Cirák 1994, 70). There are no limits on the award. The plaintiff, however, must prove that moral satisfaction does not suffice due to the severity of the harm suffered. The harm does not need to consist of lowering of the plaintiff's civic esteem, particularly if caused by invasion of privacy or unlawful publication of a photograph of personal nature (3 Cdo 137/2008, 12-13).

To substantiate his/her claim, the plaintiff must submit evidence, including documentary evidence or witness testimony, that establishes the circumstances of the infringement, the seriousness of the damage suffered, and the existence of a causal link between the violation and the consequences. In practice, the plaintiff may face difficulties when proving the consequences, particularly if witness statements are the only source of evidence because friends and associates of the plaintiff who are knowledgeable about the infringement are unlikely to claim convincingly that their opinion about the plaintiff had changed as a consequence (Kerecman 2009, 109). The defendant may challenge the plaintiff's evidence and question the credibility of his/her witnesses by drawing attention to inaccuracies and conflicts in their statements. The defendant may also submit evidence to prove that the consequences claimed by the plaintiff have not occurred. If the plaintiff fails to satisfy the burden of proof, the court will dismiss his/her claim for monetary compensation.

Should the court find that the plaintiff has only partially proved the severity of the consequences of the infringement, it can award lower damages. The court is not allowed to go *ultra petitem* and exceed the amount sought by the plaintiff (Kerecman 2009, 109). The level of non-pecuniary damages is entirely determined upon the court's discretion, but must be based on logical and legitimate arguments. The law is silent on the conditions under which non-material loss qualifies as considerable. Doctrine suggests that relevant factors which the court must take into consideration include the intensity of the defamatory statement or invasive action and the duration and scope of its negative effects

on the plaintiff's intimate sphere and position in society. Contrary to occasional arguments of free speech campaigners, the unlimited nature of non-pecuniary award itself does not necessarily disproportionately tilt the balance towards personality/goodwill protection. While astronomical damages awards might undoubtedly produce an *invidious* chilling effect as media organisations and professionals will want to avoid the risk of litigation, setting the limits too low might bar plaintiffs from adequate compensation and jeopardise the law's function of discouraging irresponsible journalism (Mullis and Scott 2009, 178).

5.4.3.6 Pecuniary Damages

Liability for pecuniary loss exists when the defendant acted intentionally or recklessly. The plaintiff is required to prove that the impugned statement caused a calculable damage to his/her personal income or tangible or intangible property. The mere existence of a threat of damage is insufficient.

5.4.4 Process and Costs Rules

The areas of process – particularly insofar as it can result in attenuated and protracted proceedings – and costs are often key problems of defamation and privacy regimes, and can have undesirable consequences for the private and public interests in reputation, privacy and expression. Any legal regime that seeks appropriately to triangulate the competing interests must have procedural rules in place to guard against unwarranted or inordinate delays in court proceedings and to secure access to justice for all parties.

5.4.4.1 Safeguards against Inordinate Delays

Between 1995 and 1997, lawmakers obliged defendants in personality (not goodwill) protection disputes to comment on the petition and adduce evidence of truth within thirty days from the day the petition was served. If he/she failed to do so, the court decided based on the plaintiff's statements contained within the petition. While it was presumably intended to speed up proceedings, this obligation significantly worsened the defendant's procedural standing, not least because evidence of truth is inadmissible in case of value

judgments (Drgonec 2013, 301). The requirement was shortly declared in breach of the Constitution (PL. ÚS 9/96).

Drawing on an earlier procedural innovation of the Czech legal system (MS SR 2008), in 2008, Slovak legislators anchored the principle of concentration of proceedings in relation to personality (not goodwill) protection that obliges parties to describe decisive circumstances regarding the merit of the matter and adduce evidence by the end of the first hearing. The court is not required to assess later submitted or adduced evidence, unless it only becomes apparent after the first hearing and simultaneously challenges the credibility of previously examined evidence. The court is obliged to instruct the parties about their obligations and the consequences of non-compliance no later than in the summons to the first hearing. The court may also request each party to pay a security on evidence adduced by the party or ordered by the court to ascertain the facts put forward by the party, which might limit the number of unnecessary procedural acts adduced and increase the speed and effectiveness of proceedings (Mazák 2002, 318).

For the most part of the studied period, no statutory limits to adjudication time applied. The now repealed Section 200i of the CCP, obliged courts to start personality protection proceedings within thirty days and adjudicate within one year from the submission of the petition. The provision created practical difficulties for courts and in 2002 was found in violation of the right to a fair trial by the Constitutional Court (PL. ÚS 25/01) and was subsequently repealed.

Another rule partially aimed at addressing delays in proceedings was adopted in 2013. It concerned restrictions on legal representation in personality protection (not goodwill protection) disputes, whereby parties were no longer to entrust their representation to another citizen having legal capacity, but could only represent themselves or employ a qualified lawyer (MS SR 2012).

5.4.4.2 Court Jurisdiction

Rules determining court jurisdiction, or ‘court competence’ in the Slovak legal parlance, can be very influential in the balancing of freedom of expression with reputational and privacy rights, as they affect the ability of the parties to access justice. Lax jurisdictional rules might lead to the abusive practice of ‘libel tourism’.

The system of ordinary courts in Slovakia consists of the Supreme Court, which is the highest judicial authority in the country, of regional courts and district courts. The Constitutional Court oversees compliance with the constitution. During the studied period, goodwill protection matters were heard before the district court in the defendant's domicile like most other civil disputes. Jurisdiction in personality protection disputes, however, changed multiple times. Between 1983 and 1994, regional courts in the defendant's domicile had substantive competence to decide personality protection disputes, thereafter the competence shifted to the defendant's district court. Between December 1995 and August 2003 and then again between July 2007 and December 2011 personality protection disputes were held before the plaintiff's court of general jurisdiction. Since January 2012, all personality and goodwill protection disputes were heard before the district court in the defendant's domicile.

Changing court competence in personality protection cases to the plaintiff's court might increase individuals' access to justice. Since defendants usually belong to large media organisations, it should not put a disproportionate burden on their access to justice. The shift might, however, affect the balancing exercise as judges in the plaintiff's local court might exhibit an – albeit unconscious – bias in his/her favour, or even allow for abuses of the law by plaintiffs who are able to use their informal local networks to tilt the litigation outcome in their favour. Keeping jurisdiction at the defendant's domicile court might further the quality of reasoning and thus reduce perceptions of arbitrariness of decisions because judges in seats of large media organisations will be better able to gain more expertise in this area of law.

Unsuccessful parties at first instance may appeal the decision at regional level, where the risk of judicial bias is arguably much reduced. The Supreme Court decides appeals against the decisions of regional courts acting as first-instance courts, and acts as court of cassation for appeals to appellate court decisions. The appeal court upholds the decision of the first-instance court if substantively correct. The appeal court can set the decision aside if the court of first-instance assessed the matter wrongly because it applied an incorrect provision and insufficiently established the facts of the case. If the appeal court sets aside the decision, it may return the case to the first-instance court for further proceedings, interrupt, discontinue the proceedings or submit the case to a body under the competence of which the case falls. If the conditions for upholding or setting aside are not met, the appeal court can change the first-instance decision. Having exhausted all possibilities of appeal in ordinary courts after the decision has become final, if the

unsuccessful party has reasons to believe that her fundamental rights or freedoms have been infringed by the decisions of ordinary courts, it can lodge a complaint before the Constitutional Court. If the Constitutional Court accepts the complaint, it will rule that the rights and freedoms were infringed, and cancels the decision. The Court may also return the matter for further proceedings or award an adequate financial satisfaction.

5.4.4.3 Costs of Proceedings

Costs in personality/goodwill protection disputes include court fees, lawyer's fees, costs of furnishing evidence, translation/interpretation fees and the parties' and lawyers' out-of-pocket/cash expenses. Parties cover their own costs during proceedings. The court typically orders the losing party to reimburse the winning side's costs on top of non-pecuniary damages.¹¹⁶ In case of settlement, no party is entitled to costs reimbursement, but the parties are allowed to reach a different arrangement among themselves. The costs regime thus tries to motivate the parties to agree on an early settlement.

Only the court fee covered by the plaintiff is paid before the commencement of proceedings. Generally, court fees are set as a percentage of the value of the dispute. Since July 2007 plaintiffs in personality protection proceedings (not goodwill) have been required to pay only half of the percentage applicable in other disputes.¹¹⁷ As their upfront costs were considerably reduced, the plaintiffs' access to justice undoubtedly improved. Upon a motion filed by the party, the court may exempt the party in material need from all or part of court fees as long as the petition does not constitute an arbitrary or manifestly unfounded attempt at exercising or defending his/her rights. The party who meets the

¹¹⁶ In personality protection disputes, the court may still award full costs reimbursement if the infringement was unlawful, but the plaintiff was only partially successful in his/her claim for non-pecuniary damages (Vozár et al. 2015, 201–4).

¹¹⁷ In 2017, unless exempt, a plaintiff was required to pay 66 Euro in personality protection disputes for moral satisfaction or 66 euro plus 3% of the amount of non-pecuniary damages claimed in proceedings before district and regional courts. The percentage increased to 6% for Supreme Court proceedings. The maximum court fee payable was 16, 596.50 euro. In December 2005, the court fee in personality protection dispute for non-pecuniary damages heard at first instance was 66 euro plus 5% of the claimed damages amount.

waiver criteria may upon request also be appointed a lawyer, whereby the costs of representation and his/her expenses are born by the state.¹¹⁸

Lawyer's fees are typically determined by agreement with the client. There are four categories of contract fees: hourly-based fees, retainer fees, a success fee no higher than 20% of the final compensation won, and a tariff rate agreed at a different level than the basic tariff rate stipulated by law. A success fee arrangement is rather unusual in personality protection cases against the media. Most lawyers prefer to charge fees on an hourly basis (significantly higher than the basic tariff fee), because personality/goodwill protection involves considerable time and resources. Some firms providing legal counsel for large media companies, including vetting, work on the basis of a retainer fee. This does not mean that private plaintiffs would not be able to access justice as many lawyers determine their fees on a case by case basis and even sizeable commercial law firms might be willing to charge plaintiffs based on the statutory basic tariff.

If the parties fail to reach an agreement on a contractual basis, the amount is determined by multiplying the basic tariff rate by the number of acts or legal services the lawyer has provided. On average, a personality protection dispute at the first instance could entail five legal acts (accepting legal representation, filing a motion to commence proceedings and attendance at three hearings). It is important to note that in these disputes, final decision is rarely reached at the first instance, as parties tend to appeal.

The basic tariff relating to personality protection (but not goodwill protection) has been subject to several amendments. Until 2006 it was set as a percentage of the value of the dispute, i.e. the amount of non-pecuniary damages claimed. This practice was criticised by legal scholars because, given its nature, it was impossible to express the value of personality rights in monetary terms (Kerecman 2009, 110). In December 2005, lawyer's fees were set at 16.60 euro for each legal act in personality protection disputes for moral satisfaction only. For non-pecuniary damages claim of 33,194 euro,¹¹⁹ the tariff fee was 486.29 euro. Between January 2006 and May 2009, the basic tariff was set at

¹¹⁸ In 2017, a natural person was eligible for legal aid if his/her monthly income was lower than 277.33 euro and if he/she could not afford to pay for legal services with his/her assets. A natural person with income between 277.33 and 316.94 euro unable to pay for legal services with his/her assets was eligible for legal aid covering 80% of the costs.

¹¹⁹ Equivalent to 1 million Slovak crowns.

371.94 and 663.88 euro respectively, depending on whether non-pecuniary damages were claimed or not, but irrespective of their amount. If unsuccessful, the parties faced reimbursing the other party's court and lawyer's fees in thousands of euro. As a result, individual plaintiffs on average income were effectively barred from access to justice in personality protection cases.¹²⁰

In June 2009, the basic tariff in personality protection disputes was significantly reduced to 61.41 euro for moral satisfaction claims and 91.29 euro for non-pecuniary damages claims, thus improving actual access to justice for ordinary plaintiffs and reducing the chill of high costs reimbursement for media defendants.¹²¹

5.5 Criminal Personality Protection

Reputation and privacy protection is anchored in several provisions of the Criminal Code (Act No. 300/2005 Coll.). Criminal law protection is only afforded to natural persons (Čentěš 2015, 159-60). Liability falls on natural persons. Journalists thus may become personally liable for criminal defamation. Special provisions protecting the reputation of national or foreign public officials, heads of states, or the state and its symbols were gradually revoked during the early 2000s (Drgonec 2013, 381–83).¹²² The most frequently invoked by plaintiffs are the provisions in Section 373 (1-3) concerning criminal defamation that state: 'Any person who communicates a false information about another likely to considerably damage the respect of fellow citizens for such a person, damage his career and business, disturb his family relations, or cause him other serious harm' commits a crime of defamation, and 'shall be liable to a term of imprisonment of up to two years.' In case the offence is committed in public, i.e. in the media, or causes

¹²⁰ Average monthly income in Slovakia in 2006 was 622.75 euro. See <http://archiv.statistics.sk/html/showdoc.dodocid=8123.html>. Lawyers' fees in a personality protection case held before a district court that entailed three hearings were expected to reach 2,422 euro if commenced in December 2005 and 3,330 euro if commenced between 2006 and May 2009.

¹²¹ Lawyers' fees in a personality protection case held before a district court that entailed three hearings and commenced in 2017 were expected at 456 euro.

¹²² Slovakia retains a provision protecting the honour and reputation of parliamentarians during war time.

the injured party substantial damage (2,660 euro), the offender faces a term of imprisonment of one to five years. If communication of the defamatory information causes the injured party large-scale damage (133,000 euro), loss of job, collapse of his/her business or divorce, the offender is liable to imprisonment between three and eight years (Čentěš 2015, 162). In contrast to provisions valid until 2005, defamation committed through the media does not fall into a special category and fines or professional disqualification of journalists are no longer applicable (CDMSI 2012, 100). Besides criminal sanctions, courts may oblige the offender to pay pecuniary damages or apologise to the plaintiff.

For establishing criminal liability, it is irrelevant whether the defamed person was aware of the act of defamation, realized the potential harm to his/her civic esteem or wished to initiate proceedings (Kerecman 2009, 52), or whether any considerable harm actually occurred (Čentěš 2015, 161). Law enforcement authorities must prove that the impugned information was communicated to at least one person other than the injured party; that it was false;¹²³ capable of causing considerable damage to the defamed individual's civic esteem, to his/her career and business, disturb his/her family relations, or cause him/her other serious harm; and that there was a causal link between communicating the information and the potential damage (Kerecman 2009, 52; Čentěš 2015, 160-62). Proving that the offender acted with 'actual malice' is also crucial for establishing the criminal nature of the impugned statement (Doley and Mullis 2010, 1334) as criminal defamation needs to be committed with intent, as opposed to mere negligence.

5.6 Discursive Remedies under Media Law

The 2008 Press Act (Act No. 167/2008) introduced the rights of correction and reply.¹²⁴ The rights can be exercised in relation to factual statements by all natural persons (Vozár,

¹²³ Čentěš argued that criminal liability only applies to factual statements because value judgments are not subject to proof (2015, 161).

¹²⁴ Under the 1961 press law, citizens, scientific and cultural institutions, and state organs whose honour was impinged upon by false or truth-distorting information published in the media could request a correction free of charge.

Valko, and Lapšanský 2009, 87) and legal entities identifiable from the disputed statement within 30 days of publication. Since the Act's 2011 amendment, public functionaries and legal entities such as political parties lost the right of reply in relation to factual statements concerning their, or their leaders' political activities.

The right of correction strives to protect individual rights injured by the publication of untrue statements and to safeguard the public's right to receive 'truthful information' (MK SR 2008, 9). The claimant is entitled to demand publication of a correction of false factual statement about him/her, even if the latter is not damaging to his/her honour, dignity, privacy or good name. In the text of the correction, the claimant presents the true state of affairs, without including the publisher's apology or value judgments about the impugned statements (Ibid., 10). After the 2011 amendment, the right ceased to exist in relation to a statement for which a reply has been published.

The right of reply purports to secure an equal footing for persons whose reputational and privacy rights have been violated and afford them the right to express their own viewpoint in an equivalent space and length (Ibid., 11). The right is granted in relation to a false, incomplete or truth-distorting statement that impinges on the honour, dignity or privacy, or good name of the claimant.¹²⁵ The text of a reply must be limited to factual statements that deny, complement, add detail or explain the impugned statement, and be proportionate in length to the original article (Ibid., 12; Vozár, Valko, and Lapšanský 2009, 88).

The publisher is obliged to print the reply or correction free of charge with no interpolations or omissions, in the same periodical in an equivalent position and the same format as the impugned statement. Replies must be published within three, corrections within eight days of the request's receipt. The publisher is not entitled to print any related text containing his/her value judgment. The publisher may reject requests that fail to comply with the formal requirements (Vozár, Valko, and Lapšanský 2009, 78) or if he/she has already published a related correction, reply or supplementary information. The publisher is not obliged to print a correction if he/she can demonstrate the truth of the impugned statement. Replies and corrections contrary to law and good morals, injurious

¹²⁵ Before the 2011 amendment, the truthfulness of the statement was irrelevant for the publisher's liability.

to lawful rights and interests of third parties do not have to be published. The publisher is not obliged to let the claimant know about his/her decision. If the publisher rejects publication or fails to comply with any of the statutory conditions, the claimant can file civil action for publication. Until the 2011 amendment, the claimant was entitled to demand proportionate monetary compensation between 1,660 and 4, 979 euro.

The right of correction under the Broadcasting Act (Act No. 308/2000 Coll.) is broader than under press law. This difference can arguably be justified by the much wider reach of electronic media and thus the potentially much more severe reputational damage. Every legal entity or natural person is afforded the right to request a correction to any broadcast that included false or distorted information concerning him/her. Commentators disagree whether the right applies only to false and truth-distorting factual statements (Kerecman 2009, 104) or whether it also extends to truth-distorting value judgments (Drgonec 2013, 135).

The broadcaster is obliged to broadcast justified corrections within eight days of receipt of the request in a proportionate form and extent as part of the same programme or in an equally valuable airtime. The broadcaster may reject a request if broadcasting the correction would constitute a crime or another administrative offence, if its text is contrary to good morals or infringes the rights and legally protected interests of a third party, or if the broadcaster has aired a correction on their own initiative. The broadcaster also does not have to satisfy the claimant's request if able to prove the truthfulness of the impugned information. The broadcaster is not bound to inform the claimants of his decision. If the broadcaster fails to broadcast the correction, the claimant may file action for publication, without any entitlement for monetary compensation in case of unlawful rejection of his/her request (Ibid., 133-34).

5.7 Conclusion

This chapter examined the constitutional and statutory protections of reputation, privacy and freedom of expression in force during the studied period. The chapter also analysed the extent to which the rights are triangulated in key substantial and procedural rules in civil defamation or privacy intrusion disputes. The analysis was done through the optics of fairness, certainty and effectiveness of the triangulation within the statutes.

Fairness

Reputation, privacy and freedom of expression all enjoy protection under international and constitutional law. Since the 1960s, the Slovak legal order has recognised the monistic concept of personality rights, which include the rights to civic honour, human dignity and privacy. The concept of goodwill in the meaning of property has been recognised in civil and constitutional law since the early 1990s. The rights to freedom of expression and information have equally been guaranteed in the Constitution and international law since the early 1990s. In case of a conflict, none of the rights has precedence over another. The private and public interests need to be fairly balanced through the proportionality test based on the circumstances of the given case. If the weight assigned to the need to protect personality/goodwill rights is on the same level as the need to protect freedom of expression, the presumption should be in favour of the latter. Such constitutional design seems to fairly triangulate the conflicting interests.

On balance, the substantive and procedural rules governing legal standing, liability, burden of proof and remedies allow for fair triangulation of the competing interests. The wide range of available remedies allows for reputational vindication, correction of misinformation and provides monetary compensation for non-material loss, which, however, is not presumed but must be proved by the plaintiff. The law forces the media towards responsible conduct as they face financial sanctions for unlawful publication. The absence of a statutory reasonable publication defence by itself might not be an issue for the private and public interests in expression, as long as the civil provisions are interpreted and applied in accordance with the Constitution and the Convention.

According to academic research and higher courts, as discussed in Chapter 2, judges' personal attitudes might taint their legal judgement in cases that require *ad hoc* balancing. The lack of a clear conception of freedom of expression in the Slovak legal system, the fact that its meaningful guarantees were only anchored decades after personality protection was introduced and the perceived prevalence of clientelism in the judiciary posed questions whether Slovak courts would be able to fairly balance the competing interests rather than overemphasising the need to protect reputation and privacy rights at the expense of freedom of expression. However, because the balancing by courts might change over time and the legal system offers safeguards against judicial

bias, including recusals, expectation of fully reasoned judgments and the availability of judicial appeal for dissatisfied parties, one cannot draw sweeping conclusions at this point.

Some of the provisions potentially open the regime to abuse, particularly on the part of plaintiffs. The non-existent cap on non-pecuniary damages awards, coupled with the relatively easily complied with requirements to establish a cause of action and lowering of the court fee, might incentivise plaintiffs seeking personal riches or intimidation of the media to file actions for large damages for defamatory but legitimate publications. At the same time, the absence of limits on damages forces the media towards greater responsibility, as too low a cap might lead to sensationalist journalism at the expense of the interests in reputation and privacy and the public's ability to receive accurate information on issues of general interest. Lastly, setting court jurisdiction at the plaintiff's court of domicile, might encourage some plaintiffs to bring cases with little merit in the hope they can rely on the influence of their local informal networks.

Following the amendments in the 2000s, the procedural rules seem to safeguard access to justice to all parties. The reduction in the court fees and in the basic tariff rate which serves as a basis for determining the prevailing party's costs reimbursement, coupled with the availability of legal aid allows even impecunious plaintiffs to sue for personality protection. However, given the demanding nature of personality protection work, it is questionable, whether private plaintiffs, unable to pay for representation on an hourly basis, are able to secure qualified legal representation. This would not preclude them from representing themselves but would drastically reduce their chances at success in the dispute. The change in jurisdiction rules to the defendant's court does not seem overly disadvantaging plaintiffs as it is the standard in most civil disputes. The reduction in the court fee and basic tariff rate for legal fees meant that media defendants did not face reimbursing the prevailing party's legal fees that could exceed the damages award. As a consequence, the publishers' right to freedom of expression and the public's right to information would seem better protected.

Certainty

The fact that all the competing interests are constitutionally protected renders no other approach to balancing than weighing up the interest against each other on an ad hoc basis. As has been widely recognised in the academic literature (Barendt 2005, 205; Mullis 2010a, 10-11) and as discussed in Chapters 1 and 2, regardless of the presumption in

favour of freedom of expression, this undoubtedly brings considerable uncertainty for parties who are unable to predict the outcome of litigation with a high level of confidence. The lack of a clear conception of the individual and societal values behind the right to freedom of expression increases the unpredictability of judicial decision-making as it is not clear which types of speech are protected and which are not. Coupled with the absence of statutory defence of reasonable publication, this provides very little clarity for publishers about the legality of their contemplated conduct and might deter them from expressing as they otherwise would have wanted, and might deprive the public from receiving valuable information.

Effectiveness

The procedural rules governing the statute of limitations for adducing evidence and legal representation adopted in the late 2000s and early 2010s might potentially reduce delays in proceedings. The change in jurisdiction rules bringing proceedings to the defendant's domicile court might also contribute to the efficiency of proceedings. The changes to rules governing court jurisdiction might have affected the effectiveness of the personality/goodwill protection regime. In the absence of jurisdictional rules promoting specialisation of judges, given the potential for district court judges to gain expertise, keeping the jurisdiction at the domicile court of the defendant would seem optimal. The regime also provides individuals and entities with inexpensive discursive remedies under press and broadcasting law. While the provisions allow for a timely vindication of reputation and rectification of false or misleading statements, their rather stringent formal requirements might prevent ordinary plaintiffs without legal representation from effectively exercising their rights. At the same time, the absence and – in case of press corrections/replies – removal of entitlement for monetary compensation for unlawful rejection of publishing a reply/correction arguably reduced the level of protection for reputation and privacy as well as the public interest in freedom of expression, as media organisations face suboptimal sanctions. The withdrawal of the right of reply from public functionaries, aimed at eliminating its past abuse, might deprive the public from information essential for exercising their electoral rights.

The above analysis has shown that the fairness, certainty and effectiveness seem to be reasonably anchored in the statute book pertaining to personality/goodwill protection disputes involving media-defendants. However, it has also been revealed that there is a

considerable risk that if the law-on-the-books is not properly interpreted and applied, the regime might be perceived as highly unfair and ineffective and liable to create undue legal uncertainty for the parties and thus unintended consequences for the protection of the private and public interest in reputation, privacy and freedom of expression. The principal protagonists' experiences with and perceptions about the interpretation and application of the law by courts is discussed in the next chapter.

Section 3: Findings

Chapter 6: Fairness, Certainty and Effectiveness of Adjudication

6.1 Introduction

The previous two chapters outlined the context in which the personality/goodwill protection regime operated during the studied period. Chapter 4 set the operation of the personality/goodwill regime in the key socio-legal and media system developments, presented a quantifiable picture of the regime and introduced the principal protagonists on both the plaintiff and defendant sides. Chapter 5 examined the extent to which the private and public interests in reputation, privacy and freedom of expression were triangulated on the statute book. It concluded that the substantial and procedural rules provided adequate protection for the competing conflicting interests and that the personality/goodwill protection regime provided sufficient safeguards for a fair, predictable and efficient operation in disputes involving media-defendants. However, the chapter also found that the operation of the regime could be perceived as largely unfair, ineffective and unpredictable where the statutes were not interpreted and applied properly by courts. This could have detrimental consequences for any of the protected interests.

This chapter explores the experiences and perceptions of judicial decision-making by plaintiffs, media managers and professionals and personality/goodwill protection lawyers. As seen in Chapter 2, academic literature suggests that **fairness, certainty and effectiveness** are the crucial attributes of adjudicatory practice affecting the plaintiffs' decision to sue, and thus their ability to vindicate their reputations and put the record straight, and the defendants' editorial decisions and thus for the quality of public discussion. In terms of fairness, the chapter investigates whether a clear bias in favour either of the protected interests or parties existed or whether the adjudicatory practice motivated parties to abuse the law.¹²⁶ The views of the main stakeholders relating to the

¹²⁶ The issue of access to justice as perceived by the plaintiffs and defendants is discussed in the following chapter.

predictability of decision-making and what certainty it provided for the parties to allow them to make informed decisions about litigation and, in the case of defendants, about contemplated publication, will also be examined. The chapter also looks at the actors' experiences with the length of personality/goodwill protection proceedings.

Adopting a longitudinal perspective (see Chapter 2 and 3), it takes into account that adjudicatory practice changes over time, that traditional defamation and privacy regime that fails to properly reflect the importance of freedom of expression might become "constitutionalised" under the influence of international and domestic higher judicial authorities (see, e.g. Mullis and Scott 2012, 25-26). Recognising that operation of laws might be path dependent (Bannerman and Haggart 2015, 10; Pierson 2004, 4; Thelen 1999), it pays particular attention to watershed Constitutional Court and ECtHR decisions and their perceived impact on the adjudicatory practice of ordinary courts. The chapter seeks to answer the following overarching question: To what extent had, from the main protagonists' perspective, the courts managed to fairly, predictably and promptly balance the competing rights in personality/goodwill protection disputes between 1996 and 2016?

Overall, the chapter paints a picture of a biased, unfair, arbitrary and unpredictable personality/goodwill protection regime riddled with delays in proceedings. It also investigates the reasons for the apparent malfunctioning of the regime, as suggested by the main protagonists in order to assist potential future policy initiatives aimed at improving the experience of all parties to a dispute. It finds a strong link between the prevalence of clientelism, corruption and informal practices within the society and the judiciary and the adversarial relationship between certain high-profile figures within the judiciary and media professional – the legacies of Slovakia's democratisation path – and the apparent malfunctioning of the regime.

6.2 Historically Unfair and Arbitrary Adjudication Practice

Most lawyers, experts and editors interviewed argued that the domestic and international statutes provided appropriate instruments for triangulating private and public interests in reputation, privacy and expression. Ringier's lawyer Benedik, who also represented plaintiffs, believed that 'personality protection provisions stipulated in the Civil Code are

sufficient’. Jozef Vozár, a prominent legal scholar specialising in personality/goodwill protection law, who actively used to represent plaintiffs and defendants, also argued that ‘we do not have a problem with legislation’ either on the domestic or international level.

The overwhelming sentiment, however, was that the interpretation and application of the relevant principles by ordinary courts was lagging, particularly in comparison to the Czech jurisdiction, where identical substantive and comparable procedural rules were in force until 2014. *SME*’s Fila argued that the problem with personality protection law for the press was ‘definitely in the application of [the law] ... the way [disputes] get adjudicated’. The IPI Slovakia chair, Múdry (2013), summarised the issues concerning freedom of expression similarly, claiming that ‘legislation is relatively well set in Slovakia – media [legislation] in particular. Application is a problem – and that is in peoples’ minds, especially [minds of] judges’. Kamenec, one of the most experienced media lawyers, argued that ‘the issue doesn’t lie in legislation’ because the Czechs operated under the same legal setting but ‘[litigation] results were different’ there.

The respondents on both sides perceived the adjudicatory practice in personality/goodwill protection disputes involving the media as biased and poorly justified and thus arbitrary and unfair with varying degrees of intensity at different times. Vozár explained that it was vital to ‘properly apply’ the aim and the spirit of the law ‘as envisaged in jurisprudence’, when balancing the conflicting interests in judicial decision-making. Vozár also argued that the aim and spirit of the law tended to be applied by ordinary courts ‘in an instrumental way’ whereby ‘[the goddess] Justice did not have her eyes closed’ but looked at the identity of the plaintiff and defendant ‘applying the law accordingly’.

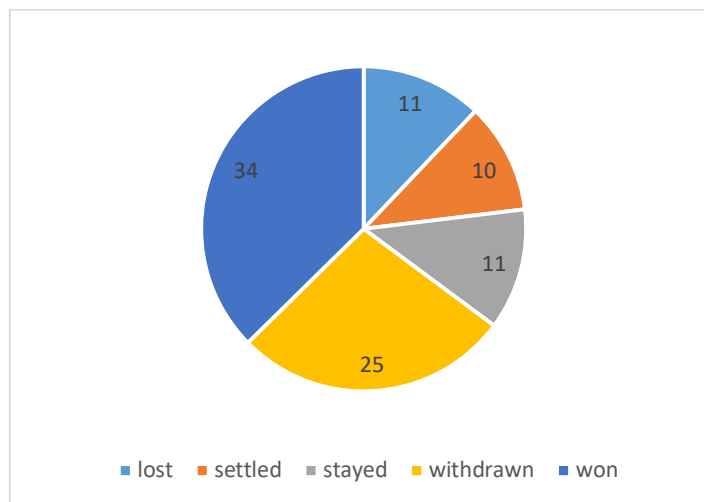
The interviews revealed that inconsistent, highly unpredictable adjudicatory practices led to undue legal uncertainty for both plaintiffs and defendants. Lukášek, *JOJ*’s lawyer with plaintiff experience, explained that while the law-on-the-books was ‘relatively well stipulated’ and the ECtHR case-law dealt with matters ‘to perfection’, the problem was with its ‘application – a systematic ... [and] uniform application of the law’, which was missing.

6.2.1 Pro-plaintiff Bias

It was impossible to independently ascertain a clear bias in adjudication outcomes without reliable official statistical data. The interviews gave a mixed picture. Of the six plaintiff-respondents, one won, two settled out-of-court after proceedings commenced, another settled one dispute and won another, and two plaintiffs' cases were pending at the time of the interviews. The highly experienced plaintiff lawyers I interviewed professed success in most cases, while noting that given their wealth of experience they were able to judge the potential for success in advance and only took on cases they believed they could win. At the same time, they acknowledged that many, particularly, private plaintiffs might be unsuccessful solely due to absence of qualified legal representation.

The interviews with media managers indicated that, in the 2010s at least, media tended to lose only a fraction of personality/goodwill protection disputes. Čekirda believed that, bar one lawsuit, *TA3* won or settled all lawsuits that reached the proceedings stage. According to *TA3*'s lawyers' statement 'the television is typically successful in legal disputes in which proceedings took place'. *JOJ*'s Kubina argued that while the television tended to win the majority of lawsuits, it often lost complaint proceedings before the Broadcasting Council. Similarly, Mihálik claimed that Ringier tended to win most disputes. Admitting that he did not keep the statistics in his head, NMH lawyer Schwarz believed that publishers managed to win just about fifty percent of lawsuits. According to its CEO, Petit Press lost, on average, just ten percent of personality/goodwill protection disputes. Fulmek's estimate was confirmed by the incomplete Petit Press records that were made available to me. Petit Press lost only twelve percent (11) of all the disputes involving reputation and privacy protection (including civil personality/goodwill protection disputes and press law disputes) that reached a final conclusion. The publisher won thirty-seven percent (34) of disputes and settled eleven percent (10) out-of-court. The proceedings were stayed by judicial decision in twelve percent of cases (11), and twenty-seven percent (25) of motions were withdrawn by plaintiffs. It should be noted that of all the recorded cases against Petit Press since 1998, forty-seven percent were still pending as of May 2014.

Figure 6.1: Outcomes of Closed Disputes Involving Petit Press



Independent statistical data on litigation results whilst useful, are not essential for this study, which starts from the premise that the motivations of actors and consequences for the competing interests at the heart of defamation and privacy disputes involving the media, are largely a factor of the actors' perceptions of the risks of litigation. These are in turn shaped to some extent by the actors' experiences and perceptions about the fairness, certainty and delays in judicial decision-making in these disputes, not by the objective reality (see Chapters 2 and 3).

Lawyers on both sides largely agreed that Slovak adjudicatory practice historically (and at least until the early 2010s) tended to favour personality/goodwill protection. L20 explained 'from the historical viewpoint a person's personality is better protected than freedom of expression'. In Benedik's experience, ordinary courts' 'default position' was 'one-sided in favour of personality protection'. Kamenec found that Slovak ordinary courts were much more legally conservative than their Czech counterparts with decisions in personality/goodwill protection matters in the two jurisdictions being 'incomparable'. The difference was, according to Kamenec 'not about how we apply the law' but 'about how we apply values, [about] what freedom of expression means for whom, what freedom of the press means, [and] what the courts see behind it'.

A prominent constitutional lawyer argued similarly that 'the fundamental problem of judicial protection of freedom of expression' lay in 'the underappreciation of [its] importance' and in 'the simultaneous overestimation of the conflicting protected value' (Drgonec 2013, 317). According to Drgonec (2013, 165), judicial practice had for long 'considered personality rights as a sacrosanct sphere restricting freedom of expression'.

In 1993, the Supreme Court expressed the opinion, which was quickly adopted by ordinary courts, that freedom of expression (dissemination of information) had to end where the freedom of others – citizens – began (1Co 19/93). Drgonec (2013, 387) thus argued that ‘rather than considering the purpose of freedom of expression as compared to purpose of personality rights’ protection’, ordinary courts ‘typically only consider personality rights’, evaluating ‘each infringement into personality rights, regardless of its intensity, as so serious that responsibility for it need be enforced’. Drgonec (2013, 387) thought judicial practice ‘crush[ed] the extensive constitutional standards of freedom of expression, chain[ed] it to the ground, restrict[ed] and disavow[ed] it’ through its failure to ensure that any interference with freedom of expression pursuing personality/goodwill protection was “necessary in a democratic society”.

Media professionals and managers also overwhelmingly believed that ordinary courts failed to fully appreciate the role of the media as watchdogs and favoured personality/goodwill protection over freedom of expression. Vagovič thought ‘the courts side with the other party and not the media’. Leško believed that ‘in general, rather than freedom of expression, Slovak courts take into account the right to personal honour’ and that ‘hardly any court at district or regional level does the balancing’, seeking to establish which of the two rights ‘must have priority in the given case’. Many judges ‘mentally remained in those times when these matters were decided absolutely unequivocally, when it sufficed to document the harm and everything was clear – harm occurred, satisfaction [was] simply obligatory without mercy’, so tended to ignore whether the harm ‘was caused through a legal and legitimate exercise of freedom of expression’. Múdry (2013) also believed that judges were only ‘interested in the Civil and Criminal Code – as long as you are able to quantify and prove that they caused you harm ... [you] can liquidate the medium’.

Other respondents suggested similarly that the judges’ personal prejudices often tainted decision-making. Kubina described a lost dispute concerning a follow-up broadcast to a story covering a Slovak citizen’s murder abroad, which reported that the body had never been repatriated contrary to the deceased family’s claims and a funeral paid for by the taxpayer. The ruling was ‘a huge disappointment’ for Kubina because he believed that ‘from the legal viewpoint’ *JOJ* was supposed to win as ‘there simply was no fault; there was nothing’ and *JOJ* ‘really wanted to help’ and ‘did help, investing time and money’. Nevertheless, ‘it turned against [it]’. Šimečka, editor of the Czech weekly *Respect* and a former *SME* editor-in-chief, was convinced that in the 1990s and 2000s,

‘judges often sided with [the plaintiffs] because they felt that they were less powerful and that we actually harmed them even though, often, we only wrote the truth’. Šimečka ‘felt that the judges were against us and positioned themselves on the side of the *quasi* injured’, rarely ‘having attempted to consider that the media provide a public service’. Šimečka’s experience of working in the Czech Republic showed up the stark contrast of the Slovak adjudicatory practice to that in the neighbouring jurisdiction.

Fila argued that the bias towards personality protection was a manifestation of ‘an ideological problem’ within the judiciary as many judges held ‘a not completely modern perception of personality protection’ and believed that ‘everything should be so formal and decorous’ or even that ‘newspapers shouldn’t write about anything’. Fila was convinced that in contrast to their Czech counterparts, Slovak judges’ understanding of the media’s duty to inform the public remained ‘anchored in the 1970s’. Milan, an investigative reporter at *Plus 7 dní*, similarly perceived the courts as ‘unprogressive’ because they were ‘unwilling, unable or incapable of appreciating the high added value of what society had to go through to achieve freedom of opinion [and] expression’.

According to defendants and their lawyers, the pro-plaintiff bias in adjudicatory practice was clearly manifested in the narrow application of the **doctrine of “truthfulness of information”** or almost absolute insistence on the truthfulness of all published facts and not allowing a defence of reasonable publication.¹²⁷ Instead of assessing the necessity of restricting freedom of expression and seeking a fair balance between reputation or privacy and freedom of expression, Slovak judicial practice insisted on examining evidence under the doctrine of ‘truthfulness of information’. The doctrine, which was developed during the communist regime in the 1970s, did not provide the option of absolving the defendant of liability for publishing inaccurate facts, for instance, by demonstrating that the journalist had made every effort to verify the truth of the allegations (Holländer, 1993; cited in Drgonec 2013, 293). Benedik advised ‘personality protection is [still] absolute, i.e. [courts] insist on absolute truthfulness of all

¹²⁷ In the early 1990s, the Supreme Court confirmed the pre-1989 interpretation of strict liability of civil personality protection, according to which ‘unlawfulness of an infringement’ could ‘never be excluded only because that who infringed the honour of another through a defamatory factual statement acted in good faith that the given statement was true’ (1 Co 19/93, cited in Drgonec 2013, 166).

information’ and ‘one can lose a dispute’ if the journalistic content comprised ‘anything that is not true’, even if it is ‘an irrelevant matter’.

Benedik believed that ordinary courts were ‘reluctant or unable’ to accept and duly apply the general principles developed in Article 10 case-law, which stated that ‘the interference [with freedom of expression] needs to be necessary in a democratic society, that journalists have a right to exaggerate [and] provoke’ and that ‘one simply cannot insist on absolute truthfulness of information, but that the priority is to consider whether journalists acted in good faith with the aim of publishing truthful information’. Lukášek found that ordinary courts often failed ‘to consider the whole context of a reportage’ and accept slight inaccuracies, as established in Convention case-law. Several media organisations were previously found liable for violating a plaintiff’s presumption of innocence having published information supplied at a state authority press conference, according to Zlámlová.

Media professionals also believed that ordinary courts tended to put undue emphasis on the truthfulness of information and require standards of proof that went contrary to Convention law, while ignoring the context, public interest or whether publishers and journalists acted responsibly. This is in contrast to the ECtHR, which held in *McVicar v. United Kingdom*, that a requirement to prove that imputations made in a newspaper article were ‘substantially true on the balance of probabilities’ was a justified restriction on freedom of expression in the interests of the protection of plaintiffs’ rights.¹²⁸ Slovak ordinary courts tended to require absolute proof of the truth of all impugned statements.¹²⁹ Mihálik argued that ‘the court naturally decides [in favour of the plaintiff]’ once the impugned information is established to be untrue, without considering whether it was published in good faith using all information available at the time in contrast to Czech courts. Šimečka felt similarly that judges were ‘totally not interested’

¹²⁸ *McVicar v. the United Kingdom*, No. 46311/99, ECHR 2002-III, §87.

¹²⁹ The Czech Constitutional Court also argued for reducing the standard of proof in personality protection disputes involving media-defendants, when it held that it was ‘necessary to respect certain particularities of ordinary press designated to inform the broadest public’ such as the need to make certain simplifications. According to the Court, it is not a given ‘that each simplification (or distortion) must necessarily lead to an infringement of personality rights’. One can therefore hardly ‘insist on complete accuracy of factual statements’, which would, in certain circumstances, impose ‘impossible demands’ on journalists. Therefore, in the Court’s opinion ‘it must always be of significance whether the overall meaning of a certain information corresponded with the truth’ (I. ÚS 156/99).

in the context of the journalistic text, what aims its publication pursued or whether the impugned information was of public interest. They tended to strictly look at ‘formal errors’ and blindly accept plaintiffs’ testimonies about the alleged harm. Šimečka advised that in contrast, their Czech counterparts considered the defendant’s aim and as long as it ‘was to write the truth and seek it’ did not rule against the publisher even if small inaccuracies were present, Slovak district judges did not reflect that ‘in principle, the journalist doesn’t want to lie [but] simply wants to write the truth’.

Defendant lawyers further suggested that courts sometimes failed to distinguish between value judgments and factual statements. Even when considering a statement to be a value judgment, they often paid little regard to the role of criticism on matters of public interest. Drawing on the interpretation of the permissibility of criticism in the pre-1989 case-law, courts tended to put **undue emphasis on the form and civility of criticism**.¹³⁰ According to an early judgment, qualifications such as “protector of thievery” and “thief” represented an unjustified infringement of plaintiffs’ rights because the criminal investigation, on which they were founded, was later discontinued (Vondracek 1975, 288–89). In probably the most controversial and most widely publicised court decision in Slovak history, a district court imposed a preliminary measure on publication of an unfinished book based on a purported secret service file, which in the meantime had been anonymously published online.¹³¹ The court held that publishing allegations of potential criminal conduct (corruption within the highest

¹³⁰ In 2001, the Supreme Court reiterated that ‘permissible or lawful criticism must be factual, concrete and proportionate in its content and form and must not exceed the limits necessary to achieve the pursued aim’, whereby factual denoted criticism ‘based on real or factual foundations from which it subsequently draws corresponding conclusions for the value judgment’, and concrete criticism meant that it was ‘based on concrete facts without drawing general conclusions’. The Court acknowledged that ‘criticism of societal phenomena is not only permitted but is desirable’, and that ‘it is possible to admit certain degree of exaggeration [and] irony or use of relatively expressive words’, which could be considered as insulting. However, unless founded on the circumstances described in the article, exaggerated and ironic statement was not to be regarded as permissible criticism but a claim devoid of factual basis. The decisive criterion for examining the permissibility of criticism was thus the ‘truthful description’ of the facts on which it rested. A description of circumstances stating some facts corresponding with reality while omitting others in such a way that prevented the reader from forming his/her own opinion could not be considered ‘truthful depiction of factual circumstances’ (3 Cdo 61/2000, published in ‘Zo súdnej praxe’ [From Judicial Practice], 2001, Vol 2:27, cited in Drgonec 2013, 176)

¹³¹ The book *Gorilla* and the endeavours of its author to verify the information contained within are discussed in Chapter 9.

echelons of politics and business) would be unlawful except where their veracity has been separately established through criminal investigation or conviction.¹³²

Most interviewed lawyers perceived strict adherence to such interpretation as contrary to the ECtHR case-law, which emphasised the importance of criticism, particularly as part of political discussion, and held that requiring journalists to prove allegations that someone committed a criminal offence by presenting evidence that the suspect was guilty of it was ‘plainly unreasonable’ in the context of a defamation lawsuit. According to the ECtHR, ‘[a]llegations in the press cannot be put on an equal footing with those made in criminal proceedings’. The ECtHR found that courts cannot expect ‘defendants to act like public prosecutors, or make their fate dependent on whether the prosecuting authorities choose to pursue criminal charges against, and manage to secure the conviction of, the person against whom they have made allegations’.¹³³ The Court also held that ‘the degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern’.¹³⁴

In Benedik’s opinion, the above case was ‘a precise example of the classic personality protection [approach]’. Benedik believed that it was not always optimal ‘to force it [the interpretation] in this way’. According to Benedik, Slovak judges tended to ‘turn on its head’ the condition of “necessity in a democratic society”. Instead of considering whether an interference with freedom of expression was necessary in a democratic society, courts examined whether the content and form of criticism was necessary to achieve the legitimate aim of informing the public. Benedik argued that using such an interpretation, ‘the judge substitutes the author [and his/her] way of producing and article’ and ‘rather than legal considerations, he/she brings into it his/her subjective ideas’.

¹³² ‘Until it becomes clear (established in a way prescribed by law – e.g. conclusions of a criminal investigation, decisions of competent authorities, particularly because it concerns serious allegations of serious criminal conduct) which of the information is truthful and which is not, it is impossible to publish details of the concrete actions, be it in the form of factual statements or value judgments, because they would undoubtedly unlawfully infringe the personality rights of the injured parties’ (11C6/2012-546, 16).

¹³³ *Kasabova v. Bulgaria*, No. 22385/03, 19 April 2011, §62.

¹³⁴ *Schorschach and News Verlagsgesellschaft GmbH v. Austria*, NO 39394/98, ECHR 2003-XI, § 43.

Benedik thought judges' ideas about appropriate form of criticism would always differ from those of the journalist because judges were inherently 'conservative'. Drgonec (2013, 178) similarly concluded that in their adjudicatory practice 'courts placed their thesis about the civility of the form in which criticism is made on a pedestal before one needs to kneel'. Lukášek also disagreed with the opinion held by many judges that only the impugned content was to be considered when balancing the competing rights because 'the way information was gathered is also important – it proves whether my value judgments stemmed from a factual basis', which cannot always be included within journalistic content due to space limitations.

6.2.2 Undue Protection of Powerful Public Figures' Personality Rights

Respondents across the spectrum reported an enormous inconsistency between adjudicatory practice in matters involving high-profile public plaintiffs – especially politicians and senior judges – who tended to be awarded non-pecuniary damages in millions of Slovak crowns for questionable infringements, and those involving other public or private plaintiffs. Many media professionals and plaintiffs felt these controversial cases demonstrated gross injustice.

Lawyers and media professionals argued that ordinary courts tended to disregard the public figure doctrine, which stipulated that public officials had to tolerate more intense scrutiny of their conduct than private persons (see also Drgonec 2013, 165). Balogová, saw 'the problem' with editorial decisions concerning contentious speech on matters of public interest in that 'in cases of politicians' courts had 'the tendency to tilt towards personality protection'. Petková believed that ordinary courts mostly adjudicated 'contrary to the case-law of the European Court of Human Rights' as the decisions were 'unbalanced [and] personality protection, particularly of important persons [and] politicians', had 'the upper hand'. By 2013, defendant lawyers 'were really getting a bit desperate' regarding domestic adjudicatory practice in cases of politicians, because contrary to the Europe-wide recognition that 'politicians should have a lowered level of protection', 'Slovak courts, as if in defiance, [went] towards Belarus', according to Kamenec. L20 argued that ordinary courts sometimes had difficulties acknowledging that public figures should tolerate more intense scrutiny and 'accept that they have to consider personality protection through the optics of freedom of expression and the duty to inform

about matters of public interest'. Lukášek believed that 'each of the politicians [in the widely publicised cases] most probably ought to have tolerated public criticism and it should never have been decided in their favour'.

Media professionals mentioned numerous disputes in which, they believed, they were unjustly punished by the courts in spite of acting in the public interest and in line with journalistic "duties and responsibilities". Maintaining 'we were hundred percent right; we did what we ought to have done', Brunovský was convinced that in *Fico v. Trend*, 'the courts punished [*Trend*] ... disgustingly'. Brunovský believed that referring to Fico as a 'thief of future pensions' on the cover and in two separate commentaries constituted 'a justified critique' of the then PM's actions. Brunovský thought the 'essence of the article was justified' and 'even the phrase [itself] was okay'. Had the judges considered the context, the article's aim, and Fico's long-term actions and political agenda, they 'would have [had] to side with [*Trend*]'. Convinced that *Trend* 'should have won', Brunovský argued that 'the fundamental problem of Slovak judiciary' was that courts failed to examine the sanction's effects on freedom of expression and the public interest in being informed about the potential impact of government action on their living standards.

Tódová (nee Žemlová) asserted that 'in spite of caution' she 'experienced several absurd decisions, wrong court decisions, which did not respect press freedom', including ordinary courts' decisions in *Slota v. Petit Press*, *Harabin v. Petit Press* and *Stiffel v. Petit Press*. Tódová did not expect the title "Slota stole on the run" 'to end up in court' and let alone be decided in favour of the plaintiff-politician because the article made clear that the claims were based on 'documents from the era of communism', which proved the claims, so 'the context was explained'. She characterised ordinary courts' judgments in *Harabin v. Petit Press*, involving claims that in the 1980s Harabin sentenced a priest for faith manifestations, as 'absurd and unjust' and considered them 'a serious injustice and a price for living in a young democracy'. The courts did not accept Petit Press's argument that the article was 'part of a public discussion concerning an urgent question of denial of religious freedom' and that no unjustified infringement occurred as 'no part of the impugned text even marginally concerned the plaintiff's intimate sphere and no false information was published', and awarded Harabin 33,000 euro in damages.

Fulmek believed that in *Stiffel v. Petit Press* ordinary courts erroneously sanctioned the publisher for writing that as a Supreme Court judge, Stiffel 'sentenced ...

priest J. to prison'.¹³⁵ Fulmek found 'absurd' Stiffel's arguments that he was a member of a three member senate whose decisions were confidential, that he simply applied valid laws and that the senate merely produced a binding legal statement, but the decision was actually made by a different court. Fulmek thought that it was 'simply a normal, acceptable [journalistic] shortcut everywhere in the world' for which he did not even reproach the reporters 'because [to say] sentenced, sent to prison is absolutely okay – absolutely, absolutely okay from the viewpoint of the priest's fate'. Fulmek found it ridiculous that 'such a person, based on such a case [could] win 100,000 euro'.

Fulmek was convinced that judges 'did not respect the legal standing of the independent press as a guardian of democratic principles, or the public's right to free information' the counterpart of which should be the 'tolerable error or tolerable inaccuracy' defence. Fulmek argued that readers and 'journalists were not lawyers or experts who could see the difference between [stating] that Stiffel sentenced someone and that he belonged to a three-member-strong senate that obliged a lower court by its opinion'. Fulmek believed the fact that judges 'were not willing to tolerate' this was 'a key' issue for freedom of expression.¹³⁶ Vagovič mentioned a similar, unjustified in his opinion, case brought by another Supreme Court judge for his article concerning a 1970's re-trial of a political prisoner, which resulted in a prolonged sentence for the latter. The article alluded to the prolonging of the sentence being 'simply improper'. Vagovič asserted that he 'gave the judge absolutely identical space to the former prisoner to express his views in the article. Despite that he sued us and we lost'.¹³⁷

¹³⁵ One of the impugned articles stated, 'Judges who in the past sentenced people to years in prison according to communist laws merely for expressing their opinions are still in high positions. ... At the Supreme Court work also judges Harald Stiffel and ..., 'who at the beginning of the 1980s sentenced priest J.L. to one-and-a-half years' (Žemlová 2002a).

¹³⁶ Šimečka also branded this dispute as the 'most dramatic' of his career. Petit Press repeatedly contested the claim's merit before the Supreme and Constitutional Courts, arguing that 'the limits of freedom of expression were not exceeded as the information ... concerned [Stiffel] as public figure, was correct and embodied the right to [lawful] criticism' (cited in III. ÚS 238/08-20). Petit Press further maintained that 'the circumstances and value judgments were based on factual findings' and 'concerned a critical evaluation of the conduct of several judges in the pre-1989 era and their role in political processes with opponents of the communist regime'. While 'the published claims were unpleasant to [Stiffel]', 'in their content and form, they did not deviate from the limits of appropriate, factual and concrete criticism' as Stiffel's role in the trial described in the article was 'incontestable' (I. ÚS 452/2016-21, 9-10).

¹³⁷ *tyždeň's* editor-in-chief also found the judgment unfair as the plaintiff had been approached for comment, which was published on the same page as the former political prisoner's views (Hříb 2009).

Respondents were convinced that when a court established that a judge's or politician's personality rights were violated, the awarded damages tended to be arbitrary and disproportionate – not only to the actual reputational harm but also to awards received by less prominent plaintiffs. This, according to interviewees, went against the ECtHR's case-law, which repeatedly stated that disproportionately and unpredictably large civil damages could have a chilling effect on freedom of expression.¹³⁸ The rather vague provisions governing remedies for non-material loss and the absence of *ex lege* limits to monetary compensation in personality/goodwill protection disputes conferred the decision on the appropriateness and potential amount of non-pecuniary damages upon the court. Typical damages awards to high-ranking public functionaries ranged between 16,000 and 100,000 euro. Respondents identified the 166,000-euro awarded in *Slota v. Ringier No. 1* (12C844/99) as the largest historically.

Interviewees overwhelmingly argued that ordinary courts often failed to establish that harm, justifying the given award, had actually occurred.¹³⁹ Adamčík claimed that courts frequently concluded that 'harm was surely suffered by politicians' even though plaintiffs did not even bother submit evidence to prove it. Similarly, Šimečka 'was horrified by the levels of non-pecuniary damages' for which, he believed, there was 'absolutely no justification'. In *Harabin v. Petit Press*, according to Šimečka, the judges failed 'to consider the pure logics of the matter' that Harabin's professional honour could not have suffered considerable harm given that soon after the publication he was re-elected Supreme Court President.

Zlámalová characterised the adjudicatory practice regarding damages for public

¹³⁸ For instance, *Cumpănă and Mazăre v. Romania*, [GC], No. 33348/96, ECHR 2004-XI, §111; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, Series A No. 316-B, §49; *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, No. 55120/00, ECHR 2005-V, §114; *Bladet Tromsø and Stensaas v. Norway* [GC], No. 21980/93, ECHR 1999-III, § 64.

¹³⁹ A study of decision-making of ordinary courts in selected cases involving public plaintiffs found similarly that judges tended to assume that the broadly publicised infringement automatically resulted in serious reputational injury, warranting monetary compensation. Moreover, since the plaintiff was known to the public, publication concerning such public plaintiffs attracted a larger audience than that concerning unknown persons, rendering the reputational harm of public plaintiffs more serious (Wilfling and Kováčeková 2011, 34). In *Fico v. Spoločnosť 7 Plus No.1* (39C-234-2005, 12) the court found that since the plaintiff was a public figure at the time of the unlawful infringement, 'his societal esteem was notably lowered through the unlawful infringement, his expert standing dishonoured, his trustworthiness and authority questioned, his further performance in this area threatened'.

functionaries as ‘brutal’ and ‘really sad’ because she believed that compensation should be ‘proportionate to the violation’ and reflect that public functionaries should enjoy considerably lower protection. Sedlačko similarly dubbed the 1990s and early 2000s as a ‘crazy’ period of judicial decision-making, which was the ‘heritage of an unhealthy era’ prior to 1989. Ikrényi found past court decisions in which ‘damages in hundreds of thousands [of euros] were awarded, while [it was] doubtful whether an infringement occurred at all’ as ‘rather controversial’. Ikrényi also considered judicial decisions as ‘arbitrary’ because they rarely included persuasive ‘reasoning for awarding the specific amount’. According to some respondents, instead of following criteria developed in case-law and rational legal arguments, district judges often identified with ludicrous, emotionally-charged witness statements and let sympathy with the plaintiff affect the damages award (Ikrényi, Lukášek).

Most respondents believed that damages awarded to high-profile plaintiffs were disproportionate to the awards received by less prominent plaintiffs. Schwarz estimated that the upper limit of non-pecuniary damages for reputational harm suffered by private plaintiffs was 20,000 euro, with 10,000 to 15,000 euro being ‘a magical limit’ for serious infringements involving malicious intent. The median in NMH’s disputes was 5,000 euro, with typical damages of between 2,000 and 3,000 euro. According to Zlámalová, *Markíza* was typically obliged to pay private plaintiffs between 10,000 and 20,000 euro. Plaintiff lawyers found such awards as ‘appallingly low’ (Lukášek) and ‘nothing miraculous’ (Sedlačko) given the harm suffered and the time litigation took.

Many plaintiff lawyers and some plaintiffs perceived the adjudicatory practice as deeply unfair, leading them to believe that equality before justice was not guaranteed in personality protection disputes. Lukášek found such decision-making practice as ‘very unfortunate’ and one of the most problematic aspects of the law’s application. Praising the courage of Slovak judges for not being afraid to award damages in excess of 39,000 euro (seen as the limit in the Czech jurisdiction), L21 found damages in excess of 66,000 euro granted to Fico ‘unbelievable’.

Among plaintiffs, P01 was perplexed by the extreme difference in damages awards for ordinary persons as compared to members of the political class. She found it ‘outrageous’ that in contrast to an infamous politician – a ‘generally-known sot’ in P01’s words – she would not have been able to claim hundreds-of-thousands of euro in damages. Defendants and their lawyers naturally did not admit that the awards to ordinary persons were excessively low. However, they did recognise the disproportionate, unfair

amounts of damages granted to prominent plaintiffs. Fulmek perceived ‘an abyss of tens-of-thousands of euro’ between damages awarded to ordinary plaintiffs – like firms and private citizens – and plaintiffs from the judiciary, politics or procuracy’. Benedik described the discrepancy in damages awards as follows: ‘while judges lick the cream, something perhaps falls to politicians and then ordinary persons stand no chance of achieving such amounts’.

The disproportionate, unfair damages awarded to public functionaries for harm resulting from publication was more striking in contrast to compensation granted for harm suffered by victims of violent crime. The latter was limited *ex lege* to fifty-fold of the minimum monthly wage.¹⁴⁰ In a case widely mentioned by respondents, a mother of a murder victim was awarded a mere 3,300 euro as compensation for harm she suffered and 6,600 euro for the harm suffered by her deceased son,¹⁴¹ despite the fact the murder was motivated ‘by despicable motives’, ‘executed in a brutal manner’ and had ‘agonising consequences’ (17Co/421/04, cited in Wilfling and Kováčeková 2011, 38).¹⁴² ‘While the ECtHR unequivocally concluded that when determining the level of damages for personality violations, the level of compensation awarded for bodily harm or to victims of violent crimes should be taken into consideration and should not be exceeded unless serious, sufficient reasons exist’, ordinary courts, according to L20, tended to award larger amounts for reputational injury than for violent crimes. Kamenec found it inexplicable and ‘totally disproportionate’ that a rape victim received around 16,000 euro in compensation but a public official received 100,000 euro for verbal injury. Schwarz thought it was ‘absurd for a judge at whom a journalist leers to get 60,000 euro, while ... a raped underage girl ... gets 10,000 euro’. Milan thought it was ‘sick’ that Harabin secured damages payments in hundreds-of-thousands of euro for harm to his dignity while ‘compensation for murder [or] rape’ was in ‘laughable sums’. Fila similarly believed there was enormous disproportion in the amounts achievable for car accident victims and

¹⁴⁰ 6,900 euro in 2013.

¹⁴¹ She claimed 8,300 euro in both instances.

¹⁴² The defendant, a neo-Nazi supporter, poured petrol over the victim of Roma origin, and set him alight.

those ‘Harabin is able to achieve because someone informed about how he had his bathroom tiled’.¹⁴³

6.3 The Shift in the Constitutional Court’s Jurisprudence

Several respondents (Múdry, Leško, Langer, L19) suggested that the pro-personality protection bias of ordinary courts, which the Constitutional Court failed to rectify in a timely manner (Fila), was demonstrated by the fact that the ECtHR found a violation of Article 10 in all but one case brought against Slovakia (for a similar argument see Drgonec 2013, 232). In the eleven cases filed between 1995 and 2012, which resulted in an ECtHR decision on the merits of the case (Table 6.1), Slovakia was found in breach of the Convention in ten instances.

Table 6.1: ECtHR Judgments in Article 10 Cases against Slovakia

Case of	Appl. No.	Date	Proceedings type	Result
<i>Feldek v. Slovakia</i>	29032/95	12/07/2001	Civil defamation	Violation
<i>Marônek v. Slovakia</i>	32686/96	19/04/2001	Civil defamation	Violation
<i>Lešník v. Slovakia</i>	35640/97	11/03/2003	Criminal defamation	No violation
<i>Hrico v. Slovakia</i>	49418/99	20/07/2004	Civil defamation	Violation
<i>Radio Twist, a.s. v. Slovakia</i>	62202/00	19/12/2006	Civil defamation	Violation
<i>Klein v. Slovakia</i>	72208/01	31/10/2006	Criminal defamation	Violation
<i>Ringier Axel Springer, a.s. v. Slovakia</i>	41262/05	26/07/2011	Civil defamation	Violation
<i>Soltész v. Slovakia</i>	11867/09	22/10/2013	Civil defamation	Violation
<i>Ringier Axel Springer, a.s. v. Slovakia (No. 2)</i>	21666/09	07/01/2014	Civil defamation	Violation
<i>Ringier Axel Springer, a.s. v. Slovakia (No. 3)</i>	37986/09	07/01/2014	Civil defamation	Violation
<i>MAC TV, s.r.o. v. Slovakia</i>	13466/12	28/11/2017	Proceedings before Broadcasting Council	Violation

¹⁴³ In 2010, Harabin as Supreme Court President filed action for goodwill protection against *Pravda* and *Radio Express* for allegedly maliciously and incorrectly reporting the refurbishment costs of a bathroom in his offices (TASR 2010; SITA 2010).

The ECtHR criticised Slovak courts for strictly adhering to the narrow “truthfulness of information” doctrine, taking an overly formalistic approach to criticism, failing to appreciate the importance of public debate, and overlooking to examine whether reporters and publishers acted in accordance with their duties and responsibilities within the meaning of Article 10(2). For a more detailed discussion of the most important ECtHR findings in cases brought by authors, journalists and publishers see Appendix 10.

From the late 2000s the Constitutional Court started to emphasise the need to seek a fair balance between reputation or privacy protection and freedom of expression, possibly influenced by the early ECtHR judgments in cases involving Slovakia. The Court first explicitly invoked the need to balance the conflicting interests and conduct the proportionality test in 2009 (II. ÚS 152/08). Characterising freedom of expression as ‘a fundamental pillar of a democratic society, in which everyone is allowed to express their views about matters of public interest and make value judgments about them’ (§24), the Court emphasised ‘the need to carefully protect freedom of expression in a transitional country’ (§27). Acknowledging that in certain instances, freedom of expression needed to give way, the Court stressed that such interferences were strictly limited and had to be ‘in accordance with the democratic character of society (“measures necessary in a democratic society”)’ (§25).

The Court found that the civil personality protection provisions ‘mustn’t be applied in isolation, but need to be interpreted in line with the Constitution’ (§27). While this required consideration of freedom of expression, it did not mean abandoning personality protection. Freedom of expression had to be favoured in certain cases, ‘even if the given expression may have certain defects from the viewpoint of classic, statutory personality protection’ (§27). The Court argued (§38) that in a case of conflict between the right to personality protection and freedom of expression, it was crucial to conduct a proportionality test, using the so-called Alexy’s formula (Alexy 2005, 574–75).

The test proposed by the Court involved establishing for the given case the intensity of interference to freedom of expression and the importance of protecting the competing personality rights. The intensity of infringement of freedom of expression and the importance of satisfying the right to personality protection were assigned values on a triadic scale: “light”, “moderate” and “serious”. The values were to be weighed against each other in order to establish whether the importance of satisfying personality rights protection justified the detriment to freedom of expression. The Court argued that the

following questions about the impugned publication should guide the court in assigning the values to the competing interests: Who, about whom, what, where, when and how was being said? (§38). Between 2009 and 2016, the Court ruled on many of the most controversial personality protection disputes involving public figures, including *Polka v. Spoločnosť 7 Plus* (II. ÚS 152/08), *Harabin v. Petit Press* (I. ÚS 408/2010 and II. ÚS 213/2014), *Harabin v. Spoločnosť 7 Plus No. 1* (II. ÚS 340/2009), *Slota v. Ringier No. 2* (IV. ÚS 448/2012), *Soročina v. Rádio Viva* (II. ÚS 326/09), *Fico v. Spoločnosť 7 Plus No. 1* (IV. ÚS 492/2012), *P03 v. Petit Press* (II. ÚS 184/2015). The Court found violations of publishers' right to freedom of expression, quashed the original decision and sent the dispute back for further adjudication in most cases. While doing so, it also introduced binding legal opinions on a multitude of crucial issues relating to freedom of expression.

The Court acknowledged that 'from the viewpoint of freedom of expression the media and journalists enjoy a privileged position, particularly when informing about matters of public interest' (IV. ÚS 302/2010, §1; also II. ÚS 191/2015). The Court considered the press 'a public watchdog' that 'plays an important role in states governed by the rule of law because it allows free political discussion' (II. ÚS 152/08, §32). Journalists thus 'have a (social) duty to provide information and ideas about matters of general interest and the public has the right to receive such information'. Journalists are 'allowed to use a certain degree of exaggeration and provocation' (IV. ÚS 448/2012, 22, also IV. ÚS 492/2012). The Court emphasized that 'the limits of acceptable criticism are widest in relation to politicians and narrowest in relation to "ordinary" citizens' (II. ÚS 152/08, §31). According to the Court, national¹⁴⁴ and regional politicians (II. ÚS 558/2012), judges,¹⁴⁵ lawyers (IV. ÚS 302/2010), and civil servants acting in official

¹⁴⁴ The Court stated that the personality protection of prime minister could be discussed with the exception of 'the viewpoint of the inner circle of his privacy' and 'probably just blatant, nominal falsehoods' (II. ÚS 191/2015, §59).

¹⁴⁵ The Court accepted 'the trend towards shifting the position of judges, who stand somewhere in the middle of the range, in the direction of politicians' (II. ÚS 152/08, §10). It found that 'a judge as a representative of public authority must be aware that his conduct may be subject to criticism and thus [in relation to judges] a larger degree of tolerance and open-mindedness than in relation to ordinary persons must be assumed'. The degree of acceptable criticism was 'even larger in relation to Supreme Court judges' (I. ÚS 408/2010, 19). According to the Court, 'in terms of intensity of privacy protection it is important to differentiate between a court chairperson and other judges of that court, who undeniably enjoy a greater degree of privacy protection than the court chairperson who symbolizes

capacity (IV. ÚS 302/2010) all had public figure status. The Court found that politicians were required to accept more criticism than other people because they had ‘a greater ability to promptly and effectively react’ to public criticism and to ‘get their viewpoints across to the public’ (IV. ÚS 492/2012, 21).

The Court confirmed that seeking and disseminating information and ideas on matters of public (general) interest enjoyed the highest level of constitutional protection. State authorities’ conduct and the persons representing them, including politicians (IV. ÚS 492/2012) and public officials (IV. ÚS 302/2010), legislation and the adjudicatory practice of courts (II. ÚS 152/08) and its circumstances (I. ÚS 408/2010), as well as the private sphere and leisure activities of judges (II. ÚS 184/2015) could be subject to legitimate criticism in the media. The Court acknowledged that whether the speech in question was a matter of public interest ‘may in certain instances depend on the passage of time’ (IV. ÚS 492/2012, 15). The Court found that the general principle ‘the larger the degree of publicity, the larger the degree of protection of personality rights’ needed to ‘be assessed in relation to the criterion of the author’ (IV. ÚS 492/2012, 15, also IV. ÚS 139/2010, I. ÚS 416/2011). If the author of the impugned statements was a journalist, his/her privileged status might, to a certain extent, neutralise the place criterion.

The Court emphasised that when examining the limits of freedom of expression, there was a need to distinguish between factual statements and value judgments, as they enjoyed different levels of constitutional protection (e.g. II. ÚS 326/09, IV. ÚS 302/2010, II. ÚS 558/2012, I. ÚS 390/2011). Drawing on an earlier Czech Constitutional Court ruling (I. ÚS 453/03) that cited the House of Lords’ *Reynolds* decision¹⁴⁶, in IV. ÚS 302/2010, the Court introduced the need to consider whether journalists acted responsibly, in line with their “duties and responsibilities”. In the Court’s opinion, publication of defamatory information (factual statements) could not be considered legitimate unless the publisher proved that he/she ‘had good reasons to count on [their] truthfulness’, that he/she ‘took independent steps to verify the information to such an extent and intensity that was at his/her disposal’, and unless s/he ‘had a reason not to trust

and represents the court outside’. A court chair candidate ‘must be aware that he/she will face increased attention from the print and electronic media’ (II. ÚS 184/2015, 28).

¹⁴⁶ *Reynolds v. Times Newspapers Ltd* [2001] 2 AC.

that [it] was false'. Publication of defamatory information, could 'not be considered sensible unless the disseminator verifie[d] its truthfulness by asking the person concerned to comment and ... publishe[d] the latter's statement, with the exception when it's impossible or unnecessary to do so' (IV. ÚS 302/2010, 17). To establish the legitimacy of the impugned information, 'the aim pursued by the publisher equally needs to be examined'. Publication was illegitimate if its 'aim was to harm the person with information the disseminator him/herself did not believe' or if published 'recklessly without caring whether it was truthful or not' (IV. ÚS 302/2010, 17).

Stressing the need 'to assess the whole expression', 'never only a statement or sentence without context', the Court held that only criticism of a public figure 'devoid of factual basis and for which there is no justification' was to be considered disproportionate criticism (IV. ÚS 302/2010, 17). According to the Court, reporters had constitutionally guaranteed rights to express even 'sharp' criticism if it concerned a matter of public interest and was based on truthful facts (II. ÚS 558/2012, 24). The Court recognised 'journalists' right to publish certain simplifications or even inaccuracies', but emphasised 'that published information ha[d] to, at the relevant time, correspond with actual facts' (I. ÚS 408/2010, 23-24).

The Court repeatedly emphasised that adjudication was non-compliant with the condition of objective and fair assessment of the case's factual circumstances 'if the presiding court fails to consider, or insufficiently considers, the organic bond between an article's headline, its graphic execution in connection with the photographic material, and the factual context of the article' (II. ÚS 340/09, 23; also IV. ÚS 448/2012). Adjudication needed to take into consideration the function fulfilled by the headline, i.e. 'to attract the reader and capture his/her attention in order to read the article, and only on this basis to clarify the information provided by the press and form his/her own opinion'. The Court concluded that 'it is generally possible also from the viewpoint of privacy protection to accept and tolerate that more expressive, provocative or exaggerating expressions appear in a headline, particularly if a medium of a tabloid character is concerned' (II. ÚS 340/09, 19). 'In case of "isolated" consideration most headlines published in the press would have to be classified as factual statements, even though the real aim of their authors is only to attract readers' attention to the article, which provides the impugned information in the form of value judgments' (II. ÚS 340/09, 23-24). 'Without sufficiently taking into consideration the organic bond between the headline of a certain article and its factual

content’ one ‘cannot reach the conclusion whether a statement comprised [in the headline] was true or false’ (II. ÚS 184/2015, 35).

The Court addressed the question of damages awards, arguing that the reliance on judicial discretion did not provide ‘space for wilfulness and arbitrariness’ (IV. ÚS 492/2012, 23). Regarding ‘legal disputes in which a judge claims personality protection, even more so [if he/she claims] considerable monetary compensation’, the Court noted that ‘a legitimate problem of “a judge judges a judge” arises’ and with it ‘an increased risk of potential client behaviour by members of the judiciary, which in case of recurrent questionable and insufficiently justified conclusions could jeopardize the legitimacy of the whole judiciary’ (I. ÚS 408/2010, 30). In a watershed decision the Court criticised ordinary courts for failing to follow the established Convention case-law, according to which ‘monetary compensation for non-material loss needs to be proportionate to the reputational loss suffered ..., whereby one needs to determine the level of damages based on evidence proving the level of harm’ (IV. ÚS 302/2010, 24). The Court found that ordinary courts based their conclusions ‘primarily on witness statements and the “extensive publicity of the unlawful infringement”, without considering other important circumstances’ (IV. ÚS 302/2010, 23), which could undermine their conclusion about the harm inflicted. The Court stated that the decision on damages ‘must take account of the level of damages awarded by domestic courts in other cases relating to reputational harm’, as well as the level of compensation awarded for physical injuries or to victims of violent crimes. The Court emphasized that compensation for reputational harm ‘should, without the existence of serious and sufficient reasons, not exceed the maximum available compensation for physical injuries or to violent crimes’ (IV. ÚS 302/2010, 24), and that ‘its level mustn’t be “liquidating” for the media’ (IV. ÚS 492/2012, 24).

The Court criticised ordinary courts for assuming that ‘public authorities and their representatives’ needed increased protection and that every fault on the part of the media caused such serious violation to the rights of public officials that could only be proportionately compensated with large damages, which ‘considerably exceed[ed] the amounts conceivable in cases of other (“ordinary”) citizens or other types of personality rights violations’. The Court warned that such practices represented ‘a serious phenomenon capable of leading to future significant reduction of freedom of expression protection standards’. The Court’s aim was not to ‘deny these persons protection’ or to endorse ‘tabloid practices that often disrespect not only the limits of human privacy but also dignity’. Nevertheless, the Court reiterated that ‘from the constitutional viewpoint’,

it was ‘non-acceptable for ordinary courts, when determining the level of compensation for non-material loss, to privilege public functionaries before other (“ordinary”) citizens with the justification that the harm caused to the former is (automatically) more serious’ (IV. ÚS 492/2012, 25).

6.4 Bias, Arbitrariness and Uncertainty Remain

It is unsurprising that the different types of respondents interpreted the shift in the constitutional doctrine and its consequences for the protection of the competing interests in different ways.

6.4.1 Plaintiffs: ‘Media Can Now Write Everything’

The plaintiffs and plaintiff lawyers saw the developments as harmful to personality rights. They believed that by mid-2010s it was increasingly difficult for plaintiffs to succeed in personality protection disputes against the press and for the public to learn the truth as ordinary courts’ adjudicatory practice became markedly media-friendly. L13 argued that ‘the media are those that always win’. L09 claimed that it was ‘possible to win in some cases’ but success was ‘increasingly rare’ due to the ‘perverse’ pro-media bias of the ECtHR and Slovak judicial authorities. L09 thought this was in stark contrast to the past when case-law ‘was built on the premise that everyone was liable for what they wrote’. Some of the most successful high-profile litigants’ lawyers also expressed perceptions of prejudice against their clients. L01 observed during some proceedings, a clear bias against Fico and his policies from the reasoning in the judgments and how the judges posed questions and their willingness to admit evidence. Ľalíková believed that judges often decided in media’s favour because ‘they are under public pressure’ and ‘indirect pressure’

of journalists covering the proceedings.¹⁴⁷ They ‘fear for their position’ should the decision be criticised in the media.

P03 – a judge by profession – perceived the Constitutional Court’s decision in his case as ‘scandalous’ and as ‘a demonstration of arrogance’ because it elevated ‘the right to freedom of information’ above his right to personality protection and failed to take into consideration that false information was published. As P03 put it, ‘once [ordinary] courts said that [journalists] had lied’ and did not prove the truthfulness of the published statements, ‘the Constitutional Court cannot ignore that [finding] and declare that nonetheless [journalists] have a right to publish what they want’. P03 asked ‘whether the media have the right to write any sort of lies’ and whether the Constitutional Court can declare “‘Well, they lied about you but tough luck because we are convinced that they can write whatever they want’”.

P03’s lawyer, Sedlačko was similarly convinced that the shift in constitutional doctrine made it extremely difficult for plaintiffs to gain adequate compensation because district courts became unwilling to award large damages for fear that the Constitutional Court would overturn their decisions. Sedlačko maintained that ‘thanks to freedom of expression media can write anything nowadays’. Nevertheless, Sedlačko considered the developments in judicial decision-making to be an integral part of the law’s natural evolution. Adjudication needed to reach extremes on both sides of the spectrum at first prior to stabilising in the centre. Using the metaphor of “childhood illnesses”, without which no child can develop, Sedlačko asserted: ‘before 1991 personality protection litigation did not exist here and automatically as the process evolves, one will find extremes on both sides until a reasonable midpoint is found’. According to Sedlačko, the media’s defence against adjudication in the 1990s and 2000s, which ‘intensely’ favoured the plaintiffs, led to the other extreme, where ‘freedom of expression is unduly glorified’. Such ‘glorification’ was natural given Slovakia’s fascist and communist past, and vital for the protection of the press’s watchdog function, ‘otherwise journalists might become too afraid to write’.

¹⁴⁷ In the late 2000s media and various media-watch organisations started reporting on the above-discussed controversial decisions, portraying the lawsuits as profit-making endeavours or attempts at muzzling the press.

6.4.2 Defendants: Cautious Optimism that Worst Abuses Are Matter of the Past

Media lawyers and editors were cautiously optimistic about the effects of the constitutional shift on freedom of expression. Adamčík argued that with the influence of the Constitutional Court's rulings, 'ordinary courts started to perceive the balancing between freedom of expression and personality/goodwill rights differently'. Encouraged by media lawyers who tended to cite the relevant constitutional doctrine, by 2016, ordinary courts had started to apply the test of proportionality and other principles emphasised by the Court. Adamčík explained, 'the ECtHR seems to be too far for our judges'; the 'Constitutional Court ... seems closer to them' and they take its 'legal opinions into account', even if they perhaps do not fully accept them. Hence, 'the situation [wa]s improving', according to Adamčík, as younger judges particularly were able to better 'perceive the ethics and morals of the issues concerning the legal relationships' and some became 'really well able to balance' the competing interests.

Media lawyers believed that, as Benedik put it, 'a certain degree of sensibility was enforced' in damages awards for reputational harm as the compensation awarded *ex lege* for health impairment and/or to victims of violent crimes became the benchmark in adjudicatory practice. Schwarz observed, 'in contrast to the past, when large non-pecuniary damages were awarded without justification, there has been a shift towards greater predictability, particularly concerning the upper and lower limits of awards'. Moreover, as Adamčík argued, media organisations 'realised that ... [liquidating damages awards] no longer threaten[ed] them' in disputes with public figures.

Some senior editors and experts also noticed the positive developments in adjudicatory practice, hoping that no court would in the future be able to make an arbitrary, unjust judgment against a media organisation or professional, as long as they acted in accordance with their duties and responsibilities. Cautious not to brand the developments as 'evidence of a systematic change in the approach [of courts]', the co-author of several *Nations in Transit* reports, Miroslav Kollár believed that 'at the minimum they signal that it is no longer a homogenous environment' in which following a petition media were 'fined'. Múdry (2013) claimed that 'the argumentation that the public's right to information is above privacy protection' started to 'gain weight'. Múdry (2014) also expressed hope that as wheels 'started to slowly turn at the Constitutional Court', ordinary judges would 'not dare decide in a biased way anymore'. Similarly, Šimečka hoped that Slovak judiciary had 'understood' and that 'the huge fines in millions

[of Slovak crowns] would not be repeated'. By 2017, Balogová observed 'a certain development' in ordinary courts' adjudicatory practice where judges began 'to accept that politicians should bear greater criticism than ordinary people'.

6.4.3 Unpredictability, Arbitrariness and Legal Uncertainty for all Parties

In spite of the doctrinal developments towards fairer triangulation of the competing interests at the heart of personality/goodwill protection disputes involving the media, media professionals and lawyers on both sides found that litigation outcomes were still unpredictable, particularly in cases involving influential public plaintiffs. Most respondents acknowledged instances of qualified, professional adjudication and evidence of the ability of some judges to fairly balance the competing interests. Nevertheless, the overwhelming majority perceived the adjudicatory practice as highly inconsistent, not least because the Constitutional Court had failed to unequivocally answer many crucial questions relating to the balancing act. Moreover, the approach towards the limits of journalistic work in conflict with reputation and privacy rights varied among the different Constitutional Court senates. There was also a perceived disjunction in the willingness of the Supreme Court senates towards admissibility of cassation proceedings in the disputes. Therefore, it was unsurprising that the Supreme Court failed to effectively facilitate ordinary courts' case-law unification.¹⁴⁸

Respondents argued that in the mid-2010s, ordinary judges were still reluctant or unable to properly apply the proportionality test, thus potentially creating unintended consequences for private and public interests in freedom of expression and equality before justice.¹⁴⁹ As the Constitutional Court observed, the questions encompassed in the proportionality test 'need not always provide an unequivocal answer' and the test

¹⁴⁸ It is the Supreme Court's role to promote the uniform interpretation and consistent application of all laws by way of its own decision-making; adopting opinions aimed at unifying the interpretation of laws and other legislation of general application; publishing final court decisions of primary importance in the Collection of opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic.

¹⁴⁹ Drgonec (2013, 301) similarly argued that in spite of the extensive binding case-law to the contrary, adjudicatory practice, particularly, in relation to evidence examination and standard of proof remained largely unchanged taking inadequate account of freedom of expression interests.

therefore offered ‘only one of the instruments’ for balancing the two competing rights (IV. ÚS 492/2012, 16). The balancing exercise therefore still largely depended on the personal prejudices of the judges. Kamenec observed that while the test of proportionality constituted ‘a way of making an issue, which is impossible to objectify, objective’, how judges applied it and whether they were able to strike a fair balance depended on ‘the values they profess[ed]’. Kubina also believed that litigation results were ‘always about the judge’ and his/her ‘sense for justice’. Recognising a ‘certain progress ... at [ordinary] courts’ and higher judicial authorities, L19 believed that adjudication was still rather unpredictable and ‘dependent on judges’ and their subjective assessment. Acknowledging instances of fair balancing, Fila believed there had been too many cases in which decisions threatening freedom of expression were made. According to Leško, the precedential judgments of Slovak higher judicial authorities demonstrated that judges were ‘able to decide in line with modern times’. However, it was ‘always only an individual achievement’ rather than ‘the standard’. Leško found it ‘quite depressing’ that contrary to his earlier hope that ‘following several precedential cases in Strasbourg it wouldn’t be that easy to carry on with the present practice’ of arbitrary adjudication, it continued without any consequences for the judges.

Respondents also acknowledged that the Constitutional Court’s watershed decisions regarding damages awards ‘did not mean absolute liberation [for the media]’, as Adamčík put it, because arbitrary, astronomical damages awards for reputational injury were still possible. Zlámalová, argued that ‘some judges still hold the strange view that ... the plaintiff doesn’t have to prove ... that the infringement had occurred and caused harm’, if monetary compensation was claimed. L20 found it desirable for courts to set clear criteria for calculating non-pecuniary damages, follow them and ‘transpose their considerations into the reasoning section of their decisions’.

Several interviewees cited the blatant disregard of Constitutional Court’s binding legal opinion by the Bratislava regional court in *Harabin v. Petit Press* as a prime example of the threat faced by the media. In its original ruling, the Constitutional Court found that in relation to the 33,000 euro damages award, the appellate court’s decision was ‘prima facie arbitrary and evidently unfounded (*in abstracto*), disproportionately harsh, unbalanced, [and] disregarding the arguments of the complainant as well as the circumstances of the case at hand (*in concreto*)’ (I. ÚS 408/2010, 28). The Constitutional Court criticised the regional court for solely basing the damages’ amount on testimonies of Harabin’s relatives, friends and colleagues, while failing to consider that Harabin’s

widely known career progression had not caused significant harm to his professional reputation and societal esteem. The Constitutional Court thus ordered the presiding senate to again ‘consider whether under the circumstances a non-pecuniary damages award is necessary’ and, if so, to ‘re-evaluate ... its amount’ and ‘to disprove all the doubts and reservations raised ... in a persuasive and constitutionally compliant way’ (I. ÚS 408/2010, 31). In its subsequent decision (3Co 334/2011-534), the regional court explicitly disputed part of the Constitutional Court’s legal opinion and awarded Harabin an identical sum in damages. In its repeated ruling in the case, the Constitutional Court held that the appellate court failed to respect its ‘sufficiently clearly stated’ legal opinion. Since the regional court’s decision remained ‘arbitrary and unpersuasive in the part concerning compensation for non-material loss’, the Constitutional Court again ruled that the publisher’s freedom of expression had been violated (II. ÚS 213/2014, 29).

The perceived arbitrariness and bias of decisions resulted in frequent appeals, unpredictable litigation results and undue legal uncertainty for both plaintiffs and defendants. L09 argued that ‘courts do not provide judicial or legal certainty’ because the Supreme Court repeatedly changed or set decisions of appellate courts aside even after the payment of compensation. Moreover, according to respondents, in the mid-2010s, first instance courts were still deciding comparable cases diametrically differently. Schwarz stated, while ‘certain predictability exists, it doesn’t mean that the moment of surprise is absolutely absent’. Due to the ‘vague’ principles pertaining to the disputes, judicial decision-making was very subjective, making it possible for two judges to consider an identical case ‘diametrically differently’. L13 similarly believed that the inconsistencies and failure of adjudicatory practice to reflect that ECtHR case-law was a binding part of the Slovak legal order, caused legal uncertainty. Leško observed that it was ‘absolutely unpredictable’ how a dispute would end because one could ‘be unlucky and the judge may see only the harm caused to honour’, disregarding other circumstances. Personality/goodwill protection disputes involving media-defendants were not the only area characterised by legal uncertainty, which represented ‘a fundamental problem for the functioning of the rule of law’, according to Kamenec. The rule of law necessitated ‘predictability of law, respect for legitimate expectations [and] basically constant and systematic interpretation of legal rules’, denoting that the result ‘cannot be different every time’. Sedlačko similarly argued that despite the recurrent emphasis in Constitutional Court case-law on the undesirability of varying decisions in similar circumstances, ‘the predictability of adjudication is not at such a level that would, in the interest of legal

certainty, perhaps be desirable’.

6.4.4 Reasons for the Unfairness and Unpredictability of Adjudicatory Practice

While most respondents did not feel qualified to comment on the reasons for the arbitrariness and unfairness of the adjudicatory practice in personality/goodwill protection disputes involving the media, some were able to offer potentially valuable insights for future policy change.

6.4.4.1 Lack of Expertise, Time and Vanity of Judges

Benedik, believed that most ordinary judges either did not understand or were ‘simply unable to digest’ the importance of freedom of expression emphasised by higher judicial authorities and tended to decide ‘in the same way as years and years ago’. In Benedik’s experience, courts often either dismissed established principles as non-applicable to the case or ‘turned them on their head’. He mentioned a 2016 judgment that cited all the relevant constitutional and ECtHR principles but nevertheless concluded that the qualifications used were too strong and thus disproportionate and unlawful. L12 likewise argued that appropriate triangulation of the conflicting interests should stem from the erudition and expertise of judges, which he believed they often lacked and were thus unable to decide justly. Other interviewees similarly recognised that experience was crucial in relation to the competent adjudication of these disputes (L01, L04, L09, Ikrényi, Sedlačko, Langer). Judges who encountered a personality protection case against the media for the first time tended to struggle with triangulating the competing interests.

Several respondents (L01, Ľalíková, L12) indicated that the relatively frequent changes to court jurisdiction in these matters (see Chapter 4) had contributed to the low quality of decision-making as it prevented judges from building solid expertise. Adamčík argued that when heard before the plaintiff’s local court, the disputes were adjudicated by judges ‘who were usually confronted with these issues for the first time and thus rose to the occasion with different level of competence’. Some were able to decide in a fair, well-reasoned way. However, given their workload, they largely had ‘no chance to improve [their expertise] to the same extent as judges at [Bratislava district courts] five, two and four’ where large media organisation had their domiciles. Ogurčák was similarly

convinced that the predictability of decision-making in the regions tended to be lower as most judges ‘absolutely fumble around in the dark’ and ‘have no idea what they are talking about’. Schwarz argued that the relative improvement in adjudication predictability, particularly in terms of damages award levels, was largely due to the fact that since 2012 judges at large media houses’ domicile courts were able to gain expertise.

While lawyers might play a pivotal role in directing overloaded judges towards the relevant case-law, many respondents recognised that judges were frequently too vain to follow the guidance or case-law of higher judicial authorities. L01, who in the late 1990s co-led a judicial training programme regarding Convention case-law claimed that initially there was a lot of resistance to ‘tak[ing] instructions from Strasbourg’. Langer experienced a regional court characterising the proportionality test as ‘an absurd institute’ which ‘it will not apply’. According to Langer this approach was typical of many ordinary judges who ‘see their own truth’ and ‘feel that they know best how to decide’, yet ‘don’t go into depth and are superficial’. In certain cases, e.g. when *Plus 7 dní* was ordered by courts to publish an apology that covered 54 pages of the weekly (Terenzani 2014), Múdry (2014) complained about the ‘arrogance of judges’ unwilling to listen to explanations about how the media and production processes worked ‘because they have their own ideas’.

6.4.4.2 Lack of Independence, Tribalism and Informal Networks

The perceived arbitrariness, unpredictability and unfairness of the adjudicatory practice, particularly in cases involving high-profile plaintiffs, led respondents across the spectrum to question the independence of the judiciary. While ‘the predictability of these decisions is improving all the time’, Adamčík argued, ‘there are still some cases that occur as a flash in a clear sky, where you feel that the decision was not independent’. Maintaining that ‘any sensitive text must be written in a way that you can prove before a just court that you are in the right’, Tódová was adamant that ‘when you stand before an unjust one you can have any evidence you want, you will not succeed’. Similarly, Petková was convinced that ‘the courts are not absolutely independent’, and Benedikovičová perceived adjudication in cases involving politicians as ‘lacking independence’. According to Fulmek, ‘the largest problem’ for the press was the ‘definitely not impartial’ adjudicatory practice in cases concerning a narrow and ‘relatively clearly distinguishable circle of

people’, including judges, state prosecutors and certain politicians, whereby the presiding judges clearly ‘look[ed] for arguments against’ defendants. Fulmek found it ‘absolutely unbelievable’, that in *Stiffel v. Petit Press*, the regional court repeatedly decided in Stiffel’s favour, confirming the original damages award despite a Supreme Court decision that had identified numerous deficiencies in the former’s original judgment.¹⁵⁰

Some interviewees acknowledged that judges might find it hard to remain impartial when deciding cases involving criticism of members of their own social group. Diko suggested that where the presiding judges might ‘see themselves’ in the plaintiff’s place, they become incapable of looking at the case from the viewpoint of freedom of expression and importance of public discussion. Balogová believed that the judiciary was ‘very closed and uncritical [towards its members]’ – ‘very collegiate in the negative sense of the word’. Milan similarly claimed that because judges perceived a judge-plaintiff as ‘one of us’, they simply felt ‘the need to stand behind him/her’ thinking ‘in their sub-consciousness “What if the same happened to me?”’ Múdry (2013) thought internal loyalties explained the propensity of ordinary courts to award large damages to judge-plaintiffs. Using a football metaphor, he stated, ‘a judge always passes the ball to another judge’. L12 argued that there was a sharp difference in adjudication of disputes involving judges and public officials, not to mention ordinary citizens. L12 described a case where ‘solidarity among judges’ manifested itself, in which a court chairperson successfully sued several outlets for violating his right to innocence presumption, receiving millions of Slovak crowns in damages.¹⁵¹ L12 considered ordinary courts far from fair and independent. He believed that judges ‘always succeed in defamation disputes’ due to nepotism, corruption and prevalent informal practices. Vozár himself also represented a case where he believed ‘solidarity among judges’ was the driver for the large damages award.

Some respondents were convinced that the perceived pro-public plaintiff bias of ordinary courts was exacerbated by the ambivalent relationship many judges developed

¹⁵⁰ In 7 Cdo 192/2013 from 10 December 2014, the Supreme Court found that the deficiencies in adjudication had not been resolved and again set the case aside, returning it to the regional court for further adjudication.

¹⁵¹ It would appear from L12’s description that he was referring to the disputes brought by Judge Polka.

towards the media based on their reporting on the judiciary in the 2000s. Adamčík explained, that from his conversations with judges it was apparent that the ‘totally unfair’ adjudicatory practice stemmed from the fact that many within the judiciary ‘started to perceive the media as enemies because they tended to write negatively about their colleagues’. Moreover, there were certain personalities in the judiciary, including Harabin and Polka, who led others by example in ‘an evident attempt to intimidate the media’. Šimečka similarly argued that a decision in a dispute where ‘a judge from your tribe stands against the media’, which you considered your enemy, was ‘totally simple’. Šimečka believed that judges like Polka and Harabin realised that defamation litigation was ‘a good method’ to ‘silence the media’ and considered the damages awarded to senior judges as a ‘malicious attempt to harm [the media] on the part of presiding judges’. Soltész suggested that as ‘members of a certain estate which the media criticise on a daily basis’, given the lack of public trust in the judicial system, judges ‘naturally feel hostility’ towards the media. As a consequence, ‘if the slightest opportunity exists for the publisher to lose, he/she will lose with a hundred-percent guarantee’.

Media professionals and lawyers were overwhelmingly convinced that clientelism, fear and pressures from superiors played a role in the adjudicatory practice favouring high-profile plaintiffs. Prušová speculated that judges’ subconscious desire to secure politicians’ protection might have played a role in adjudication of the latter’s cases. Brunovský felt that in *Fico v. Trend* judges ‘took into consideration that [Fico] is a high-profile politician with influence over the judiciary’. Fico’s former lawyer, L01, also admitted that in some instances the ‘power of the PM’s personality’ might have worked to his advantage. Vozár was convinced that the incidence of large damages awards for high-profile politicians ‘was no coincidence’, suggesting that presiding judges were ‘either afraid or pressured’. Vozár demonstrated the influence of informal networks with an anecdotal story heard from a judge who was present when a court chairperson was phoned by another judge to ask whether he/she knew anyone at a regional court because a high-profile politician ‘has a dispute there’. According to Vozár, the existence and influence of such ‘inner corruption’, as he called it, illustrated the difference in the quality of democracy between Slovakia and well-established democracies.

Adamčík also believed that there were cases when ‘politicians in Slovakia were able to arrange [favourable] court decisions’ at ordinary courts either as a result of ‘favours in exchange for favours’ or ‘direct influences inside the judiciary’. Adamčík ‘felt a strong influence’ on adjudication in some of the high-profile disputes he worked on:

‘The influence was there. What tools were employed to achieve it, I don’t know. Nevertheless, I felt it – and very, very significantly’. He recollected a dispute, in which a judge different to the one appointed as shown on the court work schedule delivered the result ‘absolutely without problems ... laughing in my face’. Nicholson was threatened by a plaintiff – a former state prosecutor – during a break during a hearing that he would ‘lose at the district level, regional level and see at the Supreme Court’ because the plaintiff ‘had the influence’ to arrange it.

Several respondents directly or indirectly implied that between the mid-2000s and mid-2010s when Harabin held leading posts within the judiciary, judges’ considerations of their career prospects might have played a part in their adjudication of media disputes involving him and/or his close allies. It should be noted that, Harabin’s lawyer, Ľalíková, suggested in contrast, that under political influence or pressure from their superiors some judges might decide against a high-profile party which was in the right. Ikrényi implied that some of the controversial decisions might have stemmed from ‘the state of the justice system’. As an illustration, he described a judge pronouncing a judgment in the plaintiff’s favour ‘with her back towards [the parties] as ‘her voice trembled because she could not identify with what she was delivering’.

Fulmek suggested that many of the decisions that disregarded freedom of expression principles were down to the pressures within the judiciary and the bonds that ‘are insurmountable within the generation’ of judges, prosecutors and politicians in leading positions. Fulmek imagined that in many decisions involving “Harabin’s people” the fact that ‘all judges here are scared of Harabin’ played a crucial role. Similarly, Vagovič believed that *tyždeň* unjustly lost the above-discussed case with the Supreme Court judge because Harabin testified at the hearing and ‘his presence influenced the presiding judge’. ‘Just as [Harabin] entered the room and the judge noticed him, the atmosphere changed completely’, resulting in an ‘absolutely ludicrous’ verdict, Vagovič said.

The pressures within the judiciary were discussed publicly in relation to appellate proceeding in *Harabin v. Petit Press* when the originally appointed presiding judge was removed for the newly-appointed senate to confirm the original decision in Harabin’s favour. Tódová, was convinced that Petit Press would have ‘won were it not for the change of senate at the regional court under suspicious circumstances’. The veteran judge, Anna Benešová, was removed following Harabin’s objection to her bias, based on disciplinary proceedings initiated against her. Benešová, who was found guilty and

demoted to a lower court publicly argued that the disciplinary initiative served as a punishment for her approach towards the adjudication of Harabin's defamation dispute (Vilikovská 2010a; SME 2009; The Slovak Spectator 2009). Benešová accused the court of pressurising her to prioritise the then Justice Minister's disputes and of instructing her how to rule: 'I was told by the management how to decide, which offended and outraged me. No one will tell me how to rule' (Benešová 2009).

Benešová claimed that the regional court chair, who initiated the proceedings, had privately admitted that she had to file the disciplinary complaint otherwise she would have faced dismissal (Vilikovská 2010a). Benešová publicly proclaimed that 'in the judiciary the [new] trend is fear' in the sense that every judge 'will carefully consider how to rule because even I was suspended from one day to the next' (cited in SME 2009). Benešová was backed by observers and colleagues among judges, fifty-one of whom launched a petition against the decision to demote her, claiming that the proceedings were orchestrated to keep Benešová from adjudicating in Harabin's defamation disputes and amounted to nothing less than bullying (Vilikovská 2010b).¹⁵²

Interviewees further suggested that some judges might have been motivated 'by the vision of promotion' as Tódová put it. Following the above-discussed repeat judgment of the regional court in Harabin's favour, which was criticised by the Constitutional Court for ignoring its binding legal opinion, the presiding judge was promoted to the Supreme Court. Prušová thus believed that this case was 'not about truth and justice' suggesting that decisions 'based on motives other than truth and justice' were easily recognizable as they lacked persuasive reasoning.

According to lawyers and media professionals, when proceedings were held in the domicile court of the plaintiff, local informal networks often contributed to the pro-plaintiff bias in personality protection decisions. Branding the switch to a plaintiff's general court that came into force in July 2007 'Fico's and Harabin's work', Adamčík was convinced that it represented 'an evident attempt to subjugate matters to local bonds'. As also indicated by the discussions about nepotism in the judiciary in Chapter 4, the influence of informal, local bonds was perceived particularly strongly in Eastern

¹⁵² Following a Constitutional Court ruling that Benešová's right to a fair trial was violated (Petková 2011), the disciplinary case closed in 2015 after the submission was withdrawn (SITA 2015).

Slovakia. Balogová explained, ‘certain complainants drag cases to the East of Slovakia in particular because they have the judges more under control’ than in the capital. Zlámalová characterised the local relationships in Eastern Slovakia, as ‘impenetrable’ for media defendants.

Benedik indicated that the propensity of courts to award higher damages was partially explained by the various ‘local bonds [and] relationships’ that ‘were in operation’ if the proceedings took place before the plaintiff’s local court because ‘as a rule, people who were someone in the concrete [geographic] area sued’, and ‘whether the judges wanted it or not, it simply influenced them’. Ogurčák argued that ‘local bonds’ played ‘a very important role in personality protection disputes’, particularly in cases of local politicians, sportsmen, celebrities and other well-known local people. Several defendant lawyers argued that it was not uncommon to learn about local bonds between the presiding judge and the plaintiff. While convinced that such bonds or corruption prejudiced the proceedings, they were usually unable to prove them to the standard required for filing a complaint of bias. Langer illustrated his point with a case in which the plaintiff won on appeal before the regional court led by his uncle and received damages of 100,000 euro instead of the original 10,000 euro. Zlámalová also claimed that ‘it was a big problem when court local competence was [set] pursuant to plaintiff’s domicile’ because one could ‘feel at district courts away from Bratislava that everyone knows everyone and that [plaintiffs] have fixed [the result]’. Soltész similarly declared: ‘for five seconds I did not think that there was a judge who was impartial’ at the district court in Eastern Slovakia where proceedings in his defamation dispute were held. Soltész also admitted that he was only able to achieve a reduction in the damages award on appeal by utilising his informal networks and ‘influencing the court’.

Lawyers perceived that the 2012 jurisdictional rules change helped to cut the bonds, increasing the fairness of the proceedings as plaintiffs lost ‘their sway over the judges’, as described by Ogurčák. Benedik observed that since proceedings were lodged in the capital and judges were ‘not bound by a local milieu’, proceedings became ‘about something else’ and damages levels were reduced. Unless proceedings were ‘manipulated so that a concrete judge gets [the case]’, Zlámalová also perceived Bratislava judges as ‘more professional’ and better able to distance themselves from the disputes.

6.5 Adjudicatory Practice Effectiveness

Respondents across the spectrum agreed that personality/goodwill disputes took too long, particularly when concerning high-profile plaintiffs. L09 characterised ‘the time dimension’ of personality protection disputes as ‘crazy’. Lukášek believed that ‘as a rule, proceedings in personality protection last too long’ and that ‘in order to fulfil their aim, they should really be shorter’. According to interviewees, it was not unusual for personality/goodwill protection cases to last five, ten or even fifteen years. Many of the causes célèbres filed in the early 2000s were still pending on (repeated) appeal or before the Constitutional Court at the time of the interviews. The delays were to a large extent the result of the general case overload at ordinary courts as discussed in Chapter 4.¹⁵³

Several plaintiff lawyers suggested that proceedings at first instance tended to take longer than most civil disputes due to the relative inexperience of judges in this area of law and its procedural specificities, which required the court to evaluate many legal arguments and much evidence in order to establish the facts of the case. Ľalíková and L09 also believed that the delays and the low quality of reasoning within decisions partially stemmed from the perceived nepotism in selection of judges and the resulting missing key qualities within the judiciary. Ľalíková’s said ‘judges are insufficiently erudite... they are unable to decide quickly. Having reviewed a case, they are unable to adopt a position. Therefore, hearings get adjourned until ... the judge “becomes enlightened” to conclude the matter’.

Lawyers recognised that the parties themselves might sometimes advertently or inadvertently delay proceedings. L01 and Sedlačko argued that a deliberate failure of witnesses to turn up forced judges to adjourn hearings. Some believed that defendants might deliberately prolong the proceedings, by, for instance, suggesting ‘nonsensical

¹⁵³ In 2013 district courts received 1,485,747 new cases, translating to 1,736 cases per judge. In 2013, the average length of proceedings in civil law matters at Bratislava district courts, which since 2012 heard most of the personality/goodwill protection cases against the media, was almost fourteen months, and over twenty-three months at the Bratislava I district court, which, according to some interviewees, adjudicated most of the disputes (MS SR 2016). In 2012, the Bratislava Regional Court, which decided most personality/goodwill protection disputes on appeal, received 27,726 new cases – 370 for each judge. According to some respondents, the average length of appellate proceedings before the court lasted 2 – 3 years.

evidence’, as P03 put it, in the hope that the plaintiff would abandon the action. Lukášek, in contrast, argued that the delays might be down to plaintiffs’ tactical thinking concerning their ability to bear their burden of proof. Lukášek explained, ‘I recommend to my clients, if they want to prove the harm ... they suffered, to wait because ... after a week one can hardly prove that one’s social relations have been damaged’. Zlámálová further argued that delays were often caused by the plaintiff’s request for court fees waivers, which defendants naturally appealed. Due to the sensitive nature of the issues at the centre of personality/goodwill protection disputes and the strenuous relationship between some public plaintiffs and the media, litigation tended to go through several levels of judicial action (sometimes several times) before a final decision was reached.

The situation had improved following the adoption of the principle of concentration of proceedings in personality protection disputes (see Chapter 5), even though the policymakers’ motivation was seen as questionable by some media representatives. Since the principle was adopted when Harabin – one of the most prolific plaintiffs at the time – was Justice Minister, they felt that the purpose was rather instrumental. Kamenec said, ‘politicians who tend to sue always want to regulate the proceedings for themselves so that it is easier to litigate’. Nonetheless, most lawyers believed that ‘the introduction of the concentration principle has helped to accelerate these proceedings’, as L20 put it. Adamčík explained that, once judges got accustomed to the rules particularly concerning their obligation to instruct parties in the summons to the first hearing, it enabled them to expedite the proceedings by rejecting late adduced evidence without any risk of being reproached on appeal. Zlámálová advised that litigation involving private plaintiffs tended to be finally concluded within four years from the early 2010s instead of the seven to eight years previously.

6.6 Conclusion

The chapter investigated the adjudicatory practice of Slovak courts in personality/goodwill protection matters, an aspect of the operation of defamation and privacy regimes largely ignored in previous studies. The analysis revealed an inability of ordinary courts to interpret and apply the law-on-the-books in a fair, certain and effective manner. This raised serious questions for its ability to achieve adequate protection of the

private and public interests in reputation, privacy as well as freedom of expression with the potentially dire consequences for freedom of express in particular.

Fairness

Through most of the studied period, the adjudicatory practice was viewed as biased towards personality protection, failing to adequately value political speech and criticism on matters of public interest. The unfairness was particularly stark in disputes involving powerful public officials, including politicians, senior judges and prosecutors, whom ordinary courts tended to award disproportionate damages. The clear disjunction between the awards received by high-profile plaintiffs for questionable reputation or privacy harm and those achievable by ordinary persons led to wide-spread perceptions of inequality before justice. This had the potential to seriously affect private plaintiffs' interests in personality protection as well as the veracity of public debate about matters of general concern. The "costitutionalisation" of personality/goodwill protection in the Constitutional Court's case-law in the late 2000s and early 2010s shifted the balance towards protection of expression, increasing the 'fairness' of the regime, with hopes that the past gross abuses of the law by powerful plaintiffs would not be repeated. However, its impact on adjudication practice of ordinary courts was not felt uniformly.

Certainty

The adjudicatory practice of ordinary courts remained unpredictable and arbitrary, particularly in disputes brought by high-profile plaintiffs. The Constitutional Court's inconsistency in adjudicating personality/goodwill protection cases and the inability or reluctance of ordinary courts to properly apply the general principles the Court and the ECtHR developed left all parties with undue uncertainty about litigation outcomes and the defendants about the lawfulness of contemplated speech.

Effectiveness

Personality/goodwill protection litigation was protracted and plagued by delays, in some cases lasting up to fifteen years. Although the introduction of the principle of concentration of proceedings in personality protection disputes visibly expedited decision-making, the civil regime remained unable to provide plaintiffs with efficient reputational vindication and the public with corrected information.

The analysis suggested that the inability of ordinary courts to triangulate the interests in reputation, privacy and expression in a fair, certain and effective way was a consequence of a multitude of interlinked factors. These included the lacking resources and capability of judges, exacerbated by changes to court jurisdiction rules and nepotism in their selection, the parties' actions and most markedly judges' personal prejudices, their adversarial attitudes to the media and the prevalence of corruption, clientelism and informal networks in the judiciary – all legacies Slovakia's democratisation period (discussed in Chapter 4).

While previous socio-legal studies of the interplay between defamation and journalism in mature Western democracies documented the perceptions among defendants and their lawyers of the pro-plaintiff bias and uncertainty of defamation and privacy regimes (most notably Barendt et al. 1997, 186-190), the underlying causes were largely related to the vagueness or stringency of legal rules and unpredictability of jury awards (see Chapter 2) and thus differed markedly from those highlighted in this study. The findings of this thesis demonstrate that, as suggested by Habermas's theory of 'discursive democracy' and American legal scholarship, when studying the operation of legal regimes in immature democracies, researchers have to pay particular attention to judges' values, interests and cultural norms prevalent in society, journalism and the judiciary. In addition, the operation of legal regimes needs to be researched in the context of the mutual relationships between the principal protagonists including judges. For if corruption, clientelism and political pressures prevail in the judiciary and if the society is polarised to that extent that judges perceive the media as their enemies, however well-balanced, the law-on-the-books, the legal regime will not be able to achieve its aims in optimally triangulating reputation, privacy and expression.

In line with expectations of historical institutionalism (Bannerman and Haggart 2015, 10; Pierson 2004, 4; Thelen 1999), the findings underlined the value of taking account of path dependence when studying the operation of legal regimes. The failure of the Slovak Constitutional Court, in contrast to its Czech counterpart, to correct the unfair personality protection adjudication practice of ordinary courts favouring high-profile plaintiffs allowed for bias and uncertainty in the regime to prevail even after its attempts at re-centring the system in the late 2000s. On the other hand, the effects of changes to procedural rules – in the Slovak case the jurisdictional rules and the principle of concentration of proceedings – were demonstrated to have hindered or contributed to the

ability of a defamation and privacy regime to achieve an optimal balance between the competing interests.

Lastly, by depicting the role played by the ECtHR, the chapter highlighted the importance of considering the international legal context when studying a legal regime's triangulation of reputation, privacy and expression, as also suggested by the conceptual framework and Townend (2014) for instance. The key, albeit indirect, contribution of the ECtHR's rulings in Article 10 disputes against Slovakia to the shift in the Constitutional Court's personality protection case-law and thus the gradual re-centring of the regime between the late 2000s and early 2010s was clearly demonstrated. The principal protagonists also viewed the Strasbourg Court's case-law as a benchmark of fairness in decision-making against which they measured the Slovak adjudicatory practice.

The next chapter explores the consequences of the operation of the regime on the private and public interests in protection of reputation and privacy. It takes the perspective of plaintiffs who sued the media for personality protection and plaintiff lawyers. Focusing on the 'complex calculus of plaintiff motives' (Bezanson 1986, 806), it examines to what extent the law, as interpreted and applied by courts, was able to safeguard the plaintiffs' and the public's interests in personality protection.

Chapter 7: Protection of Reputation and Privacy Interests

7.1 Introduction

This chapter examines the extent to which the personality protection regime safeguarded the private and social interests in reputation and privacy when triangulating the competing rights at its core.¹⁵⁴ Drawing on the conceptual framework developed in Chapter 2, to gain a better understanding of the law's ability to protect these interests, research needs to explore who actually sues for personality protection, why they sue and what objectives they pursue through litigation. According to the reviewed literature, injured parties decide to sue if they perceive litigation to be the most effective means of achieving their objectives at the lowest possible cost. They may select other statutory or non-statutory means, if they deem them to be more effective to attain their reputation and privacy objectives. If alternative remedies are unavailable and litigation costs too high, injured parties might be left with no means to defend their rights. The would-be plaintiff is expected to do the costs-benefit calculation with their perceptions of legal factors, namely the fairness, certainty and effectiveness inherent in the law and adjudication practice, in mind. Contextual factors such as would-be plaintiffs' interactions with lawyers and/or the media might prove important when explaining why they choose legal means to defend their legitimate interests.

The ability of the regime to protect individual reputation and privacy rights, and by extension the public interests in protecting the values, will be reflected in the plaintiffs' satisfaction with their litigation experience and their opinion on whether they achieved their objectives. According to previous empirical research (e.g., Bezanson 1986), despite frustration with the judicial system workings, even public plaintiffs in media-friendly systems might feel that through litigation they attained some or most of their objectives in restoring their reputation and privacy and that the law protected their interests.

¹⁵⁴ The examination in this chapter is limited to protection of natural persons' personality rights as opposed to legal entities' goodwill rights.

Chapter 4 found that plaintiffs in personality protection disputes with the media tended to be relatively affluent, well-educated public figures with above-average legal knowledge, holding positions dependent on a good reputation. Private plaintiffs constituted the minority not only because they rarely appeared in the media but also because they were less aware of and interested in protecting their reputation and privacy. The most frequent plaintiffs were politicians, judges, prosecutors, law enforcement officers, lawyers and businesspeople. There were some high-profile plaintiffs who were considered particularly litigious.

Chapters 5 and 6 examined the legal factors that are expected to play a role in would-be plaintiffs' cost-benefit calculations regarding to litigation. It was concluded that in the context of journalistic speech the law-on-the-books sought to protect natural persons' honour and dignity against publication of false factual statements or unfounded value judgments objectively capable of lowering the individual's civic esteem. The law also granted protection against dissemination of true facts and images about a person's private life without consent. The law sought to deter unlawful infringements and, if they occurred, to provide individuals with various forms of redress, including cessation of the infringement, restoration of consequences, judicial declaration of falsity, and moral (apology, retraction and admittance of fault) and/or monetary satisfaction for the non-material loss suffered. The personality protection regime also provided individuals with discursive remedies under press and broadcasting law and with criminal protection for the most serious instances of defamation. The regime was seen as unpredictable, arbitrary and ineffective at providing swift redress by plaintiffs and their lawyers. They largely believed that the re-centring of the regime following the shift in the Constitutional Court's doctrine in the early 2010s weakened the available protection of reputation and privacy as succeeding in civil actions against the media became harder. They also perceived an inherent unfairness and inequality in court decision-making in terms of achievable damages for powerful, high-profile plaintiffs and others.

Drawing on these findings, this chapter seeks to investigate what the Iowa Libel Project (ILP) called the 'complex calculus of plaintiffs' motives' (Bezanson 1986, 806) involved in their decision to defend their reputation and privacy rights. It first explores why plaintiffs felt the need to sue, whether they pursued alternative remedies and what they sought to achieve through litigation. It examines how their calculus was influenced by their perceptions of the legal regime's operation and contextual factors, including the would-be plaintiffs' interactions with their lawyers and/or the media and their

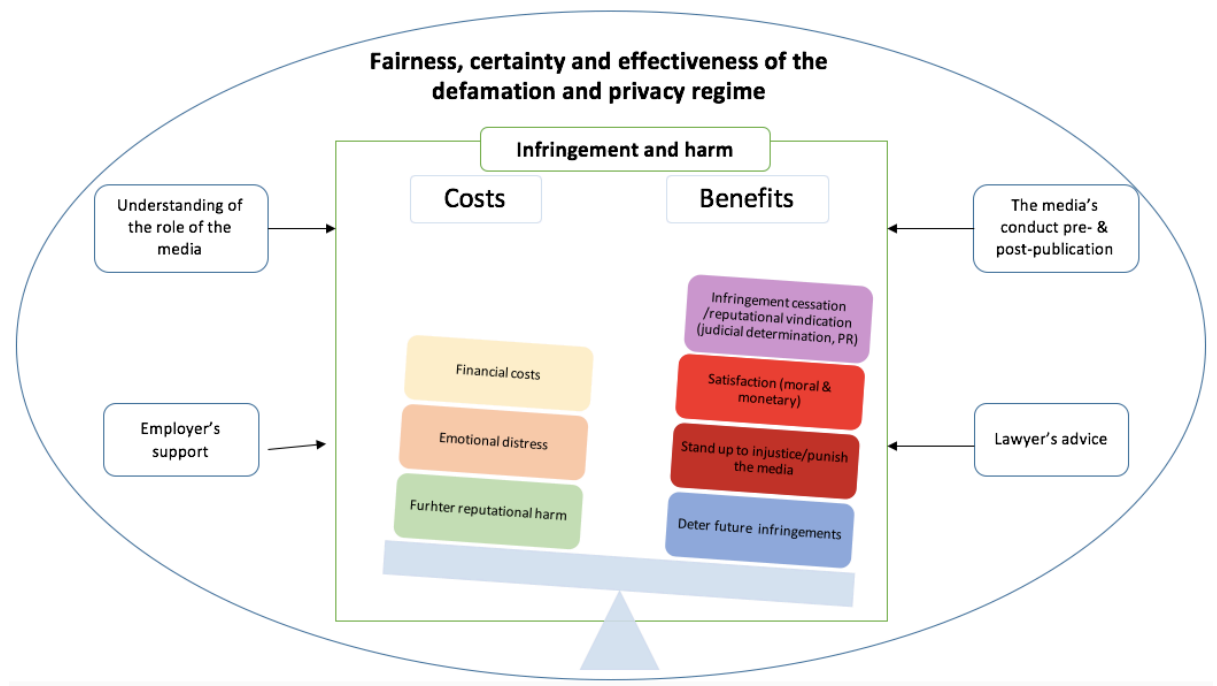
understanding of the media's role in a democracy. The chapter then investigates the extent to which the plaintiffs felt their reputational and privacy interests were protected. It looks at the plaintiffs' level of satisfaction with their litigation experience and results and whether they would sue again. The chapter lastly explores the extent to which the personality protection regime was able to protect the public's interest in quickly receiving corrected information or the injured party's response and deterring unwarranted attacks.

The chapter is primarily based on the retrospective views and perceptions of six plaintiffs who sued the media. The interviewed plaintiffs' cases either generated a final judicial decision, were pending on appeal, or settled out-of-court after the start of proceedings. The chapter also presents the views of plaintiff lawyers, in order to better understand the extent to which the personality protection regime safeguarded individual and social reputation and privacy interests. In addition, the views of three of the most litigious public plaintiffs: Robert Fico, Štefan Harabin and Ján Slota, expressed during proceedings and in public statements, together with the views of the lawyers of the former two, are explored.

7.2 The Decision to Sue

In contrast to assumptions in UK scholarly literature (e.g. Mullis and Scott 2012b, 55-56; Mullis 2010a, 11), in line with ILP's findings (e.g. Bezanson, Cranberg, and Soloski 1985), legal considerations featured little in plaintiffs' cost-benefit calculations to sue. While the plaintiff-interviewees were aware of the financial, emotional and reputational costs of litigation and its protracted nature, they believed that civil action was their sole means to defend their personality rights and to redress the harm or threat to their professional career, social relations or family life suffered as a result of unlawful publication. Their perception of the media's conduct post publication was also a major driving factor in their decision. The interviews revealed other key contextual factors that featured less prominently in previous research, as the plaintiffs' interactions with their lawyer, or not at all, as the plaintiffs' perception of the media's behaviour before publication, their understanding of the role of the media in a democratic society and support of their employer (Figure 7.1).

Figure 7.1: Plaintiffs' Decision to Sue – A Cost-benefit Calculus



7.2.1 The infringement and harm suffered

The interviewed lawyers suggested that personality protection disputes with the media typically involved reports of wrongdoing or unethical conduct or publication of allegations by third parties. The encompassing allegations and/or value judgments were, in the plaintiffs' opinion, unfounded, misleading, incomplete or truth-distorting. Since the impugned stories often covered important matters of public interest, a clear conflict between the public and private interests in reputation and expression was involved. P04 objected to a broadcast of 'several incorrect facts, from which the reporter drew his subjective opinion, including a suggestion of "a lawyer suspected of unlawful conduct"'. P03 – a candidate for re-election as a court chairman at the time of publication – brought action for an article concerning his leisure activities. Acknowledging his public figure status, P03 objected to the spurious and misleading nature of the published information: 'I am a public figure. Let them write what they want, as long as they write the truth'. P03 found the 'infringement was absolutely inadequate', as he was depicted 'as a person who misuses his post and goes hunting for free in a state hunting reserve'. P02, an economic crimes police investigator, believed he was defamed in a magazine article that 'impressed

false facts on to the public’ and alluded to corruption on his part in relation to a criminal prosecution case he had halted.

Another type of dispute involved primarily the tabloid press and sensationalist defamatory publications or intrusions into individuals’ privacy. Since such ‘canards’, as Vozár called them, were rarely factually based, they were clearly not serving the public interest. Acknowledging the difficulties with delineating the limits of justifiable criticism, P01, a magazine editor-in-chief, sued for a commentary containing ‘insults’ based ‘on absolutely nothing’. As P01 put it, ‘[a]lthough I work in the media and know that it is not easy, certain standards were violated and it was beyond the limits ... of what can appear in the media under freedom of expression’.

A distinct type of action, pursued by two judge-plaintiffs, concerned privacy infringements and violations of the Judges Act, which protected the personal details and images of judges in order to safeguard judiciary independence. P06 objected to the publication of his address within a moderated online discussion under a newspaper article. P05 sued a tabloid for publishing her personal details, including marital status and the age of her juvenile daughter, and intrusions into her private and family life in a ‘contrived’ story based on a photograph showing P05 and her future husband, a former high-profile politician. P05 sued another tabloid for publishing her daughter’s name and clandestinely taking photographs depicting them in front of their house.

The respondents expressed the harm suffered as a result of the contested publication in terms of non-material loss in line with the legal assumptions. However, the harm was, as Sedlačko pointed out, ‘hard to grasp, illusory, [and] impossible to measure’ because it proved impossible to gauge what effect the publication had on their social status. Harm was perceived differently, depending on the individual’s disposition – some might shrug it off, others might dread going to public places for fear of being recognised. Nonetheless, in light of the country’s small size, low media literacy levels, high internet penetration, according to lawyer-respondents, defamatory or privacy-intruding publication often had serious consequences for the injured party’s emotional well-being, family life, social relations, security or career prospects.

It was not uncommon for the defamed person to lose his/her job and/or become unable to find a new post in a relevant field. Ikrényi’s client lost his ministerial contract following publication of unfounded allegations even though the minister’s office was aware of his innocence. According to Ikrényi, ‘the media are decisive nowadays’. Public institutions ‘often simply give in even if they know [the media] are not right, because

they fear further confrontation or defamation’. P03 claimed that his professional honour suffered as the public was misled to believe he was yet ‘another fat cat who goes hunting in state grounds for free ... [and] is also arrogant and proscribes journalists to write about him’. P03 was convinced that the publication thwarted his re-election chances, as a selection committee member testified that while he considered P03 to be ‘the best candidate’, after the publication ‘he wanted peace’ and placed P03 in second place. P02, who characterised the publication’s aftermath as ‘a traumatic’ experience, lived through a communication breakdown at work and was eventually dismissed from his job. Unable to find clients locally, he was forced to set up an accountant’s practice elsewhere.

Several plaintiff-respondents and their families suffered considerable emotional distress as a result of their perceived civic esteem damage. P01 believed that defamatory publications threaten one’s societal status as people ‘see one in a different light. One’s authority is questioned. One’s moral integrity is questioned’. While the publication did not impact on P01’s job, she and her family suffered emotional harm: ‘what distressed me, despite being a strong person, was, above all, that my children were forced to deal with it’, as ‘their friends started asking questions regarding their mother. And that is ... something every parent finds difficult to bear’. P05 ‘felt very bad’ after the first publication came out because she believed that many people, including the parties to proceedings that she adjudicated, started to see her in ‘a very negative light’. P05 ‘almost physically felt’ condemnation by colleagues and found herself indirectly reprimanded by a superior who publicly stated that ‘he disapproved of judges appearing on front pages’.

Other plaintiffs’ social and family relations suffered. P04 started receiving anonymous threats and described a complete break-down in neighbour relations. Her relationship with family suffered as she became subject of ‘derogatory slurs’. While P04 first ‘did not want to admit the extent of the consequences’, following verbal attacks in presence of her young daughter, she decided to move home and office and to revoke the power of attorney she held in relation to her neighbours’ disputes – which were the broadcast’s focus. P04 also felt under pressure from clients who did not want to be publicly associated with her, prompting her practice to lose money. P05’s relationship with her adolescent daughter became strained after she learned from the press about her parents’ divorce and refused to attend school following taunts from classmates. In the light of previous attacks on her car, P05 believed that the disclosure of her personal information posed a real threat to her and her family’s security.

The high-profile, litigious plaintiffs also maintained repeatedly that the impugned publications caused them and their families emotional distress, damaging their family and social relationships, and threatening their professional honour. Slota, claimed that published allegations ‘had an impact on his, his wife’s and parents’ mental state’, leading ‘to the tragic death of his parents’ and ‘confusion’ in Slota’s marriage. Slota’s social and professional life suffered as ‘friends and acquaintances began to avoid him’ and in politics he was ‘continuously attacked with questions and allegations’ (*Slota v. Spoločnosť 7 Plus* No. 3, 6; also *Slota v. Petit Press*; *Slota v. Ringier* No. 2). Harabin maintained that one could not ‘describe in words’ the consequences on his ‘personal, professional and social life’ (Medialne 2013) of publication of the impugned statements in *Harabin v. RTVS*.¹⁵⁵ Following the publication of ‘the apparently false’ accusation in *Harabin v. Petit Press*, 2 he ‘experienced personal psychological trauma’ and ‘had an open wound in his soul’ when confronted with ‘words of disappointment’ and questions from family, colleagues and acquaintances. The publication led to family tensions and change in colleagues’ behaviour, leading to his isolation, and diminishing his credibility as a judge. Fico ‘felt very uncomfortable’ when alerted to a ‘defamatory statement’. It even caught the attention of his adolescent son ‘who was negatively impacted’ by it (Petition to commence proceedings in *Fico v. Trend Holding*, 5). Fico’s relatives ‘reacted negatively to the accusations’ that he called journalists ‘dirty bastards’. His mother telephoned demanding to know whether he had used those words because ‘one doesn’t talk like that in their family’ (*Fico v. Petit Press* No. 1, 4). Fico claimed that by publishing a caricature depicting him without a backbone, Petit Press failed to ‘respect such an intimate matter as pain’¹⁵⁶ and caused him ‘very intensive harm’, which he and ‘every ill person in his place’ would perceive as serious (*Fico v. Petit Press* No. 2, 3).

Several lawyers argued that a defamatory publication seriously threatened their political careers. Sedlačko considered news media as the fourth estate that won elections,

¹⁵⁵ The dispute involved the following comment broadcast by RTVS: ‘As a doctor I can say that sometimes disease is infectious. And our judiciary is ill. Dr M. also fell ill. And Dr L., who died of stark persecution by Dr Harabin, fell ill’ (cited in Kostelanský 2012). It was made during a public discussion on the conditions within the judiciary by a psychologist who had treated Harabin’s two late critics.

¹⁵⁶ Following the cancellation of Fico’s official engagements due to acute neck pain, *SME* published a caricature depicting a doctor examining Fico’s x-ray picture, stating: ‘I was not mistaken. Your backbone pain is purely a phantom sensation’.

set trends in society, and represented the only communication channel between public life and citizens, whose only knowledge of politics originated with the media. He believed it was ‘completely unrealistic’ to expect that following unsubstantiated accusations in the press a person could clear his/her name in the eyes of fellow citizens. Since some voters might decide based on ‘the crazy stuff written in the media’, L01 – Fico’s former lawyer – was convinced that politicians did not have the luxury not to care about defamation. L01 claimed that falsehoods published about Fico ‘might not only have caused harm to his private life but harmed him in terms of voter preferences’. Fico repeatedly claimed that the contested statements ‘threatened, damaged and to a considerable extent lowered [his] esteem, professional honour and dignity’ because ‘the public had no reason not to believe the artificially created media reality’ (*Fico v. Spoločnosť 7 Plus No. 3, 3*).

Fico frequently argued that publishers ‘turned the public against him’. The public trust he had enjoyed ‘had been seriously damaged and the public had been misinformed’ (Petition to commence proceedings in *Fico v. Trend Holding, 2*; also *Fico v. Spoločnosť 7 Plus No. 3*; *Fico v. Petit Press No.1*, *Fico v. Spoločnosť 7 Plus No. 4*). Slota asserted that the impugned statements ‘unequivocally politically disparaged him’ because a politician’s impeccability ‘can be of key importance for voters’ decisions’ (*Slota v. Petit Press, 4*); they ‘had a hugely negative impact on his political standing’ because ‘some readers might appropriate the false and truth-distorting information’ (*Slota v. Ringier No. 2, 3*); or were ‘capable of prompting a decline in voter preferences in national as well as regional elections’ (*Slota v. Spoločnosť 7 Plus No. 1, 4*).

7.2.2 Civil Litigation as the Sole Means to Obtain Redress

Plaintiff-respondents perceived the alleged defamatory statements as a direct threat to their social and/or professional standing, political career or security. They decided to sue because they believed it to be the sole means open to them to achieve personality protection. Most the findings about benefits of litigation replicated the assumptions of academic literature or findings of previous research (e.g. Mullis and Scott 2012b; Bezanson, Cranberg, and Soloski 1985). The interviewed plaintiffs argued to have sued to vindicate their reputation, stop the infringement, receive moral and/or monetary satisfaction and punish the media for the harm suffered. The previously little explored aims or benefits of standing up to injustice and preventing future unlawful infringements

stood out. Plaintiffs felt that civil action was the only available avenue to obtain redress because they either perceived malicious intent on the part of the media, suffered such extensive harm that could not be remedied through alternative means, or because the media rejected or ignored their before-action claim.

In line with legal and scholarly assumptions, the interview data suggested that the primary aim of most defamed persons was to achieve immediate cessation of the infringement and/or obtain fast reputational vindication and moral satisfaction in the form of a public apology. The responses indicated that most plaintiffs wanted an admission of guilt from the media. Following legal consultation, many would-be plaintiffs or their lawyers, contacted the media with a before-action request of redress. Ikrényi argued that he did not 'like to initiate lawsuits' but advised clients to forfeit damages and request an apology first. Ikrényi was convinced that a promptly published apology, even if watered-down, was more valuable to vindicate one's reputation than any monetary compensation. Ikrényi's firm had managed to settle some eighty percent of cases involving broadsheets at the before-action stage with an apology.

L04 cited a case where a news portal amended an article following a before-action letter. The client decided not to pursue litigation as the reputational harm was very short and further damage was avoided. Ľalíková recommended clients to first request an apology, and in case of 'more serious infringements', i.e. concerning a party with high social standing, also monetary compensation. Harabin, Ľalíková's most high-profile client, was infamous for sending before-action claims for substantial monetary compensation. P03, P04 and P06 contacted the respective media organisations, requesting an apology (and in P06's case the removal of his personal data). For P03, a public apology was the only effective means of vindicating his reputation: 'Given that very many lies, half-truths and falsehoods were published and since I, in fact, don't have any other option to defend myself, I requested an apology from the publisher'.

Despite the availability of corrections and/or replies under broadcasting and press law, and the option to submit complaints to the Press Council such alternative remedies were, according to lawyers, rarely requested as they did not provide adequate redress. Most lawyers argued that press corrections were of limited value to the claimant because they applied solely to incorrect facts, excluding any misleading or truth-distorting value judgments. Corrections and replies provided little moral satisfaction to the claimant since they did not involve any admittance of fault or apology by the publisher. In contrast, L01 repeatedly emphasised that Fico had a rule to 'always go for press corrections', unless the

publication concerned such ‘a glaring issue that there was no point in publishing one’ or if the violation could only be compensated through damages. If published, L01 considered corrections an effective instrument to restore reputation because they permitted the public to learn the truth quickly. According to L01, requesting a correction prior to litigation might also benefit the client because some judges considered all the plaintiff’s efforts to achieve redress when deciding on damages. Apart from P02, none of the interviewed plaintiffs requested a correction/reply. Although not permitted under press law, P02’s correction request also included a publisher’s apology, suggesting that admission of fault was crucial for many plaintiffs.

7.2.2.1 Media’s Reluctance to Settle before Action

Even if Slovak media outlets’ reluctance to admit mistakes in public (Múdry 2017; Šípoš 2007b) stemmed from other reasons than that described by previous research (Bezanson, Cranberg, and Soloski 1987, Chapter 4), the interviews suggested that the behaviour of the media when plaintiffs approach them for alternative remedies before litigation is key to many plaintiffs’ decision to sue. Given the media ignored or rejected their before-action claims, none of the interviewed plaintiffs were able to obtain fast redress through alternative remedies.

Plaintiff lawyers’ views

Lawyers acting for plaintiffs argued that despite the potential savings of increasingly scarce resources, media organisations tended to reject or completely ignore before-action requests. As Sedlačko explained, the media tend not to ‘accept the first “shot” or effort to settle or publish an apology or correction’. According to L13, the Press Council decisions were largely ignored. Lukášek claimed that press and broadcasting law provisions were ‘little respected’. While tabloids tended to ignore all requests, serious outlets were more willing to provide redress or at least provide justification for the claim’s rejection. Sedlačko advised, some outlets ‘will out of principle discuss nothing. Nothing at all. “Sue us if you don’t like it!” [they say]. The more tabloid the paper, the more arrogant the attitude; the more serious the daily [or] weekly, the more open they are to discussion’.

Media-defendants' views

The interviews with media managers, professionals and lawyers painted a more nuanced picture of the media's attitude towards before-action requests. They largely confirmed the reluctance to publicly admit fault, especially in the instance of public claimants. Most respondents acknowledged that news media were not invincible, that given the work pace and amount of content produced, mistakes occurred, and incorrect facts were published. Senior editors, however, suggested that only a fraction of before-action requests received by broadcasters and serious print outlets ended up in court, as media organisations tried to settle meritorious claims. Whilst maintaining that, 'we always try to settle somehow', Krejča estimated that around ten percent of all requests received by *Markíza* led to litigation. *HN* did not have to 'deal with disputes too often' because, according to Obradovič, claims which typically involved 'a tiny mistake' were resolved in a subsequent publication. Kubina argued that the majority of before-action requests did not end up in court because genuine claimants were willing to settle using alternative remedies. *SME's* Fila argued that 'ninety percent of problems that arise from actual mistakes are resolved prior to getting to court'.

Newsrooms' willingness to settle depended on the assessment of the claim's merit and compliance with formal requirements. Given the courts' emphasis on the truthfulness of information, the primary focus was on establishing whether incorrect facts, or unfounded opinions had been published, and if so, how to remedy the situation. As Fila explained, 'our first concern is to assess whether we have made a mistake to which we quickly have to react'.

Editors and lawyers recognised that most private individuals and businesses were genuinely outraged and/or believed their reputation to be threatened by what they viewed as false allegations. They thus sought fast redress, primarily through discursive remedies. Kamenec argued that these claimants were 'not interested in spending years in courts but genuinely fe[lt] the need to deal with the issue' and 'above all' wanted 'moral satisfaction, whether an apology, setting the record straight, correction, [or] reply, which might potentially mitigate the infringement's impact'. Brunovský believed that companies and businesspeople who had painstakingly cultivated their public image naturally strived to defend themselves in the face of a perceived unfair depiction of their actions. Fila held that most corporations did 'not want to get into disputes' as they 'correctly understood' that infringements were unintentional or that the harm suffered would not generate a large sum in compensation. Therefore, they usually requested corrections or putting the record

straight in a follow-up article. Fulmek acknowledged there were ‘normal disputes’, involving private individuals who felt ‘genuinely outraged with something we wrote that they considered not to be true’ and requested moral satisfaction, or relatively low non-pecuniary damages.¹⁵⁷

Most respondents claimed that they immediately tried to offer redress concerning factual mistakes on their own initiative or following a request complying fully with procedural rules. Mikolášiková claimed that *Nový Čas* published a correction or clarification the following day, if a mistake had been made. Brunovský maintained, ‘we don’t have a problem with publishing corrections’ and ‘even publish them on our own initiative’ because ‘it is fair’. Kubina himself contacted meritorious claimants, arguing he was ready to swiftly and publicly put the record straight because he regretted having harmed them and because effective redress had to come immediately. Admitting that provision of instant correction was a mitigating circumstance in court, Kubina asserted that eighty percent of claimants were satisfied with an apology, which, in many cases did not need to be public. Diko believed that most claimants were satisfied with partial admission of fault and that public correction of factual mistakes allowed *RTVS* to avoid litigation in most cases. However, Diko also acknowledged that such practice ‘perhaps hadn’t always been customary’.

Newsrooms preferred to provide meritorious claimants with an opportunity to comment on the contested statements in a follow-up feature or letter to the editor rather than publishing corrections or apologies, which were deemed to undermine the outlet’s credibility. Such a settlement was considered simultaneously beneficial to the organisation, and to the individual, and the public. As Milan explained, where untrue facts obtained from a malicious source, his publisher strived to settle to avoid litigation because adjudication was ‘unpredictable’ and ‘no one gain[ed] anything by [going to] court’. Milan admitted that to avoid credibility damage the media tried to maintain the pretence of infallibility so tended ‘not to advertise’ their faults when providing redress. Instead, they offered to put the record straight in another article or to write an unrelated, ‘nice article about the person’ and, if requested withdraw the impugned item from the web

¹⁵⁷ According to Petit Press’s records, private individuals were the single largest group to request damages under 10,000 euro.

archive. Milan believed that this was ‘the fastest and best solution’ because courts were unable to decide personality/goodwill protection disputes fast enough to provide efficient redress.

Offering additional editorial content to subjects of stories who had previously been reluctant to comment was also in the readers’ interests. According to Brunovský, *Trend* often complemented contested articles with interviews or follow-up articles capturing the views of the stories’ subjects because ‘of interest’ and ‘of value for readers’. Some outlets tried to remedy personality/goodwill violations by offering complimentary advertising. Ringier settled several justified before-action claims in return for free advertising rather than a ‘puff piece’, which could unduly interfere with the newsroom’s independence (Mihálik).

Several editors openly admitted that they sometimes offered complementary content, even to shaky claimants, to avoid litigation costs. Obradovič claimed that in order to avoid ‘suddenly having to publish three corrections within a month, [which] reduces the daily’s relevance’, *HN* offered follow-up content even if the contested article was factually correct. Once initial emotions cooled, claimants were, according to Obradovič, more receptive to such offers and requests were ‘not pushed to the edge’. As Krejča put it, ‘even though we stand by [the facts] in the majority of cases, it is not worth getting into a dispute, if we can broadcast another report to simply add further information about the issues’. Krejča also believed that doing so served the claimant’s and public’s interests better than a trial and broadcasting an apology years later.

Newsrooms were generally reluctant to offer redress in cases perceived as unjustified when certain about their “truth” and having sufficient legally admissible evidence. Acknowledging that Ringier ‘considered the risk [of losing]’, Mihálik argued that as long as they were sure they ‘didn’t make a mistake’, they were ‘definitely less inclined to offer a settlement to the other party’. *TA3*’s Čekirda maintained, ‘we either rectify our mistake within a broadcast or we are prepared to face a dispute’. Krejča asserted that where they were ‘hundred percent sure’ about the impugned statements, they would ‘go and fight’ in court in preference to broadcasting a correction. Given the anti-establishment attitude characteristic of the ‘critical change agent’ journalistic culture and the mutual animosity between media professionals and political elites, the media perceived high-ranking public officials’ requests as largely unjustified and tended to reject them. Múdry (2017) explained that many media professionals preferred to ‘remain on the barricades’ and perceived politicians’ requests for corrections as attacks on their

editorial freedom and credibility in the eyes of the public. L01 believed that because ‘the media were against PM [Fico]’, ‘it was more beneficial for them to “spit at him” and preserve the spittle [mark] ... than to make amends or even admit a mistake’.

Balogová acknowledged that politicians might have felt that *SME a priori* rejected all their correction and/or apology requests, but argued that this was untrue. Public officials’ correction requests tended to be rejected due to their failure to comply with statutory requirements. These stipulated that corrections were only available in relation to factual statements and could not include a publisher’s apology. The latter was presumably why P02’s correction request was rejected. Balogová, also admitted that apologising to public officials was extremely sensitive in the context of media-politics relations where the prime minister publicly labelled journalists as ‘prostitutes’ and ‘hyenas’ paid for their biased anti-government reporting (Kužel 2010, 1; Šimečka 2009, 3; Školka 2011a) or as ‘dirty anti-Slovak prostitutes’ who ‘don’t inform’ but ‘fight with the government’ (Reuters 2016), and where traditional media were under attack from disinformation outlets (Jurina 2015; GLOBSEC 2016, 10-11; MacFarquhar 2016; Cunningham 2017, 7). From experience, the media knew that politicians tended to misuse previously published apologies to ‘undermine [their] credibility’ or tie journalists’ hands regarding future reporting.

Media professionals further felt that before-action monetary compensation claims were misused by claimants who sought to gain personal riches rather than fast redress. Kubina argued that *JOJ* increasingly received before-action requests for substantial sums from private individuals who threatened to ‘sue for something that doesn’t make any sense’. Willing to provide ‘an adequate’ moral satisfaction, Kubina was prepared to litigate if a claimant insisted on financial compensation. Čekirda maintained that *TAS* was ‘definitely not inclined to any settlement in relation to non-pecuniary damages’. Respondents suggested that the rise in speculative claims in the 2010s was associated with the public’s increased awareness of their personality rights and the large damages obtained by public officials in controversial disputes.

The interviews confirmed that serious newsrooms, including *SME*, *HN*, *Trend*, *RTVS* and *.týždeň*, tried to communicate their justification for rejecting before-action requests because of a conviction that after claimants’ initial anger passed, ‘often a threat of a lawsuit [wa]s fended off by [their] ability to disprove the claimant’s arguments’, as explained by Diko. In contrast, NMH’s outlets tended to ignore most before-action requests, because a response ‘essentially solves nothing’, according to Schwarz. Ninety-

nine percent of the requests concerned press corrections/replies, did not comply with the formal criteria so were ignored. Schwarz believed that ‘from the strategic viewpoint’ it was better not to react to meritless requests for monetary compensation as it helped to filter out speculative claimants trying their luck but who were not prepared to pay the court fee and pursue litigation. Schwarz admitted that failure to respond might prompt some claimants to sue even where they would have been satisfied with an apology. He believed settlement with such ‘irritable’ persons was unlikely so it was ‘statistically more effective not to react than to react’. NMH lawyers tended to negotiate only with claimants alleging particularly serious violations. Several respondents acknowledged that as a result, some public officials might see litigation as the only means of vindicating their reputation. Balogová believed that where claimants were driven ‘purely [by] their belief that they [we]re in the right’ and had been wronged by the media, despite newsrooms being convinced of ‘the truth’ of their outputs, it was legitimate for the conflict to be ‘decided in court’. Krejča believed that the majority of high-profile claimants were primarily interested ‘in clearing their name’ whilst admitting that *Markíza* had ‘definitely caused harm in the past’, and that claimants unjustly accused of wrongdoing just needed a *de jure* proof of their innocence to show future employers or business partners.

7.2.2.2 Perceptions of Unethical Media

The perceived behaviour of the media before publication, was another important factor considered by plaintiffs that has not previously featured in the literature. Several plaintiffs perceived litigation to be the only available means to defend themselves against intentional freedom of expression abuses perpetrated by the media. They were convinced that journalists had knowingly or unknowingly participated in **smear campaigns** either by disseminating false or misleading facts, often for bribes, with the malicious intent of discrediting them or through negligence by failing to verify the information they had obtained. P02 was convinced that the author of the impugned article failed to verify information leaked by law enforcement officers who wanted revenge on P02. P04 believed that the defamatory broadcast was produced at the request of a certain public official who wanted to discredit her. P03 believed that the reporter deliberately published false accusations despite his genuine attempts to explain the issues and how he was unable to be completely open about his leisure activities for security reasons: ‘The arrogance,

attitude and ... conduct of reporter R ... completely exasperated me ... the lie – I had asked him politely to understand why I cannot disclose [the information], and I read in the newspaper that I forbade [him] to write about me!’ P03 was certain that the piece was based on information leaked out of spite by a vengeful source with the intent of creating a scandal and smearing him before the election. As P03 put it, the reporter ‘posed his questions in such manner that I knew he tried to discredit me’.

Lawyers also mentioned unethical journalistic practices. Adamčík took on plaintiff work because some ‘media exercised their rights in an extremely offensive way’. Ikrényi gradually moved from defending the right to freedom of expression to representing plaintiffs because he realised that ‘the media need some sort of control’. He was convinced that, ‘at times, totally shallow human motives lie behind many articles’ and that sometimes journalists produced defamatory stories ‘with malicious intent’. Sedlačko recognised that there were many ‘genuinely decent journalists’. Journalism often required simplification and reporters were not experts so made mistakes without malicious intent. Nonetheless, he argued that journalists did publish, for bribes, hypothetical statements capable of destroying reputations: ‘Media organisations are in private hands. Media can be bought and it is possible to discredit a person in the media’.

Vozár had experience of a ‘sophisticated’ media smear campaign against a candidate for public office. Vozár suggested that ‘if we talk about [corruption in] society at large – in politics, in the police force, in the judiciary – corruption will also be present among journalists’. According to Vozár, ‘if some twenty percent of people are problematic within any occupation’, among journalists there ‘will surely also be some weaker links, who will write an article upon request, in which they discredit you in a sophisticated manner’. L09 was aware of instances ‘where journalists produced anything for money’. According to L09, ‘intelligence games’, whereby ‘an article or an attack appears on the web, which the media immediately consider a public source they can use’ were commonly used in competition among corporate entities.

The constant criticism of government, implying that ‘all politicians are corrupt’ (Kollár 2013b) arguably contributed to the fact that, high-profile public figures felt unjustly persecuted in the press. L09 maintained that his client, ‘a common businessman’, a former communist minister and the father of a controversial secret service director under Mečiar, together with ‘the whole family became the target of an [unjust] attack’ because the press did not have enough material on his infamous son. L09 was convinced that ‘as soon as you start fighting the media they will start attacking you ...directly or indirectly’.

Since the media ‘are relatively powerful and have many contacts’ with politicians or law enforcement employees, they can discredit one indirectly or they ‘write directly about you or strike next to you, [and write] about your family’. Ľalíková acknowledged that ‘truthful criticism’ of wrongdoing moved the criticised and all society forward constructively. However, she repeatedly argued that rather than trying to ‘draw attention to wrongdoing’, the media tended to ‘focus on a single person’ with the intent of ‘causing harm’ and ‘degrading’ him/her by publishing falsehoods, even though he/she had ‘act[ed] with all honesty’.

Ľalíková observed that many people committed ‘terrible deeds’ but there was ‘not a line about them in the newspapers’ as they ‘pay[ed] for so-called protection’ and/or ‘pay[ed] for smears about others’. Ľalíková believed that early 2000s’ reporting singling out judges who had remained active after purportedly trying political cases under communism represented such journalistic practice. She said, ‘they continuously described who sentenced whom and where’, ‘slandering those [judges] by name in the newspapers’ through questioning ‘how it [wa]s possible that they [we]re still at the Supreme Court ... although they had done such evil deeds’. Ľalíková described the case of *Stiffel v. Petit Press* as a prime example. Judge Stiffel publicly refuted claims that he ‘sentenced people for expressing their beliefs’ (Žemlová 2002b) and ‘adjudicated in political trials’ (Pataj 2002). Stiffel argued that ‘[o]ne cannot recriminate and condemn a judge for adjudicating in accordance with the legal code valid at the time of proceedings’ (cited in Pataj and Vražda 2004). Ľalíková likewise asserted that Stiffel had to respect current law, which did not recognise religious freedom. She believed that Stiffel was unjustly singled out for sentencing the priest even though the decision in question was made in a senate. If the daily pursued ‘justice and redress’ the focus would centre on ‘the senate as a whole’, Ľalíková said. ‘[B]ecause voting within a senate is confidential’, it was possible that Stiffel was outvoted. However, since ‘they did not mention anyone else, did not slander anyone else, but only wrote about him’, Ľalíková was convinced that the articles were ‘personal’ and represented an unjustified attack on her client.

Ľalíková thought Harabin was one of those ‘appallingly pilloried’ in news media. Echoing the interpretation by ordinary courts that was criticised by the Constitutional Court, she believed that the headline “Harabin protects murderers” constituted unfounded, impermissible criticism. Ľalíková argued that ‘if it simply had a different headline, it would be no big deal’. Having read the word “murderer”, every person must have imagined ‘something terrible’. Ľalíková was adamant that even criticism of

politicians should be rooted in fact: ‘let them write that ... he has done something wrong, that he was supposed to do this and that. Let them write, let them criticise him. But they cannot do it in this way when nothing is going on’. Reiterating that ‘the headline cannot diametrically differ from the article’, Ľalíková was convinced that such sensationalist pieces were published to increase circulation and to harm their subjects rather than being a genuine attempt to inform the public.¹⁵⁸

Harabin frequently professed his low opinion of journalists, stating that ‘the lies that certain journalists write about [him] have gone beyond the limits of tolerance and decency’ (cited in Košíček 2008). According to a Supreme Court press release, reports about Harabin’s alleged phone conversation with the Albanian drug lord ‘concerned a political-intelligence game originating with Mr L. whose collaborators [we]re former or current, information service agents’ (Jurči 2007). Ľalíková considered the impugned programmes at the heart of *Harabin v. RTVS* as another smear campaign in which ‘they once again slurred Dr Harabin [accusing him] of causing the death of two judges even though ‘he did not know one of them, he had absolutely never seen her in his life’.

P03 thought the story involving him was part of the outlet’s battle with Harabin, whom he characterised as ‘a controversial figure for the media’. P03 was convinced that the daily ‘tarred him with the same brush as Harabin’ because in 2007, as Justice Minister the latter appointed P03, even though he had come second in the selection process for Special Court Chairperson. Professing he had no prior knowledge of Harabin’s intentions, P03 believed that since the outlet ‘fought and to this day fights against Harabin’ he was perceived as a person close to Harabin.

Arguing that ‘one gets angry when [journalists] write falsehoods’, L01 described numerous instances of incorrect facts published about Fico or herself. While she acknowledged the fast pace of journalistic work, L01 believed that it was largely the product of, particularly tabloid, journalists’ negligence and, at times, motivated by an intent to harm Fico. L01 stated, ‘recklessness in failing to verify information played a role’ and ‘they might have even published something false with intent because at that moment before elections ... it was more expedient for them’. L01 perceived an unjust

¹⁵⁸ A Justice Ministry press release (Jurči 2007) similarly characterised the claims as ‘a manifestation of [the author’s] deplorable character and hatred rather than an endeavour to inform objectively’.

hostility towards Fico on the part of the media. She believed it prompted Fico's refusal to tolerate any publication of false allegations about him. L01 conceded, 'from my viewpoint, [mutual animosity] was there. I don't know what the PM would say, but from my perspective it was there'. L01 strongly rejected that Fico was overly sensitive towards legitimate criticism, stating that he was 'a generous person who really [wa]s not easily offended' and did not sue 'at all costs'. According to L01, Fico 'never filed a lawsuit against another politician' acknowledging that having entered public life he had to tolerate greater criticism. However, 'if it was a journalist who wrote falsehoods, he had no reason [to tolerate it]' because the latter 'had had time to verify [the facts] and did not act in the heat of the moment'. During proceedings, Fico repeatedly complained of personal attacks against him, pointing to publishers' 'endeavour to scandalise' him (*Fico v. Spoločnosť 7 Plus No. 2, 3, 6; Fico v. Spoločnosť 7 Plus No. 3, 2*) by publishing false or truth-distorting information about his or his relatives' conduct. Fico objected to, what he perceived as, publishers' 'vicious and malicious, condemnable conduct and misuse of the press' (*Fico v. Spoločnosť 7 Plus No. 4, 2*), 'spiteful and malicious conduct' (Petition to commence proceeding in *Fico v. Trend Holding, 3*) and mocking and laughing at his his serious health condition (*Fico v. Petit Press No. 2*).

Slota also felt unjustly attacked by news media, calling the publication of allegedly unsubstantiated cronyism accusations a day before mayoral elections as 'politics, a method of influencing the voters' and attempt at 'his discrediting', particularly given that the report's author was the wife of another candidate (*Slota v. Spoločnosť 7 Plus No.2*). Slota similarly claimed that the publisher's 'endeavour was not to provide readers with objective information about [his] past, but ...to discredit [his] person in the eyes of the public' when reporting on his conduct whilst emigrating (*Slota v. Ringier No.2*), or that the impugned statements could 'be considered an unsubstantiated attack' against him (*Slota v. Petit Press*).

Some lawyers recognised that the red tops employed reporters without basic journalist skills or knowledge who might inadvertently infringe individuals' personality rights. Lukášek argued that journalists were 'sometimes unaware that personality protection is desirable and that certain individuals ought not to become the subject of stories'. However, plaintiffs and their lawyers more frequently perceived privacy intrusions and sensationalism as an integral part of the tabloids' business model. L13 claimed to have represented clients intentionally scandalised in the tabloids. P01 believed the publisher in her case deliberately neglected its duties and responsibilities by allowing

offensive opinions to appear in the weekly because it ‘profited’ directly from them. ‘The editorial staff of course knew about it’, P01 maintained, ‘but they probably counted on the fact that no one would speak up’. P05 argued that tabloids ‘deliberately break the law’ and ‘represent a form of business founded on cynical manipulation of emotions’ and perpetually ‘finding new victims whose privacy is recklessly intruded under the banner of press freedom and “public interest”’. P05 claimed that ‘a literal persecution of members of the political class, which fails to differentiate between legitimate control by the media regarding politicians’ conflicts of interest or abuses of power and bullying by the media, intruding into the most intimate sphere of the politician and their family’, became the norm. In addition to repeatedly having her intimate sphere invaded and her private details published, P05 and her family experienced weeks-long harassment by reporters and further humiliating attacks on the pages for non-cooperation. P05’s was blackmailed by reporters who demanded he provided their wedding photographs otherwise they ‘would write what they s[aw] fit’ about the wedding.

7.2.2.3 Civil Action as the Sole Available Means Left to Stop the Infringement and Vindicate Reputation or Privacy

Having unsuccessfully sought an apology or correction, the interviewed plaintiffs saw no alternative recourse to civil action to set the record straight and defend their reputation or stop privacy intrusions and gain moral satisfaction. Maintaining that ‘an apology would absolutely have sufficed’, P03 filed a lawsuit when the outlet failed to respond to his before-action letter. P03 repeatedly emphasised, ‘how shall you defend yourself against falsehood or lie? You can do nothing; you simply have to sue’. P02 decided to litigate after his correction requests had been rejected as he found no other way to restore his reputation. Having failed to secure an apology, P04 pursued legal action two years after the infringement as she ‘had repeatedly been confronted with doubts of third parties’ about her work and because she wanted to prevent her daughter becoming ‘the target of such doubts’.

Plaintiff lawyers also believed that the majority of claimants seeking speedy vindication to reputational damage would have been satisfied with alternative remedies to civil action if offered prior to the start of proceedings. Lálíková, thought there would be fewer disputes if the media settled prior to the commencement of proceedings because

‘once the case is in court, almost no one is willing to settle’. L01 also suggested that the media’s rejection or ignorance of discursive remedy requests might propel some people towards litigation. L01 was certain that in many cases Fico would not have resorted to litigation had a correction been published because he wanted the public to learn the truth.

Achieving confirmation of the falsity or uncertainty of the published statements

The interviews confirmed the ILP findings (e.g., Bezanson 1986) that while the aim of legal action is to vindicate reputation, such vindication does not necessarily have to come in a final judgment. P04 ‘did not doubt’ her ‘ability to prove the falseness of the broadcast facts’, and strived ‘to achieve a written apology ... without the need to publish it’. P04 further asserted that securing damages was not her primary aim despite the significant material loss she had suffered following the broadcast. P04’s case suggested that some plaintiffs pursued litigation as a means of obtaining confirmation of the falsity or uncertainty of the published statements, which could be used in future cases of reservations concerning their professional conduct. The judicial decision and defendant’s apology did not need to be public to serve this purpose. The apology also did not need to be published following a court order. Since P04 was able to obtain the apology in a personal letter as part of an out-of-court settlement, she withdrew her action. In *Harabin v. P.*, Harabin claimed that he wanted to protect his professional honour: ‘If someone publicly and without proof falsely accuses you ... under the rule of law you have the right to seek protection of your name and honour’ (cited in Kostelanský 2012). Ľalíková argued that Harabin withdrew his lawsuit against P. after she had apologised in a personal letter because the dispute ‘was really not about money ... he merely wanted to clear his name’.

Although he would originally have been satisfied with cessation of the infringement and an apology, the publisher’s failure to remove his personal data from its website infuriated P06 who ‘simply became angry because it really caused [him] problems’. That was why he ‘filed the lawsuit’. P06 repeatedly maintained that he ‘wasn’t after the money’ or ‘after making a profit’. Since P06 was able to attain his primary objective – the infringement cessation and moral satisfaction as part of the out-of-court settlement – he was content to drop his damages claim.

Litigation as an instrument of self-help

While desiring a judicial award for moral satisfaction, public plaintiffs viewed the lawsuit as an instrument of self-help to be used to mitigate any potential impact on their

professional career. The act of suing represented a public reaction to what they viewed as unjust allegations and a public demonstration of their assertions of falsehood. This kind of PR exercise had to be done quickly to prevent future career harm. P03's remarks best illustrate this rationale: 'the impugned article, if I hadn't fought back, would have been absolutely liquidating for me'. P03, a judge, believed that the accusations might have sparked disciplinary proceedings against him as he 'was accused of unethical behaviour and misuse of [his] position'. Fico repeatedly claimed that in comparison with himself the defendants were 'at an advantage' because only publishers 'decide[d] about the content' of their papers, and thus also about which statements about him would reach the public (Petition to commence proceedings in *Fico v. Trend Holding*, 3). Fico argued that 'he d[id] not have such an option' at his disposal and if false information was published about him, 'his only way to defend himself out-of-court [was] to submit a correction request' (*Fico v. Petit Press No. 1*, 2). However, as the media rejected or ignored his requests, as L01 suggested, there 'simply was no [other] option to explain' the alleged media misrepresentations of Fico's conduct than through lengthy litigation. L01 believed that the situation was exacerbated by the deteriorating mutual relationship between Fico and the press which escalated into 'considerable animosity', whereby all parties became 'allergic to each other' and were unwilling to compromise. L01 was, nevertheless, convinced that Fico's primary objective was to vindicate his reputation through fast correction of untrue facts and/or public apology. Hence, following lengthy proceedings, in many media disputes he forfeited all pecuniary damages claims and settled with a public apology.

7.2.2.4 Civil Action as the Sole Available Means to Combat Injustice, Punish the Media, Gain Monetary Satisfaction and Deter Further Infringements

Plaintiff-respondents who considered themselves to be victims of unethical behaviour by the media and those who perceived the publication of an apology to be a further infringement believed that they could achieve redress only through legal action. Their aims were punishing the media, standing up to injustice and preventing further personality rights infringements. While the first motive was reported by the ILP (e.g., Bezanson 1986), the latter two have not been much discussed in the literature. L04 explained, 'there are such serious allegations that one would go into a dispute no matter what'. According

to Schwarz, a public apology ‘essentially [constituted] defamation’, as it ‘revitalise[d] the trauma [originally] caused’. ‘Many people ridiculed in the media’ were thus ‘not interested in featuring on the cover again’. P01 was ‘absolutely not interested in an apology from either the [impugned article’s author] or the publisher’ since ‘an apology from a churl ha[d] no value whatsoever’ for her and she did not want it to be published ‘in the same [awful] medium’. P01 immediately decided to take legal action on learning about the infringement. Given the appalling behaviour of the reporters seeking photographs and information who harassed her and her family, P05 ‘saw no reason to communicate with the tabloid outlets’ and was ‘convinced that one cannot react to a deliberate violation of the law through admonishment or by requesting an apology’. Although all the interviewed plaintiffs claimed non-pecuniary damages, only P05 explicitly admitted that when she decided to litigate she pursued monetary compensation for the harm suffered.

Punishing the media

By litigating and claiming monetary compensation, some plaintiffs strived to punish the media. Admitting that a damages award ‘comes in handy’, L01 was convinced that Fico ‘did not do it for the money ... [but] as also Strasbourg says, the sanction needs to punish the medium in a way’. Benedik recognised that plaintiffs’ motivation to sue might include anger or revenge. P03 expressed disgust and anger at what he perceived to be the unethical and corrupt behaviour of the reporter: ‘The fact that he ... portrayed me as a person morally disqualified for the office ... pissed me off! And at the cost of lies and falsehoods!’ Given his indignation, P03 decided to file a lawsuit unless he obtained an apology. As his anger intensified during proceedings, P03, like other plaintiffs, resolved to persist with legal action: ‘I am going to sue them until I am able to’, he claimed. P01 commenced civil action for damages to make publishers understand that ‘freedom of expression has its limits’ and that if misused ‘punishment may follow’.

Standing up to injustice

For several plaintiff-respondents, it was also crucial to stand up to injustice and show the tabloids that freedom of expression had its limits. The act of suing itself represented a means of empowering the victim of an illegitimate infringement who thereby demonstrated to the defendant and society that individuals were not powerless in face of unlawful behaviour and that fighting injustice was possible. This aim might be connected

to the socio-political developments in a democratising country where the rules of the game regarding responsible journalism standards are far from settled. P05 decided to sue because she wanted to upset the tabloids' 'business calculation' that 'injured parties will give up on filing a lawsuit for personality protection due to the related financial costs, the risk their lawyer won't be good, and a realistic expectation that even if they achieve justice, it will be years later'. P05's aim was to demonstrate to the publishers that she 'did not fear them' and would pursue the protection of her and her family's privacy. 'As a judge, whose mission it is to make sure that the law is respected everywhere and under any circumstances', P05 wanted to show the tabloids that she would not ignore their deliberate violation of the Judges Act. P01 understood litigation in similar terms, stating, 'I insist on my moral integrity'; 'I will not allow anyone to call it into question in such an undignified manner'; and 'I will defend myself within the remit of democratic society. You will not be able to get away with it just because you feel, you can [do] everything'. P01 believed that overlooking the sensationalist press's illegitimate behaviour might have a detrimental societal impact: 'I find it important to let others know, if injustice is done to you, that you will not silently tolerate it. People have to speak up'. According to P01, 'one cannot forsake some issues just because there is no point. Because there is a point' and '[t]hese singular issues affect the whole society'.

Preventing future unlawful personality rights violations

A few plaintiffs explicitly described litigation as an attempt to prevent future unlawful violations of theirs and others' personality rights, in other words, an attempt to create a *benign* chilling effect. P02 resolved to sue because 'someone need[ed] to stop' the media as 'they cannot go about slandering without facing consequences'. P05 'felt the duty to protect' herself and her fellow judges 'from further attempts at violating the Judges Act'. Her 'objective was thus also to act in a preventive manner', making journalists 'think hard' about reporting on P05's private life in future. Ľalíková argued that rather than wanting to enrich themselves, plaintiffs sought damages so that 'the publisher feels it and takes more care in future'. Some of Harabin's public statements also suggest that through litigation, he pursued a chill on, what he maintained was, illegitimate speech. Commenting on a 31,000-euro damages award for incorrect reporting (Báraba 2009), Harabin stated: 'it will always end up like this when a certain part of the media falls for the delusions and lies of opposition politicians' (cited in Košíček 2009b).

Monetary satisfaction, personal enrichment and financial harm for the media

Yet, his statements ‘[a] million always helps in times of economic crisis, I am going to help my relatives and others’ (cited in Košíček 2009b) and ‘a publishing house made me a millionaire’ (cited in Habrmanová and Dömeová 2007) suggested that personal enrichment was a welcome side effect of litigation albeit not necessarily the primary aim. According to Ľalíková, ‘if courts decided personality protection matters very strictly and awarded higher damages, publishers would be forced to start informing objectively or face liquidation’. Benedik also experienced a would-be plaintiff who desired to ‘liquidate the outlet’ that published false statements about him. The use of terms such as ‘liquidation’ by respondents in this regard implied that some plaintiffs’ use of personality protection law bordered on abuse.

7.2.3 Remedies Claimed

The remedies sought by plaintiffs largely reflected their motivations for filing the lawsuit. Most interviewed plaintiffs requested both an apology and non-pecuniary damages. None recollected seeking pecuniary damages. Plaintiffs determined the level of damages after consultation with lawyers as to the highest achievable amount. The damages claim of those who disclosed them ranged between 33,194 and 150,000 euro, with an average of 71,500 euro. Contrary to Constitutional Court case-law, Ľalíková argued that public figures with a prominent social status suffered larger reputational harm than private persons, unknown beyond their immediate circle of acquaintances. In his media disputes, Harabin, for instance, requested between 33,194 and 200,000 euro; Stiffel claimed 99,000 euro; Fico requested between 8,300 and 99,000 euro and Slota between 166,000 and 332,000 euro.

These relatively large sums¹⁵⁹ were not only a reflection of the perceived harm suffered but also a means of punishing the media for the infringements and deterring them from future illegitimate behaviour. Acknowledging a defendant lawyer’s argument that

¹⁵⁹ The national average annual wage in the late 2000s, when many of the lawsuits were filed, was below 9,000 euro, reaching 10,944 euro in 2016.

damages requested by well-off public figures were disproportionate, Ľalíková justified the amounts as a means of compensating for reputational harm which could never be completely vindicated: ‘once damaged, one’s good name cannot be restored because even if an apology was published straightaway not all the people, who had read the defamatory article, might read it’ and ‘suspicion remains’. Ľalíková said ‘With money, it’s different’. P05 was convinced that ‘the level of non-pecuniary damages should have a preventive effect on tabloid press publishers’. When determining her damages claims, P05 considered that her ‘personal integrity as a judge was strikingly violated’, that a ‘real threat’ that her personal information ‘could be misused by former or future parties to legal proceedings’ existed and that her reputation as a judge and woman was tarnished. P05 found the way that reporters harassed her daughter and parents and photographed them from a hide-out ‘particularly cruel’.

While the responsibility for the decision on the level of damages sought belonged to plaintiffs, most lawyers maintained that they tried to guide clients as to what was realistic. They otherwise risked only a partial costs reimbursement award. L12 unexpectedly declared that if a client refused his advice because he/she perceived the harm extremely intensely, he might ‘teach’ him/her how to transform his/her subjective feelings to fit the law or ‘create a situation in which he/she can carry the burden of proof’. As examples, L12 mentioned asking the client’s friends to write a condemning letter, or putting up a copy of the impugned article by the entrance of the client’s partner’s workplace. Lukášek believed that ‘as a rule, you are always able to prove the consequences [of an unlawful infringement] if you advise the client’ because ‘as long as he/she has enough witnesses, you are able to prove the loss occurred’. Harabin’s family, colleagues and friends featured frequently as witnesses in his disputes with the media. An analysis of four court decisions in Harabin’s personality protection disputes (Prušová 2012) found that Harabin’s wife, eldest son and brother provided incredibly similar testimonies in each case. In contrast, according to available district court decisions and some defendant lawyers, Fico hardly ever provided any proof of the harm suffered other than stating that his reputation in the eyes of voters suffered because he was accused of negatively perceived conduct.

7.2.4 Costs of Legal Action

The interviewed plaintiffs had been aware of the risks of proceedings. Some recognised that the costs had deterred other claimants from pursuing civil action. P05 believed that because ‘personality protection litigation is expensive and waiting for the result is disproportionately long’ tabloid press publishers, who ‘profit on privacy intrusions’ can ‘depend on the fact that only a fraction of injured parties will sue’. Nonetheless, the respondents perceived the harm caused or threatened by the infringement as so serious that the perceived benefits of suing outweighed its costs. The most frequently mentioned costs of litigation replicated the assumptions of the conceptual framework (Chapter 2) and included financial costs, the emotional distress caused by proceedings and the potential harm to high-profile claimants’ reputations.

7.2.4.1 Financial Costs

The interviewed plaintiffs were relatively well-off and could afford the costs of proceedings. The interviews suggested that compared to the 1990s and 2000s, financial costs of proceedings ceased to be a hindrance to access to justice. Ordinary persons’ access to justice significantly improved, allowing impecunious persons with meritorious claims to defend their rights. L09 argued that before 2007, when court fees in personality protection disputes were halved to three percent of the damages sought, personality protection litigation ‘used to be very expensive’. When P02 filed for legal action, the court fee was calculated as 66 euro plus four per cent of the claimed damages’ value. Having failed to secure a court fees waiver, if he wanted to claim damages, P02 had to pay more than seven-fold the average national monthly wage. According to P02, the court fee discouraged other parties mentioned in the same article from suing. Schwarz emphasised that even following the changes to court and lawyers’ fee rules ‘not everyone ha[d] the money to litigate on end’ as the costs accumulated with each level of judicial action.

In contrast, Adamčík believed that since the late 2000s, justice in personality protection matters had become much more accessible for ordinary plaintiffs and their material risk had been reduced: ‘access to justice is relatively easy and the situation is rather favourable’. Acknowledging that if charged the usual hourly rate, most plaintiffs

could not afford his services, L04 emphasised that personality protection cases were usually based on the basic tariff rate, which was affordable for private persons. Lukášek also did not find the costs of proceedings ‘restrictive’ and agreed that litigation had become more accessible for plaintiffs as district court judges increasingly tended to summon multiple witnesses to a single hearing in order to reduce delays in proceedings. This also reduced the number of hearings lawyers were remunerated for. Ikrényi did not think the costs were in any way ‘extreme’, as he perceived the main purpose of the disputes to provide the plaintiff with moral satisfaction.¹⁶⁰

However, given the amount of work for relatively low remuneration, private plaintiffs wishing to sue merely for moral satisfaction might have found it difficult to engage an experienced lawyer, and were either forced to abandon the suit or claim damages.¹⁶¹ According to Sedlačko, most lawyers with expertise in personality/goodwill protection would not take an action for satisfaction only or would try to discourage the client from suing: ‘There is so much work regarding personality protection and the result is so far away that if a client comes to me wishing to sue for an apology only, it needs to be a very influential person for whom the apology is of real value’.

7.2.4.2 Emotional distress

Would-be plaintiffs had to consider the emotional distress caused by the personal nature of proceedings where, in Sedlačko’s words, ‘every little detail of one’s personality is laundered and recorded’ into the court file and where the defendants ‘dig more dirt’ on the plaintiff. According to Benedik, the trauma and length of proceedings were ‘two important factors making many people change their mind about suing’. P03 maintained

¹⁶⁰ At the time of the interview, the court fee for action for moral satisfaction was 66 euro.

¹⁶¹ Given the small market size, the relative complexity of personality/goodwill protection work and low financial rewards, specialist personality/goodwill bar does not exist in Slovakia. According to respondents, no firm could survive on personality/goodwill protection or media work alone. There were ten to fifteen law firms that had systematically and continuously represented media-defendants and/or plaintiffs. In contrast to the defendant lawyer segment – populated by a few firms with considerable expertise – the plaintiff lawyer segment was rather fragmented. Bar the few defendant lawyers who did plaintiff work, there were a handful of firms in Bratislava known for representing personality protection plaintiffs. Most plaintiff lawyers therefore got involved in personality protection work infrequently, which was reflected in their knowledge of the case-law and procedures.

that the other party mentioned in the same article as him ‘didn’t have the nerve to sue’ the media and decided against litigation.

7.2.4.3 Further Reputational Harm

In line with the ILP’s findings (Bezanson, Cranberg, and Soloski 1985, 230-233), some lawyers argued that high-profile public officials needed to consider the risk to their reputation and political career caused by a widely publicised defamation dispute. L21, lawyer with extensive experience representing high-profile plaintiffs in the Czech jurisdiction, believed that, given the emphasis on the defence of truth, litigation risked further harm to a public official’s reputation if the court found the impugned allegations to be factually correct. There was a further risk that the allegations would be disseminated in the reporting of the dispute to a much wider audience. L21, therefore, tried to dissuade politicians from suing the media: ‘I tell them thrice, “Reconsider. What will you gain and what will you lose? What is the value of information published about you? No one will remember in fourteen days, or [even] tomorrow”’.

Sedlačko apart, Slovak lawyer-respondents did not mention the potential threat of litigation to a public plaintiff’s reputation. According to Sedlačko, in certain cases it was ‘better to explain to the client that it was more beneficial not to sue but to let the infringement be forgotten, rely on the “chilling effect” and move on’. Rather surprisingly, Sedlačko understood the concept of the chilling effect as the effect of time which made the injured party and the public forget about the defamatory allegations without causing excessive harm to the former’s reputation. Sedlačko admitted that in recent years he had managed to discourage half of would-be public plaintiffs who approached him, from suing.

The silence of Slovak lawyers on the issue might be explained by the fact that Slovak society was distrustful of the media and apathetic to the various allegations of wrongdoing they uncovered. Politicians’ repeated denunciations and verbal attacks against journalists (Belakova 2013), the active involvement by some of the journalistic profession in politics, the constant criticism and negativity towards the political elite, and the occasional attempts of owners to instrumentalise news media arguably contributed to an erosion of public trust in journalism as an independent agent (Johnson 2012; European Commission 2016).

The Slovak levels of media literacy were low (Ondrášik 2010a). Most people were unable to ‘tell the difference between sensationalism and good quality investigative reporting’ (Kužel 2010, 3). Moreover, many people struggled with existential issues and other everyday problems and remained indifferent to public affairs. According to Milan Kruml, rather than further tarnishing his/her reputation, litigation against the media had the potential to thrust a Slovak politician into the limelight and even increase his/her popularity. In contrast, suing the media threatened Czech politicians’ reputations more than the original infringements.¹⁶² Consequently, they tried to ‘find different weapons against the media’.

7.2.5 Plaintiffs’ Legal Considerations

The previous section showed how the plaintiffs’ cost-benefit calculus was strongly influenced by the media’s conduct before and after publication. Contrary to the assumptions of the reviewed literature (Chapter 2), legal considerations in terms of interviewed plaintiffs’ perceptions about the fairness, certainty and promptness of the personality protection regime did not seem crucial in their decision to sue because they saw litigation as the only available means to secure redress. However, as suggested by lawyers, other plaintiffs might have been influenced by these considerations.

7.2.5.1 Personality Protection Regime’s Fairness and Certainty

The perceptions of the regime’s fairness and/or predictability of result was not found to be influential on the plaintiffs’ decision to sue in the interviews. Plaintiff lawyers recognised the undesirable unpredictability of adjudication outcomes and an increasing pro-media bias, which rendered substantial damages awards considerably less likely. Nonetheless, they did not indicate that these would deter a considerable number of would-be plaintiffs from suing. Some, as Ikrényi, argued that the personality protection regime

¹⁶² Kruml mentioned a well-known case of a politician who ‘absolutely failed to understand that suing for a ... caricature depicting him naked with his wife, would be counterproductive’ as the reporting on his legal action would make ‘almost everyone’ aware of its existence.

should be about moral satisfaction and putting the record straight. Therefore, monetary compensation achieved through litigation was not considered to be the most effective remedy for low to medium extent reputational damage. The predominantly public plaintiffs I interviewed also did not mention legal uncertainty or unfairness of the system as factors influencing their decision. Their decision to sue was driven by a complex concoction of motives, the attainment of most of which did not necessitate a final judicial decision in the plaintiff's favour. Moreover, some of them, like P01 decided to litigate immediately after finding out about the infringement, regardless of uncertainty. Similarly, P06 and P03 resolved to litigate as they were unable to gain moral satisfaction through alternative means.

7.2.5.2 Promptness of Adjudication

The interviewed plaintiffs were all aware that they were unlikely to obtain prompt redress through litigation. However, having failed to achieve fast vindication through discursive remedies, or having felt the infringement and malicious intent so intensely, they believed that civil action was the only means to achieve adequate redress. Nonetheless, according to the lawyers, some would-be plaintiffs were deterred from pursuing legal action due to the inordinate delays in adjudication.

7.2.6 Other Contextual Factors Influencing Plaintiffs' Calculus

The plaintiffs' interactions with lawyers, support of their employer and their understanding of the media's role in a democratic society were revealed as other influential contextual factors. The latter two hardly featured in previous empirical research on plaintiffs' motives.

7.2.6.1 Lawyers' Role

Similar to the ILP (Bezanson, Cranberg, and Soloski 1985), the interviews with plaintiffs suggested that lawyers played a limited role in their decision to defend their rights against perceived abuses of freedom of expression in the media. The lawyers' role was to recommend the most appropriate strategy and act on the client's behalf. However, most

interviewed plaintiffs made their decision to sue either independently of their lawyer immediately after seeing the impugned publication or once they had failed to achieve alternative redress. Most were sure about the illegitimate nature of the infringement.

Ikrényi suggested that lawyers may play an important role in facilitating out-of-court settlement before- or during-action. He argued that when he used to represent defendants his decision whether to advise clients to negotiate a settlement was based on his perceptions about the opposing counsel. If he recognised the counsel as a well-known practitioner in the area of law and if the claim was formulated in a qualified way, he was more inclined to advise his client to settle. Ikrényi argued that he was able to settle disputes on plaintiffs' behalf with a broadcaster following its legal representation change. As Ikrényi was acquainted with the lawyer and respected him for his expertise, when approached with a settlement offer, he was willing to look for a solution agreeable to both parties.

The lawyer-interviewees suggested that they might play a more pronounced role in other claimants' decisions to sue. Firstly, many of the established lawyers insisted on assessing the merit of prospective clients' claims in order not to jeopardise their success rates. Lawyers recognised that most individuals perceived subjectively infringements into their personality as acute and unjustified. Many were thus unable to recognise that they were objectively incapable of threatening their reputation and thus not actionable. This, according to Ikrényi, was also the case with would-be plaintiffs among judges as 'some irrational element enters the equation, rendering the person unable to evaluate [the alleged infringement] in the same way as the cases of other people' in court.

In light of the public figure doctrine, lawyers assessed the claimant's legal status because, as Sedlačko put it, 'the more publicly active he/she is, the more criticism he/she needs to tolerate and must expect that someone will try to smear him/her'. Distinguishing between factual statements and value judgments, lawyers reviewed the impugned publication sentence by sentence, assessing whether factual statements were true, misleading or truth-distorting, whether they were published in the correct context, and whether the claimant's views were reflected. Some required would-be plaintiffs to provide evidence of impugned statements' fallaciousness. Lawyers evaluated the factual basis of disputed value judgments and whether they could be considered as sound and fair comment. Given the importance attached to the truthfulness defence by ordinary courts, lawyers principally focused on factual inaccuracies. L01 'almost always went after factual statements' because these made the easiest cases. Benedik considered 'incorrect

factual statements are alpha and omega of these disputes' because 'if you are able to prove the inaccuracy of factual statements, in line with case-law, including that of the European Court, as a rule, not even value judgments pass muster'. With alleged privacy infringements, where the defence of truth is not permitted, as long as the information related to the person's intimate or family life was published without prior consent, lawyers considered the proportionality and extent of the intrusion – whether it was constituted by the publication of factual statements, photographs or recordings and how the latter were attained.

The lawyers stressed that where they were unconvinced that the case had a real chance of success, they would recommend the client to abandon an action or look for another lawyer. Apart from the case's merit, lawyers also considered the potential costs and benefits of legal action, and, as discussed above, often encouraged clients to seek fast moral satisfaction through before-action notices first. A few even actively discouraged public claimants from suing the media and looking for other platforms to put the record straight so the public would quickly forget about the misleading publication.

7.2.6.2 Employer's Support

Employer's support, particularly where the infringement concerned professional activity, might be decisive for some people. Organisational backing was crucial in P01's decision to pursue legal action. She 'would not have gone into such a lawsuit without the knowledge of the firm', since the defamatory publication partially related to her public activities. In contrast, P02 felt that the infringement was so serious that he decided to file a lawsuit without his employer's support.

7.2.6.3 Understanding the Media's Role in Society

Several respondents suggested that a public official's propensity to sue the media might depend on their individual political culture, their understanding of the media's role in a democracy and the ensuing mutual relationship between the public figure and the media. Kamenec, who did not think that 'suing for a caricature was the best PR move' Fico had ever made, believed that whether public officials sued the media depended on their understanding of journalism and 'their ability to effectively communicate with the

media'. Kamenec was convinced that, in contrast to Fico and his coalition partners, Iveta Radičová – the prime minister between 2010 and 2012, understood the democratic role of the media. In Kamenec's opinion, Radičová, whose communication style and media strategy were opposite to Fico's, would never contemplate suing for an unflattering caricature.

Radičová herself recognised¹⁶³ that the media did not respect press and broadcasting correction provisions, leaving the public claimant no other option but to 'turn to the court' or give up on defending his/her rights. As Radičová put it, 'the institutes which should ensure redress if a mistake occurs are not functioning'. Radičová, described an introductory shot in a crucial live TV debate during the 2009 presidential election campaign as 'absolutely manipulative', putting her at a disadvantage against the other candidates. Although the Broadcasting Council found several violations of the law, the television channel in question failed to issue an apology or correction. Despite her apparent belief in the injustice of the infringements Radičová, admitted that she did not consider suing the outlets.

While not explicitly discussed, Radičová's responses indicated that her repeatedly professed belief in the media's role as a watchdog and her aversion to attempts to control the media by public officials played a role in her decision not to sue. Without prompting, Radičová insisted she was a proponent of 'values like freedom, the right to [press] freedom in conjunction with responsibility, protection of privacy and individual freedoms'. Radičová recognized that 'the media had been equally critical of each [post-1989] government' and had always, from the moment a government assumed power 'performed the function of a critic of the government, regardless whether the latter was left-wing or right-wing' and regardless of the outlet's political orientation. However, as a politician, she accepted that 'this is the role of the media'.

Radičová insisted that her government's objective in amending the 2008 Press Act was to 'ensure normal and standard functioning of the media', and to anchor 'responsibilities of the media such as to inform, truthfully inform, ensure truthfulness but

¹⁶³ I interviewed Radičová twice in 2013 in her capacity as Professor of Sociology and former Prime Minister. One of the interviews was published as part of the MDCEE project (Radičová 2013).

also privacy protection in conjunction with the rights of the media'. Radičová believed that the 2008 Act provided 'excessive, inappropriate protection to public functionaries', which given 'the value system of the coalition parties' of Fico's first government, represented a 'clear attempt' to 'gain control over the media who acted as a watchdog' (Radičová 2013). Radičová was convinced that as a rule, political leaders' value orientation and their understanding of the role of the press affected their attitude to litigation. In Radičová's view, Mečiar, Fico, and Dzurinda's political style and attitude towards their opponents, including the media, was based on utilizing existing legal and political institutions, regardless of 'decency and certain culture of the conflicts', which she rejected.

7.3 The Regime's Ability to Protect Reputation and Privacy

In order to examine the extent to which the personality protection regime was, from the viewpoint of the plaintiffs, able to safeguard their personality rights, the respondents were asked how satisfied they were with their litigation experience and results, and whether they attained anything through litigation. They were also asked whether they would sue again in a similar situation. Some plaintiffs were satisfied with their experience and their dispute outcome, which brought relatively swift redress through the final decision in the case or an out-of-court settlement. Others, even if successful in their dispute and able to attain their ultimate goals, were left frustrated by the judicial system, particularly the delays and intrusive nature of proceedings and the biases inherent in the adjudicatory practice of ordinary courts.

The interviewed lawyers suggested that following their experience with adjudication, some plaintiffs might be deterred from pursuing legal protection of their rights in the future. Despite the frustration with the legal process, all interviewed plaintiffs, regardless of the outcomes of their case, reported that they attained some of their objectives and that they would sue again. These findings were consistent with those of the ILP (Bezanson 1986, 799). Most plaintiffs were able to obtain some reputational and privacy vindication through the act of initiating the suit itself. Filing the petition represented a public declaration of the contested statement's fallacy and empowered the injured party, which symbolized to the world that he/she was not afraid to stand up to

injustice. Some plaintiffs felt that through the lawsuit they managed to punish the media for their perceived unethical conduct and/or reluctance to settle on alternative forms of redress. The respondents, however, largely agreed that the law was rather inefficient at deterring the unscrupulous parts of the media from future personality infringements to the detriment of the injured parties and the public.

7.3.1 Swift Attainment of Redress and High Satisfaction Levels

Those plaintiffs who managed to win or settle their case out-of-court within a relatively short time since publication felt that they had managed to restore their reputation, stop the ongoing infringement and/or achieved the necessary satisfaction. P01 viewed her experience positively since she managed to swiftly vindicate her reputation through the judicial determination of unfoundedness of the impugned value judgments and to demonstrate to the media organisation that she was not afraid to confront its malicious behaviour. The damages award accomplished the punitive objective P01 pursued by litigation.

The interviews suggested that once proceedings commenced, moral satisfaction might still be an effective means of restoring reputation. However, it needed to be offered before the plaintiff became so resentful that punishing the media became his/her main objectives. Describing her litigation experience as ‘markedly positive, including the speed of proceedings’, P04 was satisfied with the written apology received, which she could ‘show to everyone who doubted her role in the impugned reportage’. A personal apology from the publishing house’s CEO for wrongdoing and the removal of his personal data from the website provided P06 with sufficient moral satisfaction and reduced the security risk he faced. However, according to Sedlačko, a public apology offer made several years into the dispute – when defendants realised that litigation would not proceed favourably for them – represented ‘an absolutely unacceptable satisfaction for the [injured] person; it is too little for him/her by then’. Such an offer only ‘infuriate[d] the client to the extreme’, creating a vicious spiral, whereby the plaintiff was ‘forced to’ carry on with the lawsuit because she/he was ‘bitter by then’. The dispute was ‘no longer only about an apology’. The plaintiff was ‘angry, fe[lt] a sense of injustice and want[ed] more ... want[ed] money’.

7.3.2 ‘Frustration with Justice’

Most plaintiffs expressed frustration with their litigation experience. In contrast to the experience of US defamation plaintiffs investigated by the ILP (Bezanson 1986), the sources of frustration for my respondents did not lie in the failure of the judicial system to respond to their claims of falsity or the intrusiveness of the infringement and to recognise the harm claimed to be suffered. Most of the plaintiffs interviewed were frustrated by the inordinate delays, the intrusive nature of proceedings and the perceived unfairness and arbitrariness of the adjudication in their cases. Lawyers also overwhelmingly argued that the law was failing to adequately protect individuals’ reputation and privacy and to provide suitable redress. According to Sedlačko, suing the media in the mid-2010s was like ‘tilting at windmills’ as it was ‘very difficult to win a legal action for personality protection in an effective manner’ – i.e., ‘to get decent money or an early apology’. Many lawyers believed that their clients experienced, what Sedlačko called, ‘frustration with justice’ which often left successful plaintiffs dissatisfied, regretting having commenced civil action and discouraged from future lawsuits. As Sedlačko explained, even if plaintiffs were ‘awarded an apology or money, the feeling of satisfaction rarely materialise[d]’ and clients ‘too often’ came to regret having entered into a dispute. L13 believed that many of his clients would not sue the media again because the litigation experience had a ‘deterrent effect’ on them. Lálíková insisted that after the difficulties of proceedings, ‘nobody has the strength to fight further and file a petition before a court again’ even if their rights were infringed anew by published comments accompanying a court-ordered apology.

7.3.2.1 Emotional Distress

The interviewees characterised proceedings in personality protection matters as ‘unpleasant’, ‘traumatic’, or as ‘torture’ as they were forced to relive the emotional harm felt at the time of publication. Lálíková explained that personality protection litigation ‘burdens’ the plaintiff because instead of focusing on his/her job, ‘he/she has to attend hearings [and] constantly prove something, which is very hard on one’s mental health’. Sedlačko described having to ‘go to hearings for three to four years, to fret about it, to keep it foremost in one’s mind, to explain to people whether one is litigating or not’ as

‘torture’ for the plaintiff. P04 claimed that she found the need to ‘constantly replay the reportage [in her mind] before the hearing to be able to instantly react [to questions] and to keep all the facts and how they proceeded in memory’ as the most difficult aspect of her experience.

The distress was often exacerbated by the highly personal nature of evidence examination and witness questioning during public hearings. In P03’s words, ‘going to court is pleasant for no one, even more so when the public sits there, and [you have to] talk about your private matters’. According to Lukášek, ‘for certain types of people’ litigation ‘can be a traumatic process because ... witnesses who should give evidence about a controversial topic will be summoned’. While P01 acknowledged that it was necessary for the judge to consider the factual basis of the impugned value judgments, she felt awkward when asked questions about her private life, particularly as she was not ‘thrilled to be discussing her private affairs in a public hearing’. Nonetheless, P01 considered it as a pre-requisite for defending her personality rights and demonstrating to the publisher that his/her unlawful behaviour would not go unpunished: ‘Naturally, the feeling was exactly “That’s none of your business” (laughs). Nonetheless, of course, I answered his questions as it was necessary’.

Several lawyers observed that the fact that the plaintiff’s personal and/or intimate matters were examined before the public at the hearing, or at least recorded in the minutes, created the risk of further dissemination of that information and thus of additional reputational or emotional harm. According to Sedlačko, novel personal information about the plaintiff ‘gets out and you are no longer able to control that regardless of how the dispute ends’. L01 argued that witness questioning in high-profile cases was sometimes even more upsetting because ‘the pressure from the media [present at the hearing] was enormous’. L01 believed that giving evidence in the caricature dispute ‘was very disquieting’ for Fico as he had to ‘return to the trauma’ of the pain, which no one could understand unless they themselves were in pain.

Some plaintiffs were further upset by the behaviour of defendant lawyers – particularly of those representing the tabloids – during witness examination. P05 found the defendant’s counsels’ efforts to make her ‘do some soul searching’ as if she ‘deserved’ the articles disturbing. P05 also believed that defendant lawyers tried to set press freedom above their legal obligation not to publish personal details of a judge without consent as they ‘regard[ed] the freedom to write anything about anyone as superior to other human rights and the law’. Although P01 considered herself a resilient person, and understood

litigation in terms of showing the defendant that they would ‘not get away with’ defaming people, she felt ‘uncomfortable’ when the opposing party’s lawyer asked her questions which ‘just by their nature’ she found ‘insulting’.

7.3.2.2 Delays in Proceedings

Because speed is of the essence when it comes to restoration of reputation, lawyers and plaintiffs regarded the length of proceedings as the most important factor limiting the effectiveness of civil personality protection. The delays in proceedings exacerbated the plaintiff’s trauma and emotional distress and erased the intended effects of the claimed remedies, or forced the frustrated plaintiff to abandon the lawsuit. P02, whose dispute was pending for sixteen years from the date of publication, saw the length of adjudication as the biggest problem facing plaintiffs. The vexation some plaintiffs felt regarding the length of proceedings was apparent from P03’s words: ‘I am a judge and I have been unable to uphold my rights for seven years. What about the [ordinary] citizens then?!’

The protracted nature of litigation prevented many plaintiffs and their families from reaching closure. P02 argued that the infringement constantly featured in his thoughts and that wife and daughter were still distressed about it. Schwarz argued that for the plaintiff, the lengthy litigation meant that his/her ‘negative experience will, from the psychological viewpoint, remain with him/her and his/her wound will constantly be ripped open and will not heal’. This, Schwarz explained, was because the plaintiff was forced to ‘relive it again’ with each adjourned hearing. While losing a personality protection lawsuit often left the plaintiff emotionally broken, a win represented a Pyrrhic victory because the person was ‘traumatised for four or five years’, losing a substantive amount of money through litigation. ‘Had he/she just shrugged it off, even if he/she experienced a financial loss at the beginning, he/she would have forgotten it within the five years – a memory from five years ago is very old, but a five-year-long legal dispute is a memory that is terribly fresh’, according to Schwarz.

Most respondents believed that obtaining an apology after protracted proceedings largely failed to vindicate the plaintiff’s reputation and was also of little value for the public’s right to receive factually correct information in a timely manner. Lukášek believed that ‘an apology essentially has no effect on the [plaintiff’s] relationship with the public because it comes too late and not everyone follows it, respectively not everyone is

able to search for it'. Benedik argued that an apology published after several years 'naturally doesn't have the necessary effect' because the public cannot remember what it concerned. Therefore, the lawyer had to phrase the apology in the petition so that it had information value for the audience years later. 'Given the speed of our courts', Ikrényi maintained, 'if the apology was to come in five years, it would have no impact and there would be no satisfaction'. Vozár stressed that 'since proceedings take several years, and the outlet's publisher and readers often change, the effect of an apology is often lost'. Lálíková was convinced that after the protracted proceedings, an apology could not restore a public claimant's reputation because 'five years is such a long time that no one knows anymore what Harabin [for instance] said or didn't say, what he was or wasn't. ... Therefore, the vindication effect, the redress within society that [learns] he was harmed' will be lost.

The fact that the extended nature of proceedings rendered civil litigation an inadequate means of protecting the individual's and public's reputation interests was also acknowledged by media professionals. Milan believed that litigation was not the means through which claimants would be able to effectively vindicate their reputations because after a five-year-long dispute, 'no one will know that the [impugned] article existed'. He believed that the powerful persons that the media were interested in had sufficient platforms to immediately put the record straight.

Several interviewees suggested that an apology published years after the original infringement might cause the plaintiff additional emotional harm, or 'further trauma', as L12 put it. Calling it a 'psychological nonsense', P01 explained, when 'you managed to deal with something, ordered it somehow within', a judgment pronounced after many years 'just reopens the relatively healed wound' and 'reminds the public' of the defamation. L05 claimed that delayed judicial decisions themselves constituted an infringement, for which the courts should financially compensate the plaintiff. Sedlačko perceived an apology published two years or more after the infringement as 'counter-productive' because it 'needlessly reopens the matter which everyone has already forgotten about', leaving one 'under a cloud of suspicion'. Plaintiffs therefore tended to request non-pecuniary damages in addition to or instead of moral satisfaction.

Lawyers on both sides observed that the delays prompted some plaintiffs to abandon or settle meritorious claims without restoring their reputation or obtaining appropriate compensation. L13 had been asked by several plaintiffs a few years into their dispute, whether it was still worth pursuing. Sedlačko recollected cases where he was

convinced of the validity of the plaintiff's claim, but 'the person was so sick of the process that they withdrew the lawsuit'. Kamenec mentioned a thirteen-year-long case that had gone through several rounds of appeals, which was finally settled out-of-court as the plaintiff reached an advanced age and was exhausted by the suit.

7.3.2.3 Adjudication Unfairness

The perceived arbitrariness and relative unpredictability of judicial decision-making tended to erode the plaintiffs' trust in fair and independent adjudication, leading many to believe that there was no equality before justice in personality protection matters. Such perceptions caused plaintiffs unnecessary distress and spoiled the intended effects of awarded remedies. As Vozár explained, given the unfairness and arbitrariness of adjudication practice, until one reached 'a fair, final decision' one had to 'go through the whole judicial system', which took years. Plaintiffs thus tended to become 'frustrated by the proceedings and even a victory [did] not provide the satisfaction it might have if achieved at the first instance and upheld by [appellate] courts'. P05 attained only partial satisfaction because, it came 'after a very long time and the behaviour of some judges caused her 'further stress'. P05 argued that the regional court 'changed seriously prepared and argued decisions of district courts', whereby it displayed 'huge incompetence' and 'absolute lack of knowledge of ECtHR and Supreme Court case-law'. This forced her 'to use extreme means' and appeal before the Supreme Court. She characterised one of the regional court decision as 'so scandalous' that she was 'unable to evaluate whether personal, malicious bias or colossal incompetence of the members of the senate' was in play. P05 became so aggravated that she 'didn't believe that justice existed in that moment'.

The discrepancy between damages awarded to high-profile politicians or judges and other plaintiffs reinforced the belief among interviewees that the personality/goodwill protection regime worked for the chosen few powerful enough to blindfold the goddess Justice, but not for the rest. L13 explained, 'the not chosen ones take the shorter end of the stick' in adjudication. P01 felt perplexed about the extreme difference in non-pecuniary damages awards to ordinary people in comparison to members of the political class. She found it 'outrageous' that in contrast to an infamous politician – a 'generally-known sot' in P01's words – she would not have been able to claim hundreds of thousands

of euro in damages. P01 was left with the impression that ‘there are various social classes for which different laws apply’. P01 believed that even ‘simple’ people, ‘must feel that if they suffer injustice, they will get, figuratively speaking, the same 200,000 euro, even if they don’t belong to the [privileged political] class, because they are citizens of this country and their honour is equal to the honour of anyone else’. P01 found there was little evidence of equality before the law in Slovakia despite her conviction that it was ‘undoubtedly vital for society ... to share an understanding that everyone is equal before law’.

7.3.3 Partial Attainment of Redress

While the frustration with their experience might deter some plaintiffs from further litigation, all the plaintiff-respondents maintained that they would pursue legal action against the media again, but might seek lower non-pecuniary damages (P02) or file the petition sooner (P04, P05). Even those plaintiffs whose disputes were pending for years, were prepared to sue again because, they saw civil action as the only effective means to protect their rights. P05 stated, ‘I was and still am deeply convinced that I cannot compensate the harm that my family and I had experienced in any other way than through a personality protection lawsuit’. ‘I would go for it’, declared P03, ‘because I think that if I as a judge will completely lose an illusion of justice, what about the other people? I still believe that ... [the district court will decide in my favour again]’.

All the interviewed plaintiffs achieved some of their objectives in using litigation. Those for whom legal action was a means of self-help when vindicating their reputation, those who wanted to punish the media, and those who believed that individuals must stand up to injustice and use all the available means to defend their rights took some satisfaction from the act of suing itself. Acknowledging that many of his clients became exhausted during proceedings, Adamčík argued that they continued with litigation as a matter of principle because they sought to ‘prove that in theirs and similar cases it is possible to successfully protect their rights’. P04 was also convinced that ‘many more people should defend themselves through personality protection lawsuits’ to stand up to manipulative behaviour of some media and journalists.

A judicial decision declaring that the allegations were false, even if reached years after the original publication and not helpful in the immediate aftermath of the violation,

represented moral satisfaction and reputational vindication for many plaintiffs. Ikrényi maintained that a personality protection dispute ‘is not about money, it is entirely about moral vindication’, about the plaintiff’s ‘honour [and] dignity’, particularly for individuals in positions that rely on these attributes, such as judges and lawyers. According to L05, ‘under the current conditions, only the judicial decision, that is, the dicta from the court, possesses some vindication power for the person who seeks to assert their rights’. This also seemed to apply if the court decision was not final. Describing the district and regional court judgments in his case, which were quashed and returned for further proceedings by the Constitutional Court, P03 emphasised, ‘What is essential and what resonated was that false information was published’. P03’s responses also seem to suggest that if the focus of adjudication shifted from determining the truth of the contested statements solely to whether journalists acted responsibly, plaintiffs might feel unable to achieve any reputational vindication. According to L04, the fact that a higher judicial authority set a decision aside and returned the case for further proceedings represented ‘proof of injustice’ in the original judgment, providing a form of satisfaction for the plaintiff. Since the degree of satisfaction increased with public awareness of such a decision, L04’s firm decided to opt for a press release on their website after a high-profile case was returned for further proceedings following a successful constitutional complaint.

7.3.4 Protection of the Public Interest in Reputation and Privacy

The respondents suggested that personality protection law ‘merely fulfil[ed] the satisfaction function’, as L13 put it, but failed to perform its preventive function.¹⁶⁴ As such, the law not only seemed to have failed to safeguard plaintiffs’ rights but also the public interest in reputation and privacy. P05 found that her damages awards were no guarantee that her family would not become ‘the target of another attack’ on their privacy, especially since one of the tabloids purportedly took revenge on her husband by publishing humiliating photographs. Ľalíková, pointed out that it was not uncommon for the media, when subject to a court order to publish an apology, to also provide their own

¹⁶⁴ The public interest in expression, which is intimately linked to the preventive function of the law, is discussed in more detail in Chapter 8.

‘explanation’ in which they ‘again portray the plaintiff in a negative light’ by implying that the decision was unjust. Such media behaviour was also visible in P03’s case when alongside the third apology in a row (as ordered by courts) the daily published the newsroom’s statement on the dispute where the editor-in-chief explained why they did not agree with the decision, suggesting that solidarity between judges played a role in adjudication. The media risked by doing this, making the public perceive all public apologies with suspicion, making them worthless for the individual whose reputation had been tarnished as well as for the public who will no longer have faith in them. According to Ikrényi, the wide publicity given to controversial decisions and depictions of unfair adjudication in media risked prompting the public to start questioning the legitimacy of every judicial decision and of every plaintiffs’ conduct.

The interviews further suggested that the legal regime was ineffective at ensuring that the public received corrected information about public plaintiffs in a timely manner. Due to delays in the adjudication, if found liable, media organisations were ordered to publicly apologise years after the original false or misleading information had been published. On the other hand, it was shown that some public plaintiffs publicly vindicated their reputation and privacy through the act of initiating litigation, which symbolised a public response to the contested statements, signalling to the public and/or professional community that the allegations were not true. Even if unable to obtain discursive remedies, plaintiffs were able to keep the public informed and get some form of redress. Arguably, given the rise of social media and the wide use of various platforms by politicians to communicate with their voters, the need to use litigation as a form of public relations exercise might have diminished in the 2010s.

The interviews also indicated that the serious print outlets and television broadcasters were willing to swiftly rectify what they viewed as genuine personality/goodwill rights violations involving factual mistakes. According to some respondents, this amounted to ninety percent of all received claims. Media organisations typically provided redress without admitting their own fault in follow-up editorial content, maintaining that doing so was beneficial not just for them, but also in the interest of the claimants and their audiences. The public were able to learn the truth or the views of the injured party quickly and in an intelligible way, allowing them to form their own opinion. It is, however, questionable whether the original reputational harm would truly be remedied unless the follow-up content got equivalent prominence to the original infringement, which did not always happen. While serving individuals’ reputational

interests, provision of advertorials and/or free advertising hardly aided the public's interests in reputation, privacy or expression. Last but not least, given the tabloids' circulation and their arguable reluctance to transparently put the record straight or provide the claimants' views, it could be argued that the public's interests were rather poorly protected by the law.

7.4 Conclusion

This chapter examined the extent to which and how the Slovak personality protection regime was able to safeguard the private and public interests in reputation and privacy. The chapter found that between 1996 and 2016, the regime was generally successful in safeguarding the private, and to a lesser degree, public interests in reputation and privacy, albeit not necessarily through a final resolution of a civil dispute. Over time, the regime succeeded in safeguarding access to justice for all plaintiffs, particularly after procedural rules changes in the 2000s. Despite 'the frustration with justice' stemming from the unfairness, arbitrariness and protracted nature of proceedings, through litigation, public plaintiffs were able to attain their pursued objectives, which would not have been possible through other means. Private plaintiffs seeking to put the record straight were able to achieve some redress outside of the legal process, as a fraction of before-action claims ended in litigation. Keen to avoid legal disputes and unduly harming personality rights, serious media outlets sought to provide quick redress to genuine claimants. Since admittance of fault was seen as a risk to their credibility, media organisations preferred to provide an opportunity to put the record straight and/or express the claimants' views in follow-up editorial content or advertisement.

The general assumptions of the conceptual framework about the need to investigate operation of laws in context and in the interactions between principal plaintiffs were confirmed. Many of the conclusions of previous empirical research about the 'complex calculus of plaintiffs' motives' (Bezanson 1986, 806) were replicated. The findings, however, revealed some previously unreported elements which served as a basis for the refinement of the plaintiffs' cost-benefit calculus model (Figure 7.1). This refined model is well suited to guide future empirical investigations in jurisdictions beyond Slovakia.

The chapter confirmed that plaintiffs decide to sue when they perceive litigation as the only available means to achieve adequate redress to harm to their reputation or privacy suffered in the media. Like the ILP (Bezanson 1986), the chapter indicated that plaintiffs might pursue different objectives to those assumed by law. The interviews corroborated ILP's finding that plaintiffs primarily seek the cessation of the infringement and reputational redress, and that these do not need to come through a final judicial decision, but can have the form of a formal letter admitting falsity of published statements, out-of-court settlement or a PR exercise to mitigate potential impact on their professional career. The chapter revealed other motives assumed by the law or mentioned in the literature, including punishment of the media, monetary satisfaction and prevention of future infringements. One previously unexplored plaintiff motive that stood out was pursuit of litigation as a means of the injured parties' empowerment in the face of injustice carried out by reckless journalism. This might be more pronounced in democratising societies where common understanding of the roles and duties of various institutions, including the press, is still developing.

The findings relating to costs of pursuing litigation largely agreed with those indicated by previous research and included financial costs, emotional distress and further reputational harm. They suggested that in civil law systems, where litigation costs are generally lower than under common law, financial costs do not generally deter plaintiffs from suing, particularly if appropriate procedural rules are adopted.

The findings suggested that while research needs to pay attention to plaintiffs' legal considerations, particularly the perceived fairness, arbitrariness and uncertainty ingrained in the law-on-the-books and judicial decision-making, these are of greater importance for private than public plaintiffs. This largely confirms the findings of the ILP. In line with assumptions in the literature (e.g., Mazák 2002, 318), the chapter also showed that the fairness and effectiveness of decision-making in defamation and privacy disputes might be pivotal for its ability to provide effective redress. In the Slovak case, the delays, perceived bias towards high-profile plaintiffs and intrusive nature of the judicial process often diminished the remedy's effectiveness or caused the individual further harm, and made some plaintiffs abandon their claim or deterred them from defending their rights in the future.

The chapter confirmed that contextual factors are key for explaining plaintiffs' decision to sue and by extension a defamation and privacy regime's ability to safeguard optimal protection of reputation and privacy rights. Above all, this chapter highlighted

the crucial role played by the plaintiffs' perceptions of the media's behaviour prior to and after publication. The belief in media's unethical behaviour and malicious intent and their reluctance to provide fast redress for what the plaintiffs saw as unjustified attacks propelled most to file legal action. The media tended to reject public officials' before-action requests due to non-compliance with statutory requirements or lack of merit, while some tabloids did not respond to claims as a matter of policy. In the context of mutual hostility between the media and public officials, media professionals feared that admittance of fault was likely to be misused to discredit them in the eyes of the public. The chapter revealed a deep rift between the perceptions of plaintiffs and defendants concerning the merit of claims, suggesting that these differences were rooted in divergent views on the role and responsibilities of the media in a democratic society, the public interest and the need of public figures to tolerate higher levels of scrutiny. Political culture and understanding of the media's role were also suggested as an important factor which might prompt some public officials to sue and deter others.

Overall, the chapter underlined the importance when studying the interplay between reputation, privacy and freedom of expression in new democracies of exploring the cultural factors operating on individual (plaintiff's understanding of the role of media in a democracy) and societal level (journalism culture, political culture) and their influence on the mutual relationships between principal protagonists, which are often rooted in the socio-political struggles prevalent during democratisation.

The plaintiffs' interactions with lawyers and support of their employer were revealed as other potentially influential contextual factors affecting plaintiffs' calculus. Like the ILP (Bezanson, Cranberg, and Soloski 1985), the chapter found that in the Slovak case, lawyers were more instrumental in recommending the appropriate legal strategy than in affecting the decision to sue. Rather than immediate legal action, lawyers recommended alternative remedies, particularly in the form of a quick, public apology. Some actively dissuaded public plaintiffs, particularly politicians, from suing, as litigation risked further harm to their political career. Good professional relationship with media lawyers allowed plaintiff lawyers to achieve effective reputational vindication for their clients through out-of-court settlement before or during litigation.

The chapter indicated that the Slovak legal regime was unable to fulfil the preventive function, as particularly the tabloid press was not deterred from making unwarranted attacks. Since the preventive function of the law is closely linked to the protection of the public's interests in expression, the ability of the regime to create a

benign chilling effect on illegitimate speech and promote responsible, truth-seeking journalism is discussed in more detail in Chapter 8.

Chapter 8: The *Benign* Chill and Promotion of Responsible Journalism

8.1 Introduction

I have argued in the introduction to this thesis that adequate triangulation of the conflicting interests at the heart of defamation and privacy regimes involves attainment of three specific objectives: the protection of reputation and privacy, the creation of a *benign* chilling effect and the prevention of abuses of the law by plaintiffs with the consequent *invidious* chilling effects. The previous chapter examined the extent to which the law achieved the first of these aims. It concluded that the law failed to produce a *benign* chilling effect and promote responsibility within journalism from the viewpoint of plaintiffs and their lawyers. This chapter takes the viewpoint of defendants and lawyers to investigate the extent to which the regime generated a *benign* chilling effect by deterring irresponsible practices harmful to reputation and privacy and promoted responsible journalism that provided the public with important, reliable information about matters of general concern.

The conceptual framework used for this research (see Chapter 2) suggests that the practical distinction between *benign* and *invidious* effects on freedom of expression in legal regimes that afford constitutional protection to all the competing interests and balance them in an *ad hoc* manner is very hazy. In those systems, including the Slovak one, individuals' perceptions about the desirability or undesirability of the chill are subjective, dependent on the value assigned by the individual to each of the conflicting interests and his/her understanding of what constitutes responsible journalism and the public interest. Drawing on previous studies of the chilling effect, the conceptual framework devised for this project inferred that practical manifestations of the desirable chill on journalistic speech might include adoption of measures by media organisations to avoid irresponsibility and reputation or privacy infringements, including vetting by senior editors and/or lawyers and legal training for employees (see, e.g., Cheer 2008, 2005; Weaver et al. 2006). These measures resulted in what could be characterised as direct *benign* chills, including non-publication of unlawful material in light of specific legal considerations (Cheer 2008, 149), delays to secure additional evidence for serious

allegations reworking content to make it more balanced (Weaver et al. 2006, 166-167), or toning down the allegations and/or language without losing the message (Cheer 2008, 149). According to the conceptual framework, structural *benign* chilling effect could be demonstrated in media professionals, as a rule, not venturing into topics that are not in the public interest, such as private individuals' intimate life.

The conceptual framework further suggested that the perceptions or practical manifestations of the chilling effect differs between individuals and media organisations set in the same defamation and privacy regime, depending on the level of fear of punishment for the contemplated publication felt by the organisation or individual (see Schauer 1978). The greater the fear of potential harm incurred as a result of publishing a contentious article, and the lower the benefits, the higher the probability that an organisation or individual will be deterred from publication. The punishment or harm caused by personality/goodwill protection litigation is not solely judicial sanction and the resulting financial costs, but may include other financial and non-material costs involved in defending and/or losing a dispute. The benefits of publishing unlawful speech might include financial rewards for doing so or promotion of the owner's or reporter's vested interests. The cost-benefit calculus is expected to be carried out against a backdrop of the perceptions about the operation of the defamation and privacy regime, particularly its fairness, certainty and effectiveness, which affect the risk of the potential harm resulting from litigation, as discussed in general in Chapter 2, and in the Slovak context in Chapters 5 and 6.

According to the conceptual framework, the ability of the regime to produce a *benign* chill further depends on contextual factors operating at the micro, meso and macro levels, including the structure of the media market, the size of the organisation and its culture, journalism and political culture, individual values and predispositions, and the relationships within the newsroom, between media organisations and their lawyers and between the subjects of stories and the defendants.

After briefly discussing the interrupted process of professionalisation of journalism, which has been suggested as the main factor explaining the absence of journalistic responsibility that plagued Slovakia and other post-communist countries in the period of democratisation, the chapter explores the views of media managers, professionals and their lawyers about the extent to which and how the law created a *benign* chill on carelessness and promoted a greater focus on responsible journalistic practices. It then examines the limits to the regime's ability to create a *benign* chill.

8.2 ‘Interrupted Process of Professionalisation’

Editorial decisions and journalistic content in the studied period had been affected by ‘an interrupted process of professionalisation’ (Örnebring 2013, 10), and the resulting fragile professional ethics and low levels of journalistic expertise (SPW and DBM 2008; Škol kay et al. 2010, 13-14; Šípoš 2008, 2007b, 2007a).¹⁶⁵ To develop, independent professionalism requires a period of political and economic stability (Mancini 2015, 34). However, the continuity of editorial work, and the process of nurturing awareness of journalistic ethics were disrupted as a result of communist party control over the press and the sweeping personnel changes within the profession during the 20th century (Köpplová and Jirá k 2008, 204).¹⁶⁶

The profession became more open after the fall of communism (Holina 1997, 103) as ideological prerequisites were lifted and few formal requirements introduced (Škol kay et al. 2010, 15). While the changes allowed people with valuable perspectives to enter the profession (Holina 1997, 103; Škol kay 2017, 195), they also opened the door to unprofessionalism and irresponsibility. As an entire older generation of experienced journalists was missing,¹⁶⁷ the new-comers – majority of whom lacked journalistic training and/or university education (Johnson 2012, 159; Holina 1997, 108) – had no mentors to instil in them professional standards and oversee the quality of content (Tóthová 2007). Lacking a model of practice aligned with democratic standards, journalists turned to the Western professional standards of independence, objectivity and neutrality. However, as these had themselves changed with the rise of the twenty-four-hour news cycle, the external guidance was ambiguous (Klvaňa 2004, 50), and

¹⁶⁵ In a 2008 survey of 165 Slovak media professionals (SPW and DBM 2008), respondents considered journalists’ low levels of expertise (75%) and low levels of journalistic ethics (57%) as the two main factors negatively affecting media quality.

¹⁶⁶ The Czechoslovak journalistic profession experienced a high turnover of editorial and journalistic staff in 1945, after the communist takeover of 1948, following the Prague Spring in the early 1970s, and again after the fall of communism in 1989 (see Jirá k and Köpplová 2012, 190-91).

¹⁶⁷ During the ‘post-communist clearing’ (Mocek 2015, 106), many journalists were forced to leave (Ondrášik and Škop 2011, 112–13). Journalists discredited as Mečiar’s nationalistic lapdogs were forced to the margins when their outlets closed (Šimečka 2009, 4-5). Others were unable to adapt to the demands of the new competitive environment, and left the profession on their own accord (Johnson 2012, 158-59; Tóthová 2007).

professionalisation was outpaced first by political activism and later by commercialisation.

8.3 The Law and Responsible Journalism

Respondents suggested that considerable improvements in responsible journalism and respect for personality and goodwill rights occurred since the early 1990s. They disagreed as to whether these were promoted by the legal regime or were just a natural development within the journalistic profession.

8.3.1 Rise of Responsible Journalism Regardless of the Law

Like respondents in Marjoribanks and Kenyon's studies (2004; 2008a), many Slovak interviewees were reluctant to attach any importance to the effects of the regime, arguing that regardless of litigation risks, the media and journalists had gone through a process of maturation which resulted in greater journalistic responsibility. Kamenec recognised that the quality of journalism and the tendency to thoroughly verify facts was much better than in the late 1990s when 'journalism looked differently' and journalists were less diligent – 'they received information and [simply] published it in the name of the [public] good'. Kamenec believed that the more responsible approach was a result of societal developments and the generational and technological changes within the profession rather than the law stating, 'I don't think that personality/goodwill protection disputes have had a fundamentally positive effect'.

Šimečka believed that the media had evolved and that, serious papers became increasingly careful not to publish unsubstantiated allegations having 'respect for facts' and ambition to 'be fair'. Rather than 'internal censorship' it was 'normal journalistic responsibility' and rather than fearing lawsuits, the journalistic profession feared its 'own failure'. As editor-in-chief, Balogová actively participated in fact-checking of contentious allegations because it mattered to her that *SME* did not make mistakes. Kubina tended to tell reporters to consider whether they would be 'able to tell it to the person's face', whether they were sure they were 'not causing him/her harm' and that they were 'not misusing the television' or someone was not misusing them when publishing sensitive

material. Kubina called this the ‘first point of self-censorship’, stressing the importance of ‘being sure about your claims so that you don’t ruin someone’s reputation because something has allegedly happened’.

Journalists also stressed that ethical considerations played a much more important role in editorial decisions than liability risks. When developing a story, Petková first and foremost focused on fact-checking not because she wanted ‘to avoid a lawsuit but to avoid harming someone – not to cause them civic damage’. Reiterating that her motivation ‘not to ruin someone’s reputation’ was ‘definitely stronger than’ the risk of a lost lawsuit, Petková suggested that the inclination for thorough fact-checking was down to a journalist’s experience and maturity as he/she realised his/her societal responsibility and the possible consequences of his/her work. Mikolášiková maintained, ‘we always take care ... in order not to violate [someone’s] rights’.

Senior editors and journalists acknowledged instances when it was impossible to sufficiently verify serious claims, particularly from an unknown source, leading to ‘killing’ or shelving stories as their publication was deemed unethical. According to Fila, ‘there have been claims we didn’t consider sufficiently verified to dare publish them. That happens often’. Fila could not recollect non-publication ‘due to fear’. As long as editors were convinced they had ‘uncovered something and were able to prove it, not in the legal, but journalistic sense’, it went out. Balogová claimed, ‘if you cannot verify certain claims you will not publish – that has happened. However, it isn’t about fearing a lawsuit. We perceived it was not right to publish because we were unable to verify it’.

Kubina argued that newsrooms had to be extremely cautious with information leaked by anonymous sources, particularly concerning politicians and organised crime figures, as they risked being misused in feuds between rivals, or ‘intelligence games’. Kubina explained, ‘you consider whether it is worth it to broadcast something about a Mafioso who, as a matter of principle, interests no one’, because it is often impossible to verify the allegations. While Kubina saw little public interest in reporting allegations concerning “Mafiosi”, he perceived a clear ‘risk of publishing inadequate information’, which the outlet would ‘never be able to prove’. Since politicians ‘tend to leak [information] willy-nilly’, and there was a ‘danger one could influence the election’ Kubina also perceived breaking political scandals based on anonymously obtained email conversations or audio-recordings shortly before elections as ‘dangerous’. As the allegations were often impossible to verify, Kubina, in contrast to some other editors, was reluctant to broadcast them as he was ‘old enough to jump on such hooks’. Vagovič,

advised it was normal to pull stories shortly before publication or to remove certain contentious claims if they proved impossible to verify: ‘It happens that you halt something literally before the last stop and in the end you don’t let it out even though you’ve worked on it for a month’.

8.3.2 *Benign Chilling Effect and Increased Focus on Journalistic Responsibility*

Similar to previous empirical studies (e.g., Marjoribanks and Kenyon 2004; Weaver et al. 2006; Cheer 2008) a considerable number of interviewees argued that legal considerations significantly affected the editorial process, encouraging fact-checking and avoiding publication of insufficiently substantiated allegations, and contributing to the provision of better quality information. In light of the perceived unfairness of ordinary courts’ adjudicatory practice of the 1990s and 2000s (see Chapter 6), personality/goodwill protection posed huge risks to media organisations, particularly in relation to certain public plaintiffs and businesspeople. Within a personality/goodwill protection regime that was perceived as public plaintiff-friendly, arbitrary and unpredictable, for political and business outlets the potential of being sued and incurring large litigation costs was high, whilst the benefits of publishing defamatory, privacy intrusive or borderline speech were few. Zlámálová explained that media organisations started paying more attention to ‘the legal side’ of journalism in the 2000s because one could ‘never anticipate where [litigation] will lead’, in order to minimise costs. While in the late 1990s, ‘reporters were minimally interested in the legal aspect[s]’, in 2014 they strived for more legal knowledge and increasingly consulted lawyers prior to publication. This helped them to better understand the issues and develop stories accordingly, according to Zlámálová.

Since the mid-2000s, many leading national media outlets introduced measures to promote responsibility and preclude personality/goodwill infringements. Obradovič was convinced that given the uncertainty and pro-plaintiff bias of courts, newsrooms had to be professional and ‘focus on quality’ of journalistic outputs not to give someone a pretext to take them to court, stating ‘If you do your job well, you will not get there’. Obradovič, observed that in the early 2010s when the printed press ‘simply battle[d] to be able to survive on the market’, *HN* and other outlets did ‘not have the resources to afford to make mistakes’. Kubina maintained that personality/goodwill protection costs might have been

‘liquidating’ for *TV JOJ*, ‘if [the newsroom] had not been very cautious’ to avoid rights infringements. Brunovský argued that *Trend* did ‘not have too many active disputes’ because they tried to ‘involve lawyers’ and ‘work as cleanly as possible’. Petková believed plaintiffs filed fewer petitions as media organisations became ‘really careful about what they write and [started to] use legal firms’ advice, realising ‘it is cheaper to pay lawyers for prevention than to pay the dispute costs’. Mihálik maintained that Ringier was successful in most recent personality/goodwill protection disputes because it did not ‘publish a load of rubbish’ and because it would very ‘rarely write something that [wa]s untrue’. Diko also believed that the personality/goodwill protection regime had a positive impact on journalism ‘as it force[d] journalists to increasingly verify information and act responsibly’.

The following paragraphs examine the benefits, costs and risks involved in publishing potentially defamatory or privacy intrusive material for self-defined serious outlets in more detail. The measures employed and the ways and extent to which legal considerations created a *benign* chill and promoted responsible journalism are also described.

8.3.2.1 Few Benefits of Publishing Potentially Unlawful Speech

Media professionals working for serious outlets argued that publication of defamatory or borderline stories brought no rewards. Brunovský strongly refuted the idea that publishing fraud or corruption allegations would be profitable. ‘Those who object to [stories] we write about them often blame us for doing it in order to increase our circulation. The opposite is true’, Brunovský argued. ‘Breaking contentious stories ... does not increase circulation’; ‘[y]ou’d gain nothing’ by deliberately publishing untrue facts because ‘rather than increasing circulation, it causes financial damage’ resulting from litigation. ‘Therefore’, Brunovský reiterated, ‘it does not make any sense for us to write an article which does not correspond with facts’. Balogová claimed that she would not ignore lawyers’ recommendation against publication in order to generate extra profit because ‘the money the one article would have earned would be spent on lawyers and lengthy legal proceedings’.

Defendants resolutely denied all accusations of malicious intent when covering public officials’ conduct stressing journalistic ethics whilst acknowledging that public

plaintiffs might feel unjustly pilloried in the media. *Trend* 's aim was not for 'people to be angry' because 'a good journalist is one who writes borderline articles but can also call the people next time'. Brunovský believed that fairness towards subjects of stories was crucial because 'a decent newspaper cannot live without [their and readers'] respect'. Balogová asserted that there was no 'intentional [malicious] campaign' against politicians while admitting that public officials might perceive media coverage of their conduct as 'one-sidedly negative' and that journalists 'sometimes increase the pressure if a politician surrounded by corruption allegations doesn't resign'. Balogová was convinced that such beliefs stemmed from the political culture and public officials' misunderstanding of the media's role, some of whom 'have the absolutely erroneous idea that we ordinarily decide during the morning editorial meeting that today, we will bring down a minister or have a go at Fico'. 'This absolutely isn't true'. All mistakes were 'down to individual human error', according to Balogová.¹⁶⁸ She was convinced that democratic politicians 'simply must accept that media are watchdogs who will yell if they see injustice, see, or suspect, that a criminal offence is being committed or that someone handles state assets in an uneconomical way'.

8.3.2.2 Litigation Costs

Consistent with the expectations of the conceptual framework, the costs of litigation for media organisations and media professionals consisted of actual and potential financial costs associated with legal action and the reputational costs stemming from litigation itself and/or the need to admit fault and apologise. Moreover, media professionals faced the potential time commitments and emotional distress associated with having to deal with litigation threats or participation in proceedings.

¹⁶⁸ Petit Press repeatedly argued that it did not have malicious aims when reporting on Fico, claiming in *Fico v. Petit Press No. 2*, for instance, that 'the caricature's author's aim was in no way to ridicule the [neck] pain' Fico suffered, and that Fico's claim to the contrary was 'absolutely unfounded', attesting to his 'misunderstanding of the nature of a caricature'. In *Fico v. Petit Press No. 1*, the contested statements' author declared that 'he nor his superiors had a malicious intent and didn't want to depict the plaintiff in a negative light'.

Financial costs

The actual financial costs included the organisation's costs of proceedings, that is, lawyer's fees, costs of furnishing evidence, and the out-of-pocket expenses incurred by lawyers and/or employees when summoned to testify. Media houses also risked damages payments and reimbursement of the plaintiff's proceedings costs. Legal services were relatively affordable. Many media organisations secured continuous legal services with a retainer contract, or benefitted from discounted hourly rates and a reduced basic tariff (see Chapter 5). In disputes begun after the changes to court and lawyer's fees were introduced in the 2000s (Chapter 5), damages awards represented the most substantial cost. Prior to that, plaintiff's reimbursement often equalled or exceeded damages awards, particularly in long-lasting, complicated disputes. Schwarz reckoned a lost personality protection dispute with a private plaintiff in the early 2010s might cost a publisher 5,000 euro in damages, 3,000 euro in plaintiff's reimbursement and 2,000 euro in lawyer's fees and out-of-pocket expenses. This was expected given the generally lower legal services costs in civil law countries than in common law and US jurisdictions, where costs of defending legal actions often exceeded the potential damages awards (Soloski and Bezanson 1992, Anderson 1992; Glanville and Heawood 2009; Mullis and Scott 2012a; Barendt et al. 2013).

The cumulative total of claimed damages represented substantial sums for many media organisations, potentially threatening their existence. *Trend* faced in excess of half a million euro in potential damages payments between 2002 and 2013. The total amount of damages claimed by plaintiffs in actions against Petit Press reached almost six million euro by 2014. As of 26 May 2014, Petit Press was party to at least eighty-one active disputes involving damages claims short of 3.2 million euro.¹⁶⁹ For a series of articles Ringier was sued for 1.94 million euro. As also noted by Schauer (1978, 697), most interviewed media professionals were aware of the potential consequences of large damages awards for their outlets, and feared redundancies. Vagovič explained, '[e]ach media organisation has a certain number of lawsuits for a certain level of damages. Were all of them lost ... each firm would feel it. As a consequence, they would have to make

¹⁶⁹ An obligation to pay a fifth of the total claimed damages in the active disputes would cause Petit Press considerable difficulties as its declared profit in 2013 was just 523,000 euro (Finstat 2018).

people redundant and implement other economic measures'. Brunovský admitted that reporters showed 'sensitivity' about potential financial losses as they understood that the money spent on lawsuits would not be available for other things and might result in redundancies. Šimečka argued that although 'the publisher was absolutely fine' and understood that many defamation lawsuits represented 'an attack on the media', he nevertheless 'put pressure on the newsroom to be more careful' and avoid unnecessary mistakes because he was not willing to pay millions of Slovak crowns.

Media organisations were obliged by law to create capital reserves by assessing the risk of losing its pending or imminent lawsuits and estimate the amount of capital needed to cover the associated costs. Given the uncertainty surrounding personality/goodwill protection disputes, this was a rather complex task that often created conflicts with auditors. While publishers knew that damages claims were often inflated and represented only a fraction of the amounts paid to plaintiffs, they found it challenging to justify their estimate in their annual financial statement. Fulmek said Petit Press executives 'always have long discussions with auditors' due to the high nominal cost of the disputes, arguing 'that it does not make sense to create a reserve amounting to thirty, forty or fifty percent for the disputes' because they only tended to lose around ten percent of them.

The statutory budget reserve limited the financial resources that media organisations could use to produce journalistic outputs or develop new products, and restricted their ability to seek credit. Zlámalová explained, 'no client wants to make unnecessary payments. When there is a risk – and some companies sue for abnormally large sums ... – the client must eventually count with it'. Krejča added, 'if we receive a lawsuit with a certain sum [of damages claimed], we immediately have to incorporate it in the budget because we never know how the proceedings will end. And this limits our access to money'. Múdry viewed setting up 'a reserve for these fines ... impedes publishers in their business operations'. As suggested by previous research (Anderson 1992, 17), Čekirda advised that the requirement to create capital reserves caused issues when seeking credit.

Journalists were not personally liable for infringements of personality/goodwill rights, as long as they were employed by a media organisation and the publication was approved by newsroom management. Therefore, they did not have the financial burden of litigation in most cases. Journalists who were officially self-employed, even where they worked permanently for a specific outlet – i.e. the majority of Slovak journalists by

2010, according to some respondents and commentators (Brečka and Keklak 2010) – risked becoming a party to the proceedings if the publisher failed to support them. Soltész was a freelancer when he wrote the article for which he was sued and had to bear the costs personally. Besides his legal fees, Soltész was obliged to pay the plaintiff within three working days of receipt of the final decision 16,600 euro in damages and costs reimbursement, for which he had to take out a loan. In the end, Soltész argued that the financial burden was ‘not such a big problem’. However, if he had to pay the 43,000 euro as awarded by the district court, or the almost 143,000 euro the plaintiffs sought, it would have meant ‘the end’ for him.

The interviews suggested that in the context of legal uncertainty stemming from the adjudicatory practice and vagueness of legal rules, journalists might fear salary deductions or being made redundant for breach of duties, even if convinced they acted legitimately. Múdry (2014) stated, ‘you’ll become more cautious because if you have three-four cases when a lawsuit or criminal complaint has been filed for your articles, you will become concerned that the publisher will tell you “I really don’t need this”’.

Reputational costs

The interviews confirmed that potential reputational harm might increase the fear of being found liable for defamation or privacy intrusion and thus create a chilling effect on speech (Schauer 1978 697, 700). Leading media organisations perceived reputational costs of personality/goodwill protection to be more serious than the financial expense because, as Múdry explained, during his first government, Fico ‘managed to discredit the media in a genius way – along with various judges and the like – as he sued whoever’. HN’s Obradovič argued that for media organisations, the primary fear of personality/goodwill protection concerned credibility loss: ‘In the first place, there is the fear of credibility loss and then, of course, the fear that the fine could be liquidating, which the publishing house cannot afford’. Milan believed that it was ‘worse for a medium to suffer harm to its credibility, [and as a consequence] the loss of readers than a hundred thousand [euro in damages]’. Soltész thought that ‘it doesn’t look good if two to three apologies appear [in the paper] every day’. Concerning the result of Fico v. Trend Holding, in which Trend had to apologise and pay 8,000 euro in damages, Brunovský stated ‘we had to publish the apology on the cover, which was rather humiliating’. ‘From the viewpoint of the financial settlement, there was no problem’; the issue was ‘the apology and the moral condemnation of the medium for what it had done’.

Time costs

The interviews confirmed that other non-material costs, like the time spent preparing and maintaining a defence (e.g., Marjoribanks and Kenyon 2004) feature in media professionals' calculations regarding editorial decisions. The interviewees recognised that dealing with claims, petitions and hearings cost them valuable time that they could have used for other work. Balogová observed that dealing with requests and lawsuits 'steals the time you could use for other matters. Therefore, it is irritating'. Obradovič, found personality/goodwill protection 'wasting time [and] anxiety'. Characterising court hearings as 'a nuisance', Petková explained that 'the basic inconvenience is that one could dedicate the time to something more useful'.

Emotional costs

Assumptions of the conceptual framework that media professionals might find the intimidation attempts of influential individuals, preparation and participation in hearings and the uncertainty surrounding judicial decision-making distressing have been confirmed (Glasser 2009, xi; Schauer 1978, 700). Brunovský recognized that pre-publication notices 'definitely frustrate' journalists 'because they know that they are right' and pursue the public interest. Nicholson argued that him 'put[ting] on some twenty kilos' was a reaction to stress [caused by pre-publication threats] that he encountered 'every week'.

According to Múdry (2014), most journalists found hearings 'frustrating', because '[y]ou have to testify before people who don't understand it at all. It is irritating; it is a waste of time. You have to prepare for it and they don't. They shoot from the side and literally frustrate you so that for a while you don't feel like doing anything'. Several respondents found the ignorance of the basic principles of journalistic work and emphasis on miniscule details during court hearings vexing. Šimečka explained that it 'was always unpleasant' to sit through hearings because 'it was always totally clear that the judge did not even try to understand the context of the given text, the message we wanted to convey and what it concerned'. Instead, the judges and plaintiffs 'ultimately carped about details that were irrelevant'.

Court testimony or simply having to justify one's outputs before the editor-in-chief and/or lawyers often caused media staff distress. Krejča found going to court as a witness 'terribly hard'. Prušová, advised that it 'was not a pleasant feeling' to be

questioned by a ‘terribly aggressive’ plaintiff lawyer during a hearing. Vagovič found the need to justify his claims in court ‘terribly frustrating and unnerving’. It made him ‘most anxious’ having to ‘laboriously prove every sentence in court’ even though ‘everything’ in the text was ‘substantiated by evidence’. Balogová was convinced that dealing with personality/goodwill protection claims was ‘a slightly traumatising event’ for reporters as they were forced to contemplate the hearing, meet the lawyers and discuss the defence strategy. Balogová did not ‘assume that it would cause any self-censorship’. Nonetheless, she believed that ‘the reporter’s [emotional] comfort [wa]s impaired’ by the experience.

8.3.2.3 Delays in Proceedings

The interviews suggested that the delays in legal proceedings increased the costs. Media organisations and/or journalists risked increased financial litigation costs as a result of the protracted nature of judicial decision-making. Media professionals also potentially faced greater emotional distress and time costs. Nicholson explained, ‘the proceedings carry on for much longer than they should, and you simply hang in the balance somewhere’. According to Balogová, the need to ‘study [the case] anew’ each time it was returned for further proceedings was ‘rather frustrating’ given ‘everything else one has to do’.

The protracted proceedings increased the risks of not being able to prove the truth of contested statement in court as it was sometimes impossible to secure evidence several years after the original publication. According to Brunovský, the ‘terribly long disputes’ might lead to ‘a huge problem’ for the publisher as by the time the proceedings commence some evidence might be lost. With ‘a seven-year-long dispute, no one knows any longer how it was at the beginning – the people don’t work here any longer, you have difficulties with testimonies’. Balogová argued that it was sometime ‘very difficult to get in touch with’ former employees, putting the editor ‘in the role of a beggar’ because it was ‘only up to the goodwill of the author whether he/she decides to help’ or not. The drawn-out nature of proceedings, therefore, sometimes prompted publishers to settle long-lasting disputes, regardless of their merit. *Trend* co-founders ‘tried to eliminate’ the risks of litigation and thus ‘actively initiated out-of-court settlements’ in some of their long-running disputes, according to Brunovský.

8.3.2.4 High-risk Content

Media professionals were not always able to predict which content posed the greatest risk of being sued and incurring financial and reputational costs. Prušová believed that ‘a problem can arise with every [item], even unexpectedly’. For Milan it was ‘unpredictable’ because ‘sometimes they sue for such poppycock which you would never expect’. Zlámalová often found stories perceived as ‘topics about nothing and of little interest’ to the public to be the most dangerous. Reporters claimed to strive to develop each item so that it was non-actionable given the unpredictability. Mikolášiková argued, ‘we always try to develop a topic as to minimise the risk of a potential dispute’.

Stories concerning allegations of illegal and unethical conduct, including fraud, corruption, suspect public procurement contracts, links between powerful businessmen (oligarchs) or organised crime figures and political parties, non-transparent financing of political parties; and coverage of elections were perceived as the most likely to attract litigation. ‘Investigative journalism [thus] represent[ed] top risk’, according to Soltész’s. A particular type of public affairs programmes, the so-called civic affairs journalism, covering disputes between neighbours, family disputes and consumer problems, was perceived as particularly risky by television broadcasters.

Stories concerning especially litigious persons and legal entities that enjoyed protected legal status or possessed the economic or social capital necessary to secure a favourable judicial decision were considered the most dangerous. The highest risk was associated with persons or companies who tended to request the largest damages amounts and had the wealth, influence, knowledge or informal networks that virtually guaranteed their success in ordinary courts. Ogurčák said, some persons ‘either know that they will be able to arrange it [a favourable judgment] or they will be able to get around it’. Fulmek, advised these claimants pursued disputes ‘when sure about their successes’ and typically won 50,000 to 100,000 euro in damages. Media professionals were extremely cautious when reporting about powerful businessmen, investment groups and companies involved in public contracts, often with alleged links to political parties and/or organised crime; and public officials, including certain politicians, judges, prosecutors, and police officials in leading positions within their fields.

Benedikovičová believed that the most sensitive articles concerned the affairs of large corporations and alleged organised crime groups ‘because they ha[d] many lawyers behind them’ and tended to pursue complaints in court. According to Vagovič, ‘when a

large firm you could seriously harm is concerned you consider whether you have everything [sufficiently] substantiated to dare [publish] and whether it is worth it'. For Šimečka, 'the worst lawsuits' came from 'large firms with good lawyers, and judges'. Krejča stated: 'while we are not scared of any companies in the world, we take tremendous care when we say something about Google ... Mercedes or Unilever. These are simply huge titans. We could harm their sales with a single reportage'.

Defendants and their lawyers found a certain group of public officials as exceedingly sensitive, taking subjectively legitimate public scrutiny as intentional personal attacks. Benedik found that many high-profile public figures like Mečiar¹⁷⁰ tended to 'think too much of themselves', valued their honour too highly, and held an unfounded 'belief that their negative portrayal in the media was somehow programmatic, that it was intentional, that they did nothing to provoke it and that the aim was to destroy them'. Ogurčák argued that 'some politicians, in particular, ha[d] been rather sensitive about the information published about them', sometimes having insisted on its 'utter accuracy', which, given the nature of journalistic work, was nearly impossible. Čekirda perceived 'touchiness and lack of professionalism' of public officials, believing they 'should tolerate intense public interest'.

Newsrooms had to be careful when covering certain politicians. Adamčík explained that the first personality/goodwill protection actions appeared between 1992 and 1994, peaked during Mečiarism and declined again after 1998 as 'one could feel a different attitude of politicians towards the media'. Šimečka argued that during Dzurinda's premiership, politicians sued rather infrequently because most of them were not interested in harming the media and 'realised they would lose in Strasbourg'. Therefore, he 'was not afraid of politicians' despite *SME* having faced legal action for 166,000 euro from Dzurinda,¹⁷¹ whose relationship with the press had deteriorated over time. Many interviewees believed that during Fico's first government (2006 – 2010), litigation and threats thereof were 'part of the establishment's politics' and its 'evident

¹⁷⁰ Mečiar and his female assistant filed personality protection actions against Ringier, claiming 166,000 euros in damages in total. The disputes involved a 2004 *Nový Čas* article that likened Mečiar's state of mind after the 2004 presidential elections to a 'nervous collapse' and included photographs depicting the politician and his young assistant hours after the defeat around a camp-fire in his garden (see TASR 2004; Kernová 2014).

¹⁷¹ Dzurinda later withdrew his lawsuit.

efforts to exert pressure on journalists’, as Nicholson put it. Brunovský suggested that ‘the way in which Fico treated the media definitely included an element of wanting to deter and intimidate them’. The most prominent politicians of that government – Fico, Slota and Harabin – were not only considered the most prolific but also the most successful plaintiffs. In the first half of 2009 alone they obtained a total of 177,000 euro in damages (Augustín 2009b),¹⁷² and, according to respondents, encouraged other public plaintiffs to sue. Nicholson argued, ‘Having people like Harabin and ... Fico ... who are leaders in various spheres [of public life] and file exemplary lawsuits, threaten journalists and label them hyena dogs and prostitutes, creates a [certain] atmosphere in society’. It became ‘natural for other members of Smer or other judges to do the same’ as they could ‘gain the respect of their boss or at least ... their praise’.

Harabin was widely perceived as the most dangerous plaintiff. Respondents believed that any critical story about Harabin would almost certainly lead to litigation that the media organisation was extremely likely to lose. Brunovský characterised Harabin as ‘a typical example where one needs to be exceptionally careful about how and what is possible to write’. According to Kamenec, Harabin was ‘a very sensitive topic’ for media professionals and ‘a very unpredictable person’. Schwarz called Harabin ‘a phenomenon’ who tended to achieve ‘above-average success in defamation disputes’. In Tódová’s view, Harabin ‘watches for each word, sues for whatever he can, and as Supreme Court President wins everything’. Milan perceived liability risk with Harabin, ‘who sued for and cashed in on every trifle’, as enormous because one could ‘be hundred percent sure that ... it will end up in court and that he will get the hundred or two hundred thousand [euro]’. Milan felt that Harabin’s success was virtually guaranteed because his ‘subordinates decide on his petition and compensation when he litigates’.

Some media professionals believed that politicians gradually came to understand that they had to tolerate more intense public scrutiny and avoided litigation. Leško

¹⁷² Harabin received approximately 180,000 euro in his disputes with the media (TASR 2009; Košíček 2008, 2009b; Augustín 2009a). Harabin was also awarded 150,000 euro in his dispute with the General Prosecutor’s Office, which involved confirmation of the existence of a recording of an alleged 1994 phone conversation between Harabin and a drug-lord (Balogová 2013b). Slota received damages totalling almost 196,000 euro (Augustín 2009b; Leško 2013; Augustín 2009b); and Fico obtained at least 182,000 euro (Košíček 2009b; 2009a; 2009c) Some of these ordinary courts’ decision were quashed by the Constitutional Court (see Chapter 6).

maintained that ‘when politicians see that they have a great chance to succeed – [such as] when an outlet makes a mistake ... they use it’ but they ‘do not have a tendency towards [litigation] because they know that it would ultimately harm them’. Nicholson believed that politicians ‘don’t sue frequently’ because ‘they know that as public figures they have to endure more [scrutiny]’. According to Fulmek, ‘politicians eventually always come to their senses and withdraw lawsuits’. The change in politicians’ attitudes to litigation, which started with Radičová’s government, continued during the first half of Fico’s second term in office as he settled all this remaining disputes with the press and ‘issued a new directive when he assumed office [in 2012] – “No disputes with the media”’, as Múdry (2013) described it.

As already revealed in Chapter 4, the operation of the Slovak regime was distinctive in relation to the fact that judges belonged to the most frequent and successful claimants. Interviewees found it ‘absolutely absurd’, as Kollár put it, that judges became such frequent plaintiffs claiming hundreds-of-thousands of euro. Kamenec, felt it was ‘hard to imagine’ such a disproportionately large number of disputes involving judges elsewhere ‘in the democratic world’. Being sceptical about some judges’ ability to ‘correctly interpret the demands and requirements of democratic rule of law’, Kamenec questioned whether ‘judges who permanently litigate[d] against media organisations’ were compatible with democracy. Prušová believed that judges were convinced of their own ‘truth’ and ‘untouchability’, believing they were not required to publicly explain their actions and that journalists did not have the right to ‘write about them at all’. Nicholson characterised judges as ‘much more sensitive as well as arrogant and greedy’ than politicians. Múdry (2013) argued that some judges ‘began to value their honour above human life’, which he found ‘terrible’ and ‘disproportionate’.¹⁷³

Judges were extremely successful plaintiffs since they enjoyed protected legal status, possessed legal knowledge and were part of an informal network of persons adjudicating defamation disputes. Reporting allegations about them was thus considered very dangerous. Leško explained that disputes with judges were considered extremely risky because they had ‘the advantage of legal knowledge’, were familiar with ‘the way

¹⁷³ According to Petit Press’s records, judges were the single largest category of plaintiffs to claim damages above 66,388 euro, followed by lawyers. They claimed almost 1.68 million euro in total.

their colleagues at courts adjudicate'. The judiciary was 'a closed environment of 1,400 people where everyone knows everyone and can meet everyone'. Leško believed that if newsrooms tried to avoid something, it was 'anything that would provide a reason for a judge to sue' as the probability of judge's success was 'disproportionately above-average'.¹⁷⁴ Harabin, Polka and Soročina were repeatedly mentioned as, 'the kings in terms of [achieving] decisions in their favour'.¹⁷⁵

8.3.3 Measures to Avoid Careless Mistakes

The most frequently employed measures to avoid mistakes stemming from carelessness were legal training for newsroom employees and increased scrutiny during editorial process. These largely corresponded with those reported in previous studies (Cheer 2008; Townend 2014) and outlined in the conceptual framework in Chapter 2. In contrast to the English media (Barendt et al. 1997; Weaver et al. 2006; Townend 2014), none of the large broadcasters and publishing houses interviewed carried personality/goodwill insurance. Having explored the possibility of such cover, the interviewed media organisations concluded that it was either unavailable or too expensive. Fulmek, reported that some insurers offered a customised insurance policy. However, the price tended to be 'utterly absurd' because it was based on the cumulative amount of damages claimed in disputes led against the organisation, as compared to its actual litigation costs. Several managers

¹⁷⁴ As of November 2013, Petit Press had to pay over 182,000 euro in damages to judges. While some of the decisions were quashed by the Constitutional Court, the publisher had been obliged to pay the damages once a final decision was reached in the ordinary courts

¹⁷⁵ In five personality protection disputes, Polka was awarded 229,000 euro by district courts. Polka received approximately 119,000 euro in his dispute with the Justice Ministry and further 110,000 euro in legal actions against a publishing house (StratégieOnline 2002; SME 2002b, 2002a; Leško 2004). None of the decisions were final at the time it was reported and further information was not public. Petit Press paid Polka short of 7,000 euro in personality protection disputes, including an action for publication of a reply. Soročina won an apology and 33,000 euro from *Rádio Viva* (Tódová 2008b) and 66,000 euro from the Justice Ministry (Jesenský 2009). The former decision was quashed by the Constitutional Court and sent for further proceedings (II. ÚS 326/09). According to court decisions on file with the author, in two separate actions against Spoločnosť 7 Plus, he was awarded further 73,000 euro by district courts. None of the decision was final. Data about appellate proceedings was unavailable. Soročina also lodged two separate personality protection actions against Petit Press, seeking almost a million euro in damages.

were aware that journalists carried the relatively inexpensive employee liability insurance.

8.3.3.1 Legal Training

Most media organisations offered employees some sort of lawyer-led training. This typically focused on educating reporters about the limits of journalistic work, which differed between broadcasters and the press. According to Langer, it was very important to ‘educate clients’ through workshops for journalists because ‘whether in broadcasting, in the press or on the internet ... [the media] wield enormous power’. Lawyers tended to review recent legislative developments, disputes instigated against the organisation and/or significant judicial decisions, explaining how to develop non-actionable stories. As Langer put it, the aim was to demonstrate to journalists ‘how to put their writing right’ and ‘how to formulate sentences’ in order to avoid liability. In print press outlets, the focus was mainly on wording used in articles regarding innocence presumption; using full names of subjects; verifying and citing sources; distinguishing between value judgments and factual statements; the basic principles of the proportionality test; or archiving sensitive information. Training for television reporters furthermore included issues concerning objectivity; disclosing persons’ faces; filming on private property; and prior consent.

Training took different forms, including obligatory seminars for all journalists, lectures for new employees and/or selected reporters, informal meetings among lawyers, senior editorial staff, and journalists whose stories were most likely to attract litigation. The frequency ranged from twice a year to every couple of years. Publishing houses owning several tabloid and life-style publications particularly felt the need for regular lawyer-led seminars due to high employee turnover. Other organisations tended to hold legal training on an *ad hoc* basis upon request of newsroom management.

Given the rather high turnover within the profession, the more junior journalists particularly benefitted from legal training. Several lawyers believed that following legal training journalists were able to avoid personality/goodwill rights infringements. According to Ogurčák, having attended legal seminars, journalists were ‘more careful to identify the exact stage of any given criminal proceedings’ and thus avoid liability for innocence presumptions violations, prevalent beforehand.

8.3.3.2 Newsroom Codes

The media increasingly focused on in-house introductions to journalistic ethics and the obligation to abide by the organisation's ethics code. In collaboration with media professionals from leading news media organisations (Mocek 2015, 112), in 2011, the Slovak Syndicate of Journalists (SSN) adopted a modern Code of Ethics (APJE 2017), which reflected the main issues plaguing Slovak journalism, including the use of covert sources or publication of information concerning an individual's private life (Štětka 2012, 16; Terenzani 2010). Several outlets, including *Denník N*, *HN* and *RTVS*, committed to adherence to the Code. *Trend* and *SME* had their own codes of ethics. *Nový Čas* followed Ringier's code and *Plus 7 dní* and *Plus 1 deň* were supposed to abide by NMH's code of ethics.

Fila stressed that new reporters attended an induction where *SME*'s ethics code and journalistic work principles were discussed. Diko highlighted the importance of the SSN Code and *RTVS*'s bylaws for programming employees and collaborators (RTVS 2011), which provided detailed and solid 'guidance how to behave in certain situations'. Diko insisted on adherence to the codes within the newsroom to ensure 'the chance to be held liable' was 'really small'. In most outlets, the primary responsibility to follow ethical journalism and consult superiors regarding contentious stories lay with reporters. In some organisations, journalists faced penalties for breach of responsibilities, or 'a fine for carelessness' in Obradovič's words. Diko claimed that naming and shaming journalists whose fault resulted in the obligation to broadcast a correction had 'a didactic effect', as it motivated reporters to avoid future mistakes.

8.3.3.3 Pre-publication Scrutiny

Most content was reviewed by several editors before publication.¹⁷⁶ In many outlets, the editor-in-chief was heavily involved in the review process and trusted to be able to assess

¹⁷⁶ According to Obradovič, *HN* commentators were typically experienced professionals, trusted to follow the rules of responsible journalism. They enjoyed 'extra freedom' when developing content, which was only reviewed by the commentaries section editor without involvement of other senior editors or lawyers.

whether a story involved liability risks, and, if so, how best to minimise them. Under Šimečka, *SME* used a ‘format of at least three editors’. It ‘was the editors’ role to guard over these issues’ and to be involved in ‘permanent work with reporters’. Šimečka himself contributed to editing the ‘most prominent articles’. According to Kubina, senior editors had to understand the law to avoid violating personality rights. Legal knowledge was acquired with each new lawsuit instigated against *JOJ* because ‘[e]ven if you organise any kind of training ..., each case is different’. Obradovič was convinced that *HN*’s rather strict three to four level pre-publication control mechanism explained why the newsroom ‘did not have any large issues’ with personality/goodwill protection in the 2010s. Múdry (2014) argued that many of the before-action claims received by *SITA* did not reach the courts because editors were ‘thorough’ and ‘mindful of the facts’, which the subjects of stories ‘were unable to dispute’.

Journalists and/or editors in all but one of the interviewed outlets, had the option, at their own discretion, to seek pre-publication advice from lawyers. Paradoxically, according to Vagovič, legal vetting were not available at *týždeň*, even though the weekly often covered ‘risky issues that might infringe personality rights of various people [or] firms’. Unlike English newspapers (Barendt et al. 1997; Weaver et al. 2006; Townsend 2014), none of the media organisations employed night lawyers to review content before publication. Obradovič was astonished to learn about this, and stated that while it would be ‘absolutely ideal’, he could not imagine ‘who in Slovakia would have the money for that’. With the exception of *RTVS*, which had its internal legal department, media organisations contracted one or several external law firms for legal services, including vetting. Most newsrooms had a lawyer available on call or email 24 hours a day.

The proportion of items reviewed by lawyers varied over time, between outlets and various content types. Compared to the 1990s and 2000s, media professionals consulted lawyers more frequently. However, it was still an exceptional occurrence in many newsrooms. Vetting was ‘not routine practice’ at *HN*, according to Obradovič. It was used concerning ‘very sensitive topics’ up to ‘three times a year’. In contrast, Mikolášiková argued that at *Nový Čas*, pre-publication consultations occurred ‘routinely’, or as Benedik, put it, ‘in essence on a rather regular basis’, ranging from every three days to several times a day. At *SME* Balogová used pre-publication legal advice ‘rather intensively’ – up to several times a week, while under her predecessor, lawyers were consulted only once every three to six months. The use of “legalling” partly depended on the periodicity of the publication or programme. Due to the different work pace, serious

weeklies were more likely to be reviewed by lawyers than dailies. More complex, investigative stories or public affairs programmes prepared over a longer period tended to be regularly reviewed.

Admitting that “legalling” could not eradicate all infringements, those editors and journalists who frequently used pre-publication advice, were convinced that it helped to save considerable amount of funds that would otherwise have to be spent on litigation. As Balogová put it, ‘thanks to our lawyers we don’t lose that many lawsuits’. Brunovský argued that ‘work with lawyers in a preventive manner’ ultimately reduced financial costs and ‘solve[d] many complications’. Media lawyers also found that the practice substantially contributed to the reduction of justified claims. Zlámálová believed that, she enjoyed a good rapport with her clients, that reporters were used to requesting vetting and that if the editor-in-chief motivated them to do so, lawsuits would be prevented. Langer’s firm was ‘very glad’ when clients consulted about content pre-publication because those who did so regularly, had ‘an absolute minimum of lawsuits compared to those who d[idn]’t’.

8.3.3.4 Editorial Scrutiny in Light of the Personality/goodwill Protection Regime

The primary emphasis during pre-publication review was on fact-checking and availability of legally admissible evidence in light of the decision-making practice. As Benedik explained, ‘given the [adjudicatory] practice, it is above all crucial for all the information – factual statements – comprised in the article to be true, to be verified’. Value judgments also needed to be ‘supported by undisputed factual statements’. Šimečka ‘insisted on verification of facts’ because ‘the biggest problem arises when we write falsehoods that are easily actionable’. Therefore, ‘everything simply had to be substantiated’ and ‘verified, be recorded’. Balogová felt, ‘one doesn’t really have a different option’ to prevent lawsuits than to ‘verify everything’. Vagovič argued that ‘the crucial points needed to be substantiated’. One could only dare use words like ‘allegedly’ or ‘purportedly’ for less sensitive claims that were unlikely to attract litigation. Milan asserted that unless he had ‘something 100% verified’ or ‘on paper’, he would not write it. Soltész maintained that the focus on fact-checking was ‘a normal, elementary instinct of self-preservation’ that did not ‘always concern a dispute’ but served to prevent ‘having to apologise in the newspaper, which is very frustrating’.

SME was ‘extra cautious’ to ‘substantiate and verify’ allegations concerning Harabin, because ‘one knows that it might not end up well’. The caution was not reflected in endemic ‘self-censorship’ or a ‘fear to write’ about Harabin, according to Prušová. Everything simply had to be substantiated. Prušová claimed to have learned from her litigation experience to ‘be more cautious’ and ‘pay more attention’ when drawing on information published by other outlets. Krejča professed particular care regarding allegations concerning private companies. In order to avoid ‘liquidating someone’s business based on one reportage’ containing unverified facts, stories were ‘intensely scrutinised as any other scandal or controversial case’ and had to be ‘damn well proven’ to be aired.

The perception of the adjudicatory practice influenced the type of evidence used. Given the courts’ preference for palpable evidence, journalists and newsrooms had, according to Ogurčák, become ‘more careful about the way they write’ and the evidence to substantiate their claims. The most complicated editorial decisions involved information received from anonymous or semi-anonymous sources. Fila explained that ‘the problems start with anonymous sources. There, definitely, the rule applies not to rely on a single [source]. However, there even two might not suffice’. Obradovič argued that in cases of controversial off the record allegations to which the involved parties refused to respond, facts had to be verified from at least two sources – otherwise ‘it cannot go to press, it cannot go on the web. Nowhere’. Journalists tried to corroborate claims with documentary evidence like contracts, criminal proceedings files, public register data, or documents acquired from authorities through FOI requests. Documenting the claims with email conversations or audio-recordings, and trust in sources’ willingness to testify before court were also stressed. According to Prušová, ‘you have to verify [information] as much as possible, build a network of sources you can trust unequivocally, who you can be sure will testify in case of a dispute’. In *Trend*, an anonymous source’s promise to testify was considered ‘too little’ to publish potentially defamatory claims because, as Brunovský put it, ‘unfortunately, the burden of proof is on our side’. Múdry argued that in *SITA*, ‘the basic facts needed to correspond with the truth’ and ‘had to be substantiated’.

Journalistic “duties and responsibilities” promoted in the established case-law of the ECtHR and recent jurisprudence of the Constitutional Court were also emphasised in editorial decision and scrutiny. Šimečka claimed that under his editorship, they ‘had a relatively clear [editorial] line’ in not publishing things that were not in the public interest, such as information about private individuals’ records in the then newly-opened archives

of the Czechoslovak Secret Service (ŠtB). Šimečka explained, ‘That doesn’t interest us. I don’t want to get into such dirt. However, when it is a public figure, it is different’. Petková stated that to pursue a story it had to ‘involve public interest’ and be of ‘importance’. In stories concerning ‘a public figure, the public interest is straightforward’ as opposed to an individual who ‘doesn’t hold a public office or is not in politics’.

Soltész believed that ‘nowadays the decision process in newsrooms is healthier to a certain extent as it takes into account the same factor as the law, that is, the status of the individual – whether it is a public official or not – [and] the societal importance’ of the news item. Nicholson resolutely declared that ‘the societal relevance of the topic or article’ were key when deciding whether to pursue a story or not. In case ‘there is no wider context or significance for the public, I won’t go for it’. Tabloid lawyers frequently considered the public interest in privacy intrusions or publishing serious allegations about private persons and relatively public figures. Television lawyers emphasised objectivity and news impartiality.

8.3.4 Manifestations of the Personality/goodwill Protection Regime’s *Benign* Chill

The personality/goodwill protection regime produced a degree of *benign* chilling effects. Their manifestations did largely correspond with those reported by previous empirical studies of defamation in common law countries, as discussed in Chapter 2. The *benign* chill of the personality/goodwill protection regime did vary across the news media sector. Structural *benign* chilling effect on expression was present when publication of insufficiently substantiated, potentially defamatory claims or privacy intrusions was deterred, according to respondents. When potentially defamatory allegations that were believed to be in the public interest came up, the direct *benign* chill was manifested in publication delays to allow for further verification of claims and in provision of more precise and/or civil speech. The following paragraphs explore these various examples of the chills in more detail.

8.3.4.1 Deterring Insufficiently Substantiated Allegations and Privacy Intrusions

According to some respondents, the increased liability risk of the 1990s and 2000s created a direct *benign* chilling effect by preventing numerous instances of publication of

illegitimate speech and thus contributed to enhanced protection of personality/goodwill interests. Zlámalová argued unprompted, that the regime had a beneficial effect on journalism. She acknowledged that on *Markíza* high risk liability programmes were not aired ‘numerous times’. Rather than harming expression, it represented ‘a certain form of psycho-hygiene for the television’ because it was not ‘possible to shoot and broadcast everything’ and ‘largely minimise[d] the risk of airing something untrue or something that would markedly infringe someone’s rights’.

Acknowledging that reporters sometimes might feel unjustly censored, Múdry (2014) explained that editors and managers often merely tried to prevent publication of illegitimate speech. Múdry (2014) recognised the existence of ‘a certain self-regulatory mechanism’ in the media. As *SITA* managing director, he had ‘stopped a lot of information’ because he could ‘not afford a personality protection lawsuit for large damages which would liquidate the agency’. Múdry often had to dilute reporters’ claims when he possessed contradicting information. In those cases, some journalists perceived him as ‘a censor’. Yet, Múdry (2014) claimed the he ‘was just cautious and protected the agency’. Some journalists recognized the need to act responsibly and respected the editor’s right to pull stories he/she considered insufficiently substantiated so posing undue liability risk. Stressing that this was a ‘rare and extreme case’, Milan mentioned a colleague’s article concerning allegations of past criminal activity of a well-known individual pulled by the publisher and editor-in-chief. Although the allegations were ‘very cautiously written’ and were believed to be true, it was concluded that the risk of losing a potential lawsuit was too large as the allegations were based on the Communist Secret Police files that the courts did not consider to be reliable evidence. ‘I am a friend of freedom of speech, freedom of opinion to the maximum’, Milan declared. ‘On the other hand, I have to respect the owners’ decision that they simply don’t want to risk the loss – financial loss or reputational loss. Therefore, we have to write responsibly’.

Vagovič believed that the media and ‘investigative journalists ha[d] learned their lesson’ and became ‘much more diligent and responsible, taking much more care about what they publish’. Vagovič pursued a story concerning an alleged meeting between Harabin and a criminal suspect. Since the information came from an anonymous and a semi-anonymous source, photographic evidence was lacking, and ‘Harabin represented a great risk that we would lose’, the story was never published. Vagovič argued that ‘it was not [undue] fear’ that prevented the publication but that ‘it was natural’ because he was ‘unable to follow it through as the last step was missing’. Vagovič also pulled a follow-

up article about a company threatening a 20-million-euros lawsuit shortly before publication because he ‘felt that it could cause us problems’ and was ‘not hundred percent sure’ whether it was objective, sufficiently substantiated and whether other firms were not involved in a similar practice.

Benedik recognised that the litigation threat had contributed to increased responsibility within the journalistic profession, precluding publication of illegitimate speech. Benedik recollected numerous instances when following pre-publication consultation, it was decided against the development of a story because it was ‘an exclusive private matter having nothing to do with a legitimate public interest in receiving information’ or because the claims were ‘simply so poorly substantiated that the [liability] risks would be gigantic’.

All the above examples correspond to a direct *benign* chill; whereby harmful speech is deterred by direct legal considerations. The structural *benign* chilling effect, by definition, requires internalisation of responsible journalism standards under the influence of a defamation and privacy regime. Claiming that he was rather successful at explaining to the tabloids he represented that certain practices were ‘inappropriate’, and helping change them, Benedik indicated that the Slovak personality/goodwill protection regime succeeded in gradually creating a degree of structural *benign* chilling effect.

8.3.4.2 Delaying Publication

Another sub-type of direct *benign* chilling effect was demonstrated when publication of potentially defamatory statements, which editors and/or lawyers assessed as insufficiently substantiated, was delayed to allow for further fact-checking. Krejča tended to ask reporters ‘to wait with the reportage and finalise it to be perfect’ when dealing with sensitive allegations. Acknowledging that sometimes another outlet might break a story first, Krejča believed that this subsequent reportage was typically ‘twice as good and more accurate’. Adamčík found it was sometimes not possible to immediately publish ‘certain, interesting information’ because its source was insufficiently legal. It was typically published ‘after a while’ after the outlet had ‘managed to verify it’. Mikolášiková delayed publication of larger investigative stories until she was able to check all facts. Diko declared, ‘If we don’t have certain statements sufficiently substantiated or we know we might have a problem, we verify further and broadcast later’. Diko believed that

journalism was not merely about ‘being the first to bring information’ but involved ‘responsibility’. Therefore, it was ‘better to keep something for ourselves or verify it and only then publish rather than hurt someone’.

8.3.4.3 Providing More Balanced Reporting

Most lawyers advised approaching subjects of stories for comment, or to allow them ‘to formulate a contrary opinion’, as Lukášek put it. This was another practical manifestation of the direct *benign* chill of the personality/goodwill protection regime on journalistic speech. Obradovič claimed that with each justified correction/apology request, a temporary, positive ‘psychological effect’ occurred as the increased pressure to avoid mistakes led to enhancements in professional responsibility and content quality. Journalists ‘become more cautious in a positive way ... Suddenly, you see they’ve approached all [interested] parties’ without having instructed them to do so’. However, respondents also suggested that subjects of reporting often refused to respond or failed to respond in time for publication. Benedik explained that he insisted on contacting the subjects involved prior to publication because ‘the truth might be, as they say, somewhere in the middle’ and that this gradually became ingrained in journalistic practice without specific liability considerations. As such, this could be considered as an example of a structural *benign* chilling effect.

8.3.4.4 Language Precision

Lastly, the regime promoted responsible journalism, and thus produced a direct *benign* chilling effect, by encouraging greater language precision. Newsrooms tried to phrase contentious information in a legally airtight way by toning down potentially defamatory statements when breaking news or stories of great societal importance which necessitated publication without delay. Brunovský explained, ‘we alter formulations in order to be able to withstand a potential correction request or lawsuit’. Brunovský believed that in some cases pre-publication protestations forced journalists to take greater care about ‘what they write or don’t write to be able to defend it’. To a certain extent, Brunovský perceived pre-publication notices as ‘a positive phenomenon’ that contributed to greater responsibility and well-argued, ‘fair’ claims. *Plus 7 dní* articles were reviewed by the

veteran editor-in-chief who ‘knew the case-law and how courts think and what [plaintiffs] clutch at’, and, according to Milan, tended to suggest rephrasing or removing contentious statements of lesser importance. ‘As long as it d[idn]’t change the article’s message and really [wa]s merely playing with words’, Balogová tried to ‘take great care not to bleed on some twaddle’. *SME* consulted lawyers regarding articles about past successful litigants in order not to ‘go against an existing decision’, advised Fila. While Fila did not ‘want to say that self-censorship or some kind of panic would be in operation’, he did admit that ‘unfortunately, our experiences are as they are. And there we are cautious’. Ogurčák, thought the media became ‘more straight with the reader’ and the information was ‘correctly presented’ with more precise wording. While Balogová doubted that ‘readers would benefit’ from the increased precision because they ‘do not notice things to such an extent’, she admitted to being forced ‘in a perverse way’ to learn about legal issues concerning personality/goodwill protection.

Legal vetting typically involved ‘recommendations how to suitably rephrase a potentially risky formulation’ or ‘water down certain claims’, according to Lukášek. Adamčík ‘reviewed draft articles and proposed recommendations how to ‘change [certain] expressions’ that were ‘significant [or] risky’. Langer provided recommendations on how to make certain expressions more exact so that they corresponded with the actual state of affairs or respected presumption of innocence. He believed that some journalists unduly simplified certain phrases and instead of stating that ‘allegedly, according to such and such source such and such should have occurred in this way’ claim that ‘a certain person committed such and such’.

Television lawyers advised against including journalists’ subjective opinions. Lukášek explained, ‘the feature itself doesn’t have to be neutral; it has to carry a neutral view of the journalist on the issues;’, that is, ‘the journalist has to be neutral in his/her conduct’. He thus tried to ‘push reporters to leave ... subjective evaluation of the covered issues to the viewer’. Zlámalová urged journalists to ‘state things precisely and claim only what has been proven and is true; to avoid speculation, commentaries and value judgments, and hypothetical concluding statements that might influence the viewer in his/her beliefs or opinion about any of the involved parties’.

In line with the adjudicatory practice, lawyers and editors tended to avoid identifying specific private persons or entities when publishing allegations, only reporting on the wider issues considered to be in the public interest. Often, ‘one waters it down’ by not showing a person’s face, and ‘not giving such precise clues, Kubina advised. Whoever

wants will take the hint'. According to Fila, lawyer consultations often revolved around the extent to which someone's identity should be revealed, and whether personal details or the exact location of a company should be published. If reporters insisted on naming someone in a potentially defamatory broadcast, Zlámalová asked reporters to consider whether they wanted to describe an important issue or just wanted to 'walk over someone'.

When developing stories, journalists tried to phrase sensitive information carefully to reduce liability risk. Milan tried to 'write [any] article so that it is nonactionable'. Having experienced disputes initiated for 'tiny mistakes', Milan learned to be 'more careful about details', not to include unimportant value judgments, and 'formulate statements in a legally clean way'. Milan admitted that 'to a certain, small extent', his litigation experience contributed to improvements in his writing. However, like Marjoribank's and Kenyon's (2004) findings, he suggested that the effect of the law was only secondary to a journalists' maturity and experience because 'as one [professionally] develops, works, has more experience, one improves'. Recognising he was 'far from immune' from liability, Leško looked at writing commentaries 'through the optics of potential court proceedings' and strived to minimise expressive, insulting or derisory language that could offend someone. Benedikovičová was 'definitely more watchful of each word, not to give a pretext for contesting the article' and tried to avoid 'ambiguities that could be interpreted in an unintended way'. She recognised that media professionals' increased caution concerning language might be considered a positive effect of the personality/goodwill protection regime because it contributed to improving the quality of journalistic outputs.

8.4 Limits to the Regime's *Benign Chilling Effect*

Despite the improvements to journalistic professionalism since the 1990s, respondents as well as analysts recognised that the law had not been able to prevent many personality/goodwill rights infringements. These continued to occur in both serious and tabloid news media in differing forms and intensity levels.

The red tops

Plaintiffs and their lawyers were convinced that unethical and deliberately unlawful behaviour continued particularly in the tabloids. Believing that they were considerably softer than their Czech counterparts, interviewees working for serious outlets were also openly critical of the red tops' practices and lack of professionalism. Leško claimed: 'I don't like if someone sells newspapers on the basis of fabricating something or prying into matters... which are of no public interest'. Soltész believed that tabloids often produced their own B-list celebrities 'in order for the paper to sell well when they pillory them. They have the project thought-out from the beginning to the end'. Šimečka acknowledged that some tabloid outlets were 'involved in filthy practices'. Mentioning a lost case involving *Plus 1 deň* reporting that Fico allegedly labelled its reporters "dirty bastards", Obradovič maintained that 'we have to come clean and say that it was simply a lack of professionalism on their part' because there were no witnesses and Fico's words were not on record. Obradovič believed that even if they might have been right, they had to 'have it substantiated'. Therefore, 'we can criticise Slovak courts' as 'the results are catastrophic' but 'when you make a mistake, you cannot say it was the fault of biased courts'.

Serious publications

Managers and reporters admitted that even the leading news media made mistakes. According to Krejča, '[i]t would be naïve to pretend that each programme is perfect and that each journalist is a perfectionist who has truly been careful about every fact'. He admitted that 'given the sheer amount of reportages and facts they have to process every day, even our people can occasionally go astray'. Múdry (2014) considered it 'very, very bad' when he had to 'agree with a politician, particularly Robert Fico', who said that 'he would waste his time explaining something to *SME*' as '*SME* had no interest in the truth as *SME* had its own truth'. Múdry believed that Fico was 'unfortunately ... too often right' as *SME* at the time was 'an exclusive group of people who formed their right to the truth', which was 'not journalism'.

Fulmek argued unprompted, that *SME* was 'full of mistakes and flaws' and that if he read the content before publication (which he deliberately did not) he would prevent the publication of a myriad of things. Fulmek was particularly exasperated by the 'blunt unfairness' that sometimes appeared in journalistic texts about influential politicians and companies. It was demonstrated in the way journalists posed questions and in their

unwillingness to accept facts disproving their ‘version of the truth’, ignoring the arguments provided by subjects of reporting concerning the issue at hand and obstinately insisting that the given case involved wrongdoing on the subjects’ part. Fulmek was convinced that such unfair practices were ‘ruining the good image of the newspaper’ but did not think that they often led to personality/goodwill protection disputes.

It was suggested that following the drain of advertising revenue after the global economic crisis of 2008-2009, even serious publications began to focus on profitability, suppressing liability or public interest considerations. Soltész felt that an increasingly important factor for editors-in-chief was ‘how [the story] will sell the newspaper’. Soltész believed that ‘if the headline is good, if it sells well at the newsstand’ even self-defined quality outlets increasingly ‘suppress considerations of liability or societal importance’. Citing wide-spread media coverage of a car accident involving a government minister whose pockets included allegedly a large amount of cash and items of intimate nature (Krempaský 2013), Soltész claimed that he ‘wouldn’t publish it under any circumstances’ because regardless of the minister’s public figure status, the information was of ‘no societal importance’.

The following section explores which legal and contextual factors combined in limiting the personality/goodwill protection regime’s effectiveness in producing a *benign* chilling effect and promoting responsible journalism.

8.4.1 The Red Tops: Profitability of Sensational Stories and Smears

The interviews suggested that in light of the adjudicatory practice (see Chapter 6) tabloids had little to fear from the personality/goodwill protection regime regarding the highly profitable practice of publishing unsubstantiated sensationalist allegations or intrusive stories about celebrities, politicians, or private persons. There were also indications that for certain media owners, publication of smears or character assassinations might have brought larger rewards at relatively little cost.

8.4.1.1 Rewards of Publishing Illegitimate Speech

The interviews confirmed the findings of empirical studies focusing on common law countries (Barendt et al. 1997; Weaver et al. 2006) which suggested that sometimes

tabloids knowingly publish sensationalist articles carrying high liability risks because of their profit-making potential. According to several respondents, the tabloid press's business model was based on deliberately publishing sensationalist allegations and unjustified privacy intrusions attractive to their readers (see Chapter 7). This increased circulation and profits, far outweighing any potential costs. P05 believed that for the tabloid press, 'freedom of expression merely represents the banner under which the struggle for profit is led at the expense of [individuals'] personality rights'. Kubina believed that the red tops' 'newsroom philosophy' was to consciously 'work on the line' between legitimate and illegitimate speech, 'knowing that they will get into lawsuits'. They venture into sensationalist, privacy intruding publications knowing in advance that they 'will end up in court' but 'even if they lose it will still be worth it' because 'it will increase their circulation'.

Analysts argued that the profit-driven foreign media owners of the 2000s were little interested in nurturing quality journalism. Instead, to attract the largest number of consumers and advertisers in the highly competitive market they focused on scandals and sensationalist news (Brečka 2002, 12; Dobek-Ostrowska and Glowacki 2008, 19; Stetka 2012, 438; Štětka 2012, 18). To keep running costs at a minimum, the tabloids in particular, welcomed applicants with unfinished higher education degrees or, with high school qualifications only, who were willing to work for lower salaries and/or did not object to breaching ethical standards (Köpplová and Jiráček 2008, 202–3; Krútka 2006, 236–37; Školný 2017, 195).

Milan believed tabloids followed two objectives that influenced editorial decisions: 'we can idealistically pretend that the press should provide the public with [important information], that it should support democracy, [public] discussion etc. It is one of its functions. On the other hand, it is a business as any other'. Milan said that *Plus 7 dní*'s business model was 'clear' – 'we bring information which people are interested in and therefore we can profit from people'. While Milan admitted that the decisive factor affecting *Plus 7 dní*'s editorial decisions was the consideration of the publication's ability to attract readers, he reiterated that it was 'very much intertwined' with public interest. 'One weighs up whether it is worth the risk that we make some profit out of it but [might] get into a lawsuit and lose all the profit or even more'. Milan argued that the magazine simultaneously tried to 'justify [publication] with public interest'. Milan illustrated the workings of the business model on coverage of an allegedly close relationship between Fico, who had cultivated an image of a family man, and his young female assistant, paid

for by the tax-payer. Milan claimed that the information was in the public interest and would simultaneously increase circulation.

Having been confronted during the interview by a judge sitting nearby about the press's relentless exploitation of some stories, Milan refuted accusations of revelling in the persecution of certain public figures such as Harabin or intentionally causing them harm. 'It doesn't work like that – [to harm someone] out of spite', he maintained. However, Milan admitted that 'in case of a fruitful story with true economic potential', the newsroom would 'naturally pursue it further' but with 'no objective to harm' anyone.¹⁷⁷

The interviews suggested the influence of ownership in relation to editorial decisions and the legal regime's ability to produce a *benign* chilling effect. Many public plaintiffs believed that they were unjustly pilloried in the media. Smears were spread about them with malicious intent in order to serve the owner's or reporter's vested interests (see Chapter 7). Ikrényi described a journalist apologising to his client for a defamatory article, claiming he 'was instructed to do it' as it served the owner's interests. Ikrényi also experienced some journalists writing smear articles for bribes and argued that at other times, 'totally shallow human urges' like 'journalist vanity' were behind sensationalist articles. Ikrényi claimed to have encountered cases where the rejection by a man of a female journalist's attentions gave rise to unwarranted attacks. Vozár believed that it was financially beneficial for some media organisations to publish defamatory stories. He mentioned the daily *Slovenská republika* which used to receive subsidies from Mečiar's government for publishing smears about opposition politicians. According to Vozár, its senior editors openly proclaimed that they had 'money set aside for this' and would 'write whatever [they] want[ed]'. The co-founder and CEO of *Markiza* until 2007 also used his media to advance his political career (see Štětka 2012, 10; Ondrášik 2010a, 129–30).

The influence of ownership and owners' vested interests became pronounced again following the 2008-2009 global economic crisis as foreign owners and Slovak

¹⁷⁷ The publisher, against whom Fico led myriad disputes, also repeatedly denied claims that it 'recurrently, intentionally scandalize[d] and slander[ed]' Fico, justifying its reporting about Fico's conduct by 'a legitimate interest of the media ... given his societal standing' (*Fico v. Spoločnosť 7 Plus* No. 2, 3).

legacy investors were gradually replaced by local oligarchs – very influential local businessmen, often with alleged links to political parties and little experience of media sector investment (see, e.g., Štětka 2013; Balčytienė et al. 2015; Štětka 2015). By 2015, a single local investment group – Penta – acquired *Trend*, *Plus 1 deň* and *Plus 7 dní* and controlled forty-five percent of shares in Petit Press. By 2013, *Pravda* and *HN* were also owned by local businessmen (Stetka 2012, 439; Kernová 2013; Medialne.sk 2014; Cunningham 2015, 614).

These acquisitions came at a time of declining profits. Commentators and journalists were therefore sceptical about the new owners' motives, suspecting media were to be tools to promoting the owners' vested interests through political PR, suppressing about competitor coverage, and attacks on opponents (Stetka 2012). This seemed to have been confirmed by Penta's co-owner, who referred to its media portfolio as a 'nuclear briefcase' and 'insurance that it w[ould] be more difficult for anyone to attack [Penta] irrationally' (cited in Mikulka 2015). By 2017, many experts saw little indication of interference in Penta-owned media, particularly in the quality outlets *SME* and *Trend* (Cunningham 2016, 6, 2017, 7; Múdry 2017). However, others recognised 'a clear negative impact on editorial independence, including self-censorship in coverage of politically-sensitive topics' (cited in Terenzani and Petková 2016). The resignations of the three most senior *Plus 7 dní* editors (Medialne.sk 2016, 7; Poláš 2015) seemed to have suggested some interference. One editor cited differences in views on editorial freedom between herself and senior management as her reason for leaving (Kernová 2017). Commentators also observed a switch in *Pravda*'s editorial line after the 2010 ownership change, with an evident reporting bias towards Fico's party Smer and against his opponents (Školka 2017, 199-201; Johnson 2012, 160; Czwitkovics 2010; Štětka 2012, 18). The ownership change was followed by rapid dismissals and departures of newsroom management and journalists critical of Smer (Czwitkovics 2010; Školka 2017, 201), and by reports of purported attempts at diluting critical coverage of businessmen close to Smer (Milan 2010).

8.4.1.2 Costs of Publishing Illegitimate Speech

Respondents believed that the relatively low non-pecuniary damages awards in cases that did not involve the discrete group of particularly dangerous public officials and

businesspeople failed to deter the tabloids from unethical and deliberately unlawful behaviour. The tabloid press had little to fear from the subjects of its reporting – celebrities, ordinary citizens who feuded with their neighbours, car accident victims, politicians or ex-politicians. They were aware that most would not sue, and even if they did, the damages awards that they would be obliged to pay were likely to be negligible. Kubina described the tabloid *modus operandi* as follows: ‘They pursue celebrities more. It works on the principle of mutual blackmail – you give me dirt on that person and we will not spill your dirt’. Milan ‘was not scared of the lawsuits’ because the law did not work properly. He was convinced that if courts were able to adjudicate cases involving publications of made-up claims within six months and ‘impose a fine, newspapers would be more careful’. Milan believed that given the delays in adjudication and the need to pay the court ‘no one sues’ and, with the exception of some litigious individuals, ‘the risk that someone will is generally relatively low’.

Lukášek maintained that ‘sensationalist print outlets have no fear or motivation to correct their conduct because a system that would somehow prompt them to change their attitude or be slightly more careful when developing certain topics does not exist’. Lukášek was convinced that media sensationalism was a consequence ‘of them facing no risk that could later “kick them in the butt”’. Lukášek, believed ‘in essence, print and electronic media d[id] not face any excessive loss’ as 30,000 euro represented ‘two minutes of advertising’ for a television broadcaster. Prior to the global economic crisis, 100,000 euro would not be a dramatic amount for the larger publishing houses, particularly for those having tabloid publications in their portfolios.¹⁷⁸

Some plaintiffs and their lawyers believed that the personality/goodwill protection regime failed to deter unwarranted attacks because the tabloids were easily able to pay damages from ‘special funds’ or ‘budgets’ they put aside to cover potential litigation costs. Ikrényi argued that ‘many publishing houses have budgets to fund lost lawsuits for articles that whip up circulation and viewership. They will no longer care in five years [if they have to pay] and it will still pay off’. P05 was convinced that ‘tabloid press publishers

¹⁷⁸ In 2008, Ringier achieved a profit of 9.6 million euro. Spoločnosť 7 Plus earned almost 2.4 million euro. The 2010 profit of Petit Press reached 1.3 million euro and that of Ecopress – publisher of *HN* – 200,000 euro. See <https://finstat.sk/>.

establish special funds to cover the costs of legal proceedings because they know that by publishing, often fabricated, information about their targets' privacy they are constantly on the edge [of the law]'. P05 explained that the author of one of the articles concerning her stated in court that 'it is sufficient if such article contains twenty per cent of truth, and the rest can be "whipped up"'. P05 contended that the fact that tabloid press publishers had special funds to cover costs of disputes provided evidence that legal action concerned deliberate newsroom politics rather than journalists' freedom of expression. L01 similarly argued that the damages awards were not 'bankrupting for the media' since many of them had special funds to cover litigation expenses, and were usually able to pay immediately.

Tabloid newsrooms denied existence of such special funds. Ringier's Mihálik explained that the only funds they had set aside were the budget reserves required by law. As discussed above, those reserves tended to hinder serious outlets rather than encourage them to publish borderline information. Milan stated he 'would not be surprised' if some publishers held financial reserves as a buffer to permit them to write borderline stories, but maintained that *Plus 7 dní* strived to produce stories responsibly. Milan continued, 'depositing funds on some special account or setting them aside because we expect that someone will sue us – that doesn't exist. We always try to write the articles in a way that doesn't provide any reason for suing'.

Plaintiff lawyers were convinced that if courts awarded higher levels of damages, tabloid media and journalists would be compelled to act in line with their duties and responsibilities (e.g. L04, L05, L21). According to Lukášek, damages should act as a warning to the defendant that certain behaviour, including knowingly publishing incorrect facts or distorting truth that unlawfully infringes one's personality rights was unacceptable. This would, according to L04, also benefit the public's rights because 'freedom of expression should not comprise the right to publish false information'.

Interviewees further suggested that by publishing sensationalist information, tabloids' credibility suffered little compared to that of quality papers. Recognising that there were newsrooms 'which d[id] not enjoy ... respect' of subjects of stories or their audiences, and did not seek or require it, Brunovský considered *SME*, *.týždeň* and *Trend* as outlets 'with an internal DNA' reflected in 'pursuing the essence of issues and striving to obtain information widely'. Kubina observed that the risk of incurring reputational harm was small for most of the tabloid journalists, who often remained anonymous to the public, and who adopted predominantly the practices characteristic of the 'popular disseminator' model of journalistic culture (as developed by the World Journalism

project, see, e.g., Hanitzsch 2011).¹⁷⁹ Compared to the tabloids and some oligarch-owned outlets,¹⁸⁰ the credibility loss risk if found liable for personality/goodwill infringement, was high for the quality press and its journalists.

8.4.2 Protracted Adjudication and High Staff Turnover

The interviewees suggested that delays in proceedings were one of the key factors limiting the *benign* chill of the personality/goodwill protection regime. While Múdry (2014) recognised a positive impact of the regime on the youngest generation of journalists in terms of rigour employed during development of stories, he argued it had had a negligible effect on the previous generations. This was because by the time the verdicts were reached, most reporters ‘were no longer in the media’. Similarly, according to Brunovský, ‘the length [of proceedings] [wa]s a fundamental problem’ that defeated the preventive function of the law because by the time a final judicial resolution finding the publisher liable was reached, the author of the impugned statements usually long left the outlet. ‘Therefore, no correction mechanism exist[ed]’, as Brunovský put it.

The delays combined with political economy factors to further weaken the personality/goodwill protection regime’s ability to create a *benign* chilling effect. Media managers had long recognised that improvements to responsible journalism in general had been undermined by the lacking economic resources and the resulting inability of quality media organisations to attract and retain high-quality reporters. The high outflow from the profession was seen as the main reason for the deterioration of professionalisation experienced in the 2010s (Kollár 2013b). Journalism experience was such ‘a rare commodity’ (Johnson 2012, 158) that reporters who spent five years in the media were considered old-timers. In light of the low remuneration (Glovíčko 2011; Fulmek 2013), increasingly demanding working conditions and deteriorating job security (Krútka 2006, 235-36; Brečka and Keklak 2010; Freedom House 2011a), low societal appreciation of the profession (Pacheroová 2010), little impact of their work on public

¹⁷⁹ Journalists in this milieu are very audience oriented and predominantly focus on news that attracts the widest possible audience.

¹⁸⁰ At the time of the interview, *Trend* did not belong to Penta’s NHM portfolio.

affairs (Múdry 2013; also Krútka 2006, 235), and the lacking prospect of career progression some of the most talented journalists left for PR, government spokespersons posts or politics (Štětka 2012, 16–17; Johnson 2012, 159).

8.4.3 Uncertainty in the Context of Poor Education and Weak Institutionalisation

The uncertainties stemming from the vagueness of the concepts at the centre of personality/goodwill protection (see Chapter 5) and the unpredictability of judicial decision-making (see Chapter 6) combined with the interrupted process of professionalisation, weak institutionalisation and poor quality of journalism education in limiting the law's ability to deter reputation and privacy infringements. Across the post-communist region, including Slovakia 'organizational fragmentation is the norm' (Örnebring 2013, 12). Professional organisations enjoy little legitimacy to strengthen shared values and ensure adherence to ethical standards. The SSN – historically the largest professional association – comprised only around 20 percent of all journalists (Štětka 2012, 16), lacked authority among younger journalists and was unable to ensure adherence to its Ethics Code (Školnay et al. 2010, 17). To avoid restrictive statutory regulation, a self-regulatory body to enforce compliance with the Code – the Press Council – was founded in 2002 (Czwitkovics 2006; Brečka 2002, 21). Envisaged as a moral authority whose censure the newspapers will try to avoid (Pisárová 2002), the underfinanced Council (Czwitkovics 2006) lacked real powers to enforce its decisions. It was considered a 'toothless organisation', as Múdry (2013) put it, whose decisions were generally ignored or resisted (Štětka 2012, 16; Belakova and Tarlea 2013, 21; IPI 2009, 7; SME 2007). In light of the poor quality of formal journalistic training (Školnay et al. 2010, 14; Školnay 2007; Múdry 2013; Štětka 2012, 16), senior quality media editors had long complained about difficulties with filling places with decently trained journalists' (Tóthová 2007; Glovičko 2011).

Given the perceived arbitrariness and inconsistencies within the adjudicatory practice, editors and lawyers sometimes found it difficult to provide reporters with guidance regarding the lawful nature of conduct in borderline cases. Múdry (2014) argued that it did not come to 'the positive effect' of the law because the 'courts were not willing to tolerate anything' concerning past controversial cases. 'It was impossible to discuss [ethics issues] with them'. Fila could not think of 'a fundamental, educational' court

decision for journalistic practice, which would ‘correct any blazing injustice’ perpetrated by the media. The issue, according to Fila, was that the decisions were ‘so terribly badly reasoned’ and ‘often purposeful’ that it was difficult to learn anything positive from them. He believed that it would be different if the disputes were about people who actually experienced some injustice and the legal discussion led and the decisions made ‘in good faith with the aim of protecting the public interest’, as was the case in the Czech jurisdiction. Arguing that in editorial decisions *SME* ‘definitely’ accentuated the public interest before litigation risks, he also acknowledged that it was ‘a fuzzy’, unmeasurable ‘category’. To illustrate his point, Fila mentioned lawyer consultations whether to reveal the faces of attackers battering innocent bystanders in front of a pub. According to Fila, the newsroom ‘managed to persuade’ the lawyer ‘that it was in the public interest for the faces to be visible’.

Kamenec argued that to ‘correct their future conduct’ and prevent unlawful infringements, the media had ‘to have a clue where they erred’. Kamenec and others did not find the adjudicatory practice, of ordinary courts in particular, as sufficiently predictable and decisions reasoned well enough to have an effect (Chapter 6). Soltész believed that ‘decision-making in Slovak courts is so chaotic, confusing and non-uniform that it is impossible to predict. Therefore, practically anything is actionable’. Diko perceived ‘a certain degree of legal uncertainty whether in court judgments or Broadcasting Council decisions’ meaning that ‘based on decisions in very similar cases’ he was unable to provide his reporters with ‘guidance as to how to behave avoid damaging someone’s [good] name’. Prušová believed that to eschew future mistakes, journalists needed decisions that were ‘logically argued’ to understand ‘why the judge decided in that way’.

8.4.4 ‘Critical Change Agent’ Journalism Culture and the Mutual Hostility between Media and Officialdom

The ability of the personality/goodwill protection regime to produce a *benign* chilling effect relating to unfair journalistic practices reflected in some reporters’ insistence on their truth and unwillingness to give proper consideration to public officials’ arguments was undermined by the cultural legacies of Slovakia’s democratisation process. It stemmed, according to several respondents, from the ‘critical change agent’ journalism

culture and the mutual animosity between public officials and the media. Fulmek explained, the journalistic ‘excesses’ were down to the ‘relatively strong trend present here since the 1990s’ that he called ‘an anti-establishment trend’ and that was reflected in the fact that ‘journalists *de facto* want to define themselves against influential firms [and] influential politicians’. While Fulmek believed it was ‘natural’ that journalists wanted to hold the powerful to account, he was convinced that they could not ‘ignore the facts and arguments of the other party’. Fulmek hoped that at Petit Press they were ‘successful at gradually eliminating’ this approach ‘from the heads of reporters’.

The belief in the need to constantly criticise leading politicians and judges was strengthened by the perceived unfairness of ordinary courts’ decision-making in cases of high-profile public plaintiffs. Fila thought that experience with controversial disputes had impacted on ‘journalists’ opinion on the functioning of the judiciary’. Fila explained, ‘the people know how it was – that in good faith a text is produced about the fact that the Special Court boss actually hunts for free and it ends up like this’.¹⁸¹ Fila believed that the only lesson journalists could take from the adjudication practice was ‘to intensely cover the situation in the judiciary’. The perception that public officials somehow deserved critical coverage, which might inadvertently have grown into ‘boundless criticism’, according to Múdry (2014), was implicit in Prušová’s response to how considerations of the personality/goodwill protection regime influenced her work. Prušová argued that when reporting on ongoing legal disputes involving children, she often seriously considered delaying publication until the final verdict because she feared ‘harming ... the child or the parties’, who, in contrast to public figures’, ‘would not deserve it’.

Diko thought the greatest risk faced by the journalistic profession was that accusations of injustices in judicial decision-making would be used to mask journalistic irresponsibility. Diko believed that one could not ‘overgeneralise’ and claim that ‘the judgments are only bad, whereas the media are only good’. ‘Journalists simply are not infallible’ and ‘many judgments are definitely justified and in order’. Therefore, in Diko’s view, ‘it would really be very bad’ if ‘journalists blamed every instance of

¹⁸¹ Petit Press was obliged to apologise to P03 on the cover on three consecutive days and was later ordered to pay 90,000 euro in damages.

unprofessionalism on the courts'. Similarly, Múdry (2014) argued that while he would 'always defend [journalists] before the powerful, before judges', journalists had to acknowledge that they 'also make mistakes' and stop acting as if they did not.

The perceived unfairness of the personality/goodwill protection regime and adversary relationship with public figures was also associated with the frequently present lack of appreciation of the value of legal vetting. As discussed above, vetting was not a routine occurrence in many newsrooms. Lawyers themselves admitted that at times media professionals 'should have come earlier', as Benedik put it. Acknowledging that cooperation with lawyers intensified, Múdry (2014) regarded it 'a problem' that vetting did not occur routinely, because it led to many unnecessary personality/goodwill infringements. Recognising that some publishers might be unwilling to pay for pre-publication legal services, Múdry (2014) believed there were enough experienced media lawyers willing to provide their services almost *pro bono*. According to Múdry, the issue was that newsrooms were not used to regular vetting and instead relied on the decision of the editors-in-chief, who often lacked experience or maturity. Múdry (2013) argued that the absence of experienced editors who would ensure the quality of media content was a serious structural deficiency even in leading broadsheets. Fulmek was also convinced that factual errors and occasional unfair journalistic practices in *SME*, were caused by the inability of the newsroom to find 'quality editors'.

The experience and maturity of newsroom managers affected the availability of legal training in outlets that arranged for it in on an *ad hoc* basis. During the interview, Fulmek, mentioned that 'just recently' *SME* declined the opportunity to organise another legal seminar as there was no need. Of the nine journalists with whom I discussed legal training, four had no recollection of ever having attended any. Vagovič and Nicholson, two of the most prominent Slovak investigative journalists, claimed that they had not attended legal training during their careers. Nicholson described Fulmek's belief that *SME* journalists were 'offered training to teach them how to write' as 'nonsense'. Nicholson suggested that contrary to publishers' and newsroom managers' opinion, some reporters consider the provision of legal training as inadequate. According to Nicholson, 'no one actually knows how to write' about potentially defamatory material. In the past, for instance, 'it was normal for people to write "as published in *Nový Čas*"' thinking it would absolve them from liability. Nicholson asserted that when he explained to colleagues following a conversation with a lawyer-friend that it was not so, 'the people were totally in shock that this was the case. We hadn't known that'.

8.5 Conclusion

Applying the conceptual framework developed in Chapter 2, this chapter explored the extent to which and how the Slovak personality/goodwill protection regime managed to produce a *benign* chilling effect on journalistic speech and promote responsible journalism standards. In doing so, it began unravelling the concept of the chilling effect of defamation and privacy regimes and its workings.

The chapter revealed that the Slovak personality/goodwill protection regime created a *benign* chilling effect on a substantial part of journalistic speech and contributed to the promotion of responsible journalism, particularly in the quality news media segment. Despite the difficulties in discerning the extent to which the gradual increase in responsible journalism during the studied period was conditioned by the operation of the personality/goodwill protection regime, the interviews revealed that legal considerations played an important role in editorial decisions. The plaintiff-friendly personality/goodwill protection regime of the 1990s and 2000s and the high risk of being ordered to pay substantial damages encouraged many national media outlets, particularly those on the quality spectrum, towards greater responsibility and care during the editorial process. The regime's *benign* chilling effect was most visible on investigative journalism, particularly covering litigious public officials (especially politicians and judges) and influential corporations and businesspeople.

The findings confirmed the assumptions of the conceptual framework and Cheer's work (2008) that *benign* chilling effects stem from measures adopted by media organisations to improve responsibility in the editorial process with the aim of avoiding risk of litigation. These included provision of legal training for employees, newsroom induction to professional standards and adoption of ethics codes, pre-publication scrutiny by editors and/or lawyers with a focus on fact-checking and availability of legally admissible evidence.

The structural (or indirect) and direct *benign* chilling effects were the practical manifestations of these measures visible on both organisational (media outlets) and individual (media professionals) levels and largely replicated the findings of previous studies (Cheer 2008; Weaver et al. 2006). The chapter provided further detailed examples of these categories of chill to aid future research in detecting *benign* chilling effects in other jurisdictions. In the case of Slovakia, the structural *benign* chill was demonstrated

in gradual understanding in some newsrooms that privacy infringing stories or stories involving private individuals (and thus considered not in the public interest) would not be developed. It was also visible in the general practice of approaching all involved parties for comment to make reporting more balanced regardless of specific litigation threats. The direct *benign* chill was apparent in instances when due to specific legal considerations, insufficiently substantiated allegations or privacy intruding stories were pulled, when publication was delayed to allow for further verification or collection of evidence, and when all subjects were approached for comment to allow for more balanced reporting. It was also manifested in a greater language precision and information accuracy when claims were either toned down or rephrased to make them more accurate, when less expressive or harmful language was used, private individuals and firms were not identified but the reporting focused on the wider societal issue without losing the key message.

The chapter also revealed limits to the ability of the personality/goodwill protection regime to produce a *benign* chilling effect and promote responsible journalism. The failure was most visible in the tabloids where lack of professionalism and privacy intrusions and occasional deliberate smear campaigns serving the journalist's or owner's vested interests were reported. The regime also failed to effectively deter unfounded criticism and unfairness in reporting on influential public officials and businesspeople in the quality press.

In investigating the reasons for the limits to the regime's ability to produce a *benign* chilling effect and promote responsible journalism, the chapter further explicated the mechanics of the chilling effect. The findings confirmed the assumptions of the conceptual framework that editorial decisions are based on a cost-benefit analysis that is underpinned by media professionals' perceptions of the operation of the defamation and privacy regime, the relationships between the principal protagonists (especially the media and plaintiffs) and a multitude of contextual factors operating at different levels.

It has been confirmed that contemplated speech is deterred when the risk of costs or harm caused by publication outweighs the benefits (Schauer 1978). In line with the reviewed literature (e.g., Mullis and Scott 2012b; Anderson 1992; Schauer 1978; Glanville and Heawood 2009; Glasser 2009; Marjoribanks and Kenyon 2004), the findings also indicated that potential costs of litigation for media organisations and media professionals included financial costs associated with legal action and the reputational harm stemming from litigation itself and/or the need to admit fault and apologise. Media

professionals also risk time costs and emotional distress associated with having to deal with litigation threats or participation in proceedings. The potential benefits of publishing borderline speech revealed by the chapter – financial gain and promotion of vested interests of journalists or owners – also largely replicated findings of previous research (Barendt et al. 1997; Weaver et al. 2006; Schauer 1992).

The chapter highlighted the key role played in editorial decisions by legal factors pertaining to the operation of the regime, especially the to-date little explored fairness, certainty and effectiveness of the adjudicatory practice, and the risks of harm they posed to media organisations and professionals. Under Slovak law, given the bias in the adjudicatory practice in favour of high-profile powerful plaintiffs, the likelihood that they would sue and achieve large damages awards was extremely high. The potential costs of publishing insufficiently verified allegations about these plaintiffs for serious outlets thus outweighed the rewards of doing so. In contrast, the tabloids had little to fear from publication of profit-making sensationalist or privacy intruding articles or smears, as most subjects of the red tops' stories were unlikely to sue and, if so, they faced little financial or reputational harm. The perceived unfairness of the personality/goodwill protection regime also contributed to some media professionals' reluctance to accept judicial determinations and the fact that certain practices relating to public officials were unwarranted. The uncertainty created by the adjudicatory practice precluded the law from deterring certain reputation and privacy infringements as senior editors and lawyers were unable to provide journalists with watertight guidance regarding conduct in borderline cases. The ineffectiveness of the regime to resolve personality/goodwill disputes quickly meant that reckless journalists had little repercussions to fear.

Ownership and organisational culture were revealed as key contextual factors affecting a defamation and privacy regime's ability to produce a *benign* chilling effect. The profit-oriented foreign owners of commercial broadcasters and tabloids were not interested in upholding responsible journalism standards. They built their business model on sensationalist and privacy intruding journalism and hired staff willing to forego professional standards. The organisational culture affected whether publication of unlawful speech would result in reputational harm of the outlet in question. The influence of owners' vested interests was particularly pronounced during the turbulent 1990s and following the 2008-2009 global economic crisis, as legacy investors were gradually replaced by local oligarchs who used the media to further their political and business interests by, at times, publishing smears about their opponents.

The contextual factors highlighted as particularly important in this chapter, but less pronounced in previous studies, could be characterised as legacies of Slovakia's democratisation process in the 1990s and 2000s. They included political economy factors like market conditions and the resulting ability of media outlets to attract and retain high-quality staff; media environment features, including weak institutionalisation and interrupted professionalisation; and specificities of journalism culture and relationship between the media and officialdom (also discussed by Kenyon 2010). The chapter demonstrated in detail how these factors can combine with the fairness, certainty and effectiveness of the defamation and privacy regime in limiting its ability to create a *benign* chilling effect and promote responsible journalism. As such, the findings strongly suggest that research into the interplay between reputation, privacy and expression in young democracies, needs to consider the key developments in the democratisation process and their institutional and cultural legacies, as these affect the interactions of the principal protagonists and thus the operation of defamation and privacy regimes.

In exploring the ability of the personality/goodwill protection regime to prevent abuses of the law by powerful plaintiffs and the associated *invidious* chilling effect on private and public interest in freedom of expression, the next chapter seeks to further unpick the chilling effect concept and the mechanics behind it.

Chapter 9: Abuses of Law and *Invidious* Chilling Effects

9.1 Introduction

This study is based on the assumption that a defamation and privacy regime pursues three specific objectives in triangulating the conflicting private and public interests in reputation, privacy and expression (see Chapter 1). Chapters 7 and 8 examined the extent to which and the mechanics of how the Slovak personality/goodwill protection regime attained the first two of these aims. This chapter examines whether and, if so, how the regime safeguarded the media's and journalists' right to freedom of expression and the public's right to reliable information on matters of general importance, by preventing abuses of the law by powerful plaintiffs who wish to prevent the media from publishing important, warranted reporting concerning their activities. It investigates the extent to which the regime prevented an *invidious* chilling effect on responsible journalism and its consequent undesirable effects on the public interest in information.

Drawing on the findings of Chapter 6, the previous chapter examined the extent to which the Slovak personality/goodwill protection regime produced a *benign* chilling effect and promoted responsible journalistic practices. It found that in light of the perceived unfairness, uncertainty and ineffectiveness of the personality/goodwill protection regime, reporting wrongdoing allegations about public figures, judges and influential businesspeople risked incurring considerable harm and provided few financial benefits. The chapter also examined how the fear of being sued and found liable for large damages encouraged many national media organisations to implement responsibility-promoting measures to avoid careless mistakes. In doing so, the regime produced a limited range of *benign* chills on unlawful expression and promoted responsible journalism particularly in the quality outlets.

The *invidious* chilling effect of defamation and privacy law, understood as an undesirable deterrent of warranted publication on an issue of general interest for fear of potential harm associated with litigation, has, according to Barendt et al.'s seminal study (1997, 191–93), manifested in two major forms. Direct *invidious* chill denotes omissions or amendments to material developed for publication, whilst the structural *invidious* chilling effect leads to, often sub-conscious, avoidance of publishing material on certain

subjects. While the chills have been categorised according to their harmfulness for the private interest in freedom of expression (Townend 2017), a categorisation of their harmfulness for the public interest in expression is lacking. Like the *benign* chill of the law, drawing on the conceptual framework developed in Chapter 2, the *invidious* chilling effect on individual freedom of expression is expected to be felt with different levels of intensity by different media organisations and professionals. The cost-benefit calculus relating to publication is assumed to be contingent on a combination of various structural, cultural and international factors and relationships between the main protagonists of the defamation and privacy regime.

Taking the perspective of defendants and their lawyers, the chapter first explores whether and to what extent abuses of personality/goodwill protection law were present within the regime. It then examines the perceptions of the main protagonists concerning direct and structural *invidious* chilling effects of the personality/goodwill protection regime on the right to freedom of expression of the media and media professionals. Acknowledging the subjective nature of the chill, the chapter then investigates the factors that might explain the various degrees to which media organisations and professionals perceived the undesirable effect on their freedom of expression. Before concluding, it explores the views of defendants and their lawyers on the practical manifestations of the *invidious* chills and their harmfulness for the public interest in receiving important, reliable information allowing citizens to make electoral decisions and hold the powerful to account. While by no means exhaustive, the practical manifestations of the chill identified in this chapter strive to provide further examples for researchers studying the interplay between reputation, privacy and expression beyond the case of Slovakia and contribute to a classification of chilling effects based on their harmfulness for the public interest in freedom of expression.

9.2 Abuses of Law

Media professionals were overwhelmingly convinced that unmeritorious litigious politicians, senior members of the judiciary and influential businesspeople abused the

law by pursuing or threatening civil action claiming potentially bankrupting damages.¹⁸² They were believed to seek to punish and intimidate the media and deter them from further legitimate coverage of their conduct rather than seek redress for genuine reputational or privacy harm. The respondents indicated that public officials welcomed the opportunity to enrich themselves in the process and encouraged private individuals who increasingly pursued speculative claims. Pre-publication notices from these individuals and firms were perceived as intimidation attempts. Diko believed they represented a form of ‘pre-emptive strike’ – an attempt to ‘hinder publication through threats’. Langer reported that businessmen who were not trusted by the business community often ‘vehemently protest[ed]’ against coverage of their activities. Petková illustrated how goodwill was abused to intimidate journalists on the case of an extremely successful public procurement contracts’ bidder, accused of failing to pay its subcontractors. Having worked on an article investigating the firm’s questionable practices and asked for comment, Petková received a legal statement warning that unless the company be allowed to amend the article civil and criminal actions for defamation would ensue. Having notified her superiors and consulted the organisation’s lawyers, Petková wrote the article without the company’s statement. The company, which was subsequently investigated by the General Prosecutor’s Office, filed a criminal defamation complaint and requested a reply from the publisher, and sued other media that covered these allegations (Burčík 2017, 2014). Petková believed that the company’s cumulative and repeated use of pre-publication threats and legal institutes was ‘evidence that they [we]re not merely interested in correcting the facts which might not have been accurately stated’.

Kamenec argued that by repeatedly suing various outlets, employing experienced lawyers and keeping the case going for years these influential businessmen aimed to ‘punish the media’ and communicate to them that they should refrain from all future reporting. Soltész was convinced that ‘in the overwhelming majority of cases’ the plaintiffs’ objective was ‘to intimidate, [and] shake one’s resolve’. Soltész was sued for

¹⁸² According to Petit Press data, the damages claimed in the 19 recorded goodwill protection disputes were 882,000 euro. Among the 16 plaintiffs to claim damages, private companies were most likely to request 66,388 euro and above, with one insurance company claiming cumulative damages of 400,000 euro. Public institutions or companies tended to request damages below 10,000 euro.

43,000 euro in damages (*Soltész v. Slovakia*) by a lawyer representing ‘the interests of a group who felt threatened by the existence of someone who might have ‘god-knows-what’ stored in a bank vault and might find a newsroom with enough courage to bring it to light’. Soltész believed that civil action ‘was an ideal way’ to ‘stop’ him digging into their business because a judgment in the plaintiff’s favour would have meant his ‘economic liquidation’. Nicholson recognised ‘recurrent attempts to sue you for bullshit’ to ‘achieve such a state of affairs where journalists are frightened ... to dig into issues, not just write about the issues but even venture into opening certain subject matters’.

Adamčík argued that in numerous cases, politicians, judges and government representatives filed personality protection lawsuits requesting excessive damages up to 2.66 million euro with the ‘clear aim’ to intimidate the outlet. Adamčík, felt ‘it was apparent that the plaintiffs weren’t interested in settling, knowing very well that consensually they were unable to gain a third or even a tenth’. Instead, ‘they relied on their ability to find a judge who would award them [such damages]’. Fulmek considered many senior figures in the judiciary, prosecution and law enforcement as mentally stuck in the old regime, utilising their power ‘to make others act according to their wishes’. They ‘firstly want to intimidate and secondly, want money’ using litigation. Múdry (2014) perceived that certain public figures threatened and/or filed civil action to ‘frustrate and discourage’ journalists covering their activities, stating ‘luckily, we don’t beat journalists, we don’t kill journalists, we don’t imprison journalists but we can discourage them lavishly’. Given their above-average litigation success rate, Šimečka considered the propensity of judges to sue ‘a premeditated attack against freedom of expression’. Leško similarly believed that some judges and politicians saw personality protection as ‘a profit making venture *par excellence*’ and ‘evidently’ strove to turn it into ‘an additional income stream’.

The ‘Bonanno case’, involving nine separate defamation lawsuits against Ringier seeking damages totalling 1.94 million euro (Balogová 2013a) was widely considered to be a prime example of personality protection law abuse by high-profile public officials. The actions were brought for *Nový Čas* coverage of a ‘perverse jamboree’ of judges (Mikolášiková 2011), based on images featuring a retired solicitor wearing blue ear defenders and holding an imitation assault rifle at the founding gathering of the Judiciary Oscar Association, held two months after a mass shooting during which a gunman wearing blue ear defenders and armed with an automatic assault rifle shot dead seven people (BBC 2010; Allen Green 2010; Balogová 2010b).

The then acting general prosecutor, four Supreme Court judges, the retired lawyer, another judge, the husband of the venue's owner and the association filed lawsuits, disputing the authenticity of the images and links to the mass murderer (Czwitkovics 2013; The Slovak Spectator 2014; Balogová 2013a). The interviewed media professionals, lawyers and experts believed that rather than pursuing reputational vindication, the plaintiffs sought personal enrichment and the muzzling of further coverage. Mikolášiková – the author of the impugned articles – characterised the damages claims as 'exorbitant' and believed the lawsuits might have been 'an attempt at intimidation or discrediting' of *Nový Čas* or herself. Mikolášiková felt the claims were meritless because drawing attention to 'how the justice system elite behave' was 'in the public interest'. She and the daily had acted responsibly, having done their utmost to verify the photos received from an anonymous source and having approached all the participants for comment.¹⁸³ Acknowledging that 'journalists can behave repugantly', Múdry (2013) believed that the plaintiffs did not primarily seek to 'discuss the issues' because they did not pursue discursive remedies and filed the cases after a delay. Considering it 'sick to remember two years after the controversy to sue', Múdry was convinced that the plaintiffs' objective was 'clearly to earn money' because 'one can'. Ringier's lawyer, L19, also found the delay 'rather strange', 'illogical' and counterproductive for the plaintiffs' reputations as their alleged inappropriate conduct was 'dragged through the media again'. L19 suspected that they were motivated by objectives other than moral satisfaction.

The case demonstrated to Fila, that the situation concerning abuses of law did not 'improve in time' because 'suddenly a scandal appear[ed] and a group of people realise[d] that they can profit from it'. Kollár found it perverse that senior judges who seemed to have behaved inappropriately had the temerity to sue the media, instead of being ashamed when their actions were made public. He considered it a reflection of the 'developments in the country' because 'in a normal country, they would at a minimum know that they have no chance to succeed with it or know that the moment they lodge such a lawsuit they

¹⁸³ The Ringier CEO argued that the articles were incapable of violating anyone's rights as the claims 'concerned representatives of Slovak judiciary' and therefore 'were published in the public interest' (cited in Czwitkovics 2013).

are finished in their profession, as one doesn't do that in a decent society'. For Fulmek, it demonstrated the mentality and 'atrocious arrogance' of the plaintiffs, who 'simply make fun of the public' He found it 'simply arrogant, disgusting, abominable' because they were senior representatives of the state prosecution service and judiciary. Fulmek was convinced that a high-ranking public official 'cannot do that ... And if he does, if it seems fun to him to dance with an automatic rifle with ear defenders on, he should say "Yes, I am an idiot. I apologise [and] I cannot hold this post [any longer]"

Respondents suggested that the large damages awards received by high-profile plaintiffs increasingly encouraged private plaintiffs to lodge meritless, 'speculative' lawsuits with the objective of enriching themselves. Ľalíková stated, 'really, people come with various matters – more and also less honest', in which 'they want to make money'. Tabloids and commercial broadcasters most commonly encountered such claims. Langer reported, ninety percent of petitions filed against *Markíza* were 'absolutely unjustified' because private persons believed that the broadcaster had a lot of money. Adamčík argued that ordinary citizens and, at times, celebrities often tried to 'cash-in on damages'.

Mihálik was convinced that, typically, plaintiffs 'try to make profit from the dispute' and 'welcome the opportunity of extra income'. Considering many petitions as 'irrational', Benedik explained that ordinary citizens 'have a completely mistaken notion about what they can request from the media and what they cannot in light of their conduct'. Having read in the papers that Harabin and Fico received tens of thousands of euros in damages, they 'cite these examples [in court]' and 'try to achieve a similar sum'. According to media lawyers, plaintiffs and their lawyers often failed to realise large damages awards were 'illusory', in Kamenec's words. Schwarz argued that private individuals had unrealistic expectations because the 'benchmark' created by Harabin's above average results diverged from the adjudicatory practice in most other disputes.

9.3 Media's and Journalists' Freedom of Expression

This section explores the views of the plaintiffs, media professionals and their lawyers on the extent to which the law created an undesirable chilling effect on the media's and journalists' free speech rights.

9.3.1 The Plaintiffs' View

Having been asked whether they considered the possibility of an undesirable impact on freedom of expression when filing civil actions against the media, plaintiffs overwhelmingly said no because, in their view, the defendants had failed to act in accordance with their duties and responsibilities. P04 believed 'that subjective opinions should be subject to censorship, and that public service television reporters should be led by sufficiently experienced superiors who won't allow serious, untrue statements about concrete individuals to be broadcast without evidence'. P03 argued that the decisions of ordinary courts in his favour were 'in no way' capable of violating the defendant's freedom of expression because 'the whole leitmotiv of the proceedings was that they had lied'. It would only have been possible to violate their freedom of expression 'if they wrote the truth' and 'did not purposefully lie, mislead, [and] provide information out of context'.

9.3.2 The Absence of *Invidious Chill*

Given the prevalence of abuses of the law, rather surprisingly, most respondents argued that the intimidation efforts of litigious plaintiffs failed to generate enough fear to impede their or their organisation's freedom to publish important, legitimate information about the latter's conduct. National media organisations' managers saw few undesirable effects of personality/goodwill protection disputes on their organisations as a whole, on newsroom editorial freedom or on individual reporters' freedom of expression or the public's right to information. *TAS*'s Čekirda argued that defamation was not 'a fundamental problem for the newsroom'. Trend's Brunovský believed that undue caution or self-censorship due to risk of attracting a lawsuit was 'definitely not [present] in the topics that represent the backbone of the paper'. Ringier's Mihálik was unaware of a story ever being "killed" or substantially watered down as a result of liability risk. Arguing that newsrooms were 'rather independent of the management', Mihálik asserted that if a topic was considered 'interesting from the readers' viewpoint', it would 'definitely be developed into an article'. Fulmek maintained that Petit Press's outlets had never been banned from publishing anything and that personality/goodwill protection law did not threaten freedom of expression in Slovakia.

An overwhelming majority of senior editors were also adamant that litigation or threats thereof had little tangible impact on freedom within newsrooms. Balogová argued that under no circumstances ‘a legal dispute could change how we write or do anything in the newsroom’, reiterating that the personality/goodwill protection regime ‘doesn’t interfere with newsroom operations in any serious way’. Obradovič maintained that self-censorship ‘fortunately doesn’t occur’ in *HN*. Krejča found it hard to believe that fear of lawsuits could deter investigative journalists.

Respondents also overwhelmingly claimed that it was extremely rare for publishers and/or newsroom managers to kill or significantly amend important public interest stories purely for fear of personality/goodwill protection litigation. As Múdry (2013) explained, nowadays ‘a publisher cannot say to a reporter: “Don’t write about that!” That’s impossible because they have [newsroom] statutes’. Unsurprisingly, senior editors overwhelmingly denied killing or considerably watering down stories purely due to liability risks. Diko declared, ‘We have always done everything we could to get information to the reader or listener, regardless of where I worked’. Balogová argued that pre-publication notices ‘cannot stop any material we are developing’. Múdry (2014) did ‘not remember having killed a story’ of public interest. *SITA* management ‘pushed such stories’. Defendant lawyers also rejected the practice of killing or significantly watering down stories for fear of liability. Adamčík never witnessed publishers telling editors not to break information because it was considered ‘too hot’. Legal consultations involved discussions about journalistic responsibility, and the extent to which the claims could be published.

Editors resolutely rejected the idea that any subject would be off-limits in their newsrooms. ‘Essentially, no topic is taboo’ Krejča declared. ‘No one is banned from working on controversial cases, issues or scandals. I rather think that we have a very free environment here’. To demonstrate litigious persons were not off-limits for *SME*, Fila jokingly stated, ‘on average, we write a text a day about Harabin’. Ogurčák maintained that if publishers or editors-in-chief ‘tried to stifle’ journalists and prevent them from writing about certain subjects, the latter would leave. Ogurčák doubted that fear of litigation could ‘force [the newsroom] into the sphere of not writing about something’.

Journalists also denied being unable to report on certain topics. After petitions were lodged in the Bonanno case, Mikolášiková did not feel she ‘wouldn’t have the space or that they would intimidate the editor-in-chief’ or the publisher so that they became afraid to publish her stories. Mikolášiková argued, ‘regarding politicians or public figures

it doesn't exist in *Nový Čas* that because someone has filed a lawsuit we stop writing about him or her'. Benedikovičová 'absolutely did not perceive' that she 'would somehow be constrained and [could] not write an article' that was in the public interest. Declaring that fear of lawsuits 'doesn't deter us', Vagovič claimed that the case involving the threat of a 20-million-euro dispute, was 'an example where they failed to intimidate us' as he wrote 'four more articles, one of which was much more daring than the first one'. Many journalists maintained that if they felt unfree or censored, they would change newsrooms. Soltész 'wouldn't work in a newsroom where someone would interfere with [journalistic] texts to such an extent' as to change their meaning.

9.3.3 Others Might Be Chilled

Many respondents recognised that other outlets, particularly non-quality ones, and journalists might not have 'withstood the threat' of litigation, as Adamčík put it. According to Múdry (2013), litigation threats 'simply frighten some journalists, frighten some publishers who then wag their finger and say "I will not pay for your mistakes"'. Petková admitted that on numerous occasions she had been given materials by colleagues who were unable to develop the story in their newsroom. Fulmek, who was convinced that liability risk had no undesirable effect on freedom of expression, had been astonished when journalists started to contest his arguments during a public event, declaring they 'perceived pressures from publishers' and 'definitely felt it had an effect on their writing and on their caution'. Nicholson declared that he knew 'from the journalistic viewpoint that ... really only a maverick, only mavericks among journalist won't get scared' and that 'self-censorship' was 'definitely' burgeoning. While he 'never had an issue with writing about serious' matters, Milan admitted that 'there are others who ... are frightened'. Šimečka admitted that he 'feared, or found it very unpleasant [to get into litigation with] ... large firms' that were his 'enemies in a sense'.

Langer recognised that intimidation 'sometimes works' and produces 'a chilling effect', as he described it. The chill affected individual reporters rather than the organisation: 'The editors-in-chief and the newsrooms [we represent] won't tolerate interference with editorial freedom and freedom of expression. However, this is not about the editor-in-chief and the management. Sometime it is in the [journalist's] subconsciousness'. Langer argued that despite lawyers' reassurances about the lawfulness of

contemplated publication, journalists sometimes excluded ‘the toxic content’ wishing to avoid problems. Múdry (2014) was convinced that following public officials’ intimidation attempts, some journalists asked themselves whether the trouble was ‘worth it’ and became ‘more cautious’. During his *SME* editorship in the early 2000s, Šimečka strongly perceived that the operation of personality/goodwill protection law forced him to self-censor: ‘I perceived it as an enormous nuisance. Definitely, it constrained me in serious matters’. Vagovič, believed that, at times, journalists displayed ‘undue cautiousness’ and ‘over-anxiety’ concerning warranted allegations, which ‘simply wasn’t appropriate’.

9.3.4 Motivational Complexity

Several respondents suggested that it was often impossible to discern whether the motivation behind a particular editorial decision was fear of being sued and erroneously found liable by courts, lack of newsworthiness, journalistic responsibility or the owner’s specific interests. Soltész suspected that considerations of litigation and liability risk were at play when his editor decided to pull his article concerning the actions of the organised crime group whose lawyer later sued him for a less significant segment of the report. While Soltész disagreed with the decision at that time, he respected the rationale of the editor-in-chief who probably considered the article to be having ‘such impact’ that he did ‘not dare publish it’. Soltész admitted that it was ‘hard to say’ what the reason for killing the story was as the editor-in-chief might merely have considered it ‘insufficiently verified, lacking sufficient arguments and evidence’. Soltész stated astute editors-in-chief did not need to kill developed stories citing defamation liability risks or the owner’s specific interests as they could simply dismiss topics suggested by journalists as little newsworthy or uninteresting for readers.

9.3.5 Between *Benign* and *Invidious* Chill: The ‘Gorilla’ Case

The interviews further confirmed the expectations of the conceptual framework about the subjective nature of the chilling effect under Slovak law (see Chapter 2). The respondents’ opinions about the editorial decisions of two different newsrooms not to publish Nicholson’s articles based on the ‘Gorilla’ file clearly demonstrated that perceptions

about the desirability or undesirability of the effect of the law depended on the individual's understanding of responsible journalism standards. The file was supposedly compiled by the Slovak Information Service (SIS) and purported to detail a wiretapping operation code-named Gorilla. The file contained an analytical summary of a dozen allegedly intercepted conversations between an investment group co-owner and several politicians, their aides and other public officials. The material purported that millions of euros in kickbacks were paid to public officials for fixed public procurement tenders and rigged privatisation sales (see, e.g., Balogová 2012; Cienski 2012; Economist 2012; Euractiv 2012; Nicholson 2012; Mesežnikov, Kollár, and Bútorá 2013).

Nicholson obtained the file from an SIS agent who wished to remain anonymous. While investigating the claims and trying to verify its authenticity, Nicholson handed the document to the police that 'investigated and dismissed [it] within a month' (cited in Balogová 2012). Nicholson also showed the material to editors at *SME* and *Trend*. Despite Nicholson's belief in the authenticity of the file, the publication of several variants of his articles were halted in both outlets. Nicholson thus resolved to write a book about the alleged 'Gorilla' operation (Nicholson 2018). The existence and contents of the file became public shortly before the March 2012 parliamentary election. It was uploaded on the Internet and anonymously leaked to several media outlets, purporting to be an excerpt from Nicholson's book. The rapid dissemination of the document through online media triggered mass demonstrations.

The publisher and senior *SME* editors justified the decision to shelve Nicholson's articles on the basis of journalistic ethics. Fulmek was probed as to whether publication of matters of public interest had ever been stopped in any of its outlets, Fulmek acknowledged that this was the case for the 'Gorilla' file. Arguing that he was not party to editorial decisions, Fulmek asserted that the reason not to publish allegations based on the material 'was simple and logical, i.e., that no-one among politicians or law enforcement agencies confirmed the file's authenticity, or confirmed it in a publishable way'.¹⁸⁴ Fulmek stressed that while *SME* had not revealed the existence of the document,

¹⁸⁴ Fulmek (2012b) publicly argued that questions about the file's origin, authenticity and credibility of information uttered in private conversations between a finite number of people, who freely commented on actions of others, created ethical dilemmas. Fulmek was 'proud that daily *SME* newsroom had carefully been verifying the whole file and that two years back it had decided not to

journalists had ‘used information from that file and tried to verify it’. Therefore, ‘they clearly proved, when accused of withholding information from the public, that they had intensely worked around it, conducting and publishing interviews with the parties mentioned in the file.’¹⁸⁵

Downplaying the importance of liability considerations, *SME* deputy editor-in-chief Fila justified the decision not to publish the serious allegations due to the impossibility of corroborating the material’s authenticity. Fila claimed, ‘while we had tried to pursue it, whether someone might be able to confirm it in any way, we were not successful’. Since the document ‘was of such unclear origin not [just] from the legal but more so from the journalistic viewpoint it was problematic to take the decision on one’s shoulders to publish it because it was unclear what was going on’. The then *SME* editor-in-chief, Kostolný, publicly argued that before 2011 *SME* ‘did not have sufficient evidence’, such as an audio recording or word-for-word transcript of the alleged wire-taps, to be able to break the scandal. He stressed that ‘a recording’s literary adaptation’ was ‘a different genre’ than a recording with a voice closely resembling Fico’s (see below). Therefore, *SME* ‘did not have the right to publish’ the story (Kostolný 2012). He maintained that the reasons for non-publication went beyond liability threats and were rooted in journalistic ethics. ‘Not just fear of lawsuits, which we wouldn’t be able to fence off ... was present’. *SME* ‘had nothing other than the feeling that ‘Gorilla’ was probably authentic’ because everyone Nicholson had talked to ‘kept silent at that time’. *SME* editors also feared ‘that it was all a set-up’. According to Kostolný, ‘[t]he media must seek the truth and prevent abuses of power’. This entailed verification of allegations because journalists ‘cannot become pawns in [intelligence] games’ and ‘have responsibility which prevents them from simply writing something and waiting to see what will happen’. These were the reasons why *SME* ‘attended to and chased’ the file

publish it in full in the newspaper or secretly on the web’ because this testified ‘for the responsibility of the newsroom, not about its failure’. According to Fulmek (2012a, 7–8), it was possible that the leak was ‘an intentionally orchestrated smear campaign’ which left the media with the question of ‘how to avoid becoming the target of intelligence games’ and simultaneously ‘not to suppress important information from readers as a result of ethical behaviour’.

¹⁸⁵ Fulmek (2012b) publicly claimed that ‘the editors and daily *SME* executives as well as the then reporter Tom Nicholson tried to ascertain the facts, and what they had managed to verify, they published. Here, one can see an abysmal difference between new media and traditional print [press] with standard editorial processes’.

with Nicholson ‘spen[ding] months with it, verifying all that was possible’ and the paper ‘publish[ing] several Gorilla-inspired texts’ (Kostolný 2012).

Múdry (2013) argued that the ‘Gorilla’ controversy was ‘a classic example’ of rare situations where publishers had to ‘interfere’ and halt publication of stories likely to attract lawsuits from powerful financial groups. Múdry would do the same in the publisher’s place because ‘Gorilla’ was unverified material, the publication of which threatened the media organization’s very existence: ‘If I publish it and [they] sue me, it will liquidate my publishing house. I completely agree with it. It was not possible to do it’. According to Múdry (2014), media reporting before and after the alleged intelligence file’s publication online was a manifestation of the *benign* chill of the personality/goodwill protection regime, which promoted increased journalistic rigour regarding controversial topics. Múdry (2014) found that the Gorilla scandal was ‘essentially handled fair and square’ by journalists who had dedicated considerable time and effort to verifying the allegations, making it hard to contest their claims or succeed with litigation.

Kamenec, who participated in discussions with *SME* senior editors concerning Gorilla, acknowledged the complex nature of the editorial decision and the chilling effect. According to Kamenec, ‘the impossibility to verify the facts, to verify the story, in a way, deterred the media – also following consultations with lawyers – from publishing the material as such’. Kamenec explained, ‘it is not so simple to take the responsibility ... in today’s economic climate to publish anything and in any way [especially] when you are unable to verify the story’ and ‘given that it can be anything from intelligence games, utter fabrication or the truth’. Moreover, ‘if the degree of the risk of an actual violation of someone’s rights and the [consequent] risk for the publisher [are great], it is not easy to conclude to publish’.

Rather than a *benign* chill manifestation, other respondents considered *SME* and *Trend*’s reluctance to publish Nicholson’s articles as an example of the undesirable chilling effect of the law and abdication of the media watchdog role. Dismissing the argument that *SME* could not publish the stories because of the material’s unreliability and Nicholson’s inability to reveal his source, Tomáš Němeček – a prominent Czech media professional – characterised the editorial decision as ‘a failure of the Slovak press’ and a ‘cock-up’. Němeček, believed the documents released by the then interior minister and the articles covering Gorilla after the scandal broke confirmed the file’s overall veracity. Leško and Benedikovičová were convinced that fear of litigation played a

crucial role in the decisions, and that the outlets should have done more to verify and publish the information. Had he had an advisory vote,¹⁸⁶ Leško ‘would have always argued that the absolute maximum must be done in order to be able to publish it’. Leško recognized that the decisions were made ‘for fear that the potential damage to the parties involved was so enormous’ that, if compensation was claimed, ‘it might have had serious consequences for the newsroom’. Notwithstanding the real risk of triggering several disputes with very influential people, Leško was adamant that the newsrooms ‘should have done the absolute maximum to publish [the information] as soon as possible’ because the press had probably never ‘laid their hands on anything as important as the Gorilla file’. Acknowledging *SME*’s attempts to fact-check the material and the publication of articles about some of the implicated persons, ‘from the journalistic viewpoint’, Benedikovičová nevertheless, considered it ‘a failure’ and ‘a shame’ that the daily ‘didn’t dig in [the allegations] with more vigour’ and ‘in more detail’. She believed that one of the reasons was fear of legal action because the allegations were ‘so powerful’ that doing so simply on the purported SIS file ‘might have bankrupted the publishing house’.

Nicholson, who spent part of his journalistic career in Canada and the US, jurisdictions in which the understanding of *invidious* chilling effect differs from that under Convention law (see Chapters 1 and 2), perceived the reluctance of *SME* and *Trend* executives to publish his previously approved articles as manifestations of a direct, *invidious* chilling effect of personality/goodwill protection. Nicholson described, ‘[i]t went through the lawyers who had said that it was okay, that it could be published in the form I had written it. It was to be published on Monday. And yet, on Friday the editor-in-chief told me: “I won’t let it out”’. According to Nicholson, the scenario was similar at *Trend*. ‘They had said: “This material is your priority, write about it”. However, when I submitted the article, suddenly, it was [too] risky for them and they did not publish it, without giving a reason’.¹⁸⁷ Nicholson was convinced that executives in one of the

¹⁸⁶ Leško worked as *SME* political commentator when Nicholson presented his findings to the editors. He started working for *Trend* around the time Nicholson’s articles were rejected by its executives. In both cases Leško was unaware of the material’s existence.

¹⁸⁷ Nicholson (2012) described how one of the articles, produced after he had submitted the file to the police as evidence in their investigation of suspected ‘vote-buying’ in parliament (see, e.g., Jurinová 2005; Terenzani 2009), was halted by *SME* executives: ‘I prepared an article about the Gorilla file, I

newsrooms were arguing that his ‘material [wa]s not trustworthy enough’ even though they ‘had known the whole time that it was true’ as one of the persons implicated in the file had admitted to a former employee that he had been seized by the police when leaving the purportedly wiretapped apartment. Nicholson thus concluded that ‘the chilling effect is very pronounced’.

Nicholson also perceived the *invidious* chilling effect following the leak of the purported intelligence file. According to Nicholson (2012, 175), ‘daily *SME* and weekly *tyždeň* wrote a few articles but the majority of the media ignored the story about ‘Gorilla’. [The financial group] threatened legal action’.¹⁸⁸ Diko partially confirmed Nicholson’s suspicions when he admitted that ‘the most significant interference concerned ... the most complicated decision of my career was the decision in the ‘Gorilla’ case’. As editor-in-chief, Diko decided that *Markíza* would not identify the persons named in the alleged leaked SIS file before obtaining their statements or documentary evidence corroborating the allegations.

9.4 Explanation for the Perceived Degree of the Chill

The following paragraphs explore why, against the background of the high risks of incurring litigation costs stemming from publication of contentious, but legitimate, reporting about the conduct of certain litigious individuals and entities, and low financial rewards of doing so (see Chapter 8) certain media organisation and journalists felt intimidated and constrained in their right to freedom of expression while others did not. The analysis paints a picture in which various structural, cultural and international level factors combined with the mutual relationships among the main protagonists in producing varying levels of the chilling effect.

cited the director of the anticorruption unit [X]. I wrote that [X] anticorruption office “is still investigating a file according to which a member of Dzurinda’s cabinet allegedly secretly met with the owner of a financial investment group in order to prepare and agree privatisation decisions”. Nevertheless, they still considered it too risky and didn’t want to publish the article’.

¹⁸⁸ Nicholson (2012, 174) described how a TV station CEO told him and the station’s reporter, as they discussed Nicholson’s appearance on an evening talk show, to stop wallowing in it.

9.4.1 The Perception of Costs in the Context of Media Political Economy

In line with earlier studies (Cheer 2008; Marjoribanks and Kenyon 2004; Barendt et al. 1997), the interviews suggested that the perceptions of risks posed by potential costs associated with litigation largely depended on the size and financial strength of the given media organisation. By 2014, the large national media organisations I interviewed were able to manage the risk of personality/goodwill litigation and their managers therefore believed that the regime had a negligible undesirable effect on the editorial freedom within newsrooms. Through the measures adopted during the 2000s (see Chapter 8), the interviewed national media organisations were able to considerably reduce the risk of litigation caused by carelessness and thus also its actual and potential costs. The swing in the Constitutional Court's jurisprudence and the gradual reduction of damages awards also significantly reduced the risk of bankruptcy for media organisations. Múdry (2013) indicated, 'if the media claim that they have a problem with publishing, they don't' because 'usually they don't lose so much in courts' anymore'. Moreover, only a small fraction of claims went to court (see Chapter 7) as Benedikovičová indicated 'one always endeavours to settle with the other party and avoid the courts because it financially burdens the publishing house'.

According to the interviewed executives, the financial costs associated with personality/goodwill protection disputes did not jeopardise the financial stability of their organisations. Mihálik claimed that litigation did 'not have any significant impact on the running of the firm'. Čekirda did not consider personality/goodwill protection 'a burning issue for the television channel'. Brunovský thought the disputes posed 'no existential threat'. According to *Trend's* records, between 2002 and 2014, the publishing house incurred just under 131,000 euro in damages and settlement payments. Fulmek believed that plaintiffs were not 'so stupid to sue for such sums they know the publishing house cannot pay', as one of their aims was to profit financially. Fulmek estimated that the company paid 'roughly fifty or hundred thousand [euro] once in three years' in damages and spent annually on average fifty to sixty thousand euro on legal services. That he regarded as 'nothing catastrophic'. According to Petit Press's records, by November 2013

it had to pay a total of 314,500 euro in damages. The claimed amount in those disputes was 646,000 euro.¹⁸⁹

For large national media organisations, the main cost of the personality/goodwill protection regime seemed to have been the obligation to hold capital reserves to cover lost lawsuits. With the reduction in the number of lawsuits, the amount of capital needed to be put aside by the media decreased. Personality/goodwill protection litigation and its associated costs were thus perceived by them as an annoyance rather than an existential threat. Fulmek summarised it, ‘While it is annoying when I lose 100,000 euro, I cannot say it threatens the existence of the publishing house’. As a result, according to the executives, there was little fear of litigation and little pressure on newsrooms to avoid publication of contentious information.

Many interviewees, however, acknowledged that smaller, less financially stable organisations might have worried more about the effects of personality/goodwill protection. Broadcasters’ budgets were believed to have been less affected than those of publishers. National media organisations were perceived to be more financially secure than local ones, and thus less likely to be deterred from publishing contentious information. Lukášek was convinced that ‘no one can really intimidate a television with damages’. Diko believed that there was ‘probably a difference between electronic media, which operates in different numbers, and print or radio. A sum that might jeopardise the existence of a print [outlet], will pose no threat to a television [broadcaster] because its turnover is altogether different’. Acknowledging that ‘luckily’ *Markíza* was ‘a strong medium’ with ‘the finances for the fine[s]’, Krejča claimed that the notice threatening legal action for 20 million euro served to *týždeň* was ‘liquidating for such a magazine’. Adamčík admitted that the large damages claims ‘had to a certain extent a deterrent effect on some publishers because [publishing] was not such a profitable business as it might have seemed’ and ‘there was always a risk that several lawsuits for large sums, particularly from politicians, might have threatened the medium’s existence’.

¹⁸⁹ The records included disputes where a final decision was reached as well as those that were pending on appeal before the Supreme or Constitutional courts but where damages payment had to be made following a regional court decision.

Šimečka claimed that, given the considerable profits *SME* generated during his editorship, the relatively large damages payments, or ‘fines’ as he put it, ‘did not pose a threat to the budget’. Šimečka recognised that such financial costs might have been threatening for other outlets. Fila similarly argued that because *SME*’s ‘survival’ did not ‘depend on one concrete dispute’, there was ‘an atmosphere of inner freedom’ concerning personality/goodwill protection. Balogová claimed that ‘since we are a large publishing house, those particular lawsuits [for high damages] are not liquidating for us’. Balogová admitted that pre-action notices might make ‘some media more cautious’, as outlets ‘that don’t have good lawyers or are smaller’ might want to avoid ‘the torture’ of a legal dispute. Múdry (2013) reported that personality/goodwill protection law was ‘a huge problem’ for local print outlets and it produced ‘certain self-censorship’.

The interviews indicated that media market conditions, particularly the health of the market and its competitiveness, also influenced the perceptions of the chilling effect. The financial stability of media organisation, particularly the print media sector, had been seriously affected by the global economic crisis and the changing habits of audiences. The plummeting revenues exacerbated a fear of financial repercussions for losing a high-profile personality/goodwill protection dispute and made some organisations and individuals more cautious with high-risk stories. Soltész argued that with the reduction in advertising revenues, a few lost disputes might push some publishers into bankruptcy. Soltész was convinced that, at times, his publishers were chilled by the law because ‘they really ha[d] to very carefully consider how many lawsuits and of what magnitude they [could] withstand’. Leško claimed, ‘when every newsroom has financial difficulties’, the personality/goodwill protection regime ‘significantly affects the way in which newspapers write about contentious and problematic matters’. Leško believed that given ‘the fear of existential threats’, newsrooms, ‘try to minimise the risk of having to pay tens of thousands for casting doubt on someone’s dubious reputation in the case of a potential dispute’.

Market competitiveness was revealed as a potentially important factor accounting for the ability of a legal regime to create a chilling effect. While Barendt et al. (1997, 187) found that the competitiveness of the UK media market sometimes led tabloids to reckless publication, my respondents suggested that market competitiveness and lack of solidarity between media professionals hindered meaningful cooperation on a public campaign that might have contributed to earlier changes in the adjudicatory practice and plaintiffs’ behaviour. This was experienced in the Czech Republic. Šimečka, believed the ‘pressure’

and ‘the media environment in Czechia had always been stronger’ than in Slovakia, as the media tended report about other outlets’ lost lawsuits, presenting such cases as ‘a threat to freedom of expression’. In contrast, in the Slovakia of the late 1990s and early 2000s inter-media solidarity was low. Šimečka argued that when *SME* lost a dispute, it was ‘in it alone’ as ‘no one cared’ and ‘the environment was simply not loyal enough’. Public discussion on the issue commenced ‘only when it started to be serious, when other outlets started to have the same problem with litigious judges. Only then was it perceived differently’. Múdry (2014) similarly believed that the lack of solidarity among media professionals was an ‘enormous mistake’. While publishers were able to work together, given the high turnover of employees and the consequent immaturity of journalists, there was little solidarity among them. Múdry (2014) was convinced that if they had stuck together and campaigned that they might have deterred the most blatant abuses of the law and the unfair adjudicatory practices.

9.4.2 Journalists’ Status, Employer’s Support and Newsroom Relationships

While managers of large national media organisations argued that editorial freedom within their newsrooms was not unduly restricted by legal considerations, the interviews with editors and journalists suggested that reporters might nonetheless perceive high levels of fear concerning potential action and consciously or sub-consciously self-censor to avoid costs associated with litigation or threats thereof. Replicating Townend’s (2014, 299-300) findings, the interviewees indicated that the journalist’s perceptions of the employer’s backing and the relationships within the newsrooms considerably influenced the intensity of the chilling effect. The interviews also suggested that in struggling media markets and the current crisis of traditional journalism, the journalist’s employment status might be of importance.

Many journalists argued that they did not fear personality/goodwill protection litigation and did not feel the need to suppress true, albeit defamatory, statements about matters of public interest as long as they had their employer’s support in the case of a lawsuit. Milan felt it was ‘important what kind of status one has [in the newsroom] and whether the firm will stand up for them’. Recognising that according to the law the publisher or the broadcaster bears liability, Milan was certain that, as long as he acted in line with journalistic duties and responsibilities, his organisation would support him

during litigation: ‘If someone threatens me, I am confident that ... the firm will actually stand up for me, ... as long as I write the truth and stand by it, of course’. Milan had thus ‘fortunately ... never been scared’ because he ‘knew that in the worst case, it would be [his] employer to suffer the consequences’. Milan, however, admitted that the situation might be different if a journalist’s articles attracted numerous lawsuits that the publisher eventually lost.

Several lawyers and editors also pointed out the importance of employer’s support for reducing the perceptions of the chilling effect. Benedik had ‘never encountered anyone who would be intimidated’ by pre-publication threats because ‘in Ringier, they are very sensitive about these things and take great care to ensure protection of their reporters’. Kubina believed that undue caution did not exist in *JOJ*’s newsroom because, the reporters ‘know that I will always stand by them, that they won’t be in trouble. Whenever someone has messed up, I’ve been in for scolding ... I am the one ... who should decide, the one who allows [publication]. If I hadn’t noticed it, it is my fault’.

Interviewees suggested that the team spirit in some newsrooms functioned as a fear-reducing factor. Múdry (2014) indicated that the ‘tight-knit team’ or ‘the warriors in *SME*’ were in a relatively advantageous position compared to colleagues from other outlets. *SME*’s Prušová was not deterred from writing stories that would most certainly attract a lawsuit. As long as the editor-in-chief approved a story, she took it that the publisher was prepared to risk litigation and felt that her ‘back [wa]s covered’. Tódová perceived a sense of fellowship and mutual trust in *SME*: ‘We live the newspaper together; we create it together. It is a very friendly environment and there is great trust among us’. Therefore, she never felt she was a lone wolf reporter who would try to get a contentious topic through the editor-in-chief.

However, as Múdry (2014) argued, journalists could ‘never be sure whether the publisher and the newsroom will actually stand by’ them and ‘protect’ them. The certainty of media organisation’s support was particularly crucial for those journalists who worked as freelancers. Soltész called the numerous Slovak journalists writing without an employee contract ‘suicides’. Since ‘in the instant a journalist is an employee he is off the hook’, Soltész maintained that following his experience, he ‘would never ever be willing to write anything, not even a horoscope, without being employed’. The uncertainty about employer’s support might increase the distress of pre-publication threats and increase fear of litigation. Nicholson, who did not feel supported by *SME* leadership when working on the Gorilla materials, argued ‘you cannot be sure you can

rely on the organisation. The newsroom is a good thing. Yet, even there everyone has their own interests. In my experience, it is rare to be able to enjoy the strong support of your boss'. Nicholson thus maintained that journalists had to bear the stress caused by pre-publication threats 'on their own'.

Moreover, several respondents were aware of instances when newsrooms failed to support self-employed journalists sued for personality protection and/or when employed investigative journalists left newsrooms because they had not felt sufficiently backed by management. Múdry (2014) believed that such examples might make journalists contemplate whether pursuing sensitive stories 'is worth' risking loss of employment, and/or the financial and emotional costs associated with litigation.

Editors and journalists further suggested that the attitude of newsroom managers was key when explaining reporters' perceptions of the chilling effect. Many interviewed journalists argued that good editors-in-chief were able to alleviate the emotional distress felt by reporters and thus prevent them from unduly self-censoring. Leško believed that *SME* reporters had always been lucky to have 'had strong editors-in-chief' who did not project on to them the potential pressures emanating from the business department or the publisher. Milan declared, 'The boss is there to block out the pressures and protect his people'. In Soltész's view, 'a good editor-in-chief is able to completely insulate people from the pressures to the extent that the reporter only finds out that a lawsuit was filed for his article two years later when receiving a summons to appear as a witness in court'.

Balogová believed that fear of personality/goodwill protection did 'not interfere' with the work in *SME* because she took particular 'care through not mentioning the disputes, exert pressure on [her] colleagues'. Balogová communicated with lawyers and only discussed claims of lawsuits with the author of the impugned article, and strove to not unduly caution reporters to avoid certain phrases due to an increased liability risk. Balogová explained, 'I have to be brutally self-reflective not to stop a reporter from writing something because the lawyer has told me that they can sue us for such a phrase if I believe the phrase is justified'. Schwarz did not think that fear of litigation would act as a 'deterrent' for NMH journalists because, in contrast to financial executives and editors-in-chief, they were not aware of the number and cost of disputes, and thus did not contemplate editorial decisions in terms of potential financial costs of litigation.

Soltész advised that the newsroom management's approach might, however, increase a reporter's anxiety and self-censoring to avoid future trouble: 'If my boss keeps informing me in fortnightly intervals that a lawsuit against me arrived again,

subconsciously, I will become less courageous and more cautious’. Nicholson suggested that the pressure from newsroom managers might increase reporters’ fear if combined with general ignorance among journalists concerning the actual costs of personality/goodwill protection incurred by media organisations. Nicholson argued that most journalists were unaware that media organisations only lost a fraction of the claimed damages. This information asymmetry explained why, contrary to some publishers’ beliefs, journalists might feel the need to self-censor. Nicholson put it, ‘for f*uck’s sake, the journalist doesn’t see the two hundred thousand [actually lost], he sees the nine million [claimed]. This is because the editor-in-chief comes [asking] “Tom, what have you done?”’

9.4.3 Relationship with Lawyers

The interviews confirmed arguments of earlier studies (Townend 2014; Marjoribanks and Kenyon 2004; Hansen 2000; Barendt et al. 1997) about the pivotal role lawyers play in explaining why some media professionals feel more chilled than others. Editors and journalists working for outlets that use legal vetting regularly valued highly the cooperation with their lawyers. They recognised that the lawyers with a wealth of defendant work experience, understood the mission and principles of and journalistic work. They saw lawyers as their allies, not ‘censors’, who did their utmost to ensure stories in the public interest got published. Balogová advised, *SME’s* lawyers ‘usually suggest various alternatives’ how to proceed to be able to publish contentious information and avoid liability, and sometimes even strove to ‘find ways how to make things more courageous’. Brunovský, claimed that *Trend’s* lawyers ‘understand press law’ and ‘appreciate the mission’ and ‘what a newspaper should do and are on our side also from the civic standpoint’. Stressing that rather than wanting to avoid trouble at all costs, Brunovský argued that *Trend’s* lawyers were ‘interested in the newspaper fulfilling its function’ and strived ‘to get things into the newspaper’. Mikolášiková characterised pre-publication consultations as ‘absolutely super’ and ‘very helpful’. However, she recognised that other, less legally aware colleagues, might consider lawyers’ suggestions as an attempt ‘to muddle thing up’. Benedikovičová thought *SME* lawyers were ‘experts who know that the article needs to be very comprehensible and attractive for readers’ and

they tried to find a compromise that would make the content simultaneously lawful and attractive.

Lawyers who did a lot of vetting work were convinced that their job entailed finding ways how to publish important information whilst minimising liability risks. Kamenec believed it was not the lawyer's role 'to prohibit publication. For the easiest way is not to publish at all. Then the risk of you being sued is minimal'. Counsels in Kamenec's firm tried to 'respect the privileged role of the press, or the media, [and] to enable discussions about questions of public interest and to edit texts in a way ... that minimise[d] potential risks'. Zlámalová claimed that her 'aim was always to think about how the important could be published while potential lawsuits be avoided'. Ogurčák, thought it was 'possible to write about any topic'. The point was 'to write it in a way to preclude a lawsuit' and 'to avoid getting in a position where it is impossible to stand one's ground' if a petition was filed.

The interviews also suggested that as well as enabling publication, lawyers might be perceived as hindering the media's exercise of freedom of expression. Occasional conflicts between lawyers and newsrooms emerged. Schwarz thought that pre-publication vetting was 'not the absolutely most appreciated' service given the tensions between the newsroom and publishers. 'If you approve something without reservations, you might delight the newsroom, you flatter them so to say or at least you don't place obstacles in their way'. However, the lawyer might leave the publisher vulnerable to liability risk. 'If you take a negative stance towards something, it is not perceived to be ideal'. Schwarz believed that the lawyer should not take over the editorial authority because journalists were professionals, for whom lawyers organised training, and they should know the basic limits of journalistic work. Interviews with journalists suggested that those who had little experience of consulting a lawyer were rather sceptical of the usefulness of vetting. Several were aware of instances when vetted content gave rise to liability. Soltész believed that vetting did 'not make much sense' in light of the uncertainty and arbitrariness of the adjudicatory practice of ordinary courts. Some journalists also thought that lawyers tended to be 'too cautious' (Tódová), that their advice often read 'If you don't publish, nobody can sue you' (Soltész), or that they spoke 'their own language that no one understands' (Milan). In contrast, Milan thought the role of newspapers was 'to write or speak in a language that everyone understands. And there a great conflict arises'.

9.4.4 Organisational Culture and Reporter's Status

The interviews confirmed suggestions of previous studies (Barendt et al. 1997; Marjoribanks and Kenyon 2004) which argued that organisational culture and reporters' professional values affected a defamation and privacy regime's ability to produce a chilling effect. This was because the weight ascribed to the benefits and potential costs of publication of important speech in the public interest largely depended on them. Several respondents indicated that quality print outlets were expected by their readers to remain independent and publish investigative stories that scrutinised the conduct of public officials, senior judges and influential businesspeople. According to Fila, *SME*'s 'company culture or the expectations of readers' played an important role in alleviating the fear of litigation within the newsroom. Fila explained, the readers 'expect that we will risk it and write something rather than be constrained by the legal context'. Fila believed that in this respect, *SME* was in 'a very comfortable position' among Slovak newsrooms, many of which either did not have 'enough money to afford [venturing into sensitive matters]' or 'no one really expect[ed] it from them to be worth the risk'. Adamčík asserted that the quality publishers he used to represent, never pulled stories because they 'strived for freedom of expression, wanted to do real journalism and not just business with journalism. And to an extent, they understood it as their mission'. Acknowledging that considerations of potential personality/goodwill protection disputes might sometimes induce 'a more cautious approach to publishing certain information', L20 argued that this was not a rule 'because sometimes the interest in informing the public outweighs the threat of a damages pay-out'.

The respondents who denied that their organisation or themselves would be deterred from publishing legitimate speech, argued that the fear of potential litigation costs was outweighed by their consideration of their role as watchdogs who had to hold powerful actors accountable by publishing the "truth" about their conduct. Čekirda claimed concerning high-risk broadcasts: 'even if we perhaps potentially get ourselves into legal difficulty, there is the dimension of the duty to inform ... the public. And we venture into it'. Prušová advised that as long as the contemplated publication was believed to be 'true' and 'in the public interest', *SME* did 'not take into consideration whether someone will sue or not'. Obradovič was adamant that *HN*'s reputation was based on its 'not letting anyone meddle in its content'. Therefore, as long as an article was 'founded on facts' it was published, regardless of whether it concerned an 'advertiser, subscriber

or influential person'. Fulmek claimed that he always tried to explain to high-profile complainants that Petit Press was 'a democratically organized organisation' where 'each individual journalist [was] responsible for his/her performance' free from the publisher's control. Brunovský claimed that *Trend's* management did not pressurise reporters to exercise undesirable caution. While the errors that led to lawsuits were discussed within the newsroom, the co-owners would 'not embark on jeopardising the [paper's] role' because as former journalists, they understood liability risk to be 'part of the business'. Brunovský, however, admitted that 'it might work differently' in 'other types of newsrooms with different types of owners and investors'.

Leško believed that his 'societal role [wa]s to put [influential persons'] deeds, actions, their conduct into context and assess it'. Therefore, he did not think 'it should be central' to him 'whether someone will feel aggrieved' by his commentaries. Leško thought 'it would be ideal' if the aggrieved parties accepted his commentaries for 'the public interest and factuality' that he tried to promote. While 'newspapers have a duty to do the absolute maximum to bring verified, corroborated, ascertained facts', he was convinced that 'journalists don't have to be right about everything'. Leško believed that 'if something is in the public interest', it is possible to postulate 'a reasonable suspicion that things don't happen according to accepted standards and principles. If the suspicion is truly reasonable and if the ... article fairly states all the circumstances that make the suspicion credible' it should be published. Tódová declared, 'I am a journalist and it is my role to write about every public official whom I found is involved in wrongdoing. I cannot imagine I would be selective just because that person is rich and can sue me successfully'. When pursuing investigative stories, Milan was motivated by the need 'to write about the crooks who steal ... and live on embezzled public money' because it made him 'angry'. Milan wanted 'to make them pay for their wrongdoing' and for those involved in managing public procurement 'to get a wakeup call' and 'for society to move forward'. Milan's objective was 'to write the truth' rather than harming anyone. That the truth was 'vexatious for someone' was 'another matter'.

Several respondents also mentioned decisions to publish high-risk stories because the newsroom management considered their publication to be of such pressing public interest that it outweighed liability risks. Milan stated this was a much more common occurrence than killing stories for fear of litigation in newsrooms. Petková described 'a heated discussion' in *SME's* newsroom concerning whether to publish allegations of illegal financing of the Smer party based on an audio recording featuring a voice strongly

resembling that of Fico, which suggested that there were undeclared campaign contributions (see Balogová 2010a). Petková reported that despite the article's potential impact given the looming general election, 'the public interest ... won even though it was not absolutely certain ... whether the voice did or did not belong to Fico'. *SME* did not possess an expert opinion concerning the recording.

9.4.5 Journalism Culture and the Relationship between Media and Public Officials

The interviews largely confirmed Kenyon's (2010) argument that when investigating chilling effects in non-democracies or young democracies journalism practices and culture often play a key role. In the context of 'critical change agent' journalism culture and the mutual animosity between public officials and the media, pre-publication notices from the former were often perceived as intimidation and sometimes acted as a red rag to a bull to journalists and media organisations. Adamčík declared that stories about especially litigious public figures were pursued with extra vigour, rather than being consciously avoided for fear of litigation. Adamčík explained that what journalists and publishers perceived as intimidation attempts, 'irritated them. And rather than [self-censorship], the tendency was to discover as much as possible about that person, albeit in a legitimate way, and then to release it'. This was a part of 'the battle' between politicians and the media in the 1990s and 2000s. Vozár also believed that the intimidation attempts 'had a rather opposite effect' because those 'writing the truth weren't easily intimidated' and continued to scrutinise the behaviour of powerful actors.

Rather than being frightened, many journalists claimed that they were more strongly motivated to uncover the alleged wrongdoing. Soltész advised it was 'a very flawed approach to threaten one before publication' because every time he was warned to stop sniffing around, he knew he was 'on the scent of something' and pursued the story further. Nicholson argued that receiving a pre-publication threat 'reinforces your effort to uncover the issues' because 'of course, you know that you hit the nail on the head'. 'The more someone threatens me, the more motivated I am to write about it', asserted Milan. Prušová acknowledged that public officials' failure to provide relevant information disproving the claims she investigated and threats of legal action tended to confirm that 'their conscience is not clear' and that 'one needs to write about it'.

9.4.6 The ‘Human Factor’: Personality Traits and Maturity of Media Professionals

The interviews confirmed Schauer’s (1978) argument about the importance of the ‘human factor’ or individual reporter’s values and predispositions for editorial decisions about high-risk material. Several respondents suggested that the reporter’s character and maturity influenced the magnitude of fear of personality/goodwill protection he/she perceived. Asked whether receiving pre-publication threats impacted her decision to pursue stories, Petková stated ‘I am such a kamikaze that it doesn’t really’. Petková admitted, however, that such a personality trait might not be common among journalists. According to Soltész, ‘investigative journalism requires the whole person’. Therefore, while he felt some financial discomfort as the consequence of his lost dispute, he believed that his investigative work ‘was worthwhile’. Soltész declared ‘The mere fact that they sued me, that they expended some energy ... means that the crooks are still afraid, at least sometimes and of something. And until it is so, there is a point in doing it [investigative journalism]’. Milan argued that the risk of being sued ‘belongs to [the] job’, of investigative journalists. Brunovský explained that following pre-publication notices, decent journalists ‘needed to properly analyse the problem within them’ and subsequently ‘write about it as they feel it is’. They need to ‘deal with the conflict within themselves – that is part of the psychological requirements of today’s journalist. Who doesn’t have such personal characteristics to manage this, cannot work in journalism’. Brunovský argued that given the financial and emotional harm they risked, ‘journalists had to act on their conviction to do their job properly’.

However, as Balogová indicated, veteran investigative journalists who had been through several testimonies, most probably perceived court summons differently to young reporters experiencing legal proceedings for the first time. Balogová also believed that the drawn-out nature of proceedings might have a traumatic effect on less experienced reporters, as they were often forced to discuss the defence strategy with editors and lawyers at organisations they no longer worked for and testify about content produced years previously. The experienced Mikolášiková found it irksome to have to recollect the details of producing a story and to locate old evidence. However, working for a daily involved ‘such stress and pressure’ that she just had to ‘find it and roll on’. Obradovič similarly considered the time costs and anxiety experienced as a result of having to deal with claims ‘a marginal issue’.

Benedikovičová argued that a journalist had to be ‘mature enough’ not to take pre-publication threats too seriously, otherwise he/she ‘could write no critical articles’. While Nicholson admitted that pre-publication threats were ‘in no way pleasant’ and that they ‘increase[d] one’s stress levels’, he considered them as ‘part of the job’ rather than ‘something that intimidates one or that one is frightened of’. Tódová tried ‘not to think about’ pre-publication threats because ‘given Slovak courts’ she ‘would have to live in constant fear of potentially losing a lawsuit’. She ‘could not work like that’. According to Vagovič, ‘when a journalist is young’, he/she might perceive having an article pulled ‘as injustice’ or ‘censorship’. However, ‘with time’ he/she might realise that the editors ‘were perhaps right’. Vagovič admitted that when younger, he ‘perceived everything as interference’, while the instances often merely involved ‘common copy-editing or his claims were insufficiently substantiated’.

9.4.7 The European Court of Human Rights

Several respondents suggested that a country’s international legal obligations and the existence of an impartial international arbiter might affect a defamation and privacy regime’s ability to deter expression. The knowledge that, unless they failed to act in line with journalistic ‘duties and responsibilities’, they could receive reputational vindication and monetary compensation from the ECtHR reduced the fear for some publishers and reporters. Vozár, thought larger media were not intimidated by powerful plaintiffs because they knew that the money paid in damages would most probably be won back in Strasbourg. Soltész argued that he would publish the article at the heart of *Soltész v. Slovakia* again because he understood that ‘somewhere in Strasbourg, they will eventually prove me right, unless I make a gross mistake’. For Soltész, the ECtHR represented ‘the highest judicial authority’ where he was certain he would ‘find ultimate protection’. Although a complaint before the ECtHR did not delay his obligation to pay the plaintiff, moral satisfaction achieved by a judgment in his favour was most important for Soltész.

9.5 Manifestations of the *Invidious* Chill on the Public Interest in Freedom of Expression

The views of the main protagonists on the desirability or undesirability of the law's effect on freedom differed widely. While some denied the law had any effect, others like Diko, recognised that the personality/goodwill protection regime simultaneously produced *benign* and *invidious* chills on the media's right to free speech. Several interviewees also suggested that many media professionals did not recognise they had been chilled as they subconsciously internalised the restrictions imposed by the regime. This section explores the perceptions of defendants and their lawyers about the practical manifestations of the *invidious* chilling effects and their harmfulness for the public interest in expression.

9.5.1 Structural *Invidious* Chills

Respondents perceived the harmfulness for the public interest in expression of the 'undue cautiousness', 'self-censorship' and 'chilling effect' on a scale. The manifestation of what could be characterised as the structural *invidious* chilling effect according to Barendt et al.'s (1997, 192) conceptualisation were perceived as the most harmful. These were the avoidance of publication of material about certain persons and/or companies by media organisations and/or media professionals. This was often so internalised that the individual did not recognise he/she was self-censoring. The withdrawal of investigative programmes from television screens and print, accompanied by the outflow of experienced investigative reporters to other professions were other examples of the serious harm to the public interests in freedom of expression caused by the personality/goodwill protection regime's operation and its structural *invidious* chilling effect. The interviewees also mentioned the general reluctance of many reporters to cover corruption scandals broken by other media.

According to some interviewees, undue caution or undesirable self-censorship concerning particularly litigious and/or powerful persons and companies was newsroom policy in some outlets. Without prompting, most interviewees mentioned judges and Harabin, in particular, as typical examples. Leško was convinced that allegations about wrongdoing of judges 'don't get out to such an extent as in the case of the government or other public officials' because judges simply 'strike greater fear, greater anxiety'. *SME's*

Fila believed that ‘certainly, there are newsrooms where ... one doesn’t write or writes [significantly] less about problematic persons’. According to Fila, ‘part of the media definitely takes a more cautious approach towards Harabin because they know that a problem could arise there’. Prušová believed that having to ‘pay terrible sums of money’ in lawsuits instigated by Harabin, had made reporters for a specific daily ‘more cautious’ than *SME*. Petková also heard from colleagues working for that outlet that, at some point, the newsroom policy was not to write about Harabin to avoid lawsuits.

Milan admitted that one ‘writes very carefully about Štefan Harabin’. According to Milan, any article about Harabin had to be ‘very, very carefully written, if at all’. ‘I wouldn’t say I avoid writing ... Nonetheless, Harabin is a case *per se*. Therefore, it is the case for the whole media sector ... I am not the only one careful about what I write about him’. While adamant that his magazine published ‘matters the public should know’ and that can be proven by the coverage about Harabin’s family using his ministerial car, Milan acknowledged that ‘sometimes we really consider whether to write a trivial matter about him at all’. Benedik was convinced that Harabin was ‘everyone’s scarecrow’ and ‘that many journalists won’t write about his scandals because they don’t want to get into trouble’. He considered Fico as another extremely successful plaintiff that journalists might wish to avoid. Benedik, however, denied that excessive cautiousness was the reason why *Nový Čas* had never been sued by Harabin. Benedik suggested that the paper’s tabloid character precluded the political commentaries that he believed Harabin was sensitive about.

Šimečka acknowledged that at times, *SME* gained information which it was not able to ‘verify in such a way’ that he ‘could release it’ or that *SME* ‘would be able write the text at all’ because *SME* was not in a strong enough position ‘given the Slovak justice system and a potential lawsuit’. Šimečka claimed that he ‘definitely did not dare’ publish some articles that he would have released in the Czech jurisdiction ‘without any problems’. Denying any undue caution, Obradovič admitted that following past experience with articles for which the publisher was threatened with a goodwill protection lawsuit unless a correction was published, *HN* had become reluctant to report about large state contractors failing to pay their subcontractors. Since ‘the reporter had nothing on paper’, only verbal testimonies of affected sub-contractors who ‘were unwilling to testify for fear of not receiving any payment at all’, *HN* would not have been able to withstand the court case and published the correction. Subsequently, *HN* management decided that they ‘would not publish such information in the future because it could turn against’ them.

Nicholson believed that ‘almost nothing gets covered’ for fear of litigation. As examples of no-go areas for Slovak journalists, Nicholson mentioned financing of political parties, links between organised crime and politics, and the ‘absurd’ and ‘unhealthy’ practice of certain former judges, prosecutors or intelligence service officials who used their contacts to provide legal representation to organised crime figures. Nicholson rejected the arguments of some other respondents that a lot of information could not be published due to difficulties with its verification and obtaining legally admissible evidence, stating: ‘I don’t think that one would even search for evidence. ... And we know how it works. If I can find out how it works, other journalists know for sure’. Nicholson admitted that he himself had not released certain information even though he ‘had it confirmed by nine different people’ due to the litigious nature of some persons because he realised ‘what could happen’ to his publisher and himself.

The uncertainty of the personality/goodwill protection regime and the requirement to keep budget reserves to cover lost lawsuits were viewed as having contributed considerably to the withdrawal of investigative programmes from commercial televisions and print outlets. According to Štětka and Örnebring (2013, 418), in the early 2010s, Slovakia belonged to CEE countries with the smallest number of investigative journalists and nationwide investigative media. While this manifestation of an *invidious* chilling effect has not been reported in empirical studies to date, with the traditional revenue streams drying up for investigative journalism, in extremely pro-plaintiff friendly defamation and privacy regimes, this might become a more frequent occurrence.

In Petková’s opinion, the personality/goodwill protection regime’s ‘effect on journalism as a whole [was apparent] in the fact that investigative journalism almost vanished from television’. Petková perceived this as harmful for society ‘because television stations have a different and larger impact than the press’, which retained investigative journalism to some degree. Petková also recognised that the ‘intimidating effect’ of past disputes caused a decline in investigative journalism in some smaller print outlets, like *.týždeň*. Diko – the former editor-in-chief in *Markíza* – likewise argued that the capital reserves required to cover potential lawsuits, which exceeded its annual production costs, were ‘one of the reasons to terminate’ *Markíza*’s investigative programme. Describing the tensions between commercial and journalistic aims of broadcasters, Diko stated, ‘If something doesn’t add up in a commercial television, then

... Whatever noble aims [media professionals] might have, when a manager from outside comes and asks: “Why do you broadcast this if it is not profitable?” ...’.¹⁹⁰

In the context of the pressures on newsrooms’ budgets experienced after the 2008-9 financial crisis, the financial risks associated with personality/goodwill protection combined with high production costs, newsroom politics and the public’s disinterest in investigative journalism, resulted in its gradual withdrawal from Slovak media. ‘Investigative journalism died due to the public’s lack of interest’, according to Soltész. He added, ‘As soon as it were at least a bit profitable’, media organisations would keep it. However, because ‘it is expensive in terms of resources’, as ‘you need people who are less productive in terms of not being able to spit out three texts a day’ and ‘it is expensive in potential litigation [costs]’ and it ‘attracts too few people, has low viewership’, it was not financially viable for the media to retain investigative journalism. Soltész argued that ‘newspapers also realised that it causes them problems. If they don’t include it, no one misses it; it doesn’t influence circulation’. Nicholson acknowledged that the support he received from readers was not ‘reflected in the circulation’ and keeping investigative journalism was therefore not financially worth it.

Nicholson suggested that relationship within newsrooms might also hinder investigative journalism. According to Nicholson, news reporters often ‘work[ed] upon the boss’ (editor-in-chief) asking why investigative reporters had different working conditions to them. Nicholson argued that while he was officially in charge of the investigative department at *SME*, the only other investigative reporter was regularly required to work on news and there was never ‘a firmly guaranteed space or time’ for publication of their reports. Since the newsroom management ‘only have a limited amount of money they have to operate with’, by granting investigative reporters ‘special status’, they made ‘their lives more difficult’. Therefore, despite the publisher’s intentions it proved ‘difficult to keep investigative journalism’ within *SME*.

Several respondents believed that independent of newsroom policy some journalists might sub-consciously avoid high risk stories. Brunovský recognised that

¹⁹⁰ In reaction to the investigative format’s withdrawal, *Markíza*’s director argued that *Markíza* ‘had evaluated the efficiency of the programme as well as the legal risks associated with this type of format and their consequences’ (cited in Glovičko 2010).

some journalists ‘don’t pursue particularly problematic topics or don’t write a contentious article in years’, while trying not to ‘unnecessarily complicate [their] life’. Petková acknowledged that ‘not every journalist has such character’ as her to ‘find pursuing the issues further and publishing worth the trouble associated with legal disputes’. According to Soltész, ‘no one really does [investigative journalism] anymore – perhaps Marek Vagovič is the only one who has an actual ambition’. Nicholson was convinced that in the post-financial crisis environment with enormous pressures on journalists’ productivity, powerful actors’ intimidation efforts were often successful. ‘If you have to produce a minimum of an article a day, sometimes two, why should you complicate your life by opening a sensitive story?’, asked Nicholson.

The interviewees suggested that journalists were not only reluctant to pursue original investigative stories, but had become averse to report on scandals broken by other media for fear of litigation. According to Benedik, liability risk had ‘a dark side [manifested in the fact] that journalists were unwilling to embark on scandals where a colleague has burnt their fingers. They don’t pursue them; they are not as active, as aggressive as they could be’. Nicholson believed that in the past, journalists ‘used to be much more collegiate – when a story broke, everyone would take it up. You would not leave a [fellow] journalist in it on their own’. Characterising it as undue caution, Vagovič was surprised that an outlet, which would typically report corruption scandals broken in other media, did not cover the alleged VAT fraud case for which his publisher was threatened with a 20-million-euro lawsuit. Vagovič dismissed the argument of the outlet’s reporter about the story’s complexity and impossibility to verify the allegations: ‘It all seems to me like excuses, like they are far too afraid’.

Some respondents believed that fear of litigation contributed to the decision of many investigative journalists to leave the profession. As Nicholson put it, ‘there are some who will say: “You know what? I’ve had enough”. And they change profession’. Nicholson lamented that there were ‘very few’ investigative journalists left in Slovakia as many of his former colleagues had ‘decided to give up ... as a result of similar lawsuits’.

9.5.2 Direct *Invidious* Chills

The interviewees claimed overwhelmingly that pulling developed stories for fear of being unable to prove the claims before court, even if the newsroom believed them to be true and in the public interest – the classic direct *invidious* chilling effects identified by Barendt et al. (1997) – was extremely rare, they recognised other types of direct *invidious* chilling effect. These included reporting on serious wrongdoing, including corruption and clientelism, in an opaque manner, without identifying subjects of stories, and/or providing context or interpretation. In the extreme such reporting was so incomprehensible that it failed to capture the message of the story. This significantly harmed Slovak investigative journalism and the public's ability to hold the public officials involved accountable.

Some respondents considered these as unavoidable compromises that affected the quality of information received by the public, but did not excessively interfere with the public interest in freedom of expression. Kamenec, did not feel that the outlets he represented 'would not write' about the Supreme Court President at all whilst admitting that 'self-censorship' and caution were present around Harabin. Reporters approached stories involving Harabin in a very prudent manner. Fila admitted that there were some compromises, like not publishing judges' photographs, that went 'against fundamental journalistic principles and even common sense' and the readers' interests which the newsroom was forced to make to avoid violating the law. However, according to Fila, it was 'nothing fundamental'.

In contrast, other respondents found the practices damaging for investigative journalism, the public's ability to comprehend crucial issues and hold those in power to account, and thus impeding the country's fight with corruption. Benedik believed that the courts' interpretation of the law regarding innocence presumption, not allowing identification of parties under criminal investigation, led to self-censorship of sorts and often rendered articles 'totally worthless' for the reader. Benedik felt obliged to encourage journalists to self-censor in this way: 'These issues affect the content of articles, force them to, and, in fact, I force them to cover the faces etc. It is a form of self-censorship even though I cannot identify with the legal opinion'.

Langer recognised that following litigation threats in ongoing coverage of some scandals, journalists tended to replace 'certain details, certain connections that used to resonate' in past reporting with less contentious information. Langer saw this 'chilling effect' in avoidance of 'such little things, certain collocations', warranted value

judgments or associations. According to Langer, the chilling effect was also demonstrated by the use of ‘polemical [or] hypothetical terms’ concerning some litigious individuals. Langer believed, Harabin’s threats had led to the use of the phrase ‘alleged transcript of an alleged phone conversation’ between Harabin and the convicted drugs baron instead of more factual reporting justified by the general prosecutor’s confirmation of the existence of the transcript. Diko laughed when he stated that rather than avoiding mentions of the issue, *RTVS* kept reporting that Harabin had ‘links to the alleged drugs baron Sadiki – nowadays legally sentenced – based upon an alleged transcript of an alleged phone call’ similarly demonstrating how absurd he found the formulation.

According to some of the most prominent media professionals, the personality/goodwill protection regime of the 2000s seriously damaged investigative journalism. Nicholson believed that while it was ‘not a popular opinion’ within the profession, most investigative stories were published in ways that rendered them worthless to the public as the media tended to publish ‘mere sketches, no names, no deeds’ while ‘the point was to publish who was involved, [and] how they did it’. Nicholson claimed the reporting tended to contain a ‘rough outline’ that left the public ‘not much wiser’ even if evidence that could ‘prove to people what happened’ was available. Nicholson also argued that investigative reports of early 2010s became increasingly hypothetical. Asked whether he perceived a ‘chilling effect’ on journalistic speech, Nicholson declared: ‘Very much so. It is very strong, very strong’. He found it was ‘a shame’ that *SME*’s investigative reporting was much less hard-hitting and courageous than in the early 2000s when ‘they had no problem publishing secret service materials’.

Vagovič confirmed his perception that some media were ‘unnecessarily cautious’ citing the coverage by another outlet of the carousel tax fraud scandal he had broken. The report only dealt with a minor part of the scandal, providing only broad outlines of the suspected fraud without mentioning the firm’s name, its alleged links to Smer or the potential motive for removing investigators from the case. Vagovič felt that fear of litigation rendered the report insufficiently clear to the public to understand the gist of the story. When later confronted by Vagovič, the reporter claimed that he would not have been able to justify the claims before the organisation’s lawyers.

Šimečka acknowledged that when *SME* editor-in-chief, for fear of litigation he used to ‘dilute some statements exactly for that reason’. Šimečka argued that a ‘complicated story’ concerning activities of an influential financial group threatening

litigation was an exemplary case ‘when you know that you can lose the lawsuit – and very easily because the courts are against you – and thus write it much more cautiously or you call it a day straight away’. According to Šimečka, the media’s approach towards sensitive matters was to ‘write some bare facts which one could substantiate’ without interpretation. As a consequence, ‘even corruption scandals of great magnitude were written in such an incomprehensible way’ that ‘no one actually understood the essence’. The articles were simply ‘clogged with verifiable facts but lacked a conclusion because you would not dare write it’. This, in Šimečka’s view, was ‘one of the reasons why investigative journalism in Slovakia is, or was at that time [of his *SME* editorship], in a rather poor condition’. Even if the public ‘felt there was a problem, that dirty practices were involved, because they did not get the leitmotif’, the story ‘remained hazy and naturally also without consequences’. Šimečka therefore believed that the personality/goodwill protection regime ‘considerably impaired Slovak media’. Šimečka realised the undesirable chilling effect of the law more clearly after he started working for a Czech magazine that published numerous ‘investigative stories with a considerable dramatic impact’. Šimečka ‘only felt the difference there because those were much more courageous texts’. The magazine tended to win its defamation disputes even though its language was less precise than *SME*. Šimečka believed that, given the difference in the adjudicatory practice in the two jurisdictions, *SME* would have lost half of those disputes. By 2016, investigative journalism, according to Šimečka, had not fully recovered from the experience of the 2000s. Šimečka argued that personality/goodwill protection regime was ‘a really big problem’ at least until Harabin stepped down from the position of Supreme Court President. This contributed to the protracted fight against corruption in the country. While ‘the difference compared to the Czech Republic’ was still ‘dramatic’, Šimečka believed that in 2016 the situation in Slovakia was ‘changing for the better’.

Šimečka’s views were partially confirmed by Němeček, who denied any effect of the Czech personality/goodwill protection regime on his editorial freedom. However, Němeček believed that ‘in Slovakia it is basically a terrible problem’. He was convinced that ‘his fear of personality protection disputes’, which ‘he wouldn’t have felt in the Czech Republic’ forced Nicholson to call the main protagonists of the ‘Gorilla’ book by pseudonyms even though the public knew their identities.

9.6 Conclusion

This chapter examined the extent to which the Slovak personality/goodwill protection regime achieved the third specific objective pursued by triangulating the conflicting private and public interests in reputation, privacy and freedom of expression – prevention of abuses of the law and of *invidious* chilling effect on media freedom with its undesirable consequences for the public's right to information. The chapter found that the regime failed to deter abuses of the law by powerful, litigious public officials, particularly among senior figures within the legal system, and businesspeople, and was thus socially dysfunctional. Given the pro-powerful plaintiff bias in ordinary courts' adjudicatory practice, attempts at intimidation of the media and journalists or personal enrichment through litigation or threats thereof were rife throughout the studied period, despite the shift in the Constitutional Court's jurisprudence.

The chapter painted a picture of a defamation and privacy regime that largely failed to prevent *invidious* chilling effects and as a result to secure provision of investigative journalism and important speech communicated in a comprehensible manner. The effects were particularly striking in comparison with the situation in the Czech jurisdiction, which some respondents were able to provide. It offered ample evidence of direct and structural *invidious* chilling effects on journalistic speech on organisational (media organisations) and individual (media professionals) level and their harmful consequences for the public interest in free expression. These will be of value to future research as they allow for easier identification of manifestations of *invidious* chilling effects and a classification of the chills based on their harmfulness for the public's interest in expression.

The chapter revealed that the most harmful are structural *invidious* chilling effects that operate at the organisational level, as these mean that the public never learn about serious wrongdoing allegations. In the Slovak case, these included the complete withdrawal of investigative journalism by commercial broadcasters and reduction of its provision by quality print outlets; and the avoidance of publication as a matter of newsroom policy of material about certain litigious plaintiffs, particularly within the highest echelons of the judiciary or business with involvement in contracts with the state. The structural *invidious* chilling effect operated on the individual level and was manifested in the outflow of investigative journalists from the profession or change in the

journalist's focus on less contentious types of journalism. It was also visible in a general reluctance of certain journalists to cover corruption scandals broken by other media outlets. These were considered the next most harmful as they still precluded the public from receiving important information, albeit on a smaller scale.

The next type of chilling effect in terms of their harmfulness for the public's interest in freedom of expression was the direct *invidious* chilling effect. This was manifested on organisational and individual levels with the latter being slightly less harmful. Examples included omission of important parts of (investigative) reports like links between different subjects, names of public figures, context, connotations, interpretations of facts and conclusions; using opaque language and providing mere sketches of described issues so that the message was lost. It has been suggested that such practices resulted in speech that was largely incomprehensible and thus of little value for citizens who were unable to act on it when holding the powerful to account and almost irreparably harmed the country's ability to combat corruption. Other manifestations of direct *invidious* chilling effects, as identified by Barendt et al. (1997), like pulling developed stories were present on organisational level, but were much rarer.

The findings highlighted the subjective nature of the concept of the chilling effect in jurisdictions where reputation, privacy and expression are all constitutionally protected and conflicts between them are resolved by *ad hoc* balancing, which has been identified in earlier studies of defamation and journalism (Cheer 2008; Townend 2014). These subjectivities were revealed in three main forms. Firstly, it was often difficult for reporters to distinguish whether undue fear of litigation was or was not behind an editor's decision not to develop a story. Secondly, on the example of the 'Gorilla' case it was demonstrated that an identical instance of deterrence on speech might be considered by some as responsible journalism, a manifestation of *benign* chill of the law or a prime example of the direct *invidious* chilling effect harmful for the public interest in receiving valuable information. It was suggested that the seniority, maturity and thus greater tendency towards responsible journalism, might affect the perceptions of the existence, desirability and harmfulness of a chilling effect of defamation and privacy laws. Thirdly, Schauer's (1978) argument that the fear of litigation and thus the extent of the chilling effect of defamation and privacy law will be felt differently by different media organisations and professionals operating in the same system has been confirmed. In the Slovak case, the respondents among some of the most prominent investigative journalists and media professionals mostly working for quality outlets denied chilling effects on their freedom

of expression. However, they recognised that other organisations and journalists might have been unduly chilled by fear of litigation in reporting on warranted corruption allegations about litigious powerful individual and companies.

The chapter corroborated the assumptions of the conceptual framework developed in Chapter 2 that the cost-benefit calculus relating to editorial decisions and thus perceptions of a chilling effect by defamation and privacy regimes are affected by various contextual factors (structural, cultural and international) operating at different levels and the mutual relationships among principal protagonists operating within the regime. The constantly-evolving nature of legal regimes and the fact that they generate varying degrees of chilling effects over time have also been documented. It was most noticeable in the reduction of the *invidious* chilling effect perceived in relation to politician-plaintiffs following the gradual shift in ordinary courts' adjudicatory practice and plaintiffs' behaviour under the influence of the Constitutional Court and the increased media reporting of the controversial cases in the late 2000s.

Media political economic factors, particularly the organisation's size, financial stability and market conditions, and cultural factors, including organisational culture and reporters' professional status, journalism culture and the related relationship between the media and officialdom were found to be of key importance in explaining the different perceptions of the *invidious* chilling effects produced by a defamation and privacy regime. While the interviewed organisations were large and financially stable enough to absorb the potential cost of several high damages awards and to keep capital reserves to unduly fear litigation risks, it was suggested that small and financially weaker regional and local media did self-censor considerably. The organisational culture of serious national outlets and status of prominent journalists rendered litigation risks stemming from publication of legitimate but critical speech about the actions of those in power 'part of the business' that was outweighed by their belief in their "mission" and the expectations of their audiences. In the context of the mutually antagonistic relationship between officialdom and media professionals resulting from the clash of journalism and political cultures during Slovakia's democratisation and beyond, litigation threats from public officials encouraged rather than discouraged some media organisations and journalists from publication.

It has been suggested that market health and competitiveness can increase or reduce the perceptions of the chill. The plummeting profits following the global financial crisis instilled more 'cautiousness' into Slovak publishers and journalists as they realised

the impact of a potential large award on the organisation and their employment prospects. The media market competitiveness in the 1990s reflected in the lack of solidarity between different outlets and media professionals impeded the journalistic community's ability to effective collaboration to influence public opinion, encourage changes in the adjudicatory practice and plaintiffs' behaviour, and thus reduce litigation risks.

The chapter found that in addition to their personality traits and maturity, the nature of journalists' relationship with their employer, with their organisation's lawyers and senior newsroom managers are key for understanding their perceptions of the chilling effect. Mature, experienced journalists tend to take intimidation, the emotional distress and time costs associated with litigation as 'part of the job' while those less experienced might self-censor to avoid the trouble. The maturity of the reporter might also affect the extent to which he/she perceives editorial decisions as undue censorship. The employer's support in case of a claim or dispute might prove vital for reporters' editorial decisions, especially in a gig-type economy where the majority of journalists are self-employed and therefore face a greater personal liability risk. The approach of newsroom managers and their ability to shield reporters from the pressures of litigation was shown to be another important fear-reducing factor.

The chapter corroborated arguments of common law studies (Townend 2014; Marjoribanks and Kenyon 2004; Hansen 2000; Barendt et al. 1997) about the pivotal role lawyers play in explaining why some media and professionals are more chilled than others. While lawyers played a largely publication-enabling role in the Slovak case, legal advice sometimes conflicted with journalists' self-perceptions, creating tensions or resentment.

The findings suggested that a country's international legal obligations and the existence of an impartial international arbiter like the ECtHR might mitigate a defamation and privacy regime's *invidious* chilling effects as media professionals know they can obtain a final reputational vindication and monetary compensation.

The next chapter revisits the findings of all the empirical chapters and draws conclusions about the ability of the Slovak personality/goodwill protection regime between 1996 and 2016 to reach an appropriate triangulation between the private and public interests in reputation, privacy and freedom of expression; discusses the contribution of this thesis for our understanding of the interplay between defamation, privacy and expression; and draws ensuing lessons for future research.

Section 4: Conclusion

Chapter 10: Conclusions: No “Vicious Spiral” and Lessons for Future Research

10.1 Introduction

This study began with a description of the Slovak defamation and privacy regime, which, according to anecdotal evidence, was at risk of descending into a “vicious spiral” in its interplay with journalism. The fear was that this spiral would comprise simultaneous, deleterious consequences for all the protected interests at the core of the regime (the private and the public interests in reputation, privacy and freedom of expression). The media felt threatened by civil actions brought by high-profile figures from the spheres of politics, business and the judiciary. Plaintiffs seemed unequal before the law and in their ability to effectively protect their reputational and privacy rights. The public received poorly verified, misleading, trivial and sensationalist information instead of hard-hitting investigative stories.

This depiction of the Slovak personality/goodwill protection regime in the context of journalism seemed particularly striking in comparison to the neighbouring Czech jurisdiction where identical substantive laws had applied for decades but where such complaints were rarely raised. This study has sought to investigate this apparent vicious spiral from the viewpoint of the regime’s principal protagonists. It examined whether, to what extent and how the defamation and privacy regime – as interpreted and applied by courts – triangulated the individual and social interests in reputation, privacy and expression between 1996 and 2016. The thesis explored in depth the extent to which and how the regime sought to meet its three interconnected, specific objectives: protection of personality and reputation interests by providing adequate instruments for the injured parties to defend their rights against unwarranted attacks in the media; creating a *benign* chilling effect and promoting responsible journalism; and preventing powerful actors from abusing the law to preclude warranted critical reporting on their actions, and thus preventing an *invidious* chilling effect on freedom of expression.

10.2 Complex Picture of the Effects of the Slovak Regime

Drawing on Habermas's theory of 'discursive democracy' and new institutionalism, the study conceptualised law as a social institution that operates in interactions between principal protagonists within the legal regime set in a specific context. Through systematically collating, comparing and contrasting and reflecting upon the experiences and views of the principal protagonists and setting them in their contexts, the study painted a rich but complex and evolving picture of the interplay between journalism and the personality/goodwill protection regime in Slovakia between 1996 and 2016. It found that the regime did not disintegrate into a vicious spiral, as it was able to partially achieve its objectives. It largely succeeded in protecting reputation and privacy, produced a *benign* chilling effect and promoted responsible journalism among a substantive part of the media. Given the excessive pro-public plaintiff bias, the regime, however, failed to prevent abuses of law and the resulting *invidious* chilling effects.

The regime's operation during the studied period was not static but changed over time, as the regime went through incremental re-centring towards freedom of expression and away from personality/goodwill protection in the early 2010s following a shift in the Constitutional Court's jurisprudence. The effects of the regime's re-centring on the private and public interests in speech were not yet clearly discernible by the end of the studied period. However, there were indications that the gross abuses of the law by powerful plaintiffs of the 1990s and 2000s would not be tolerated by courts.

Protection of reputation and privacy

The regime was generally successful at safeguarding the private and public interests in reputation and privacy, albeit not necessarily through the final judicial resolution of disputes. Through procedural rules changes in the 2000s, the regime succeeded in guaranteeing access to justice to virtually all plaintiffs. Despite wide-spread frustrations with the operation of the personality/goodwill protection regime, the public figures who dominated among plaintiffs during the studied period were largely able to achieve the reputational vindication, cessation of privacy infringements and other satisfaction desired through litigation. They would not have been able to attain their aims through different means. The satisfaction did not have to come through a final court decision, but was achieved through fast out-of-court settlements, or through the act of initiating suit itself,

which served as a public relations exercise signalling falsity of the allegations, or a means of standing up to unjust journalistic practices and empowering the victim.

Due to lack of awareness, disinterest in defending their rights or general absence in news coverage, private individuals rarely featured as plaintiffs. Many private plaintiffs seeking to correct the record were able to achieve some redress outside of the legal process, at least in the self-proclaimed quality outlets, as only a small fraction of before-action claims ended in court. Eager to avoid litigation and/or following professional standards, most outlets were happy to provide genuine claimants an opportunity to put the record straight and/or express their views in follow-up journalistic content or receive free advertisement space. The media were, however, less willing to publish corrections, replies or apologies because they viewed them as threatening their credibility.

The regime was thus essentially able to fulfil its satisfaction function for both public and private plaintiffs. However, the rights and interests of a small group of particularly litigious politicians, judges and powerful businesspeople were disproportionately better protected than those of the other injured parties, as they were much more likely to succeed in disputes and receive large damages. Since they posed great risks to the financial stability of the media, the reporting on their actions was much more cautious and prudent than that of other parties.

The law was less successful in protecting the public interest in reputation and privacy. Given the media's general reluctance to transparently put the record straight and publish retractions, apologies and corrections, the public was able to learn the injured parties' point of view in follow-up reports or advertorials, but might have found it more difficult to connect it to the misleading or distorted information previously received.

Benign chilling effect and promotion of responsible journalism

The Slovak personality/goodwill protection regime created *benign* chilling effects on a large proportion of journalistic speech, and contributed to the promotion of responsible journalism, particularly in the quality news media segment. At least since the late 1990s, legal considerations played an important role in editorial decisions and combined with the emerging professional standards in encouraging responsible journalism. To avoid careless mistakes and thus the high risk of being ordered to pay substantial damages awards by the plaintiff-friendly courts, many organisations implemented measures to improve responsibility during the editorial process. These included legal training,

newsroom induction to professional standards, ethics codes adoption, and pre-publication scrutiny by editors and/or lawyers.

Adoption of these measures led to *benign* chilling effects on journalistic speech on both organisational and individual level. They were apparent in instances when insufficiently substantiated allegations were stopped from being published, when publication was delayed to allow for further verification or collection of evidence, and in certain instances when private individuals and firms were not identified but the reporting focused on the wider societal issue. The greater linguistic precision and information accuracy when claims were either toned down or rephrased to make them more accurate and when less expressive language was used were other examples. The *benign* chill was further demonstrated in instances when it was decided that privacy infringing stories or stories involving private individuals (and thus considered not in the public interest) would not be developed, and in the general practice of approaching all involved parties for comment to make reporting more balanced.

The Slovak personality/goodwill protection regime's success in producing a *benign* chilling effect on the tabloids and some 'unfair' practices prevalent in serious outlets was rather limited. Lack of professionalism, privacy intrusions and occasional deliberate smear campaigns persisted in the tabloids and oligarch-owned media. Despite publishers' efforts, certain unfair journalistic practices, like presenting dissenting opinion next to a court-ordered apology or reluctance to accept public officials' arguments contrary to their "truth", remained in quality media outlets, often unrecognized by the media professionals themselves.

Abuses of law and invidious chilling effects

Throughout the studied period, the regime largely failed to prevent abuses of the law by leading politicians, judges and businesspeople involved in fulfilling state contracts. While the *invidious chilling* effect of the law was felt with different intensity among media professionals and across the sector, its manifestations on the public interests in freedom of expression were particularly damaging. Mostly as a result of the unfair pro-public plaintiff bias of the adjudicatory practice of ordinary courts, the Slovak personality/goodwill protection regime failed to secure the provision of investigative journalism and valuable speech communicated in an intelligible manner. The operation of the law combined with other factors to create *invidious* chilling effects on both organisational and individual levels that precluded the public from receiving important

information about certain litigious plaintiffs, particularly within the judiciary. The operation of the personality/goodwill protection regime apparently contributed to the complete withdrawal of investigative journalism by commercial broadcasters and to the reduction of its provision by quality print outlets. The fear of personality/goodwill litigation also contributed to the decision of many investigative journalists to leave the profession. The fear of being sued and having to pay large damages resulted in alterations to published speech that ranged from unavoidable compromises or greater prudence when reporting on certain litigious plaintiffs to publishing investigative stories comprising bare, proven facts without any interpretations or context, or omission of important parts of stories. These practices were viewed to have irreparably damaged the quality and comprehensibility of investigative journalism to the public, impeded the public's ability to act on the information and hindered the country's ability to combat corruption in public life.

10.3 Contribution to Our Understanding of the Interplay between Defamation, Privacy and Expression

This study sought to address the existing limitations in our knowledge about the interplay between defamation, privacy and freedom of expression in the context of journalistic speech. The thesis provided the first systematic, holistic, fine-grained, empirical analysis of these interactions in a civil law country set in the context of a young Central and Eastern European democracy. Covering a period of twenty years, the thesis was able to shed light on the complex problems involved in balancing the private and public interests in freedom of expression on the one hand and privacy and reputation on the other by a civil law defamation and privacy regime in an immature democracy. The thesis provided important new insights into the workings of the defamation and privacy regimes, not only in consolidating or recently consolidated democracies. Crucially, in contrast to existing empirical studies, the thesis provided a holistic picture of the operation of defamation and privacy laws in the context of journalism, as it looked at the ability of the regime to protect the legitimate interests of the plaintiffs, defendants as well as the general public.

10.3.1 Conceptual Framework for Research on Balancing Free Speech with Other Interests

The thesis developed an innovative conceptual framework that can be applied to future studies of the operation of legal regimes that seek to balance competing protected interests in the context of public discourse, including hate speech, data protection or regulation of social media platforms (see Chapter 2). Drawing on Habermas's (1984, 1987, 1996) theory of 'discursive democracy', new institutionalism (e.g., Suchman and Edelman 1996), media communications studies and earlier socio-legal studies of defamation regimes, the framework conceptualises law as a social institution that is formulated, enacted, interpreted and applied in mutual strategic interactions between the principal protagonists, or the different social actors whose behaviour the law seeks to regulate. These mutual interactions occur within their structural, cultural and international contexts. A change within these interactions, in legal rules or in the context may re-centre the regime and have unintended consequences for any or all of the protected interests.

According to the framework, in addition to the law-on-the-books, any investigation of the interplay between a legal regime and journalism must focus on the interests, experiences and mutual relationships between the principal protagonists whose behaviour the law tries to condition. The actors' behaviour is expected to be shaped by its structural, cultural and international contexts. Because legal regimes respond to changes in the broader environment in which they operate, democratisation is expected to trigger a process of renegotiating the power balance between the actors, often leading to conflicts. The particular constellation of the institutional constraints of transition, alongside cultural trajectories thus establish particular pathways that affect the regime's ability to optimally protect the competing interests at its core.

The legal considerations identified by the framework as key to defamation and privacy regimes' ability to condition the principal protagonists' behaviour and achieve an optimal balance between reputation, privacy and expression were the fairness, certainty and effectiveness provided by the given regime on the statute book and in its interpretation and application by courts. According to the framework, the law-on-the-books and judicial decision-making are not identical analytical categories, as statutes might remain virtually unchanged, but the balance in adjudicatory practice might shift towards one of the protected interests and away from another.

The conceptual framework proved to be well suited to a study of the interplay between law and journalism. It allowed for the identification of the principal protagonists within the regime and focused the research on their mutual interactions, cost-benefit calculi and the contextual factors that combined with the principal protagonists' legal considerations in conditioning their behaviour. At the same time, it was flexible enough to investigate previously unexplored key benefits and costs considered by plaintiffs and/or defendants, the contextual factors, relationships and the multitude of ways in which they combined to affect the regime's ability to achieve its objectives.

10.3.2 Protection of Reputation and Privacy: The Plaintiffs' Calculus

The study unpicked the little-researched cost-benefit calculus behind the plaintiffs' decision to sue or pursue other non-statutory redress for reputational or privacy harm suffered by an unlawful publication in the media. Understanding why plaintiffs sue is key to our understanding about the extent to which and how defamation and privacy regimes protect reputation and privacy. Examining whether they are able to achieve their objectives, allows researchers to make inferences about the ability of the regime to safeguard reputation and privacy protection. In Chapter 7, I developed a plaintiff cost-benefit calculus model (Figure 7.1) that can be used to guide future empirical research in this area.

According to the model, plaintiffs decide to sue when they perceive litigation as the only available means to achieve adequate redress to the reputational or privacy harm they suffered. While plaintiffs might pursue different objectives to those assumed by law, they are primarily expected to seek the cessation of the infringement and reputational redress. These do not need to come through a final judicial decision, but can have the form of a formal letter admitting falsity of published statements, out-of-court settlement or a PR exercise to mitigate any potential impact on their professional career. Other motives pursued by plaintiffs might include punishment of the media, monetary satisfaction, prevention of future infringements or self-empowerment by standing up to injustice caused by reckless or malicious journalism. The latter motive may be particularly pronounced in democratising societies where common understanding of the roles and duties of various institutions, including the press, is still developing. The costs of litigation plaintiffs face, according to the model, are financial costs, emotional distress

and further reputational harm. In civil law jurisdictions, where litigation costs are generally lower than under common law, financial costs are not expected to deter plaintiffs from suing, particularly if appropriate procedural rules are adopted.

In addition to legal considerations, in particular the fairness, certainty and effectiveness of the law (including safeguarding access to justice for all) on the statute book and in its interpretation and application by courts, and availability of alternative discursive (statutory or extra-statutory) remedies the model assumes that various contextual factors will influence the would-be plaintiff's calculus. Above all, like the Iowa Libel Project before it (Bezanson, Soloski and Cranberg 1987, Chapter 4), this study highlighted the key role played by the injured party's perception of the media's behaviour before and after publication. The belief in media's unethical behaviour and malicious intent and newsrooms' reluctance to provide fast redress can propel many to file avoidable legal action. Political culture and the would-be plaintiff's understanding of the media's role in a democracy can be an important factor especially in immature democracies, as it might prompt some public officials to sue while deterring others.

10.3.3 Protection of Expression: The Chilling Effects

This study also opened up the black box of the widely-used but much less understood chilling effect of defamation and privacy laws. To be analytically useful, the differences in the meaning of the concept that are partly jurisdiction dependent, and the complexities and subjectivities behind it need to be unpacked. The chilling effect of defamation and privacy law implies a restriction on a media organisation's or an individual's exercise of freedom of expression with its impacts on the public's right to receive information. The chilling effect is a result of the fear of incurring sanction for publication of the expression in question. The 'chill' on freedom of expression may not always mean an outright obstruction of the media's or journalists' right to freedom of expression, as they may decide to publish the information in an altered form rather than not at all. While widely used pejoratively, the chilling effect of defamation or privacy law is not always undesirable. The literature distinguishes between *benign* and *invidious* chilling effects. The *benign* chilling effect on socially harmful expression or illegitimate speech is desirable for the protection of reputation and privacy and for the public interest in expression. In contrast, the *invidious* chilling effect deters media organisations and

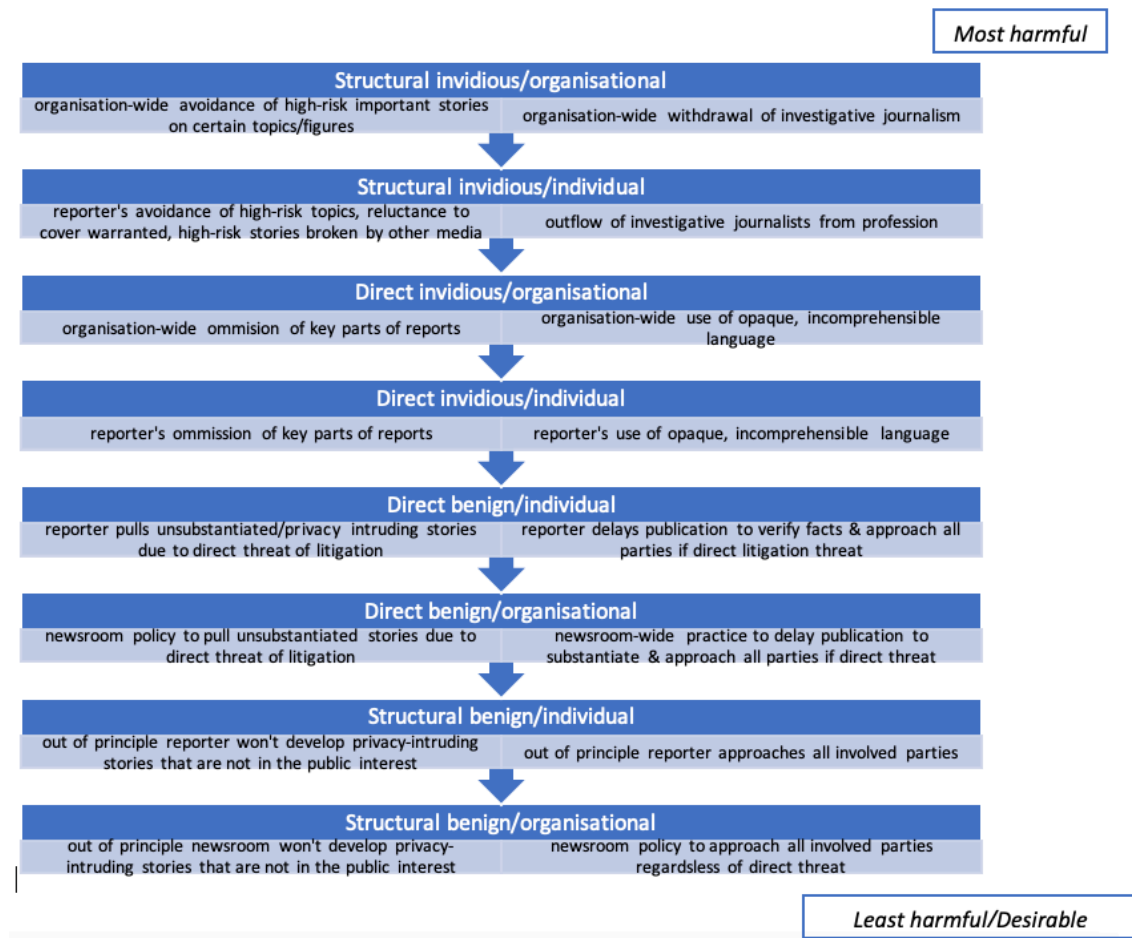
journalists from publishing warranted, important information or as Schauer (1978, 693) put it, expression ‘which they lawfully could, and indeed, should’ publish. Such chilling effect is harmful not only for the organisation’s or individual’s right to freedom of expression, but even more for society. The chilling effects have further been classified into ‘direct’ that occur when expression is deterred or altered specifically in light of legal consideration and structural (or indirect) that operate in a preventive manner by preventing the creation of certain material (Barendt et al. 1997, 192-193). The chilling effects have also been categorised by their harmfulness to media freedom on a scale from desirable to excessively harmful (Townend 2017).

10.3.3.1 Classification of the Chills by their Harmfulness to the Public Interest in Speech

To be able to detect chilling effects empirically, researchers need to be aware of their various manifestations. The empirical findings of this study suggest that while important for understanding the mechanisms behind the chilling effect on media freedom, whether speech was deterred due to a direct litigation threat or general considerations of the law’s operation is of little value for researchers’ ability to recognise the manifestations of the chilling effect. This is particularly true because media professionals themselves often do not recognise that they have been chilled. A classification of chills by their manifestations on journalistic content is also helpful for evaluations of their harmfulness for the public interest in freedom of expression, on a scale from most harmful to least harmful or desirable.

Drawing on the new specific examples of manifestations of the chill on the information the public receives revealed in this study, I argue that a classification of the harmfulness of the chilling effects of defamation and privacy laws on the public interest in speech must consider whether the chilling effect operates on the level of media organisations or on the individual level. Accordingly, their harmfulness for society will be of varying degrees. The classification proposed below (Figure 10.1) might be useful for guiding future research into the relationship between reputation, privacy and freedom of expression and be a first step in future classifications of the chilling effect.

Figure 10.1 Classification of Chilling Effects by their Harmfulness to the Public Interest in Freedom of Expression



10.3.3.2 Subjective Nature of the Chilling Effect

Like earlier empirical studies (Cheer 2008; Townend 2014), the findings of this thesis highlighted the subjectivities behind the chilling effect concept in jurisdictions where reputation, privacy and expression are all constitutionally protected and conflicts between them are resolved by *ad hoc* balancing. These are manifested in three main forms. Firstly, it is often difficult for reporters to distinguish whether undue fear of litigation was or was not behind an editor's decision not to pursue or pull a story. Secondly, an identical instance of deterrence on speech might be considered by some media professionals as responsible journalism, a manifestation of *benign* chill of the law or a prime example of the direct *invidious* chilling effect harmful for the public interest. Thirdly, the findings clearly demonstrated Schauer's (1978) proposition that the fear of litigation and thus the

extent of the chilling effect of defamation and privacy law is felt differently by different media organisations and professional operating in the same legal regime.

10.3.3.3 The Varying Degree of the Chills within a Regime Explained

The thesis further explicates the mechanics of the chilling effect. Editorial decisions whether to publish certain borderline expression are based on a cost-benefit analysis that is underpinned by media professionals' perceptions of the operation of the defamation and privacy regime, especially its fairness, certainty and effectiveness and the resulting risk of being sued and having to pay large damages; the relationships between the principal protagonists; and a multitude of contextual factors operating at different levels.

Contemplated speech is deterred when the risk of harm, or costs incurred by publication outweighs its benefits. The potential costs of litigation media organisations and media professionals face include financial costs associated with legal action and the reputational harm stemming from litigation itself and/or the need to admit fault and apologise. Media professionals also risk time costs and emotional distress stemming from having to deal with litigation threats or participation in proceedings. The rewards media or journalists might gain by publishing borderline speech include financial gain and promotion of vested interests.

Several factors other than the legal factors and the relationships between the principal protagonists emerged as key to explain why the *benign* and *invidious* chilling effects might be felt with different intensity levels by different media organisations and professionals operating within the same defamation and privacy regime.

Contextual factors affecting a regime's ability to produce a benign chill

The ability of a defamation and privacy regime to produce a *benign* chilling effect depends on the ownership, and resulting organisational culture and status of the media organisation in question. The findings suggest that law is more likely to produce a *benign* chill in the editorial practices and content of quality press outlets and the more strictly regulated television broadcasters. The quality papers are often owned by legacy investors whose main aim is not profit-making and their organisational culture and readership composition mean that publication of sensationalist, unwarranted allegations will not bring in extra profits. If sued, they risk large reputational loss, and if found liable a

financial one as well. In contrast, the owners of tabloid publications or non-traditional media owners among oligarchs are motivated either by profit or other vested interests in publishing borderline sensationalist or smear stories. While the public interest might be pursued in certain instances, it is secondary to the other motives. Given their organisational culture and readership, tabloids' business model is based on deliberate publishing of sensationalist, borderline stories that attract large audiences. Ethical standards are not a priority for the publishers when recruiting staff who are not overly concerned by journalistic ethics or reputational loss resulting from their article attracting a lawsuit. For the oligarch media owners, the benefits of disseminating smears about their business or political opponents outweigh the negligible financial or reputational costs of litigation.

The characteristics of the journalistic environment, such as weak institutionalisation, undeveloped professionalisation, and poor quality of journalistic education, and media market conditions, like limited amount of capital in the market to attract and retain high-quality staff, and an adversarial journalism culture can also limit the regime's ability to produce *benign* chilling effects and promote responsible journalism standards. The individual reporter's values and professional standards further affect the law's success in creating *benign* chills.

Contextual factors influencing invidious chills

The findings highlighted the importance of media political economic factors – the organisation's size and financial stability and market conditions – and cultural factors, including organisational culture and status, when explaining why some media outlets might be chilled while others are not. Large and financially stable media organisations can absorb the potential financial cost of litigation and the journalists employed there do not need to fear loss of employment. The organisational culture and status of quality outlets may render litigation risks stemming from publication of legitimate but critical speech about the actions of those in power 'part of the business', as these are outweighed by the organisations' and journalists' belief in their watchdog function. Broadsheets and political and/or economic magazines may be expected by their audiences to take the risk and publish critical stories. Deteriorating market conditions might instil more cautiousness into quality publishers and journalists as the risk associated with litigation increases with decreasing financial stability of the organisation. The competitiveness of the market might impede the media's ability to generate an effective campaign to

influence public opinion, encourage changes in the adjudicatory practice and in plaintiffs' behaviour, and thus reduce the risks associated with litigation.

On the individual level, the personality traits and maturity of media professionals and their relationships with their employer and within the newsroom are key to understanding the extent to which individuals perceive the chilling effect. While the mature, experienced journalists tend to take intimidation by plaintiffs, the stress and time costs associated with litigation as 'part of the job', less experienced journalists might self-censor to avoid the trouble associated with defending litigation. The reporter's maturity also affects the extent to which he/she perceives editorial decisions as undue censorship.

Recognition of employer support in case of a claim or dispute seems vital for journalists' editorial decisions regarding the pursuit of risky stories in a gig-type economy, especially if self-employed journalists face a greater personal risk of liability than their employed colleagues. The approach of newsroom managers and their ability to shield reporters from the pressures of litigation is another important chill-reducing factor.

10.4 Lessons for Future Research

The analysis and the empirical findings of this study offer four general lessons for future research into the interplay between defamation, privacy and expression in jurisdictions beyond Slovakia.

10.4.1 Lesson 1: Study the Adjudicatory Practice

The findings of this study strongly suggested that the adjudicatory practice, particularly its fairness, certainty and effectiveness, as perceived by the principal protagonists, is critical for explaining a defamation and privacy regime's ability to properly triangulate the private and public interests in reputation, privacy and freedom of expression. For the perceived unfairness, unpredictability and ineffectiveness of the adjudicatory practice can question the overall legitimacy of the regime in the eyes of the principal protagonists and the general public and seriously impact its ability to protect the private and public interests in reputation, privacy and freedom of expression.

The overwhelming lesson for future research, not least in young democracies, is that to gain a complete understanding of the interplay between privacy, reputation and expression, it needs to explore the decision-making practice of courts and the mutual interactions between plaintiffs, judges and defendants.

While, in the Slovak case, the law-on-the-books essentially achieved an appropriate triangulation of the competing interests, the adjudicatory practice had serious ramifications for the regime's ability to duly protect reputation, privacy and expression. The adjudicatory practice was viewed as unfair and biased towards personality protection and failing to adequately value political speech and criticism on matters of public interest, particularly concerning powerful public officials, including politicians, senior judges and prosecutors. There was a clear disjunction between the large awards received by high-profile plaintiffs for questionable reputation or privacy harm and those achievable by ordinary persons. The interpretation and application of the law by ordinary courts remained seen as unpredictable and arbitrary even after the shift of the Constitutional Court's jurisprudence, as judges were reluctant or unable to properly apply the general principles developed by the Court and the ECtHR. The regime was largely ineffective as litigation was protracted and plagued by delays, in some cases lasting up to fifteen years.

The largely unfair, uncertain and ineffective interpretation and application of the law by ordinary courts was a consequence of a multitude of interlinked factors, including the lacking resources and capability of judges, exacerbated by changes to court jurisdiction rules. The most pronounced cited reasons were nepotism in judicial selection and most markedly judges' personal prejudices, their adversarial attitudes to the media and the prevalence of corruption, clientelism and informal networks in the judiciary – all legacies of Slovakia's democratisation period.

The thesis demonstrated that the perceived unfairness and arbitrariness of judicial decision-making can impede the ability of plaintiffs to achieve the desired satisfaction resulting from reputational or privacy vindication or monetary compensation. The study revealed that having gone through several appeals, even if eventually successful, many Slovak plaintiffs felt frustrated by the regime, believing that it worked for the chosen few but not for the rest. The perceived illegitimacy of decisions in many of the controversial cases, encouraged by media coverage of those cases, risked delegitimising the whole system and jeopardising individuals' ability to gain reputational and privacy vindication and remedy the harm to their civic esteem. It further hindered the public's ability to recognise whom to trust to do business with or vote for. In line with the expectations of

the conceptual framework, the findings strongly suggested that the length of proceedings is a key factor limiting a legal regime's ability to safeguard reputation and privacy protection. Protracted litigation exacerbates the plaintiff's and his/her family's emotional distress and erases the intended effects of the claimed remedies, or forces the frustrated plaintiff to abandon the lawsuit without obtaining redress. Public apology obtained several years after the original infringement is counterproductive for the individual's reputation and/or privacy interest and is of little value for the public's right to receive factually correct information in a timely manner.

The study has demonstrated how the biases and unfairness in adjudicatory practice can affect the regime's ability to create a *benign* chilling effect. In the Slovak case, the likelihood that powerful public plaintiffs would sue and achieve large damages awards was extremely high. The potential cost of publishing insufficiently verified allegations about these plaintiffs was also high. Eager to avoid giving plaintiffs a pretext to sue, media organisations and professionals therefore took greater care to avoid mistakes stemming from journalistic irresponsibility. At the same time, the preferential treatment of the small group of high-profile plaintiffs compared to the rest effectively severely limited the law's ability to prevent unlawful attacks on individuals who were believed by the tabloids and their lawyers to be unlikely to sue or to receive significant damages.

The findings further indicated that if media professionals perceive the defamation and privacy regime as highly unfair or corrupt, they might be reluctant to accept judicial determinations and accept that certain practices are unwarranted. The uncertainty created by adjudicatory practice can also preclude the law from deterring certain reputation and privacy infringements as senior editors and lawyers are unable to provide journalists with watertight guidance regarding conduct in borderline cases. The ineffectiveness of the regime and significant delays in adjudication limit the educational effect of the law as by the time the final decision is reached a new generation of media professional with little memory of the case will be in place.

The study demonstrated in detail how unfair, biased or corrupt defamation and privacy regimes are socially dysfunctional as they fundamentally fail to prevent abuses of the law and *invidious* chilling effects. The findings clearly show that in such regimes, attempts to intimidate the media and journalists by threatening or filing suits are rife and that the perceptions of unfairness, bias and uncertainty of adjudicatory practice contributes to a fear of litigation which results in conscious or unconscious self-censorship among media professionals. The effects of unfair and biased adjudicatory

practice on the public interest in speech were patently evidenced in the comparison of the Slovak situation with that in the neighbouring Czech jurisdiction, where for the most part of the studied period identical legal provisions applied.

While earlier empirical studies of defamation and journalism all discussed the law-on-the-books and precedential case-law, they largely assumed judges were objective arbiters in the disputes. The Slovak case confirms the arguments of the conceptual framework and the political and legal scholars studying courts (e.g., ; Shapiro 1981; Segal and Cover 1989; Ducat and Dudley 1989; Ashenfelter, Eisenberg, and Schwab 1995; Baum 1997; Yates and Whitford 1998; Segal and Spaeth 1998; Steffensmeier and Britt 2001; Miles and Sunstein 2008; Goldstein 2004; Guarnieri and Pederzoli 2002; Maravall 2003) that to get a full understanding of the operation of legal rules, researchers need to examine how courts interpret and apply them, setting it in the context of judges' interests, interactions with other principal protagonists within the regime and the wider socio-political context. When studying the operation of legal regimes in immature democracies in particular, researchers have to focus on the judges' values, interests and cultural norms prevalent in society, journalism and the judiciary. The operation of legal regimes needs to be researched in the context of the mutual relationships between the principal protagonists including judges. For if corruption, clientelism and political pressures prevail in the judiciary and if the society is polarised to that extent that judges perceive the media as their enemies, however well-balanced the law-on-the-books, the legal regime will not be able to achieve its aims in optimally triangulating reputation, privacy and expression.

10.4.2 Lesson 2: Explore Institutional, Cultural and Relational Legacies of Democratisation in Young Democracies

The above leads to a lesson specific to investigations into the ability of defamation and privacy regimes in democratising or recently democratised jurisdictions to properly triangulate the interests in reputation, privacy and freedom of expression. Studies of these jurisdictions need to explore the uncertainties and conflicts that arise during the process of democratisation, as these affect the legal regime's ability to condition the principal protagonists' behaviour. This thesis has clearly demonstrated that a country's democratisation path can have lasting legacies for the institutions, including the media

market and judiciary, cultural norms and values, including political culture, journalism culture, individuals' beliefs and deeply ingrained informal practices like corruption and clientelism, as well as relationships between the principal protagonists operating in a defamation and privacy regime.

In the case of Slovakia, the period of democratisation represented almost constant struggle for the rules of the democratic game among different state institutions, political elites and, with notable interruptions, the political and judicial elites on the one hand and independent media on the other. These power struggles led to deep and long-lasting polarisation and pervasive corruption and clientelism within society (and judiciary in particular). The power struggles also shaped the developments in the media system and characteristics of the journalist environment, including weak institutionalisation, interrupted professionalisation and the hybrid 'critical change agent' and 'popular disseminator' journalism culture. They led to an adversarial relationship between political, business and judicial elites on the one hand and media professionals on the other, and, at times, instrumental use of the media by the owners, and the ability of several high-profile litigious plaintiffs to abuse the law to intimidate the media and prevent coverage of their actions.

These institutional, cultural and relational legacies played a key role in limiting the Slovak personality/goodwill protection regime's ability to create a *benign* chilling effect, promote responsible journalism and prevent abuses of law and *invidious* chilling effects on freedom of expression with their harmful effects on the public interest in expression. They largely contributed to conditions in the judiciary and its inability to modernise and rid itself of political pressures and corruption during the studied period, with its consequences for the adjudicatory practice in personality/goodwill protection disputes involving the media described above.

The 'critical change agent' journalism culture prevalent among journalists in the quality news outlets rooted in the collective experience of the government's oppressive tactics under Mečiarism resulted in highly critical, and at times unfair, coverage of each government's actions. It made many public officials feel unjustly attacked in the media, whom they believed acted unethically or even maliciously. In contrast, media professionals were overwhelmingly convinced that, with the help of corrupt or intimidated judges, powerful politicians, judges and shady businesspeople abused the law to intimidate or discredit them and/or to enrich themselves in the process. They were convinced that public plaintiffs had to tolerate a greater degree of public scrutiny and

were reluctant to provide quick redress to what they perceived as unmeritorious before-action claims. This adversarial relationship between media professionals and officialdom stemming from the clash between the political and journalism cultures and divergent perspectives on the role of the media in a democratic society often led to litigation as many public plaintiffs believed they had no alternative means to defend their reputations. Public plaintiffs tended to request large remedies as they wished to punish the media and show them they were prepared to stand up to injustice.

This only intensified the feeling among media organisations and professionals that the powerful few abuse the law and encourage others to do the same. In light of the unfairness of the adjudicatory practice, some outlets and journalists became reluctant to publish contentious stories about the highly risky plaintiffs, or pursue investigative journalism at all, harming the public's interest in expression. In contrast, in this atmosphere of mutual hostility, litigation threats from public officials encouraged those media organisations and journalists who viewed themselves as watchdogs whose mission was to hold the powerful to account, to publish warranted critical stories about officialdom and those who profited from public contracts. However, to minimise the risks of litigation, they often had to publish the warranted allegations in a manner that was highly incomprehensible for the public who remained unable to act on the media's findings.

10.4.3 Lesson 3: Don't Ignore Lawyers

Another lesson for future research into the interplay between reputation, privacy and expression provided by this thesis is to study the role played by lawyers. For their expertise, self-perceptions and relationships with plaintiffs, defendants and fellow lawyers might be key to our understanding of the operation of a defamation and privacy regime, as has also been recognised in the literature (Townend 2014; Marjoribanks and Kenyon 2004; Hansen 2000; Barendt et al. 1997; Bezanson 1986).

The findings suggested that lawyers play an important role in private plaintiffs' decision to sue and that they might actively dissuade high-profile plaintiffs with weak cases from suing to avoid further reputational harm. The study replicated the ILP's (Bezanson, Soloski and Cranberg 1987) argument that the essence of plaintiff lawyers' role is in recommending the most appropriate strategy and acting on the client's behalf.

The findings further imply that a plaintiff lawyer's expertise, reputation and relationships with their counterparts in legal circles are key for his/her ability to secure early settlement, and thus effective reputational or privacy vindication for his/her client. In judicial systems that suffer from a backlog of cases or inexperience of judges, lawyers can direct overloaded judges to the relevant case-law and thus ensure a fairer adjudication of the case.

The study indicated that in those media organisations that invested in legal services to avoid litigations costs, lawyers play a key role as promoters of responsible journalism standards and enablers of warranted publication in the public interest. Their ability to do so depends on their experience, understanding of the role of the press in a democracy and the frequency with which their services are used. It has also been shown that lawyers' interactions with newsrooms can partially account for why some media professionals feel more undesirable chilling effect than others. In the Slovak case, media lawyers were mostly viewed as publication-enabling actors with solid understanding of the role of the press in a democracy. Their efforts to reduce uncertainty about the legality of contemplated publications and to get important information out, while preventing careless mistakes and unnecessary litigation and associated costs, were praised by media professionals with whom they frequently cooperated. It has been revealed that lawyers with a wealth of experience in pre-publication advice often see their role as educators and promoters of responsible journalistic practices who simultaneously look for ways in which speech in the public interest may be published whilst minimising liability risks.

The study also showed that legal advice can sometimes conflict with journalists' self-perceptions and create tensions or resentment. Depending on the newsroom-publisher dynamic, media professionals' experience with pre-publication advice and beliefs about the role of the press, lawyers might be viewed as 'censors' restricting the media's freedom of expression and the public's right to receive comprehensible information. The findings suggested that journalists with little experience with legal vetting can be more sceptical of its usefulness, particularly in the context of prevailing uncertainty and arbitrariness of adjudicatory practice, and the lawyer's ability to phrase information in a way that is intelligible for the general public.

10.4.4 Lesson 4: Consider International Arbiters Like the European Court of Human Rights

The findings confirmed the argument of media and communications studies (Schudson 2005, 178; Hallin and Mancini 2004, 41–44) and socio-legal scholars (Townend 2014, 282) that research into the interaction between legal regimes and journalism ought not to ignore the international context in which these take place. It was strongly suggested that a country's international legal obligations and the existence of an impartial international arbiter like the ECtHR might mitigate a defamation and privacy regime's *invidious* chilling effects, as media professionals know they can obtain a final reputational vindication and monetary compensation. It has also been shown how the ECtHR case-law in disputes involving the country in question can indirectly but decisively contribute to re-centring of domestic defamation and privacy regimes. The thesis also demonstrated that the Strasbourg Court's established case-law can serve as guidance concerning the rules of responsible journalism and be viewed as a benchmark of fairness in decision-making against which domestic adjudicatory practice is assessed. This function seems particularly important in young, post-communist democracies affected by the interrupted process of professionalisation (Örnebring 2013, 10) where responsible journalism standards are far from set decades after the fall of the totalitarian regimes.

10.5 Concluding Reflections

This study opened up the black box of thinking about the triangulation of the competing interests at the heart of defamation and privacy regimes in the context of journalistic speech. It highlighted the complexities policy-makers and judges face when designing, interpreting and applying defamation and privacy laws. The study also illuminated the intricacies of the cost-benefit calculations of would-be plaintiffs and defendants when navigating the defamation and privacy regime that seeks to regulate their behaviour to strike an appropriate accommodation between the private and public interests in reputation, privacy and freedom of expression. The thesis provided a nuanced picture of how legal and contextual factors combine with the mutual interactions between plaintiffs, defendants, judges and the lawyers on both sides to shape to create intended and unintended consequences for the protected interests.

The study painted a nuanced picture of the complexities behind the chilling effects of the law on media freedom and the right to information present in jurisdictions that constitutionally protect expression as well as privacy and reputation and take an *ad hoc* approach to their balancing. It highlighted several key factors specific to Slovakia's personality/goodwill protection regime, and underlined more general contextual factors that might be key when examining the chills in other civil or common law jurisdictions.

The highlighted complexities call for more research into the interplay between defamation and privacy laws and freedom of expression in different contexts. This chapter offered conceptual clarifications and some general lessons that future research might find useful. The focus of future investigations of defamation, privacy and expression should focus on the various manifestations of the *benign* and *invidious* chilling effects and on the mechanisms and the legal and contextual factors that explain why the chills are more pronounced in certain regimes than in others and why some media organisations and media professionals seem more chilled than others. Increased attention to the adjudicatory practice of courts and the interests and values of judges, especially in democratising or recently democratised societies, is particularly called for.

Appendix 1: Informed Consent Form

INFORMOVANÝ SÚHLAS S ROZHOVOROM/INFORMED CONSENT FORM

Názov štúdie/Name of Study: **Právo na ochranu osobnosti a médiá na Slovensku/ Personality/Goodwill Protection and the Media in Slovakia**

Výskumníčka/Researcher: **Nikola Beláková** (PhD candidate,
Department of Media and Communications, LSE)

Ciele štúdie/Purposes of the Study:

Táto štúdia je súčasťou dizertačnej práce Nikoly Belákovvej na Department of Media and Communications na London School of Economics. Cieľom tohto projektu je preskúmať ako na Slovensku funguje právo na ochranu osobnosti v sporoch voči médiám a ako ovplyvňuje žurnalistiku v týchto krajinách. Táto časť projektu skúma skúsenosti, postrehy a názory médií, novinárov, žalobcov a ich právnych zástupcov, ako aj sudcov, ktorí rozhodujú spory o ochranu osobnosti, na fungovanie práva na ochranu osobnosti a jeho vplyvu na žurnalistiku na Slovensku./This study is part of Nikola Beláková's doctoral project at the Department of Media and Communications at the London School of Economics. The aim of this project is to investigate how civil defamation law (protection of personality rights law) operates in cases involving media defendants and how it influences journalism in Slovakia. This part of the project examines the experiences with and views held by the media, journalists, plaintiffs, their legal representatives as well as of judges deciding defamation cases about the functioning of civil defamation law and its influence on journalism in Slovakia.

Hodíacie sa, prosím, označte krížikom/Please cross the appropriate boxes

Prečítal/a a porozumel/a som cieľom tohto projektu./I have read and understood the purposes of the study. ☐

Dostal/a som možnosť opýtať sa otázky o tomto projekte./I have been given the opportunity to ask questions about the project. ☐

Súhlasím so svojou účasťou na tomto projekte. Moja účasť zahŕňa poskytnutie rozhovoru./ I agree to take part in the project. Taking part in the project will include being interviewed. ☐

Rozumiem, že moja účasť je dobrovoľná. Z projektu môžem kedykoľvek odstúpiť bez toho, aby som musel/a vysvetľovať, prečo ďalej nechcem participovať./I understand that my taking part is voluntary. I can withdraw from the project at any time and I will not be asked any questions about why I no longer wish to take part. ☐

Vyberte, prosím, jednu z nasledujúcich dvoch možností/Please select only one of the next two options.

Súhlasím, aby moje meno bolo použité tam, kde sa moje slová objavujú ako časť správ, publikácií a iných výskumných výstupov, aby môj príspevok do projektu bol rozpoznateľný./I agree for my name to be used where what I have said or written as part of this study will be included in reports, publications and other research outputs so that anything I have contributed to this project can be recognised. ☐

Neželám si, aby bolo moje meno použité v projekte./I do not want my name used in this project. ☐

Hodíacie sa, prosím, označte krížikom/Please cross the appropriate boxes

Beriem na vedomie, že moje osobné údaje ako telefónne číslo a emailová adresa nebudú sprístupnené nikomu mimo tohto projektu./I understand that my personal details such as phone number and email address will not be revealed to people outside the project. ☐

Beriem na vedomie, že moje slová môžu byť citované v publikáciách, správach, webových stránkach a iných výstupoch z tohto projektu, ale moje meno nebude použité, pokiaľ som tak vyššie neuviedol/dla./I understand that my words may be quoted in publications, reports, web pages, and other research outputs but my name will not be used unless I consented above. ☐

Meno respondenta/Name of respondent

Podpis/Signature

Dátum/Date

Nikola Beláková
Výskumníčka/Researcher

Podpis/Signature

Dátum/Date

Appendix 2: List of Interviewees

<i>Media managers and senior editorial staff</i>		
Name/Code	Position held at time of Interview (IV)	Date of IV
Lukáš Diko	Head of News, Radio and Television of Slovakia	09/04/14
Martin M. Šimečka	Former editor-in-chief, <i>SME</i> , editor <i>Respect</i> (Czech Rep.)	16/03/16
Igor Čekirda	Director for External Relations, <i>TA3</i>	27/05/14
Roland Kubina	Director of News, <i>TV JOJ</i>	27/05/14
Alexej Fulmek	CEO, Petit Press	21/05/14
Lukáš Fila	Deputy editor-in-chief, <i>SME</i>	13/05/14
Filip Obradovič	Deputy editor-in-chief, <i>Hospodárske noviny</i>	13/05/14
Martin Mihálik	CFO, Ringier Axel Springer Slovakia	14/05/14
Pavol Múdry (2014)	Former CEO, <i>SITA</i> News Agency	08/04/14
Henrich Krejča	Head of News, <i>TV Markíza</i>	04/04/14
Oliver Brunovský	Editor-in-chief and co-founder, <i>Trend</i>	04/04/14
Beata Balogová (Skype)	Editor-in-chief, <i>SME</i>	04/03/17
Tomáš Němeček	Editor <i>Lidové noviny</i> , former editor-in-chief <i>Respekt</i> (Czech Republic)	18/03/13
<i>Journalists</i>		
Name/Code	Institutional affiliation at time of IV	Date of IV
Mária Benedikovičová	<i>SME</i>	15/05/14
Adpád Soltész	<i>Hospodárske noviny</i>	28/03/14
Lukáš Milan	<i>Plus 7 dní</i>	02/04/14
Júlia Mikolášiková	<i>Nový Čas</i>	03/04/14
Tom Nicholson	Freelancer	27/05/14
Marek Vagovič	<i>.týždeň</i>	21/05/14
Zuzana Petková	<i>Trend</i>	07/04/14
Marián Leško	<i>Trend</i>	08/04/14
Veronika Prušová	<i>SME</i>	10/04/14
Monika Tódová (email)	<i>SME</i>	01/05/14
<i>Defamation lawyers</i>		
Name/Code	Plaintiff/Defendant work	Date of IV
L01	Plaintiff work	03/11/16
JUDr. Andrej Schwarz	Defendant and plaintiff work	03/11/16
JUDr. František Sedláčko	Plaintiff work	03/11/16
L04 and L05 (joint interview)	Plaintiff work	02/11/16
JUDr. Jozef Vozár, Csc.	Plaintiff and defendant work	02/11/16

JUDr. Rudolf Adamčík	Defendant and plaintiff work	25/10/16
JUDr. Tomáš Langer	Defendant work	26/10/16
L09	Plaintiff work	26/10/16
JUDr. Ivan Ikrényi, PhD	Plaintiff and defendant work	31/10/16
Mgr. Peter Lukášek	Defendant and plaintiff work	25/10/16
L12	Plaintiff work	03/03/16
L13	Plaintiff work	16/03/16
Mgr. Marek Benedík	Defendant and plaintiff work	11/03/16
JUDr. Elena Ľalíková	Plaintiff work	09/03/16
Mgr. Zuzana Zlámalová	Defendant work	14/05/14
Mgr. Tomáš Kamenec	Defendant work	07/04/14
JUDr. Marek Ogurčák	Defendant work	10/04/14
L19	Defendant work	11/04/14
L20 (email)	Defendant work	24/10/17
L21	Plaintiff work (Czech Republic)	18/03/13
<i>Plaintiffs</i>		
Name/Code	Position at time of filing lawsuit	Date of IV
P01	Senior editor	16/03/16
P02	Police investigator	05/03/16
P03	Judge	07/03/16
P04 (email)	Solicitor	12/01/17
P05 (email)	Judge	15/01/17
P06	Judge	09/03/16
<i>Experts</i>		
Name/Code	Institutional affiliation at time of IV	Date of IV
Iveta Radičová	Former Prime Minister of Slovakia, Professor of Sociology, Komenského University, Bratislava	05/02/13
Miroslav Kollár	President, Institute for Public Affairs	15/03/13
Pavol Múdry (2013)	Chairman, International Press Institute Slovakia	13/03/13
Milan Kruml	University lecturer, Charles University, Prague, and media analyst	18/03/13

Appendix 3: Media Manager/Media Professional Interview Guide

Interview topic	Questions/issues
Defamation-related training	Ask about provision of any training for journalists/senior editorial staff and about its form and periodicity.
Defamation insurance	Does your media organisation have defamation insurance?
Budget reserve	Existence of a budget reserve for expenses connected to personality/goodwill protection lawsuits.
Lawyer-client arrangements	Legal department/outside law firms. Basis of contractual agreement with outside lawyers.
Pre-publication scrutiny	Typical procedures before publishing an article/report that carries a heightened risk of a personality/goodwill protection lawsuit. Legal vetting – initiation, frequency, final editorial decision responsibility.
High-risk stories/factors considered in relation to liability	Articles are deemed risky in relation to personality/goodwill protection. Factors/circumstances are deemed important when deciding whether or not to publish in light of legal considerations (factual correctness, available evidence, source reliability, public interest).
Role of lawyers	How do you feel about the cooperation with lawyers during vetting? Lawyers as enablers or inhibitors? Does legal vetting save litigation costs?
Pre-publication notices	Frequency, form, complainants. Proportion that reaches courts. Perceptions about motivations of complainants. Resolution procedures, involvement of lawyers, factors considered when responding, settlement. Impact – how do they influence the work in the newsroom or your work in any respect?
Non-defamation factors considered pre-publication	What other factors or circumstances, legal considerations apart, are considered when developing a story /in decisions whether or not to publish? Do you remember a situation when an article, which would almost certainly attract a defamation lawsuit, was published regardless of the risk? If so, what were the reasons for doing so?
Direct chilling effect	Have you ever experienced a story, which you considered of great public interest, has been “killed” or substantially amended? Circumstances, frequency.
Structural chilling effect	Are there any subjects/individuals/firm that are deemed taboo in your organisation or in general? Are there any persons/entities covered particularly carefully, because they are especially litigious, for instance?
Post-publication complaints	Experience with, frequency. Procedure for resolving, involvement of lawyers. Attempts to settle, proportion that reaches courts. What do claimants request? Perceptions about claimants’ motives. Impact – how do they influence the work in the newsroom or your work in any respect?
Experience with lawsuits	Organisation and/or you personally sued? Frequency? Circumstances – type of story, plaintiff, remedies sought, result. Concern before publication? Legal vetting before publication? Motivation of the plaintiff.

Steps during litigation	Defence strategy. Evidence. Settlement during proceedings.
Perceptions of litigation	Perceptions of experience. Perceptions of judge's conduct. Satisfaction with result/justification.
Trends in the operation of law	Trends in litigation rates, most frequent plaintiffs. Explanations.
Adjudicatory practice	Perceptions about the adjudicatory practice. Courts' ability to strike an appropriate balance between reputation/privacy and freedom of expression (e.g. through proportionality of damages awards).
Effects of the law	Consequences for media organisation(s). Desirable/undesirable effects on own work/work in the newsroom(s)/journalistic content/society. Why? Why not?
Problematic aspects of the regime	Most problematic aspect of the operation of the law for organisation/individual.
Comparison with the Czech Republic (optional)	Familiarity with situation in the Czech Republic? Differences/similarities. Explanations.

Appendix 4: Defendant Lawyer Interview Guide

Length and extent of defamation experience, client portfolio	Length of experience. Media type. Also plaintiff experience? Ethical issues in relation to doing both defendant and plaintiff work?
Structure of legal profession	Specialist law firms. Defamation bar.
Lawyer-client arrangements	General contractual basis between media and lawyers. Interviewees' contractual arrangements with clients.
Defamation-related training	Provision of training: Form, frequency.
Pre-publication vetting	Involvement in pre-publication vetting? Frequency, availability, form, focus. Who can contact you? Ultimate responsibility for editorial decision? Sufficient use of vetting?
High-risk stories	High-risk topics, subjects of stories, type of material.
Role of lawyers	Self-perceptions about own role during vetting process. Relationship with clients.
Pre-publication notices	Involvement? Frequency? Form and claimants, content? Motivations of claimants. Resolution procedures. Factors considered. Settlement. Impact on work/freedom within newsrooms.
Direct chilling effect	Have you ever recommended 'killing' or significantly watering down a story you considered too risky in regard to personality/goodwill protection liability? Frequency?
Structural chilling effect	Particularly litigious persons/entities. Media attitudes towards them. Topics, persons or companies considered taboo by the media
Post-publication claims	Involvement, frequency, form. Claimants and material involved. Resolution procedures, factors considered, recommendations, settlement. Motives of claimants. Proportion that ends up in court. Effect on newsroom/journalist work.
Notable cases	Circumstances – material, plaintiff, involvement in vetting. Result. Plaintiff's motives.
Defence strategy and evidence	Defence strategy, evidence submitted.
Arguments/defences accepted by courts	What kind of arguments do Slovak courts accept? What circumstances do Slovak courts take into account when deciding personality/goodwill protection cases involving the media? Are there any important substantial or procedural rules which can determine the success of one or the other party?
Costs of legal action	Costs for media and their effect on access to justice? Costs for plaintiffs and their effect on access to justice?
Length of proceedings	Typical length and consequences for media organisations/journalists

Trends in legal practice	Trends in litigation rates, most frequent plaintiffs. Explanations.
Adjudicatory practice	Arguments/defences accepted by ordinary courts. Circumstances taken into account. Existence of any important substantial or procedural rules which can determine the success of one or the other party? Assessment of consistency and predictability of adjudicatory practice. Courts' tendency to take into consideration case-law of the Constitutional Court and ECtHR. Courts' ability to strike a fair balance between personality/goodwill rights and freedom of expression. Explanations. Prevailing party. Perception of pro-public figure bias. Range of typical non-pecuniary damages awards? Level of damages awards adequate?
Effects of the law	Consequences for media organisations. Desirable/undesirable effects on own work/work in the newsroom/journalistic content/society. Why? Why not?
Most problematic aspect	Most problematic aspect of the operation of the regime for your clients' rights.
Suggestions for reform (optional)	Policy suggestions.
Comparison with the Czech Republic (optional)	Familiarity with situation in the Czech Republic: Differences/similarities, Explanations.

Appendix 5: Plaintiff Lawyer Interview Guide

Interview topic	Questions/issues
Professional defamation experience (length, extent, client portfolio)	Client portfolio. Also defendant work? Ethical issues in relation to doing both defendant and plaintiff work?
Legal profession structure	Specialist law firms Defamation bar
Contested material	Typical contested material in personality/goodwill protection disputes.
Harm suffered by clients	Typical harm suffered by injured parties as a result of publication.
Perceptions of plaintiffs' aims	Type of redress clients usually want to achieve.
Client consultation	Factors considered before taking on a case. Recommendations. Determining level of non-pecuniary damages awards if sought.
Notable cases	Circumstances of notable cases (in general terms).
Defence strategy and evidence	Defence strategy, evidence submitted.
Arguments/defences accepted by courts	What kind of arguments do Slovak courts accept? What circumstances do Slovak courts take into account when deciding personality/goodwill protection cases involving the media? Are there any important substantial or procedural rules which can determine the success of one or the other party?
Costs of legal action	Costs for plaintiffs and their effect on access to justice.
Length of proceedings	Typical length and consequences for plaintiffs.
Trends in the operation of law	Trends in litigation rates, most frequent plaintiffs. Explanations
Non-pecuniary damages awards	Do you find the levels of awards for the compensation for non-pecuniary damages as proportionate? From your experience, what is the range of damages award levels in Slovakia?
Adjudicatory practice	Arguments/defences accepted by ordinary courts. Circumstances taken into account. Existence of any important substantial or procedural rules which can determine the success of one or the other party. Assessment of consistency and predictability of adjudicatory practice. Courts' tendency to take into consideration case-law of the Constitutional Court and ECtHR. Courts' ability to strike a fair balance between personality/goodwill rights and freedom of expression. Explanations. Prevailing party. Perception of pro-public figure bias. Range of typical non-pecuniary damages awards. Level of damages awards adequate?
Effects of the law	Does the regime offer effective personality/goodwill protection? Were clients were able to achieve their objectives through legal action? Perceptions of plaintiffs about litigation experiences. Would plaintiffs sue again?
Most problematic aspect	Most problematic aspect of the operation of the regime for your clients' rights?
Suggestions for reform (optional)	Policy suggestions.

Effect of the operation of the law on freedom of expression	Any effects on media freedom/right to receive information? Enables/hinders freedom of expression.
Comparison with the situation in the Czech Republic (optional)	Familiarity with situation in the Czech Republic. Differences/similarities. Explanations.

Appendix 6: Plaintiff Interview Guide

Interview topic	Questions/issues
Standing/position of plaintiff	Legal standing at time of infringement.
Defendant	Type of medium where infringement occurred.
Focus of contested publication	Focus of contested publication (private and family life, false wrongdoing allegations).
Harm suffered	Harm suffered as a result of publication. Consequences of publication (emotional, social, family and/or professional life).
Contact with the media	Contact with the media prior to litigation (personal, lawyer on your behalf). If so, what was requested? Media response. Perceptions about the response/communication with the media?
Lawyer consultation	Selection of lawyer. Issues considered. Recommendations.
Decision to sue	Timing. Reasons/objectives. Awareness of potential costs. Remedies sought. Determination of damages level, if sought.
Litigation experience	Length, result. Feelings during proceedings. Satisfaction with experience. Objectives of suing attained? What was most difficult about it? Ability of courts to strike the right balance between personality rights and freedom of expressions? Thoughts about effectiveness of the personality/protection regime. Would you sue again? If so, would you do anything differently?
Effects on freedom of expression	Have you considered any potential undesirable effects of your dispute on freedom of expression?

Appendix 7: Sample Media Manager Interview Transcript Excerpt

April 2014

NB = Nikola Belakova

M = Manager

Interview starts

...

NB: I would be interested to find out about the process of programme production, whether you ever take into account the risk of personality protection litigation. And if there is a risk how do you proceed? Do journalists consult with their boss – either you or the editors-in-chief – or with lawyers?

M: Each journalist, if they have the least dilemma, always come and ask the editor of the issue who is responsible for the day's scheduling, or the editor-in-chief, how to proceed further. If the editor-in-chief cannot answer the question on the spot, they immediately contact our lawyer who is in charge of the reportage format. The lawyer either advises them over the phone or comes in person to watch the reportage whether it is okay. And, of course, I have to say that in around seventy percent of cases the lawyers intervene in order to minimise the risk. Nonetheless, the television world is so broad that even if we obeyed the law to the maximum, the law is stipulated in such a way that if a lawsuit is filed or a complaint submitted to the Board [The Board for Broadcasting and Retransmission], there are three hundred million interpretations of one issue. Even if the television really believes that the letter of the law has been obeyed to hundred and ten percent, the judge or the Board can have a different opinion on the matter.

NB: And what programmes are considered risky in this respect? I mean the type of the programme, or a programme on a certain topic, person or firm, and what have you.

M: Those attracting the greatest risk are ... I would divide it into two streams. One stream is economic/business cases, in which many large firms are involved, together with cases concerning crimes and socio-political issues. Those are also often the focus of increased attention and lawsuits. Then there is a second type of lawsuits. Those are instances when we use an explicit picture, a picture which is rather distressing or when we by mistake just don't blur the picture of a juvenile, that is if we fail to blur their face. This is the second line, in which the Board usually takes decisions. It typically imposes sanctions on us if we mistakenly use some more distressing shots without the reporter announcing in the beginning that viewers need to make sure their children and youngsters not to watch it, or if we fail to blur or cover an explicit picture after the announcement. We have active lawsuits in the first area I have mentioned. These have typically involved large companies, various distrainers, various legal entities, whereby their lawyers immediately contact the television to [inform us] that they are filing a lawsuit against us, or they request an immediate correction. If we stand by the reportage, [if we believe] that it was in order, we will not do it. Occasionally we try to find a solution by making another reportage where we put the issues in a more normal light. Nonetheless we don't do this because we think that we have made a mistake. Instead we do this to calm the waters and to avoid unnecessarily going to courts because we never know what the result of the lawsuits will be. And even if we are hundred percent sure that we will win, the judge can have a different opinion.

NB: You and your lawyers are thus of the opinion that decision making of Slovak courts is unpredictable in these cases. And consequently you rather try to somehow settle out of court, I don't mean financially, but through a form of vindication or ...

M: If we are hundred percent sure, we go and fight. Yet, in any case, we offer the subject that wants to sue us the option of a second reportage. In the majority of cases, the vast majority of cases, they accept it. However, occasionally, they don't. In that case they file a lawsuit. Then there is the other option of a so-called out-of-court settlement, when in such extreme circumstances when we can see that the courts are going in a direction when the television is likely to lose, we try to settle. And yet, we simply stand by the vast majority of our reportages, the vast majority of the reportages. It is very hard because we often work with sources, we often work with witnesses. In those instances, we are in a more difficult position of not being able to reveal the witnesses, the sources. Were we able to, the judges would perhaps say themselves that "Yes, it is so." Yet, to protect our sources, which is a journalistic right, the court result often hinges on chance.

NB: What did you mean when you said that there are instances when you can see that the courts are going in a direction where you are not likely to win? Could you explain it a little bit?

M: Accidentally, it can happen that we make a reportage whereby all the parts are not hundred percent okay or sometimes the journalist makes a mistake. We have to say that [we make mistakes]. In that case, if the other party does not agree with producing another reportage and wants to sue as at all costs, we try to reach an out-of-court settlement after some time. Yet, this has occurred only a few times during the existence of the television. I am, of course, not aware of all cases. However, from what I have been able to observe as editor-in-chief, there have been several attempts to end a lawsuit through an out-of-court settlement. To a certain degree, it is an indirect admission of fault. However, sometimes we simply have to say to ourselves that we have not been hundred percent [right] in everything. It would be naïve to pretend that each programme is perfect and that each journalist is a perfectionist who has truly been careful about every fact. Given the sheer amount of reportages and facts they have to process every day, even our people can occasionally go astray. Nonetheless, we also try to limit it through these legal trainings and daily discussions [with the reporters].

NB: Sure. If it is possible to generalize, what stories do attract a liability risk? Are they stories within the main news programme or some investigative stories? Although I am not sure whether you have any investigative programme anymore.

M: Unfortunately, we don't. The last investigative programme was aired in 2010. Until the end of last year [2013] there was a programme called R which provided investigative journalism to a certain degree. It has now become part of [programme] E. We have kept the content of citizen public affair stories there. Some difficulties arise there as well. Occasionally, we receive some complaints for that as well. I am not saying that these are always lawsuits. From ten complaints perhaps one eventually leads to a lawsuit. Yet ... I honestly have to say that out of those ten, eight are unsubstantiated and two are up for consideration when we really try to agree with the other party to produce a second reportage. Sometimes broadcasting the second reportage within a short period of time from the original one when the issue is still topical, it is much more effective than broadcasting a long apology with all the legal stipulations, which the viewers won't understand, before the main news programme several years after the original reportage when no one really knows what it was about. And I think that they [the apology and legal stipulations] will in no way help the injured party. I thus often don't understand why if we make a mistake and offer a second reportage immediately, the majority of claimants doesn't accept it and wants to sue.

NB: What do you think might be behind that? What is their motivation?

M: At all costs, they simply want the court to publish a decision which exonerates them of any guilt, and which states [instead] that the television is guilty; to have it [confirmed] *de jure*, to be

simply able to show it. The stories' content sometimes upsets legal entities or some more prominent persons. I thus understand that they want to drag it to court for the court to definitely prove that the television made a mistake. However, you have the district, regional and supreme [court level proceedings]. It thus sometimes takes a very long time. And much can change in the meantime, because it can take two years but also ten years. We have disputes that have lasted for very many years. Hence, if it for instance harmed him [the plaintiff] professionally, it's been too long since then [by the time the court decision is made]. And the people who back then decided not to hire that person or to fire them might not even be alive anymore. I don't know. I don't want to speculate now. I have to admit that we have definitely illegitimately caused harm in the past. And it is our duty to rectify it. Whilst none of us are perfect, we try maximally to avoid it at each front. Nonetheless, I have two hundred and thirty people working below me, out of whom approximately hundred and twenty are journalists or work with content. It is thus not a small group to keep an eye on on a daily basis. This is why we have a director of each programme who should oversee it. And yet, occasionally some things escape their attention.

NB: For sure. And in relation to the complaints, the lawsuit threats or the lawsuits themselves what do the claimants or plaintiffs claim? Do they claim an apology or do they also claim monetary compensation for non-pecuniary damages?

M: That [monetary compensation for non-pecuniary damages] almost always.

NB: And how large are the sums they claim?

M: Well, I remember a certain record. It was a large insurance company that claimed, I think, hundred and sixty million Slovak crowns [5,311,040 Euro]. Usually it is approximately between 30,000 and 50,000 Euro, in that range. The problem for the television is that it simply has to incorporate it in its budget into such an extent that it has to set the sum aside in the event it is needed [for paying damages]. It needs to be there [available in the budget].

NB: You thus have a certain sum in the budget reserved for these lawsuits.

M: If we receive a lawsuit with a certain sum, we immediately have to count with it in the budget because we never know how the proceedings will end. And this limits our access to money.

NB: I'm not sure whether it is available in Slovakia, but do you have an insurance for such cases?

M: No, we don't have insurance for such cases. Some of our journalists are insured within the limits of their work. However, they do not have such a liability and reach. We, as television, as the broadcaster as a whole, are liable for content. Hence no individual is liable ... But we are not insured, no.

NB: I would like to go back to the [plaintiffs'] motives. How do you perceive them? Of course, this is your opinion, this is not something given. However, if they claim such vast sums, do you think that part of the motivation might be financial enrichment or alternatively to intimidate or discourage the television in a way in order not to stop you dealing with such issues or to make you more cautious?

M: Luckily, our television is a strong medium and it thus has the finances for the fine. Yet, take, for instance, magazine G, that is sued by a company for some twenty-four million [Euros]. This is liquidating for such a magazine. I would thus also divide it. There are some subjects trying to liquidate the media through the fine since it cannot be precluded that the court will grant it. Then, of course, there are also persons who want some money. Notwithstanding I think that Mr C, for instance, who has sued us as well as other media, that for him the money is not as important as

being exonerated. There are thus numerous judges, prosecutors, police officers who are definitely not so much interested in the money than in clearing their name. And I think that in the majority of cases it is also the case for other entities.

NB: You have just mentioned Mr C. Are there any persons, companies or topics that are considered taboo in your news broadcasts or reportages because from experience you know that they will sue or that they have a tendency to sue? Or do you simply attach no importance to it?

M: No. Essentially, no topic is taboo for us. We are more cautious when it comes to certain topics because these concern our advertising partners, large powerful companies, [or] large multinational companies, which would be able to defeat us through their lawyers. The cautiousness really works there [in the sense] that when preparing a story, we confirm the facts three hundred thousand times. We take great care there. In principle, we should do this with each story. And we do. However, this [stories about large business companies] goes through many external experts who evaluate it. Still, no one is banned from working on controversial cases, issues or scandals. I rather think that we have a very free [working] environment here. However, the laws are ever stricter towards us and thus do not help journalistic production. As a result, we have to be more agile in our work with words and pictures to be able to imply to the viewer, sometimes in allegories, what is going on ... And ... we are definitely not scared of politicians. While we are not scared of any companies in the world, we take tremendous care when we say something about Google, about, I don't know, Mercedes or Unilever. These are simply huge titans. We could harm their sales with a single reportage. When producing a story about meat, for instance, being sold after its use by date, I don't know, in D supermarket chain or in these huge companies, we have to have it damn well proven that it is true to air it. Such issues are intensely scrutinised as any other scandal or controversial case. And yet, I repeat that we are careful because these are large stores, large businesses that make the world go round. And if it were all fabricated, we do not want to liquidate someone's business based on one reportage.

NB: If I understand it correctly, it is important with such sensitive topics, entities or what have you that could give rise to a lawsuit to verify the facts for your statements to be based on facts that you are able to substantiate if it comes to court proceedings.

M: I will start from the other side. We do not have a list of companies we cannot publish material about. Naturally, in case of any private company, we are always very cautious. I simply ask journalists to have a testimony, to have it substantiated by documents, by evidence. If it is a police statement, for instance, to try to investigate and corroborate whether it is really so, even a few times. And we proceed in this way in relation to all companies.

NB: Sure. I was mainly interested in what you have just said about having stuff verified and having the various statements. If we can get back to your cooperation with lawyers. How do you perceive the consultations with your lawyers in instances when you have a reportage which could infringe someone's personality rights or good name? Do you perceive it positively that they are really trying to help you, or rephrase certain sentences in the reportage so that it is legally unassailable? Or do you find that the lawyers try [advising] 'just to be sure, stop it, don't air it?'

M: Certainly, each lawyer would be most satisfied if we did not air any, just potentially liable reportage. That is clear. However, my experience from the past clearly says that together we try to find a way to broadcast it. And they would occasionally face problems just because our laws on the book are one thing, and our courts are another. There is thus a vast gap between those. They have told me that according to the books it is absolutely okay, but according to our courts, it could be completely opposite, diametrically different. Hence they are also in a difficult position. And essentially all media lawyers are because it is always somehow on the borderline in a given society. Here, the laws, our laws have large holes and simply the courts do not work as they ought

to, and especially not as fast [as they ought to] in these matters. But yes, we have also made mistakes from time to time. We have received some [court] decisions that have taught us important lessons. As if some of the reportages have slipped through the control mechanisms. And the lawyers have simply not seen them. And they could have stopped them because they really had the right to do so as they simply were not alright. Hence, they do try to find an agreement with us for us to be able to air it.

NB: Who does the final decision belong to?

M: The final decision is, naturally, up to the head of the centre, that means me, or up to the editor-in-chief.

NB: Has a story, which you thought was in the public interest, not been broadcast due to the threat of a protection of personality dispute or after consultation with lawyers?

M: Definitely not during my era [as head of the centre]. However, we had worked a little bit more on some reportages before they were broadcast.

NB: Alternatively, has a story been altered to such an extent that the gist of the message got lost because you were only able to broadcast the material that was legally airtight?

M: No. I will answer differently. I rather try not to broadcast a reportage if we are not certain. And I request from everyone to wait with the reportage and finalise it to be perfect, rather than ... Occasionally it occurs that another medium publishes it before us. Nonetheless, even if in the majority of cases the journalists have to wait a day or two, the reportage is subsequently twice as good and more accurate.

NB: Sure. And does the centre or television have experience with complaints or threats before you actually broadcast a story? Of course, when you are preparing a reportage, the concerned parties whose rights could be infringed, or who claim that an infringement occurred, contact you or the journalist in question with a threat or complaint that they will sue if you air it? Have you experienced that?

M: Yes, million times. Definitely. They try it on the phone, via email, [or in] in person. It's sometimes beyond the borderline of blackmail. But I enjoy it because it is sometime comical to dodge them and it is very funny sometimes to uncover who is behind it, who is their source and who knows whom and suchlike. Nonetheless, these things would never get through me, at the least. And I am very careful about this. For I sincerely care about it, in my heart, I am still a journalist. And if the journalist is any good, he simply has to work because he influences the history of the society, he solves many issues. It [journalism] is the fourth estate. And if he [the journalist] truly works honestly, fairly and in good faith, he can save many things, save the country money and send criminals to prison. This is the crux of it.

NB: Despite these threats do you thus try to broadcast such stories instead of killing them?

M: Yes. I also distinguish between the threats. At times the people who call are also in the right a bit because the stuff [aired] is sometimes not hundred percent correct. Recently, I do not remember anyone threatening me with death or prison or the like.

NB: With death?

M: It used to be so in the past. It was common in the 1990s under Vladimír Mečiar. Back then my car got smashed. Really, they wiretapped me, and the secret service as well as police followed

me. It was a very difficult period. Nonetheless, it did not matter to me as a journalist. Yet, since 1999, since Ducký's death ... I apologise for mentioning this case, but it was a turning point when the society started to transform and when it became a bit more secure in the country. They have also tried to bribe me many times. They would come with briefcases full of money to make sure the reportage was never aired. These are also the forms [of influencing content], even if rarer. Hence yes, there have been tens of cases during my career as journalist, or a media manager when someone tried to blackmail me.

...

NB: You thus try to reach an agreement with them.

M: With some people there's silence [after the broadcast]. However, a month later arrives a formal complaint drafted by lawyers with a petition to commence proceedings or with a complaint to the Board. Still, in the majority of cases, they [first] call, and if we say 'sorry, but it was okay', they then file a lawsuit.

NB: And could you estimate how many percent from these complaints eventually end up in court?

M: It's also around ten percent because we always try to settle somehow. However, in the majority of cases we stand by the stance that it is not worth for us to get into a legal dispute with the person, if we can broadcast another reportage to simply add further information about the issues, let's say. Not to correct but to complement it. I take it as a complementary reportage. We stand by the facts. Often the stories [we broadcast] are not liked. Every day we deal with problems that a reportage is not liked by someone because ... We have numerous investigative reporters who work on serious contentious issues and, of course, these do also touch large, powerful companies. But it's up to me, I am the filter, I am the buffer.

NB: So you are the filter. It is then surely on your consideration. Or do you also contact lawyers or does it depend on the character of the threat or complaint?

M: If we don't reach an agreement on anything that I am able to offer, it's the lawyers' turn.

NB: I would now like to talk about the disputes themselves. Could you describe a dispute you have experienced as the head of the centre or before in the past in more detail? I know it was probably long ago, but if you could tell me what the dispute was about, what steps were taken, whether you won, what the other party claimed and the like.

M: There have been disputes with judges, prosecutors, police officers, [and] with various large companies. A case involving a judge, for instance, related to the fact that he was friends with a businessman who was trying to seize some land in Eastern Slovakia. The judge was his friend, and yet he was deciding the issue in court. We mentioned it in the reportage and they sued us. Surprisingly, we won the dispute at the district level, but lost at regional level. So these are such interesting issues. These have mainly been protection of personality lawsuits. These are number one [among lawsuits]. Then there was the insurance company that sued us for the hundred and sixty million [Slovak Crowns]. We did mention then that their contracts were unfair and that they lie to people. And they sued us for hundred and sixty million as a result of that reportage. Then there was, for instance, the case of V where they also tried to illegally buy hectares and hectares of land at a fraction of its cost. The influence of state, of power of state officials. Now the D area where hectares of woodland were exchanged for other land and the forests logged, hundreds of trees logged. And these lawsuits have already arrived. We just mentioned a name of the person in question somewhere. And numerous such cases exist. I'm trying to recollect everything because I have to go to court as witness, which is quite hard. Then there were various, for instance,

medical doctors in case they erred in their work. We've had such a lawsuit as well. I'll try to recollect some more. I could then send you something as well.

...

NB: My last question is very important and we have already touched on it in several of your responses. How do you perceive the influence of the right to personality/goodwill protection on journalistic work?

M: The protection of personality law is alright. However, law enforcement in Slovakia is very weak. The interpretation of the law, for instance, the law that forces print media to publish a correction ... Although there are simply numerous laws that do not aid journalism, I think that it does not discourage people and some media organisations to carry on with investigative work. But ...

NB: And how is it in your organisation?

M: I am simply ... I respect the laws of this country. I think that many of them are not stipulated in the best way, that they had not been consulted with the people who do the [journalistic] work. Nevertheless, they are [in force] and we have to put up with it and we have to be able to use the gaps in the law and interpret them in your advantage. I'm answering in a diplomatic manner (laughs).

NB: Thank you.

Interview ends.

Appendix 8: Sample Plaintiff Interview Transcript Excerpt

March 2016

NB = Nikola Belakova

P = plaintiff

Interview starts.

NB: Could you please briefly describe your dispute and explain to me what made you file your lawsuit? Since your lawyer represented you during your dispute, I assume the petition [to commence legal proceedings] was filed.

P: Yes, the petition was filed. And I or we won the lawsuit. The dispute concerned ... insults that violated certain standards. Although I work in the media and know that is not easy, certain standards were violated and it was beyond the limits of what is permitted ... for me [beyond the limits of] acceptability of what can appear in the media under freedom of expression.

NB: Could you describe it in more detail? You do not need to say the name. I assume it was a competitor weekly, daily or was a TV channel [that ran the story]?

P: No, no, it did not concern [my magazine], it concerned my person.

NB: What I meant was where it was published.

P: Oh, of course, it was published in, in ...in ... What was it? Whether it was a weekly or what I really do not remember. I don't even know whether it still exists in the same form. I think [it does] not, that it went out of business. And it was, it was ... a commentary. A commentary by a certain person that contained insulting, insulting statements ... based on absolutely nothing.

NB: Sure. There was no true factual basis.

P: No

NB: I know it is very sensitive and I do not wish to open your old wounds, but could you please briefly elucidate, how this affected you? I do understand that it undoubtedly affected you as a person. But did the [publication of the] insults also trigger any reactions in your closest circle of people?

P: In case of proceedings like these, of course, one most probably always needs to submit to the judge what you ask about, and one has to prove it. That means [you have to prove] in what way it [the allegedly defamatory statement] affected you both from within and from without, that is via the reactions of people. From within, ... what distressed me, ... despite being a strong person, above all was that my children started or were forced to deal with it ... [because] their friends started to ask them how it was regarding their mother. And that is... something every parent finds difficult to bear.

NB: Mhm.

P: Thus it did not just concern me. And ... my community naturally reacted by asking questions. They see you in a different light. Your authority is questioned. Your moral integrity is questioned. And I insist on my moral integrity, because ... I insist. I simply do not have an issue with my own moral integrity. Therefore, I will not allow anyone to call it into question in such an undignified

manner. As a result, my children, ... colleagues ... whom the statements involved had to testify in court. We had to document such prosaic matters as the circulation of the medium in question to show how many people it [the defamatory statements] could influence etc., as this, of course, would determine, figuratively speaking, the extent of the harm and of what occurred afterwards.

NB: Was it then a national medium outlet?

P: Yes, it was a national medium. Yes.

NB: And did it [the publication of the defamatory statements] have any other consequences for you in your workplace other than your colleagues asking questions? Of course, it had the personal ones you mentioned, that it primarily affected your children, because they were asked ...?

P: No. I must say that the firm acted very, very decently. After all, after all, I am, I am ... I still hold the position, which I hold [in the firm], so ... The insulting commentary was aimed at myself also in my capacity ... not merely at me as a private person, but as a person who holds a certain position and represents a certain medium. The firm thus acted very, very decently and from my point of view very correctly. That means that I was provided with support and it had no influence on me... or my position, if this is where you question aims, because the firm, of course, knew where the truth was. I would not have got into such a lawsuit without the knowledge of the firm, since ..., as I have said, it [the defamatory publication] partially related to my public activities.

NB: And had you considered any other means of redress than a lawsuit? Had you considered contacting the management of the outlet requesting to publish an apology and retract the false statements about you? Or had you considered [requesting] a press correction or reply?

P: ... I don't remember if an apology was part of the claim. But given that ... I personally definitely wasn't interested in an apology from the person we sued. Actually, in the end, we sued the publisher that ..., because it is set like that [in law], which provided the space [for the allegedly defamatory statements] without any correction. I was thus absolutely not interested in an apology from either the person or the publisher, because it has no value for me whatsoever. For me personally, an apology from a churl has no value whatsoever. ... That is one thing. Another thing is that they apologise to you in the same medium, which is as [awful] it is. And thirdly, they apologise to you after ... two years from ... [the publication of the statements]. That is total nonsense. That is a psychological nonsense. This is due to ... Among other things, the problem of the Slovak justice system is that everything takes infinitely long. Thus ... when one, let's say, has managed to deal with something, has ordered it somehow within, [and] if the judgment is made after two, three, in some cases in fifteen years, then it just reopens the wound which has been relatively healed by the scar or how to describe it. What is more, the public is reminded of it [the defamatory statements]. So what is the effect?

...

NB: And do you remember or do you wish to disclose the level of financial compensation you claimed.

P: I do remember, but I do not wish to disclose it (laughs).

NB: Sure (laughs). How did you arrive at the sum? Had you consulted it with your lawyer?

P: I had certainly consulted it with my lawyer. I think that as the lawyer has experience with it, he knows ... what is realistic and what is not [and] that there is a discrepancy between what people

might feel, to what extent they might feel hurt and ... This is, of course, a topic for a nice discussion, why my honour is less valuable than the honour of some ... I don't know ...

NB: ... Slovak politician, for instance.

P: ... politician. But that is, as I'm saying, that is ... a discussion about morals. So, I don't remember details anymore, but it definitely was, the proposal originated from the ... legal counsel as to a realistic range [we can claim].

NB: You mentioned that you did not want an apology from the publisher in question or the person who wrote the article about you. What did you wish to achieve by [filing] the claim? What kind of vindication or compensation?

P: ... I find it important to let others know, if injustice is done to you, that you will not silently tolerate it. People have to speak up. And now I am saying this as the person whom people contact with requests [for reply, correction, retraction or apology]. You cannot forsake some issues just because there is no point, because there is a point ... These singular issues affect the whole society. I feel that cannot let someone ... [publish what they wish], and in this case it was someone well-known, without them understanding the following: 'If you say something, punishment may follow. So think about it well, because freedom of expression has its limits. And in general, democracy and freedom have limits. And ... and I will defend myself within the remit of democratic society. You will not be able to get away with it just because you feel, you can [do] everything. Well, you cannot. We will let the court decide, whether you can. And if you think that you can, but you cannot, it will hurt!' That's why [I claimed] the money.

NB: So more-or-less it was a punishment for the illegitimate infringement [of your personality rights].

P: Certainly.

NB: From what you are saying, it would seem that you wanted to prevent them from doing something similar to you or anyone else in the future.

P: Of course.

NB: We can now move to the court proceedings. How long did they approximately take?

P: They did not take long. I definitely do not feel that they would have dragged. No.

NB: And you said that you had won.

P: Yes.

...

NB: You have already mentioned that your children and your colleagues had to give testimony as part of the examination of evidence as to whether an infringement was caused [by the publication of the defamatory statements], and, I assume, when the level of damages was examined. Do you remember any other evidence you had had to submit or how the evidence submission proceeded? Were you present at hearings? How did you feel about it or how did it affect you to have to go there and that your children and colleagues from work had to come to [court] to give testimony? Did you find it as something you have to go through to achieve your

aim? Or did it somehow open your old wounds as you had to relive the harm [caused by publication of the defamatory statements] again during the legal proceedings?

P: ... In principle, it was in no way pleasant. And I am no sissy. I took it as ... as part of what I am convinced about, what we have discussed, that 'you will not get away with that'. I remember that it was unpleasant, ... but this is, of course, part of the process, when the opposing party's lawyer, that is the defendant's lawyer, asked me questions which, which ... just by their nature I found insulting. But again, since they wanted to prove the truthfulness of the, of those ... This in itself was ... odd. And there, in the corridor as we were waiting for the judgment, I can say this, I told the [defendant's] lawyer that I understand that he is doing his job, because he is ... he is doing his job. But [I also told him] that I did not envy him, because what he was doing was nasty. I do remember that (laughs). And he, poor guy, got red in his face and he apologised to me [saying] that yes, he was doing his job ... He had probably realised that ... that ... well. He did not feel comfortable about it. And what else was so ... unpleasant for me? Perhaps ... but this was nothing serious, when the judge asked about some of my private affairs, which were included in the commentary. And this really ... I am not the type who would ... be thrilled about discussing their private affairs in a public hearing (nervously laughs).

NB: I completely understand.

P: Thus ... well ... It was rather odd because I was inclined to say: 'That's none of your business!' (laughs). Well ... so. But we managed it.

NB: However, if it was the subject of the article, the judge was obliged to ...

P: Certainly. I am just telling you about ... You asked about feelings. Therefore, I am telling you about feelings. Naturally, the feeling was exactly 'that's none of your business' (laughs). Nonetheless, of course, I answered his questions as it was necessary.

NB: Do you find that in your case the courts were able to appropriately judge and balance the two rights, that is your personality rights and freedom of expression?

P: Well, I think so. Since I was successful, I find that this was the case.

NB: You have possibly already answered my next question. What do you consider the most problematic during this dispute for you? Which of its aspects? It probably wasn't the length as you have said that it took relatively short time by Slovak standards. I thus assume that it was the fact that you had to talk about your private affairs during the hearing. Was there anything else you consider as problematic and as an issue for plaintiffs in general in relation to the operation of defamation law? What could be improved in order to achieve better or more effective protection of [personality] rights?

P: As I have said, in this concrete case, I had no negative experience with the court proceedings. Yet, I am talking about my case, about this single case. In my role [as an editor-in-chief] I have to attend court hearings quite frequently and I encounter various issues there. What I can say, how I perceive it, is that I think, but I have no backing for this other than my perceptions, that judges themselves often do not know where the limits of what is acceptable and what is not acceptable [to publish] lie; what freedom of expression in a democratic society is; what an insult and an argument are; and what the difference between a commentary and a factual statement is. They are not clear about this. But why they are not clear about it, I don't know.

NB: Of course.

P: I don't know whether judges specialise in an area of law. I don't think that judges specialise in an area of law.

NB: No.

P: Therefore, if someone ... deals with issues ranging from a needle to a tractor, well then ... It would probably be suitable if ... Well, I don't know. I will not speculate. Nonetheless, they [judges] have reacted in various ways because some ... I really feel that they ... were at sea.

NB: I understand what you mean. You are not the first respondent who sees it in this way. From what you have said, I think I know the answer to my next question. Nevertheless, I am going to ask. Given your experience, would you do it all over again? Would you file the claim again and would you get involved in the dispute again?

P: Yes, sure. Yes, definitely.

NB: Thus in the end, it did have the outcome for you [which you wished for] ... You wanted to somehow show the person that they cannot boundlessly accuse people or say whatever [they wish]. Did it [the dispute] serve that purpose?

P: Yes, definitely.

...

NB: I have no further questions. Is there anything else you consider important, which we haven't discussed or anything from your experience that got stuck in your mind or that has remained with you?

P: ... Well, I don't know, really ... Now, as I have talked to you, I feel that where a huge question mark remains for me and what ... what I would like to understand, how exactly is, in the case of defamation disputes, the amount of the 'pain' derived. I do not understand how this is done in Slovakia. I really, really find it outrageous that ..., let's say in my case I couldn't, I couldn't have claimed, as I would have had no chance to succeed with such a lawsuit in Slovakia ..., I don't know, I'll make it up, 200,000 Euros. Whereas a ... sot, generally-known sot ... holding a political position etc., etc. is able to ... A court is able to award him ... for ... some untruthful statements in the media ... Thus the context eludes me. And this perception, I think that this perception is very detrimental for the Slovak society since it means that there are various social classes for which different laws apply. Thus I think that even the, and I am not talking about myself, that even the, let's call them, 'simple' person has to feel that if they suffer injustice, then ... they will get, figuratively speaking, the same 200,000 Euros, even if they are, if they are not the [privileged political] class, because they are citizens of this country and ... their honour is equal to the honour of anyone else. And here I am missing such perception ... That's what I have not understood.

NB: I think that many still don't know, don't understand that. It often depends on the judge in question, how they evaluate it.

P: ... Sure. Yet, it is undoubtedly vital for society, for the community that calls itself society, to share the understanding that, yes, we are all ...

NB: ... equal.

P: ... equal before the law. And such understanding in various matters, such understanding is missing here ... We have nothing to support that [understanding] because it is not so.

NB: I do understand. Thank you. I would have a very last question, if I may.

P: Sure.

NB: How did you take the fact that the periodical in question allowed the defamatory statements about you to be published? Was it done with the aim of harming, defaming, hurting you or was it just an unintentional mistake?

P: ... Goodness! ... I don't know ...

NB: ... Or was it recklessness or how did you take it?

P: ... It was, it was a regular space for a person ... Or more precisely, the periodical profited from the fact that this type of person who then insulted me, ... had a regular commentary column there. Thus the editorial staff of course knew about that [the defamatory statements], but they probably counted on the fact that no one would speak up. But I did speak up. And it ended up as it did. Because ... because this type of commentaries ... Well, simply, some people will read that very happily, because it is a type of a tabloid ..., a scandalously insulting or what have you [genre]. The publisher was thus aware of what was published but failed to correct it. ... Thus the duty ...

NB: So from their side it was all about profit. They thought to themselves that it [the defamatory commentary column] will attract readers and we will simply not take into account what's written in there.

P: Yes, yes.

NB: Thank you.

Interview ends.

Appendix 9: Personality and Goodwill Protection Civil Code Provisions

Personality Protection

Article 11^[SEP]

Any natural person has the right to protection of his/her personality, in particular of his or her life and health, civic honour and human dignity, as well as his/her privacy, name and expressions of a personal nature.

Article 12

(1) Writings of a personal nature, images, photographs, and video and audio recordings which concern a natural person or his/her expressions of a personal nature may be taken or used only with his/her consent.

(2) The consent shall not be required if the writings of a personal nature, images, photographs, and video and audio recordings are used for official purposes by virtue of the law.

(3) Images, photographs, and video and audio recordings may be taken or used in an appropriate manner without the natural person's consent also for scientific and artistic purposes, as well as for purposes of news services by way of the press, film, radio and television. However, even such use must not be contrary the natural person's lawful interests.

Article 13^[SEP]

(1) Any natural person has the right to request that unjustified infringement of his/her personality rights be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.

(2) In cases when the satisfaction obtained under Article 13 (1) is insufficient, in particular because a person's dignity and position in society has been considerably diminished, the injured person is entitled to monetary compensation for non-pecuniary loss.

(3) The amount of the satisfaction under paragraph 2 shall be specified by the court with regard to the intensity of harm suffered and circumstances of the infringement.

Article 14 – repealed

Article 15

After the death of a natural person, the right to protection of his/her personality may be asserted by his/her spouse or children or, if there are no spouse or children, his/her parents.

Article 16

A person who causes damage by unlawfully violating the right to personality protection shall be liable for this damage according to the provisions of this Act concerning liability for damages.

Article 17 – repealed

Goodwill

Article 19b

(1) Legal entities shall have their name; the name must be specified at the moment of their establishment.

(2) Should the name of a legal entity be used unlawfully, the legal entity may demand in a court that the unlawful user terminates its use and remedy the unlawful state of affairs; the legal entity may also demand an adequate satisfaction, which may be monetary.

(3) The provisions of paragraph 2 shall adequately apply to an unlawful infringement of a legal entity's goodwill.

Appendix 10: Summary of the Most Important Findings of the ECtHR in Article 10 Judgments Involving Slovakia

Feldek v. Slovakia

The case involved an article titled “For a better picture of Slovakia – without a minister with a fascist past”, written by the defendant and published shortly after a new cabinet was appointed following the proclamation of Slovak sovereignty in 1992. Among others, it contained the following passages: ‘S. became the Slovak Republic’s Minister for Culture and Education and the next thing was that his fascist past came out in public. ... Is it good to have S. in the government when this fact will lead to the political, economic and cultural isolation of Slovakia?’ After S. publicly announced that he would sue the author for stating he had a fascist past, the latter explained: ‘when I speak of the fascist past [S.], I do not characterise him, I only think that the fact that he attended a terrorist training course organised by the SS falls within the term “fascist past”’. S. himself had revealed his participation in the training course in his autobiography published the previous year.

The defendant called upon the ECtHR to examine the judgment of the court of cassation, which obliged him to endure the publication of a text declaring his statement defamatory (§77). The court of cassation argued that the defendant’s argument that the impugned statement “fascist past” was a value judgment ‘could only have been accepted if the statement had been accompanied by a reference to the facts on which [he] had based his conclusion’. Such expression of opinion would not have required any proof. While the court of cassation admitted that the defendant’s statement was not devoid of a factual basis for the opinion expressed, it held that the term “fascist past” implied that a person had actively propagated or practiced fascism. The court of cassation thus concluded that the impugned publication was a factual statement, which the defendant had failed to prove and thus unjustifiably infringed the plaintiff’s personality rights (§82).

Emphasising the promotion of free political debate was ‘a very important feature of a democratic society’ and attaching ‘the highest importance to the freedom of expression in the context of political debate’, the ECtHR maintained ‘that very strong reasons are required to justify restrictions on political speech’ because ‘allowing broad restrictions on political speech in individual cases would undoubtedly affect respect for the freedom of expression’ (§83). In contrast to the court of cassation, the Court considered the impugned statement a value judgment, the truthfulness of which was not susceptible of proof, and which was made in the context of a free debate on an issue of general interest concerning a public figure for whom the limits of acceptable criticism were wider than for a private individual (§85). While the statement ‘contained harsh words’, ECtHR found it ‘was not without a factual basis’ and was made ‘in good faith and in pursuit of the legitimate aim of protecting the democratic development of the newly established [Slovakia]’ (§84).

The ECtHR did not accept the court of cassation’s proposition that ‘a value judgment can only be considered as such if it is accompanied by the facts on which that judgment is based’. Acknowledging that the necessity of a link between a value judgment and its supporting facts may vary from case to case according to the specific circumstances, it was satisfied that the impugned value judgment was ‘based on information which was already known to the general public’ (§86) and therefore was not excessive. The ECtHR was further critical of the Slovak court’s ‘restrictive definition’ of the term “fascist past” and its failure to ‘convincingly establish any pressing social need for putting the protection of the personality rights of a public figure above [the defendant’s] right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned’. The ECtHR found, in particular, that by failing to persuasively establish that the publication affected S.’s political career, professional or private life (§87), Slovak courts ‘failed to strike a fair balance between the relevant interests’ (§88).

Marônek v. Slovakia

The ECtHR found a violation of Article 10 mainly due to the ‘disparity between the measures complained of and the behaviour they were intended to rectify’. In particular, the Court did not find that the reasons relied on by the domestic courts ‘sufficiently convincing to justify the relatively high amount [5,850 euro] of compensation awarded to the claimants’.

Hrico v. Slovakia

ECtHR found a violation of Article 10 in relation to a personality protection action against the publisher and editor-in-chief of a weekly brought by a Supreme Court judge mentioned as author of a judgment in the defamation proceedings at the heart of *Feldek v. Slovakia*, which was criticised in the impugned articles. Slovak courts ordered the defendant to apologise and pay the plaintiff damages for ‘grossly and without any justification’ interfering with his civil and professional honour (§12). The courts based their decision primarily on the ‘disproportionate’ character of the terms used, which ‘clearly showed that the purpose of the statements was to offend, to humiliate and to discredit the criticised person’ (§44). The district court ‘found that the limits of objective and acceptable criticism had been exceeded in that the above articles comprised such expressions as “tragicomic farce”, “shameful judgment”, “strange reasoning” and “legal farce”’ (§14). The court of cassation held that ‘because of their expressive character the applicant’s statements were disproportionate to the aim pursued, namely to criticise a judicial decision or the public activities of judge Š.’, clearly indicating ‘that the applicant had intended to offend judge Š., to humiliate and discredit him. Limits of acceptable criticism had thereby been exceeded’ (§20).

Acknowledging that opinion, while, ‘by definition, not susceptible of proof’, may be excessive, ‘in particular in the absence of any factual basis’ (§40), the ECtHR considered the impugned publications ‘a value judgment on a matter of public interest which cannot be said to have been devoid of any factual basis’ (§45). The ECtHR observed that underlying the impugned articles was the undisputed fact that the plaintiff was a candidate for election on the list of a political party with a widely-known sympathetic stance towards the position taken by the Slovak authorities during World War II. Explicitly and implicitly, the articles expressed the view that a judge who had made public his intention to become involved in politics on the ballot paper of that party should have withdrawn from defamation proceedings that directly concerned the fascist past of one of the parties. Acknowledging that ‘the terms used in the impugned article ... were strong’, the ECtHR noted that ‘the limits of acceptable criticism are wider in respect of a judge who enters political life’, reiterating that ‘the protection of Article 10 extends to opinions which may shock or offend’ and ‘that journalistic freedom covers possible recourse to a degree of exaggeration’. Considering the articles as a whole, the Court rejected the conclusion of Slovak courts that ‘the purpose of the statements in question was to offend, to humiliate and to discredit the criticised person’ (§47). Instead, it noted that the ‘judicial proceedings in which the criticised judge had been involved and which were commented upon in the articles under consideration related to an issue of general concern on which a political debate existed’ (§48). The ECtHR therefore concluded that the standards applied by Slovak courts were not compatible with the principles embodied in Article 10 and the reasons adduced to justify the interference were not sufficient, regardless of the ‘relatively small amount’ of damages.

Radio Twist a.s. v. Slovakia

The then state secretary at the Justice Ministry filed a civil action against a radio broadcaster for violating his right to personal integrity by broadcasting an illegally recorded telephone conversation between himself and a minister concerning the privatisation of a major national insurance provider. Slovak courts found the broadcaster liable on the grounds that in order to comment on the situation and present the broadcaster’s views, it had not been necessary to broadcast an illegally-obtained recording. Since the plaintiff’s dignity as a public official had been diminished as the recording had been widely commented on in other media, the court considered

it appropriate to award the plaintiff damages (§25). The appellate court acknowledged that ‘imparting of information by the media was an important instrument for supervising political power in a democratic society’ and that ‘informing on and criticising matters of public interest were among the media’s most important tasks’. Nevertheless, since ‘protection of privacy extended to the conversations of public officials’, the court found that by publicly broadcasting the telephone conversation, the defendant unjustifiably interfered with the plaintiff’s right to respect for privacy (§27).

The ECtHR did not accept the conclusion of Slovak courts that since the telephone conversation was ‘private in nature’ it should not have been broadcast. While the Court found that the context and content of the conversation were ‘clearly political’, it was ‘unable to discern any private-life dimension in the impugned events’ as the conversation in question was between two high-ranking government officials and related to a power struggle between two political fractions. The special standard of tolerance established in the Convention case-law was therefore not applicable. The ECtHR further noted that ‘questions concerning the management and privatisation of State-owned enterprises undoubtedly and by definition represent a matter of general interest’, particularly so ‘in periods of economic and political transition’ (§58). The Court also observed that it had ‘not been established before the domestic courts that the recording contained any untrue or distorted information or that the information and ideas expressed in connection with it by the ... journalist occasioned as such any particular harm to the plaintiff’s personal integrity and reputation’ (§61). According to the ECtHR, ‘the mere fact that the recording had been obtained by a third person, contrary to law’ could not, deprive the broadcaster of Article 10 protection (§62). Finally, the ECtHR found no indication that the journalists ‘acted in bad faith’ or ‘pursued any purpose other than reporting on matters which they felt obliged to make available to the public’ (§63). The Court thus stated that it could not be concluded that the defendant ‘interfered with the reputation and rights’ of the plaintiff ‘in a manner justifying the sanction imposed on it’ and the interference with its right to impart information’ was thus not “necessary in a democratic society” (§64).

Ringier Axel Springer Slovakia, a.s. v. Slovakia

The application concerned civil defamation proceedings brought against the publisher of *Nový Čas* for a series of articles reporting about alleged indecent behaviour and public disturbance incitement by Ján Slota and the plaintiff – the then vice-president of the police corps. The district court found that the publisher had failed to establish the truthfulness of the facts – meaning the articles could not be considered a justified critique (§35) – and thus significantly, and without acceptable justification, damaged the plaintiff’s position in his employment, family, and society in general (§36). The court ordered the publisher to publicly apologise and pay the plaintiff approximately 23,000 euro in damages plus legal costs. The court of appeal applied the doctrine of “truthfulness of information”, according to which the law only protected journalists and/or publishers if they could establish the truthfulness of the impugned material as well as their *bona fides* in publishing it and the presence of a public interest in the matter. It further stipulated that information intended for publication was to be verified with adequate care by at least two credible and mutually independent sources (§42).

The publisher contended that ‘by applying the incorrect test’ and insisting on proving ‘the absolute truthfulness of the published information’, while failing to assess the case under the criteria stemming from the Convention case-law, Slovak courts had arbitrarily found for the plaintiff (§82, 84, 90). The Court first summarised the established general case-law principles related to press freedom and its meaning under Article 10(2) of the Convention, in particular relating to the “duties and responsibilities” of the press when publishing allegations about third parties, which was frequently cited in its subsequent judgments (§§ 94 –100).

The ECtHR took a critical view of the Slovak courts’ narrow insistence on the doctrine of “truthfulness of information” which essentially consisted of determining whether, as a matter of fact, the information contained in those articles was true (§101). According to the Court, Slovak courts failed to examine (in form and substance) whether the publisher acted in line with its

“duties and responsibilities” within the meaning of Article 10(2), including whether it acted ‘in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism’ (§103). The ECtHR observed that the reporters took independent steps to verify the facts by visiting the location of the incident, interviewing its witnesses and the plaintiff. The ECtHR noted that it remained for the Slovak courts to examine whether these steps were in accordance with its “duties and responsibilities” because ‘domestic courts are better equipped to establish the facts relevant to the ensuing legal analysis’ (§109). Examination under these criteria would involve ‘individual and contextual assessment, with reference to the situation at the time when the impugned articles were published’ of the importance of the public interest at stake in correlation to the status of the plaintiff, in contrast to the status of Šlota, the extent to which the plaintiff was involved in preparing the articles and the adequacy of the efforts on the part of the publisher to check the veracity of the information published from the perspective of journalism ethics (§106). The Court acknowledged that ‘the behaviour in public, while off duty, of officials and civil servants vested with public authority may arguably attract public interest’ (§108). The ECtHR, however, concluded that Slovak courts failed to assess the case according to the established criteria and thus could not be said to have “applied standards which were in conformity with the principles embodied in Article 10” and to have “based themselves on an acceptable assessment of the relevant facts” pursuant to *Kommersant Moldov v. Moldova* (§109).

Soltész v. Slovakia

In *Soltész v. Slovakia*, the ECtHR concluded that due to their failure to examine the case ‘under the criteria of “duties and responsibilities” within the meaning of Article 10 §2 of the Convention’, Slovak courts ‘cannot be said to have “applied standards which were in conformity with the principles embodied in Article 10”’ (§53). Doing so would have involved ‘individual and contextual assessment, with reference to the situation at the time when the impugned article was published, of such complex matters’ as the existence and importance of the public interest in correlation with the status of the plaintiff; the necessity of disclosing his identity; the *bona fides* of the defendant; the genuine aim pursued by the defendant in publishing the article; the extent to which the defendant could rely on the credibility of his source; and the adequacy of the level of adjudicated damages (§50). The ECtHR, however, found that instead, Slovak courts relied on the doctrine of “truthfulness of information” as their assessment of evidence and drew conclusions with a view to establishing the truthfulness of the factual basis of the article and its repercussions for the plaintiff’s good name and reputation (§45), while questions of intent, negligence, source of information and whether it had been quoted or not seemed to have been ‘of no or very little consequence’ (§47).

Ringier Axel Springer, a.s. v. Slovakia (No. 2)

The case concerned civil proceedings brought for reporting a traffic accident, which had claimed the life of the plaintiff’s son, and the circumstances of the ensuing investigation and pre-trial detention of the driver – A. Suggesting that in the course of the investigation and pre-trial detention, A.’s fundamental rights might have been breached, the article identified the plaintiff and his late son with their full names, citing a short statement by the plaintiff and indicating that he was the chief district prosecutor. The publisher, who had been ordered to apologise and pay damages, contended that the Slovak decisions ‘had been arbitrary, disproportionate and based on a one-sided assessment of the facts, focusing exclusively on the protection of the privacy of the claimant and completely disrespecting its right to freedom of expression’ (§41).

The ECtHR found that Slovak courts did not appear to have taken ‘full judicial notice of the context and overall content of the impugned article’, particularly as concerned the investigation and detention of A. (§52) or considered the presence or absence of good faith on the part of the publisher, the aim pursued by it, the public interest at stake as related to the status of the plaintiff and his son, and the necessity of disclosing their identity (§53). The conclusions of Slovak courts were primarily based on the disclosure of the full names of the plaintiff and his son

(§50) and the harm caused to the plaintiff and his family as a consequence of the impugned publication (§51). Having acknowledged that the plaintiff was a public official who had to accept a higher degree of interference with this privacy, the district court, for instance, established that the reported accident had no link to his public functions and was, therefore, exempt from that rule (§21). The ECtHR thus concluded that Slovak courts had failed ‘to examine the elements of the case necessary for the assessment of the applicant company’s compliance with its “duties and responsibilities” under Article 10 of the Convention’ (§54).

Ringier Axel Springer, a.s. v. Slovakia (No. 3)

The ECtHR concluded that ‘the domestic courts cannot be said to have “applied standards which were in conformity with the principles embodied in Article 10” (§85) as no judicial attention appeared to have been given to whether the articles related to a matter of legitimate public interest, to the presence or absence of good faith on the part of the publisher, the aim pursued, or any other criteria relevant to the assessment of the publisher’s compliance with its “duties and responsibilities” (§84). The Court found that, instead, the Slovak courts resorted to a form of the “doctrine of truthfulness of information” apparent, for instance, in the district court’s conclusion that ‘qualifiers such as “seemingly”, “perhaps” and “suspicion” did not free the publisher from “liability for the truthfulness of the published information”’ and ‘that questions of intent, negligence, source of information and whether or not it had been quoted were of no consequence’ (§80).

References

- Aberbach, Joel D., and Bert A. Rockman. 2002. 'Conducting and Coding Elite Interviews'. *PS: Political Science and Politics* 35 (4): 673–76.
- Achen, Christopher H., and Duncan Snidal. 1989. 'Rational Deterrence Theory and Comparative Case Studies'. *World Politics* 41 (02): 143–69.
- Alexy, Robert. 2005. 'Balancing, Constitutional Review, and Representation'. *International Journal of Constitutional Law* 3 (4): 572–581.
- Allen Green, Richard. 2010. '8 Dead, 14 Wounded in Slovakia Shooting'. CNN.Com. 30 August 2010.
<http://www.cnn.com/2010/WORLD/europe/08/30/slovakia.shooting/index.html>.
- Anderson, Christopher W. 2010. 'Journalistic Networks and the Diffusion of Local News: The Brief, Happy News Life of the "Francisville Four"'. *Political Communication* 27 (3): 289–309.
- Anderson, Christopher W. 2013a. 'Media Ecosystems: Some Notes Toward a Genealogy of the Term and an Application of It to Journalism Research'. ESF Exploratory Workshop on Mapping the digital news ecosystem: Professional journalism, new producers and active audiences in the digital public sphere. Barcelona.
<http://cwanderson.org/wp-content/uploads/2013/04/EcosystemGenealogy.pdf>.
- Anderson, Christopher W. 2013b. *Rebuilding the News: Metropolitan Journalism in the Digital Age*. Philadelphia: Temple University Press.
- Anderson, David A. 1992. 'Is Libel Law Worth Reforming?' In *Reforming Libel Law*, edited by John Soloski and Randall P. Bezanson, 1–67. The Guilford Communication Series. New York: Guilford Press.
- Annus, Taavi, and Margit Tavits. 2004. 'Judicial Behavior After a Change of Regime: The Effects of Judge and Defendant Characteristics'. *Law & Society Review* 38 (4): 711–36.
- APJE. 2017. *Etický Kódex Novinára [Code of Ethics for Journalists]*. Bratislava: Association for the Protection of Journalistic Ethics. http://trsr.sk/wp-content/uploads/Eticky_kodex.pdf.
- Article 19. 2000. 'Defining Defamation: Principles on Freedom of Expression and Protection of Reputation'. Article 19. <https://www.article19.org/resources/defining-defamation-principles-on-freedom-of-expression-and-protection-of-reputation/>.
- Article 19. 2016. 'Revised Defining Defamation Principles: Background Paper'. London: Article 19.
<https://www.article19.org/data/files/medialibrary/38362/Defamation-Principles-Background-paper.pdf>.
- Atkinson, Rowland, and John Flint. 2001. 'Accessing Hidden and Hard-to-reach Populations'. *Social Research Update* 33: 1–4. <http://sru.soc.surrey.ac.uk/SRU33.PDF>.
- Ashenfelter, Orley, Theodore Eisenberg, and Stewart J. Schwab. 1995. 'Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes'. *The Journal of Legal Studies* 24 (2): 257–81.

- Augustín, Radoslav. 2009a. 'Harabin vysúdil 33 tisíc eur a ospravedlnenie od denníka SME [Harabin to Get 33,000 Euro and Apology from Daily SME]'. Medialne.etrend.sk. 24 March 2009. <https://medialne.etrend.sk/tlac/harabin-vysudil-33-tisic-eur-a-ospravedlnenie-od-dennika-sme.html>.
- Augustín, Radoslav. 2009b. 'Ján Slota vysúdil od Nového Času 20-tisíc eur [Ján Slota to Get 20,000 Euro from Nový Čas]'. Medialne.etrend.sk. 12 June 2009. <https://medialne.etrend.sk/tlac/jan-slota-vysudil-od-noveho-casu-20-tisic-eur.html>.
- Bajomi-Lázár, Péter. 2015. 'Variations in Media Freedom: Why Do Some Governments in Central and Eastern Europe Respect Media Freedom More than Others'. *Central European Journal of Communication*, no. 1: 5–20.
- Bajomi-Lázár, Péter. 2013. 'From One-party to Multi-party Media Control – and Back'. *Global Media Journal Slovak Edition* 1 (1): 26–42.
- Balčytienė, Auksė, Péter Bajomi-Lázár, Václav Štětko, and Miklós Sükösd. 2015. 'Roundtable Discussion: Oligarchization, De-Westernization and Vulnerability: Media between Democracy and Authoritarianism in Central and Eastern Europe'. *Journal of Media, Cognition and Communication* 3 (1).
- Balogová, Beata. 2009. 'Minister Seeks Damages'. *The Slovak Spectator*, 15 June 2009. <https://spectator.sme.sk/c/20033061/minister-seeks-damages.html>.
- Balogová, Beata. 2009. 'Gašparovič Remains Slovakia's President'. *The Slovak Spectator*, 4 April 2009. <https://spectator.sme.sk/c/20032326/gasparovic-remains-slovakias-president.html>.
- Balogová, Beata. 2010a. 'Daily Publishes a Recording Resembling Fico's Voice'. *The Slovak Spectator*, 11 June 2010. <https://spectator.sme.sk/c/20036490/daily-publishes-a-recording-resembling-ficos-voice.html>.
- Balogová, Beata. 2010b. 'Shooting Massacre Shakes Slovakia'. *The Slovak Spectator*, 1 September 2010. <https://spectator.sme.sk/c/20037249/shooting-massacre-shakes-slovakia.html>.
- Balogová, Beata. 2012. 'Slovak Politics Gripped by Gorilla File'. *The Slovak Spectator*, 6 January 2012. <https://spectator.sme.sk/c/20042075/slovak-politics-gripped-by-gorilla-file.html>.
- Balogová, Beata. 2013a. 'Prosecutor, Judges Sue Newspaper'. *The Slovak Spectator*, 3 March 2013. <https://spectator.sme.sk/c/20046224/prosecutor-judges-sue-newspaper.html>.
- Balogová, Beata. 2013b. 'Harabin to Get €150,000'. *The Slovak Spectator*, 18 November 2013. <https://spectator.sme.sk/c/20048885/harabin-to-get-150000.html>.
- Balogová, Beata. 2014. 'Harabin out of Judicial Council'. *The Slovak Spectator*, 1 December 2014. <https://spectator.sme.sk/c/20052790/harabin-out-of-judicial-council.html>.
- Bannerman, Sara, and Blayne Haggart. 2015. 'Historical Institutionalism in Communication Studies'. *Communication Theory* 25 (1): 1–22.
- Báraba, Pavol. 2009. 'Harabin vysúdil od Plus 7 dní cez 30-tisíc eur [Harabin to get more than 30,000 Euro from Plus 7 dní]'. 1 October 2009.

<http://medialne.etrend.sk/tlac-spravy/harabin-vysudil-od-plus-7-dni-cez-30-tisic-eur.html>.

Barendt, Eric. 1999. 'What is the Point of Libel Law?' *Current Legal Problems* 52 (1): 110–25.

Barendt, Eric. 2005. *Freedom of Speech*. 2nd ed. Oxford: OUP.

Barendt, Eric, Jason Bosland, Rachael Craufurd-Smith, and Lesley Hitchens. 2013. 'Defamation'. In *Media Law: Text, Cases and Materials*, 361–453. Harlow, United Kingdom; New York: Pearson.

Barendt, Eric, Laurence Lustgarten, Kenneth Norrie, and Hugh Stephenson. 1997. *Libel and the Media: The Chilling Effect*. Oxford: Clarendon Press.

Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.

BBC. 2010. 'Seven Killed by Bratislava Gunman'. BBC News. 30 August 2010. <https://www.bbc.co.uk/news/world-europe-11129844>.

BDHRL. 2008. '2008 Human Rights Report: Slovak Republic'. Bureau of Democracy Human Rights and Labour. <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119104.htm>.

BDHRL. 2009. '2009 Human Rights Report: Slovakia'. Bureau of Democracy, Human Rights, and Labor. <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136057.htm>.

Belakova, Nikola. 2011. "'The Seven Sins of the Press Act?'" A Study of the Adoption and Implementation of the 2008 Slovak Press Act'. Unpublished M.Phil Thesis, Oxford: University of Oxford.

Belakova, Nikola. 2013a. 'Analysing How Law Shapes Journalism in Central and Eastern Europe: The Case of the 2008 Slovak Press Act'. *Global Media and Communication*. 9 (3): 197–217.

Belakova, Nikola. 2013b. 'Analysing How Law Shapes Journalism in Post-Communist Democracies'. In *Past, Future and Change: Contemporary Analysis of Evolving Media Scapes*, edited by Ilija Tomanic Trivundza, Nico Carpentier, Hannu Nieminen, Pille Pruulmann-Vengerfeldt, Richard Kilborn, Ebba Sundin, and Tobias Olsson, 157–70. Ljubljana: Faculty of Social Sciences, University of Ljubljana Press.

Belakova, Nikola, and Silvana Tarlea. 2013. 'How National Parliaments Legislate the Media in CEE: The Adoption and Implementation of Media Legislation in the Czech Republic, Romania and Slovakia. A Fieldwork Report of the ERC-Funded Project on Media and Democracy in Central and Eastern Europe'. Oxford. http://mde.politics.ox.ac.uk/images/stories/documents/mdcee%20legislative%20report-ro-cz-sk_pv.pdf.

Benešová, Anna. 2009. Potrestaná sudkyňa: Harabin mal mimoriadny termín [Punished Judge: Harabin was Specially Scheduled] Interview by Veronika Prušová. *SME*. <https://domov.sme.sk/c/4928869/potrestana-sudkyna-harabin-mal-mimoriadny-termin.html>.

Benson, Rodney. 2009. 'What Makes News More Multiperspectival? A Field Analysis'. *Poetics* 37 (5–6): 402–18.

Berger, Arthur Asa. 1998. *Media Research Techniques*. 2nd ed. Thousand Oaks: Sage.

- Berger, Arthur Asa. 2011. *Media and Communication Research Methods: An Introduction to Qualitative and Quantitative Approaches*. 2nd ed. Thousand Oaks: Sage Publications.
- Bezanson, Randall, Gilbert Cranberg, and John Soloski. 1987. *Libel Law and the Press: Myth and Reality*. New York: Free Press.
- Bezanson, Randall P. 1986. 'The Libel Suit in Retrospect: What Plaintiffs Want and What Plaintiffs Get'. *California Law Review* 74 (3): 789–808.
- Bezanson, Randall P., Gilbert Cranberg, and John Soloski. 1985. 'Libel Law and the Press: Setting the Record Straight Essays'. *Iowa Law Review* 71: 215–34.
- Black, Julia. 1997. 'New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making'. *Law & Policy* 19 (1): 51–93.
- Boies, David. 1994. 'The Chilling Effect of Libel Defamation Costs: The Problem and Possible Solution Corporate Defamation Symposium'. *Saint Louis University Law Journal* 39: 1207–18.
- Brečka, Samuel. 2002. *Médiá v Slovenskej Republike [Media in the Slovak Republic]*. Trnava: Univerzita sv. Cyrila a Metoda.
- Brečka, Samuel. 2010. 'Úvod: Hlavné črty vývoja médií na Slovensku za posledných 20 rokov'. In *Médiá a novinári na Slovensku 2010 [Media and Journalists in Slovakia 2010]*, edited by Samuel Brečka, Branislav Ondrášik, and Richard Kelak, 8–14. Bratislava: Eurokódex.
- Brečka, Samuel, and Richard Keklak. 2010. 'Novinárska Profesia Na Slovensku 2010 [Journalistic Profession in Slovakia 2010]'. In *Médiá a Novinári Na Slovensku 2010 [Media and Journalists in Slovakia 2010]*, edited by Samuel Brečka, Branislav Ondrášik, and Richard Kelak, 121–209. Bratislava: Eurokódex.
- Britten, Nicky. 1995. 'Qualitative Research: Qualitative Interviews in Medical Research'. *BMJ* 311 (6999): 251–53.
- Bryman, Alan. 2004. *Social Research Methods*. 2nd ed. Oxford: OUP.
- Bugaric, Bojan. 2008. 'Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe'. *Communist and Post-Communist Studies* 41 (2): 191–203.
- Bunce, Valerie. 1995. 'Should Transitologists Be Grounded?'. *Slavic Review* 54 (1): 111–27.
- Burčík, Matúš. 2014. 'Stavbár z Gorily žaluje časopis .týždeň [Builder from the Gorilla File Sues Weekly .týždeň]'. *SME*, 24 September 2014. <https://domov.sme.sk/c/7404914/stavbar-z-gorily-zaluje-casopis-tyzden.html>.
- Burčík, Matúš. 2017. 'Vyšetovanie kauzy Euro-Building uzavreli. Skutok sa nestal [Investigation in the Euro-Building case closed. The Deed Was not Committed]'. *SME*, 28 February 2017. <https://domov.sme.sk/c/20471007/vysetrovanie-kauzy-euro-building-uzavreli-skutok-sa-nestal.html>.
- Business Alliance of Slovakia. 2015. 'Podnikatelia sa sťažujú na súdnictvo a zvýhodňovanie Váhostavu [Entrepreneurs Complain about the Judiciary and Favours]

of Váhostav]'. 2015. <https://www.alianciapas.sk/2015/08/25/podnikatelia-sa-stazuju-na-sudnictvo-a-zvyhodnovanie-vahostavu/>.

Bútora, Martin, and Zora Bútorová. 1999. 'Eastern Europe a Decade Later: Slovakia's Democratic Awakening'. *Journal of Democracy* 10 (1): 80–95.

Bútora, Martin, Zora Bútorová, and Grigorij Mesežnikov. 2003. 'Slovakia's Democratic Awakening'. In *The Road to the European Union*, edited by Jan Zielonka and Jacques Rupnik, Volume 1:51–68. Manchester: Manchester University Press.

Carothers, Thomas. 2002. 'The End of the Transition Paradigm'. *Journal of Democracy* 13 (1): 5–21.

CDMSI. 2012. 'Study on the Alignment of Laws and Practices Concerning Defamation with the Relevant Case-Law of the European Court of Human Rights on Freedom of Expression, Particularly with Regard to the Principle of Proportionality'. Council of Europe. <http://www.coe.int/en/web/media-freedom/resources>.

Čentéš, Jozef. 2015. 'Sloboda prejavu a trestné právo [Freedom of Expression and Criminal Law]'. In *Sloboda prejavu v rozhodnutiach súdov [Freedom of Expression in Court Decisions]*, edited by Jozef Vozár. Publisher Accepted Manuscript, 151 - 163. Bratislava.

Cheer, Ursula. 2005. 'Myths and Realities about the Chilling Effect: The New Zealand Media's Experience of Defamation Law'. *Torts Law Journal* 13 (3): 259–301.

Cheer, Ursula. 2006. 'Defamation in New Zealand and Its Effects on the Media - Self-Censorship or Occupational Hazard'. *New Zealand Law Review* 2006: 467.

Cheer, Ursula. 2008. 'Reality and Myth: The New Zealand Media and the Chilling Effect of Defamation Law'. PhD thesis. University of Canterbury. <http://ir.canterbury.ac.nz/handle/10092/3050>.

Chmelár, Eduard. 2007. 'Fico a médiá – dvaja kohúti na jednom smetisku [Fico and the Media - Two Roosters on the Same Rubbish Heap]'. *Blog.Sme.Sk* (blog). 26 April 2007. <http://chmelar.blog.sme.sk/c/92826/Fico-a-media-dvaja-kohuti-na-jednom-smetisku.html>.

Ciensi, Jan. 2012. 'Opposition Wins Slovak Elections'. *Financial Times*, 11 March 2012. <https://www.ft.com/content/7aa9864e-6b59-11e1-ac25-00144feab49a>.

Čikovský, Konštantín. 2015. 'Smer sa bojí len telky, na vaše zdravie kašle [Smer is Only Afraid of Television, it Does Not Care about Your Health]'. *Denník N*, 23 September 2015. <https://dennikn.sk/249089/smer-sa-boji-len-telky-na-vase-zdravie-kasle/>.

Cirák, Ján. 1994. *Ochrana osobnosti v slovenskom občianskom práve [Personality Protection under Slovak Civil Law]*. Bratislava: Vydavateľské oddelenie PF UK.

Cohen, Jean L., and Andrew Arato. 1992. *Civil Society and Political Theory*. Cambridge, Mass: MIT Press.

Colson, Renaud, and Stewart Field. 2016. 'Socio-Legal Studies in France: Beyond the Law Faculty'. *Journal of Law and Society* 43 (2): 285–311.

Cottle, Simon. 2003. 'Media Organisation and Production: Mapping the Field'. In *Media Organisation and Production*, edited by Simon Cottle, 2–24. London: Sage.

- Cownie, Fiona. 2004. *Legal Academics: Culture and Identities*. Oxford: Hart.
- Craik, Kenneth H. 2009. *Reputation: A Network Interpretation*. New York: Oxford University Press.
- Cunningham, Benjamin. 2015. 'Nations in Transit 2015: Slovakia'. Freedom House. https://freedomhouse.org/sites/default/files/NIT2015_Slovakia_0.pdf.
- Cunningham, Benjamin. 2016. 'Nations in Transit 2016: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2016/slovakia>.
- Cunningham, Benjamin. 2017. 'Nations in Transit 2017: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2017/slovakia>.
- Czwitkovics, Tomáš. 2006. 'Socialistický tlačový zákon oslávi štyridsiatku [The Socialist Press Law Celebrates Forty Years]'. Medialne.Sk. 10 August 2006. <https://medialne.etrend.sk/tlac/socialisticky-tlacovy-zakon-oslavi-styridsiatku.html>.
- Czwitkovics, Tomáš. 2010. 'Ako sa zmenila Pravda [How Pravda Changed]'. Medialne.Etrend.Sk. 10 September 2010. <https://medialne.etrend.sk/tlac/ako-sa-zmenila-pravda.html>.
- Czwitkovics, Tomáš. 2013. 'Ringier bol na súde. Má posudok o pravosti fotiek z Bonanna [Ringier Was in Court. It Has Analysis Regarding Authenticity of Bonanno Pictures]'. Medialne.etrend.sk. 10 July 2013. <https://medialne.etrend.sk/tlac/ringier-axel-springer-bol-na-sude-doniesol-posudok-o-pravosti-skandaloznych-fotiek-z-bonanna.html>.
- Davies, Philip H. J. 2001. 'Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services'. *Politics* 21 (1): 73–80.
- Dent, Chris, and Andrew T. Kenyon. 2004. 'Defamation Law's Chilling Effect: A Comparative Content Analysis of Australian and Us Newspapers'. *Media and Arts Law Review* 9 (89).
- Denzin, Norman K., and Yvonna S. Lincoln. 2005. *The Sage Handbook of Qualitative Research*. 3rd ed. Thousand Oaks, London: Sage Publications.
- Desmond, Margaret. 2004. 'Methodological Challenges Posed in Studying an Elite in the Field'. *Area* 36 (3): 262–269.
- Dewey, John. 2008. 'Liberalism and Civil Liberties'. In *The Later Works of John Dewey, 1925-1953: Essays, Reviews, Trotsky Inquiry, Miscellany, and Liberalism and Social Action*, edited by Jo Ann Boydston. Carbondale: Southern Illinois University Press.
- Dexter, Lewis Anthony. 1970. *Elite and Specialized Interviewing*. Handbooks for Research in Political Behavior. Evanston, Ill: Northwestern University Press.
- Diamond, Larry Jay., and Leonardo Morlino. 2005. 'Introduction'. In *Assessing the Quality of Democracy*, edited by Larry Diamond and Leonardo Morlino. The Johns Hopkins University Press.
- Dill, Barbara. 1993. 'Libel Law Doesn't Work, but Can it Be Fixed?' In *At What Price?: Libel Law and Freedom of the Press*, edited by Martin London and Barbara Dill, 33–73. New York: Twentieth Century Fund.

- Dobek-Ostrowska, Bogusława, and Michał Glowacki. 2008. 'Introduction: Central European Media between Politicization and Commercialization'. In *Comparing Media Systems in Central Europe: Between Commercialization and Politicization*, edited by Michał Glowacki and Bogusława Dobek-Ostrowska, 9–24. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Doley, Cameron, and Alastair Mullis. 2010. *Carter-Ruck on Libel and Privacy*. 6th ed. London: LexisNexis.
- Downey, John, and Sabina Mihelj. 2012. *Central and Eastern European Media in Comparative Perspective: Politics, Economy and Culture*. Burlington: Ashgate.
- Drgonec, Ján. 2008. *Základy masmediálneho práva* [Foundations of Media Law]. Bratislava: Eurokódex.
- Drgonec, Ján. 2013. *Sloboda prejavu a sloboda po prejave* [Freedom of Expression and Freedom after Expression]. Šamorín: Heuréka.
- Ducat, Craig R., and Robert L. Dudley. 1989. 'Federal District Judges and Presidential Power During the Postwar Era'. *The Journal of Politics* 51 (1): 98–118.
- Economides, Kim. 2014. 'Socio-Legal Studies in Aotearoa/New Zealand'. *Journal of Law and Society* 41 (2): 257–82.
- Economist. 2012. 'The Multi-Million Euro Gorilla'. *Eastern Approaches* (blog). 27 January 2012. <https://www.economist.com/blogs/easternapproaches/2012/01/scandal-slovakia>.
- Edelman, Lauren B., and Mark C. Suchman. 1997. 'The Legal Environments of Organizations'. *Annual Review of Sociology* 23 (1): 479–515.
- Ekiert, Grzegorz, and Roberto Foa. 2011. 'Civil Society Weakness in Post-Communist Europe: A Preliminary Assessment'. No. 198. Carlo Alberto Notebooks.
- Elliott, Jane. 2005. *Using Narrative in Social Research: Qualitative and Quantitative Approaches*. First edition. London: Sage.
- Elster, Jon, Claus Offe, and Ulrich Klaus Preuss. 1998. *Institutional Design in Post-Communist Societies: Rebuilding*. Theories of Institutional Design. Cambridge: Cambridge University Press.
- Epstein, Edward Jay. 1973. *News from Nowhere: Television and the News*. New York: Random House.
- ESRC. 1994. 'Review of Socio-Legal Studies: Final Report'. Economic and Social Research Council.
- Euractiv. 2012. 'Slovak Politics Rocked by "Gorilla" Corruption Scandal'. Euractiv.Com. 17 January 2012. <https://www.euractiv.com/section/justice-home-affairs/news/slovak-politics-rocked-by-gorilla-corruption-scandal/>.
- European Commission. 2002. 'Candidate Countries Eurobarometer 2001'. Brussels. http://ec.europa.eu/commfrontoffice/publicopinion/archives/cceb/2001/cceb20011_en.pdf.
- European Commission. 2003. 'Candidate Countries Eurobarometer 2003.2'. Brussels: European Commission.

http://ec.europa.eu/commfrontoffice/publicopinion/archives/cceb/2003/2003.2_full_report_final.pdf.

European Commission. 2006. 'Opinions on Organised, Cross-Border Crime and Corruption'. Special Eurobarometer 245. Brussels: European Commission.

European Commission. 2008. 'The Attitudes of Europeans towards Corruption'. Special Eurobarometer 291. Brussels: European Commission.

European Commission. 2009a. 'Attitudes of Europeans towards Corruption Full Report'. Special Eurobarometer 325. Brussels: European Commission.
https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_325_en.pdf.

European Commission. 2009b. 'Attitudes of Europeans towards Corruption Full Report'. Special Eurobarometer 325. Brussels: European Commission.
https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_325_en.pdf.

European Commission. 2011. 'Štandardný Eurobarometer 76: Verejná mienka v Európskej Únii. Národná správa Slovenská republika. Jeseň 2011. [Standard Eurobarometer 76: Public Opinion in the European Union. National Report Slovak Republic. Fall 2011]'. Brussels: European Commission.
http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb76/eb76_sk_sk_nat.pdf.

European Commission. 2012a. 'Štandardný Eurobarometer 78: Verejná mienka v Európskej Únii. Národná správa Slovenská republika. Jeseň 2012. [Standard Eurobarometer 78: Public Opinion in the European Union. National Report Slovak Republic. Fall 2012]'. Brussels: European Commission.
http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb78/eb78_sk_sk_nat.pdf.

European Commission. 2012b. 'Corruption'. Special Eurobarometer 374. Brussels: European Commission.
https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_374_en.pdf.

European Commission. 2014a. 'Annex 25 to the EU Anti-Corruption Report: Slovakia'. Brussels: European Commission. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_slovakia_chapter_en.pdf.

European Commission. 2014b. 'Corruption'. Special Eurobarometer 397. Brussels: European Commission.
https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf.

European Commission. 2015. 'Štandardný Eurobarometer 84: Verejná mienka v Európskej Únii. Národná správa Slovenská Republika. Jeseň 2015. [Standard Eurobarometer 84: Public Opinion in the European Union. National Report Slovak Republic. Fall 2015]'. Brussels: European Commission, Directorate-General for Communication.
<http://ec.europa.eu/COMMFronTOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2098>.

- European Commission. 2016. 'Media Pluralism and Democracy – Special Eurobarometer 452'. Brussels. <https://ec.europa.eu/digital-single-market/en/news/media-pluralism-and-democracy-special-eurobarometer-452>.
- Fekete, Imrich. 2011. *Občiansky zákonník: veľký komentár I. [Civil Code: An Extensive Commentary I]*. Vol. Volume 1. Bratislava: Eurokódex.
- Fenwick, Helen, and Gavin Phillipson. 2006. *Media Freedom Under the Human Rights Act*. London: OUP Oxford.
- Fereday, Jennifer, and Eimear Muir-Cochrane. 2008. 'Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development'. *International Journal of Qualitative Methods* 5 (1): 80–92.
- Finstat. 2018. 'Petit Press, a.s. - Zisk, tržby, hospodárske výsledky a účtovné závierky'. Finstat.Sk. 2018. <https://finstat.sk/35790253>.
- Flick, Uwe. 2009. *An Introduction to Qualitative Research*. 4th ed. London: Sage.
- Forer, Lois G. 1987. *A Chilling Effect: Subjects, Authors, and Threats to Freedom of Speech*. New York: Norton.
- Frampton, Ben. 2015. 'Is Clickbait Changing Journalism?' *BBC News*, 14 September 2015, sec. Wales. <http://www.bbc.co.uk/news/uk-wales-34213693>.
- Freedom House. 2003. 'Nations in Transit 2003: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2003/slovakia>.
- Freedom House. 2004. 'Nations in Transit 2004: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2004/slovakia>.
- Freedom House. 2005. 'Nations in Transit 2005: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2005/slovakia>.
- Freedom House. 2006. 'Nations in Transit 2006: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2006/slovakia>.
- Freedom House. 2007. 'Nations in Transit 2007: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2007/slovakia>.
- Freedom House. 2008. 'Nations in Transit 2008: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2008/slovakia>.
- Freedom House. 2011. 'Nations in Transit 2011: Slovakia'. Freedom House. <https://freedomhouse.org/report/nations-transit/2011/slovakia>.
- Fulmek, Alexej. 2012a. 'Prológ [Prologue]'. In *Gorila [Gorilla]* by Thomas Nicholson, 7–9. Bratislava: Dixit.
- Fulmek, Alexej. 2012b. 'Čo je ešte nebezpečnejšie ako Gorila a Sasanka [What is Even More Dangerous than Gorilla and Sea Anemone]'. *SME*, 7 March 2012. <https://komentare.sme.sk/c/6289998/co-je-este-nebezpecnejsie-ako-gorila-a-sasanka.html>.
- Fulmek, Alexej. 2013. 'Denníky? Ostanú len dva [Dailies? Only Two Will Remain] Interview by Tomáš Czwitkovics. *Trend*. <https://www.etrend.sk/trend-archiv/rok-2012/cislo-50/denniky-ostanu-len-dva.html>.

- Fuller, Lon L. 1978. 'The Forms and Limits of Adjudication'. *Harvard Law Review* 92 (2): 353–409.
- Futej, Daniel, and Cyril Hric. 2015. 'Slovak Republic: New Civil Procedure Codes'. *International Financial Law Review*. <http://www.iflr.com/Article/3502255/Slovak-Republic-New-civil-procedure-codes.html>.
- Gair, Susan. 2012. 'Feeling their Stories: Contemplating Empathy, Insider/Outsider Positionings, and Enriching Qualitative Research'. *Qualitative Health Research* 22 (1): 134–43.
- Galmišová, Dominika. 2015. 'Kauzám sa najviac venujú v denníku SME: Ako intenzívne médiá informovali o desiatich vybraných kauzách [SME Most Dedicated to Wrongdoing Scandals: How Intensely Media Informed about Ten Selected Wrongdoing Scandals]'. Bratislava: INEKO. <https://ineko.blog.sme.sk/c/381303/kauzam-sa-najviac-venuju-v-denniku-sme.html>.
- Gans-Morse, Jordan. 2004. 'Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm'. *Post-Soviet Affairs* 20 (4): 320–49.
- Garoupa, Nuno. 1999. 'Dishonesty and Libel Law: The Economics of the "Chilling" Effect'. *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift Für Die Gesamte Staatswissenschaft* 155 (2): 284–300.
- Gaskell, George. 2000. 'Individual and Group Interviewing'. In *Qualitative Researching with Text, Image and Sound: A Practical Handbook*, edited by Martin W. Bauer and George Gaskell, 38–56. London: Sage.
- Gavison, Ruth. 1980. 'Privacy and the Limits of Law'. *The Yale Law Journal* 89 (3): 421–71.
- Gazda, Imrich, and Albert Kulla. 2011. 'Destructive Influence of the Government on the Formation of the Slovak Media System during the Period of "Mečiarism" (1993–1998)'. In *Making Democracy in 20 Years: Media and Politics in Central and Eastern Europe*, edited by Bogusława Dobek-Ostrowska and Michał Głowacki, 136–43. Wrocław: Wydawn. Uniwersytetu Wrocławskiego.
- Genn, Hazel, Martin Partington, and Sally Wheeler. 2009. 'Law in the Real World: Improving Our Understanding of How Law Works'. Final Report and Recommendation of the Nuffield Inquiry on Empirical Legal Research. London: The Nuffield Foundation.
- Gerring, John. 2001. *Social Science Methodology: A Criterial Framework*. Cambridge: Cambridge University Press.
- Gibbons, Thomas. 1996. 'Defamation Reconsidered'. *Oxford Journal of Legal Studies* 16 (4): 587–615.
- Gibbons, Thomas. 1998. *Regulating the Media*. 2nd edition. London: Sweet & Maxwell.
- Glanville, Jo, and Jonathan Heawood. 2009. 'Free Speech Is Not for Sale: The Impact of English Libel Law on Freedom of Expression'. London: English PEN and Index on Censorship. http://www.issueelab.org/resource/free_speech_is_not_for_sale_the_impact_of_english_libel_law_on_freedom_of_expression.

- Glasser, Charles J. 2009. *International Libel and Privacy Handbook: A Global Reference for Journalists, Publishers, Webmasters, and Lawyers*. New York: Bloomberg Press.
- LOBSEC. 2016. 'LOBSEC Trends: Central Europe Under the Fire of Propaganda: Public Opinion Poll Analysis in the Czech Republic, Hungary and Slovakia'. Bratislava: LOBSEC Policy Institute. https://www.globsec.org/wp-content/uploads/2017/09/glb_trends_en.pdf.
- Glovíčko, Ján. 2010. 'Kauzy na obrazovkách skončili [Wrongdoing Scandals Finish on Screen]'. *SME*, 2 August 2010. <https://ekonomika.sme.sk/c/5488689/kauly-na-obrazovkach-skoncili.html>.
- Glovíčko, Ján. 2011. 'Školy nevedia vyučiť novinárov'. *SME*, 15 August 2011. <https://ekonomika.sme.sk/c/6015925/skoly-nevedia-vyucit-novinarov.html>.
- Goldstein, Kenneth. 2002. 'Getting in the Door: Sampling and Completing Elite Interviews'. *PS: Political Science & Politics* 35 (4): 669–72.
- Goldstein, Leslie Friedman. 2004. 'From Democracy to Juristocracy. Review Essay'. *Law & Society Review* 38 (3): 611–29.
- Gross, Peter. 2002. *Entangled Evolutions: Media and Democratization in Eastern Europe*. Baltimore: The Johns Hopkins University Press.
- Guarnieri, Carlo, and Patrizia Pederzoli. 2002. *The Power of Judges: A Comparative Study of Courts and Democracy*. Translated by Cheryl Thomas. Oxford: OUP.
- Gunther, Richard, and Anthony Mughan, eds. 2000. *Democracy and the Media: A Comparative Perspective*. Cambridge: Cambridge University Press.
- Habermas, Jürgen. 1984. *The Theory of Communicative Action. Vol.1 - Reason and the Rationalization of Society*. London: Heinemann Education.
- Habermas, Jürgen. 1987. *The Theory of Communicative Action. Vol.2 - Lifeworld and System: A Critique of Functionalist Reason*. Cambridge: Polity Press.
- Habermas, Jürgen. 1992. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Cambridge: Polity.
- Habermas, Jürgen. 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: Polity.
- Habrmanová, Slávka, and Annamária Dömeová. 2007. 'Politikom pribudli milióny [Politicians Gained Millions]'. *Hospodárske Noviny*, 28 March 2007.
- Hakim, Catherine. 2000. *Research Design: Successful Designs for Social and Economic Research*. 2nd ed. Social Research Today. London: Routledge.
- Hallin, Daniel C., and Paolo Mancini. 2004. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge: Cambridge University Press.
- Hallin, Daniel C., and Paolo Mancini. 2012. *Comparing Media Systems beyond the Western World*. Cambridge; New York: Cambridge University Press.
- Hanák, Peter. 2016. 'Kriminalizácia žurnalistiky: Trestne stíhaní novinári na Slovensku v európskej perspektíve [Criminalisation of Journalism: Criminally Prosecuted Slovak Journalists in European Perspective]'. *Mediální Studia/Media Studies* 02: 245–64.

- Hanitzsch, Thomas. 2011. 'Populist Disseminators, Detached Watchdogs, Critical Change Agents and Opportunist Facilitators: Professional Milieus, the Journalistic Field and Autonomy in 18 Countries'. *International Communication Gazette* 73 (6): 477–94.
- Hanna, Mark, and Mike Dodd. 2012. 'Defamation - Definitions and Dangers'. In *McNae's Essential Law for Journalists*, 21st edition, 237–46. Oxford: OUP Oxford.
- Hansen, Elizabeth K., and Roy L. Moore. 1990. 'Chilling the Messenger: Impact of Libel on Community Newspapers'. *Newspaper Research Journal* 11 (2): 86–99.
- Hansen, Elizabeth K. 2000. 'Muzzling the Watchdogs: An Empirical Study of Factors Associated with the Chilling Effect of Actual and Threatened Libel Suits on United States Daily Newspapers'. Ph.D., Kentucky: University of Kentucky.
<http://search.proquest.com/docview/304627027/abstract/26DD36E75E04773PQ/1>.
- Harvey, William S. 2010. 'Methodological Approaches for Interviewing Elites'. *Geography Compass* 4 (3): 193–205.
- Harvey, William S. 2011. 'Strategies for Conducting Elite Interviews'. *Qualitative Research* 11 (4): 431–441.
- Hay-Gibson, Naomi V. 2009. 'Interviews via VoIP: Benefits and Disadvantages within a PhD Study of SMEs'. *Library and Information Research* 33 (105): 39–50.
- Hennink, Monique M. 2011. *Qualitative Research Methods*. London; Thousand Oaks: Sage.
- Holina, Vladimír. 1997. 'Zmeny novinárskej profesie na Slovensku'. *Otázky Žurnalistiky* (2): 103–14.
- Holländer, Pavel. 1993. 'Sloboda tlače versus ochrana osobnosti [Freedom of the Press v. Protection of Personality]'. *Národná obroda*, 17 August 1993.
- Holstein, James A., and Jaber F. Gubrium. 1995. *The Active Interview*. Thousand Oaks; London: Sage Publications.
- Hopf, Christine. 2004. 'Research Ethics and Qualitative Research'. In *A Companion to Qualitative Research*, edited by Uwe Flick, 334–39. London: Sage Publications.
- Howard, Marc. 2003. *The Weakness of Civil Society in Post-Communist Europe*. Cambridge: Cambridge University Press.
- Howarth, David. 2011a. 'The Cost of Libel Actions: A Sceptical Note'. *The Cambridge Law Journal* 70 (2): 397–419.
- Howarth, David. 2011b. 'Libel: Its Purpose and Reform'. *The Modern Law Review* 74 (6): 845–77.
- Hríb, Štefan. 2009. 'Za čo bol .týždeň odsúdený [What Was .týždeň Sentenced for]'. *.týždeň*, 7 June 2009. <https://www.tyzden.sk/casopis/4701/za-co-bol-tyzden-odsudeny/>.
- Hunter, Caroline. 2012. 'Introduction: Themes, Challenges and Overcoming Barriers'. In *Integrating Socio-Legal Studies into the Law Curriculum*, edited by Caroline Hunter, 1–18. Palgrave Macmillan Socio-Legal Studies. Houndmills, Basingstoke; New York: Palgrave Macmillan.
- IAB Slovakia. 2017. 'Vývoj návštevnosti slovenského internetu v prvom polroku 2017 [Trends in Use of Slovak Internet in the First Half of 2017]'. IAB Slovakia. 2017.

<https://www.iabslovakia.sk/aimmonitor/vyvoj-navstevnosti-slovenskeho-internetu-v-prvom-polroku-2017/>.

IPI. 2009. 'Press Freedom Audit Report – Slovak Republic'. International Press Institute.

http://www.ifex.org/slovakia/2009/04/16/press_freedom_audit_report_slovak_republic.pdf.

IVO. 2009. 'IVO Barometer Newsletter 4/09'. Bratislava: Institute for Public Affairs.

http://www.ivo.sk/buxus/docs/IVO_barometer/Barometer_04_09.pdf.

IVO. 2010. 'IVO Barometer Newsletter 1/10'. Bratislava: Institute for Public Affairs.

http://www.ivo.sk/buxus/docs/IVO_barometer/barometer_1_2010.pdf.

IVO. 2012. 'Slovenská j ustícia o čami verejnosti, odborníkov a sudcov [Slovak Judiciary in the Eyes of the Public, Experts and Judges]'.

http://www.ivo.sk/buxus/docs/vyskum/subor/Slovenska_justicia_vyskum_IVO_jul_2012.pdf.

IVO. 2014. 'IVO Barometer Newsletter 4/2014'. Bratislava: Institute for Public Affairs.

http://www.ivo.sk/buxus/docs/IVO_barometer/IVO_BAROMETER_4-2014_newsletter.pdf.

Jesenský, Mikuláš. 2008. 'Sudca chce štátne milióny. Máli sa mu aj miliarda [Judge Wants Millions from the State. A Billion is Too Little for Him]'. *SME*, 3 October 2008.

<https://www.sme.sk/c/4105250/sudca-chce-statne-miliony-mali-sa-mu-aj-miliarda.html>.

Jesenský, Mikuláš. 2009. 'Harabin nebránil štát. Platí [Harabin Didn't Protect the State. He Pays]'. *Korzar*, 6 February 2009.

<https://korzar.sme.sk/c/4404613/harabin-nebranal-stat-plati.html>.

Jiráček, Jan, and Barbara Köpplová. 2012. 'Two Decades of Free Media in the Czech Republic: So What? Remarks on the Discourse of Post-1989 Media Transformation'. In *Media Transformations in the Post-Communist World: Eastern Europe's Tortured Path to Change*, edited by Peter Gross and Karol Jakubowicz, 183–94. Lanham: Lexington Books.

Johnson, Janet Buttolph. 2001. *Political Science Research Methods*. 4th ed. Washington, D.C.: CQ Press.

Johnson, Owen V. 2012. 'Entertaining the People, Serving the Elites: Slovak Mass Media since 1989'. In *Media Transformations in the Post-Communist World: Eastern Europe's Tortured Path to Change*, edited by Peter Gross and Karol Jakubowicz, 149–65. Lanham: Lexington Books.

Jurči, Michal. 2007. 'Press Release of the Justice Minister'. *Medialne.etrend.sk*. 29 May 2007.

<https://medialne.etrend.sk/tlac-tlacove-spravy/stanovisko-ministra-spravodlivosti-k-dnesnemu-textu-v-plus-jeden-den.html>.

Jurina, Ľubomír. 2015. 'Konšpirácie sú súčasťou ľudskej mysle [Conspiracies Are Part of the Human Mind]'. *Trend*, 15 February 2015.

<https://www.etrend.sk/trend-archiv/rok-2015/cislo-6/konspiracie-su-sucastou-ludskej-mysle.html>.

Jurinová, Martina. 2005. 'Police Launch their Investigation into Alleged Bribery of Deputies'. *The Slovak Spectator*, 21 November 2005.

<https://spectator.sme.sk/c/20027460/police-launch-their-investigation-into-alleged-bribery-of-deputies.html>.

Kahn, Robert Louis, and Charles F. Cannell. 1957. *The Dynamics of Interviewing: Theory, Technique and Cases*. New York: Wiley.

Kelley, Judith G. 2004. 'Slovakia: The Mečiar Hurdle and Beyond'. In *Ethnic Politics in Europe: The Power of Norms and Incentives*, edited by Judith G. Kelley, 116–39. Princeton: Princeton University Press.

Kendrick, Leslie. 2013. 'Speech, Intent, and the Chilling Effect'. *William & Mary Law Review* 54 (5): 1633.

Kenyon, Andrew T. 2001. 'Defamation and Critique: Political Speech and New York Times v Sullivan in Australia and England'. *Melbourne University Law Review* 25 (2): 522.

Kenyon, Andrew T. 2007. *Defamation: Comparative Law and Practice*. London: UCL Press.

Kenyon, Andrew T. 2010. 'Investigating Chilling Effects: News Media and Public Speech in Malaysia, Singapore, and Australia'. *International Journal of Communication* 4: 440–67.

Kenyon, Andrew T. 2014. 'Assuming Free Speech'. *The Modern Law Review* 77 (3): 379–408.

Kenyon, Andrew T., and Timothy Marjoribanks. 2005. 'Researching Media Production Practices: Comparative News and Defamation Law'. In *TASA Conference*, 1–11. University of Tasmania.

Kenyon, Andrew T., and Megan Richardson. 2006. *New Dimensions in Privacy Law: International and Comparative Perspectives*. Cambridge: Cambridge University Press.

Kenyon, Andrew T., and Tim Marjoribanks. 2008a. 'The Future of "Responsible Journalism"'. *Journalism Practice* 2 (3): 372–85.

Kenyon, Andrew T., and Tim Marjoribanks. 2008b. 'Chilled Journalism? Defamation and Public Speech in US and Australian Law and Journalism'. *New Zealand Sociology* 23 (2): 18–33.

Kerecman, Peter. 2003. *Novináři a sloboda tlače v rozhodnutiach Európskeho súdu pre ľudské práva [Journalists and Freedom of the Press in Decisions of the European Court of Human Rights]*. Bratislava: Informačná kancelária Rady Európy.

Kerecman, Peter. 2009. *Sloboda prejavu novinára a ochrana pred jej nneužitím [Journalist's Freedom of expression and Protection against its Abuse]*. Bratislava: Slovenský syndikát novinárov.

Kernová, Miroslava. 2013. 'Babiš dnes kúpil Hospodárske noviny [Babiš Bought Hospodárske Noviny Today]'. *O Mediach Blog* (blog). 12 April 2013. <https://www.omediach.com/tlac/item/1301-babis-dnes-kupil-hospodarske-noviny>.

Kernová, Miroslava. 2017. 'Z Plus 7 dní odchádza šéfka oddelenia politiky - Má inú predstavu o autorskej slobode [The Head of the Department of Politics Leaves Plus 7 Dni - She Has Different Idea of Editorial Freedom]'. *Omediach.Com* (blog). 2017.

<https://www.omediach.com/tlac/item/11192-z-plus-7-dni-odchadza-sefka-oddelenia-politiky-ma-inu-predstavu-o-autorskej-slobode>.

Kernová, Miroslava. 2014. 'Ústavný súd dal za pravdu Ringieru v spore s Mečiarom [Constitutional Court Sided with Ringier in Dispute with Mečiar]'. Omediach.com. 29 January 2014. <https://www.omediach.com/tlac/item/3371-ustavny-sud-dal-za-pravdu-ringieru-v-spore-s-meciarom>.

Kitajima, Noriko. 2012. 'The Protection of Reputation in Japan: A Systematic Analysis of Defamation Cases'. *Law & Social Inquiry* 37 (1): 89–118.

Klobucký, Robert. 2016. 'Správa Zprieskumu Verejnej Mienky Odôvere Verejnosti k Súdom [A Report on the Public Opinion Poll on Trust in the Courts]'. Bratislava: Judicial Council of the Slovak Republic and Via Iuris. <https://viaiuris.sk/wp-content/uploads/2017/09/Spra%CC%81va-z-prieskumu-do%CC%82vera-verejnosti-voc%CC%8Ci-su%CC%81dom-2016.pdf>.

Kluknavska, Alena. 2017. 'Slovakia'. In *Reuters Institute Digital News Report 2017 - Digital News Report 2017*, edited by Nic Newman, Richard Fletcher, Antonis Kalogeropoulos, David A. L. Levy, and Rasmus Kleis Nielsen, 90–91. Oxford: Reuters Institute for the Study of Journalism. https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf.

Klvaňa, Tomáš P. 2004. 'New Europe's Civil Society, Democracy, and the Media Thirteen Years After: The Story of the Czech Republic'. *Harvard International Journal of Press/Politics* 9 (3): 40–55.

Knap, Karel, and Jiří Švestka. 1989. *Ochrana osobnosti v československém občanském právu [Protection of Personality in Czechoslovak Civil Law]*. Praha: Panorama.

Knap, Karel, Jiří Švestka, Oldřich Jehlička, Pavel Pavlík, and Vladimír Plecítý. 2004. *Ochrana Osobnosti Podle Občanského Práva [Protection of Personality under Civil Law]*. 4th ed. Praha: Linde.

Kollár, Miroslav. 2013a. Mediálny odborník: Od SME by som čakal iný prístup [Media Analyst: I would Expect a Different Line of Action from SME]. Interview by Karol Sudor. *SME*. <https://ekonomika.sme.sk/c/6898193/medialny-odbornik-od-sme-by-som-cakal-iny-pristup.html>.

Kollár, Miroslav. 2013b. 'Slovenské médiá 2013 – Príprava na ťažký rok? [Slovak Media 2013 – Preparation for a Tough Year?]'. *Inštitút Pre Verejné Otázky* (blog). 31 December 2013. <https://institutpre.blog.sme.sk/c/346222/Slovenske-media-2013-priprava-na-tazky-rok.html>.

Koltay, András. 2007. 'The Right of Reply: A Comparative Approach'. *Iustum Aeguum Salutare* 4: 202–13.

Köpplová, Barbara, and Jan Jiráček. 2008. 'Brave New Journalism: The Attitudes of Czech Journalists towards Their Own Profession'. In *Comparing Media Systems in Central Europe: Between Commercialization and Politicization*, edited by Michał Głowacki and Bogusława Dobek-Ostrowska. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.

- Košíček, Lukáš. 2008. 'Harabin vysúdil od Spoločnosti 7 Plus pol milióna [Harabin Got Half a Million from Spoločnosť 7 Plus in Litigation]'. Medialne.etrend.sk. 12 December 2008. <https://medialne.etrend.sk/tlac/harabin-vysudil-od-spolocnosti-7-plus-pol-miliona.html>.
- Košíček, Lukáš. 2009a. 'Fico vysúdil od Spoločnosti 7 Plus ďalšie tisíce eur [Fico to Get Further Tens of Thousands from Spoločnosť 7 Plus]'. Medialne.etrend.sk. 19 February 2009. <https://medialne.etrend.sk/tlac/fico-vysudil-od-spolocnosti-7-plus-dalsie-tisice-eur.html>.
- Košíček, Lukáš. 2009b. 'Pluska musí zaplatiť ďalšie desaťtisíce eur v súdnom spore [Pluska Must Pay Further Tens of Thousands of Euro in a Legal Dispute]'. Medialne.sk. 19 February 2009. <https://medialne.etrend.sk/tlac/pluska-musi-zaplatit-dalsie-desattisice-eur-v-sudnom-spore.html>.
- Košíček, Lukáš. 2009c. 'Fico vysúdil doposiaľ najvyššiu sumu. Dva milióny od Spoločnosti 7 Plus [Fico Awarded the Largest Sum so Far. 2 Million from Spoločnosť 7 Plus]'. Medialne.etrend.sk. 15 May 2009. <https://medialne.etrend.sk/tlac/fico-vysudil-doposial-najvyssiu-sumu-dva-miliony-od-spolocnosti-7-plus.html>.
- Kostelanský, Ľuboš. 2012. 'Harabin žiada státisíce eur [Harabin Requests Hundreds of Thousands of Euro]'. *Hospodárske noviny*, 6 September 2012. <https://slovensko.hnonline.sk/433150-harabin-ziada-statisice-eur>.
- Kostolný, Matúš. 2012. 'Prečo sme nepísali o Gorile [Why We Didn't Write about Gorilla]'. *SME*, 18 January 2012. <https://komentare.sme.sk/c/6222616/preco-sme-nepisali-o-gorile.html>.
- Kováč, Peter. 2019. 'Constitutional Court's Groundbreaking Decision Scraps Constitutional Law'. *The Slovak Spectator*, 21 February 2019. <https://spectator.sme.sk/c/22058031/constitutional-courts-groundbreaking-decision-scraps-clearance-of-judges-and-constitutional-law-at-the-same-time.html>.
- Kratochvíl, Zdeněk. 1965. *Nové občanské právo [New Civil Law]*. Praha: Orbis.
- Krause, Kevin Deegan. 2003. 'The Ambivalent Influence of the European Union on Democratization in Slovakia'. In *The European Union & Democratization: Reluctant States*, edited by Paul Kubicek, 1st ed., 56–86. London: Routledge.
- Krempaský, Ján. 2013. 'U Richtera po nehode vraj našli viagru, kondómy a tisíce eur [Viagra, Condoms and Thousands of Euro Allegedly Found with Richter after Accident]'. *SME*, 30 July 2013. <https://domov.sme.sk/c/6886339/u-richtera-po-nehode-vraj-nasli-viagru-kondomy-a-tisice-eur.html>.
- Kroeze, Irma J. 2013. 'Legal Research Methodology and the Dream of Interdisciplinarity'. *Potchefstroom Electronic Law Journal* 16 (3): 35–65.
- Krútká, Zuzana. 2006. '"Postavenie novinára v spoločnosti" [The Standing of Journalists in Society], *Otázky Žurnalistiky* 49 (3–4): 236–40.
- Kužel, Rast'o. 2010. 'Media: Journalists in a Chokehold'. *Transitions Online*, 28 April 2010. <http://www.tol.org/client/article/21402-journalists-in-a-chokehold.html?print>.
- Kvale, Steinar. 2007. *Doing Interviews*. Sage Qualitative Research Kit. London: Sage Publications.

- Kvale, Steinar, and Svend Brinkmann. 2008. *InterViews: Learning the Craft of Qualitative Research Interviewing*. 2nd ed. London: Sage Publications.
- Layder, Derek. 1998. *Sociological Practice Linking Theory and Social Research*. London; Thousand Oaks, Calif.: Sage.
- Leško, Marián. 2004. 'Precedentný Polkov prípad [The Precedence Case of Polka]'. *SME*, 13 August 2004. <https://komentare.sme.sk/c/1712482/precedentny-polkov-pripad.html>.
- Leško, Marián. 2013. 'Odškodnenia papalášov [Damages for Fat Cats]'. *Trend*, 18 July 2013. <https://www.etrend.sk/trend-archiv/rok-2013/cislo-28/odskodnenia-papalashov.html>.
- Lesná, Ľuba. 2008. 'Journalists Ponder Effect of Ruling on Their Freedom'. *The Slovak Spectator*, 24 November 2008. <https://spectator.sme.sk/c/20031124/journalists-ponder-effect-of-ruling-on-their-freedom.html>.
- Lichtenberg, Judith. 1987. 'Foundations and Limits of Freedom of the Press'. *Philosophy and Public Affairs* 16 (4): 329–55.
- Lilleker, Darren G. 2003. 'Interviewing the Political Elite: Navigating a Potential Minefield'. *Politics* 23 (3): 207–14.
- Linz, Juan J., and Alfred Stepan. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*. Baltimore: The Johns Hopkins University Press.
- Lofland, John, and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*. 3rd ed. Belmont: Wadsworth.
- London, Martin. 1993. 'The "Muzzled Media"'. In *At What Price?: Libel Law and Freedom of the Press*, edited by Martin London and Barbara Dill, 3–30. New York: Twentieth Century Fund.
- LSE Truth, Trust & Technology Commission. 2018. 'Journalism Credibility. Strategies to Restore Trust'. London School of Economics and Political Science. 2018. <http://www.lse.ac.uk/media-and-communications/truth-trust-and-technology-commission/journalism-credibility.aspx>.
- MacFarquhar, Neil. 2016. 'A Powerful Russian Weapon: The Spread of False Stories'. *The New York Times*, 28 August 2016, sec. Europe. <https://www.nytimes.com/2016/08/29/world/europe/russia-sweden-disinformation.html>.
- Malová, Darina. 2001. 'Slovakia: From the Ambiguous Constitution to the Dominance of Informal Rules'. In *Democratic Consolidation in Eastern Europe*, edited by Jan Zielonka and Alex Pravda, Volume 1: Institutional Engineering:347–77. Oxford Studies in Democratization. Oxford: Oxford University Press.
- Mancini, Paolo. 2015. 'The News Media between Volatility and Hybridization'. In *Media and Politics in New Democracies: Europe in a Comparative Perspective*, edited by Jan Zielonka, 26–37. Oxford: Oxford University Press.
- Mangen, Steen. 1999. 'Qualitative Research Methods in Cross-National Settings'. *International Journal of Social Research Methodology* 2 (2): 109–24.

- Maravall, José María. 2003. 'The Rule of Law as a Political Weapon'. In *Democracy and the Rule of Law*, edited by José María Maravall and Adam Przeworski, 261–301. Cambridge Studies in the Theory of Democracy. Cambridge: Cambridge University Press.
- Marjoribanks, Timothy, and Andrew Kenyon. 2004. 'Negotiating News: Journalistic Practice and Defamation Law in Australia and the US'. The University of Melbourne Faculty of Law Legal Studies Research Paper No. 67.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=530365.
- Marshall, Catherine. 2006. *Designing Qualitative Research*. 4th ed. London: Sage.
- Marshall, William P., and Susan Gilles. 1994. 'The Supreme Court, the First Amendment, and Bad Journalism'. *The Supreme Court Review* 1994: 169–208.
- Mason, Jennifer. 2002. *Qualitative Researching*. 2nd ed. London; Thousand Oaks, Calif: Sage Publications.
- Mazák, Ján. 2002. *Základy občianskeho procesného práva [Foundations of Civil Process Law]*. Bratislava: Wolters Kluwer.
- McDowell, L. 1998. 'Elites in the City of London: Some Methodological Considerations'. *Environment and Planning A* 30 (12): 2133 – 2146.
- McGonagle, Tarlach. 2016. *Freedom of Expression and Defamation*. Strasbourg: Council of Europe Publishing.
- McNabb, David E. 2010. *Research Methods for Political Science: Quantitative and Qualitative Approaches*. 2nd ed. Armonk, N.Y.: M.E. Sharpe.
- McNamara, Lawrence. 2007. *Reputation and Defamation*. Oxford; New York: Oxford University Press.
- Medialne.sk. 2013. 'Harabin na súde vypovedal v spore s RTVS o 200-tisíc eur za Reportérov [Harabin Testified in Court in Dispute against RTVS for 200,000 euro for Reporters]'. Medialne.etrend.sk. 30 October 2013.
<https://medialne.etrend.sk/televizia/harabin-na-sude-vypovedal-v-spore-s-rtvs-o-200-tisic-eur-za-reporterov.html>.
- Medialne.sk. 2014. 'Penta kupuje Trend Holding a 7 Plus [Penta Is Buying Trend Holding and 7 Plus]'. Medialne.Etrend.Sk. 3 September 2014.
<https://medialne.etrend.sk/tlac/penta-kupuje-trend-holding-a-7-plus.html>.
- Medialne.sk. 2016. 'Z Plus 7 dní odišiel šéf domácej politiky, z Aktuálne.sk Piraňa [Head of Domestic Politics Leaves Plus 7 Days, (as) Piraňa Leaves Aktuálne.Sk]'. Medialne.Etrend.Sk. 15 February 2016. <https://medialne.etrend.sk/tlac/z-plus-7-dni-odisiel-sef-domacej-politiky-z-aktualne-sk-pirana.html>.
- Medialne.sk. 2017. 'Počúvanost' [Radio Stations Market Share]'. Medialne.Etrend.Sk. 2017. <https://medialne.etrend.sk/radia-grafy-a-tabulky.html>.
- Meiklejohn, Alexander. 1965. *Political Freedom: The Constitutional Powers of the People*. New York: Oxford University Press.
- Merkel, Wolfgang. 1996. 'Institutions and Democratisation in East Central Europe'. Estudio Working Paper 86.

- Mesežnikov, Grigorij, Miroslav Kollár, and Bútora. 2014. 'Nations in Transit 2014: Slovakia'. New York: Freedom House. <https://freedomhouse.org/report/nations-transit/2014/slovakia>.
- Mesežnikov, Grigorij, Miroslav Kollár, and Martin Bútora. 2013. 'Slovakia: Nations in Transit 2013'. New York: Freedom House. <https://freedomhouse.org/sites/default/files/NIT13SlovakiaFinal.pdf>.
- Mesežnikov, Grigorij, Miroslav Kollár, and Michal Vašečka. 2012. 'Nations in Transit 2012: Slovakia'. New York: Freedom House. https://freedomhouse.org/sites/default/files/Slovakia_final.pdf.
- Mesežnikov, Grigorij, Miroslav Kollár, and Michal Vašečka. 2010. 'Nations in Transit 2010: Slovakia'. <http://www.freedomhouse.org/images/File/nit/2010/NIT2010Slovakiafinal1.pdf>.
- Mesežnikov, Grigorij, Miroslav Kollár, and Michal Vašečka. 2009. 'Nations in Transit: Slovakia 2009'. In *Nations in Transit 2009. Democratization from Central Europe to Eurasia*, edited by Lisa Mootz, 479–97. New York: Freedom House. http://www.ivo.sk/buxus/docs//rozne/Slovakia_2008_NiT.pdf.
- Metyková, Monika, and Lenka Waschková Císařová. 2009. 'Changing Journalistic Practices in Eastern Europe: The Cases of the Czech Republic, Hungary and Slovakia'. *Journalism* 10 (5): 719–36.
- Mihalikova, Silvia. 2006. 'Slovakia: Pathways to a Democratic Community'. In *Democracy and Political Culture in Eastern Europe*, edited by Hans-Dieter Klingemann, Dieter Fuchs, and Jan Zielonka, 172–202. Abingdon; New York: Routledge.
- Mikecz, R. 2012. 'Interviewing Elites: Addressing Methodological Issues'. *Qualitative Inquiry* 18 (6): 482–493.
- Mikolášiková, Júlia. 2011. 'Zvrátený žúr sudcov: Takto sa zabávali na masakri z Devínskej [Perverse Jamboree of Judges: This is How They Amused Themselves at the Devínska Massacre]'. *Nový Čas*, 15 June 2011. <https://www.cas.sk/clanok/200258/zvrateny-zur-sudcov-takto-sa-zabavali-na-masakri-z-devinskej/>.
- Mikulka, Milan. 2015. 'Spolumajitel Penty Dospiva: Chceme Mediální Štít Proti Iracionálním Útokům [Co-Owner of Penta Dospiva: We Want a Media Shield against Irrational Attacks]'. *Hospodářské Noviny*, 21 April 2015. <https://archiv.ihned.cz/c1-63893810-spolumajitel-penty-dospiva-chceme-medialni-stit-proti-iracionalnim-utokum>.
- Milan, Lukáš. 2010. '„Pre novinára je principiálna vec vedieť, pre koho píše" [“For a Journalist It's a Matter of Principle to Know Who They Write For”]. Interview by Gabriel Šipoš. Slovak Press Watch Blog. <https://spw.blog.sme.sk/c/240658/Pre-novinara-je-principialna-vec-vediet-pre-koho-pise.html>.
- Miles, Thomas J., and Cass R. Sunstein. 2008. 'The New Legal Realism'. *University of Chicago Law Review* 75: 831–51.
- Milo, Dario. 2008. *Defamation and Freedom of Speech*. Oxford; New York: Oxford University Press.

- Minarechová, Radka. 2013. 'Sadiki Phone Call with Harabin Confirmed'. *The Slovak Spectator*, 2 December 2013. <https://spectator.sme.sk/c/20049111/sadiki-phone-call-with-harabin-confirmed.html>.
- MK SR. 2008. 'Dôvodová správa k vládnemu návrhu zákona o periodickej tlači a agentúrnom pravodajstve a o zmene a doplnení niektorých zákonov (Tlačový zákon)' [Explanatory Memorandum to the Governmental Press Bill]. Ministry of Culture of the Slovak Republic. <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=269991>.
- Mocek, Stanislaw. 2015. 'Journalists as Critical Change Agents and Popular Disseminators'. In *Media and Politics in New Democracies: Europe in a Comparative Perspective*, edited by Jan Zielonka, 99–116. Oxford: Oxford University Press.
- Morris, Zoë Slote. 2009. 'The Truth about Interviewing Elites'. *Politics* 29 (3): 209–17.
- Morrison, David, and Michael Svennevig. 2002. 'The Public Interest, the Media and Privacy'. London. <http://downloads.bbc.co.uk/guidelines/editorialguidelines/research/privacy.pdf>.
- MS SR. 2008. 'Dôvodová správa k návrhu zákona č. 384/2008 Z. z. [Explanatory Memorandum to Act No 384/2008 Coll.]'. Ministry of Justice of the Slovak Republic. <http://www.najpravo.sk/dovodove-spravy/rok-2008/384-2008-z-z.html>.
- MS SR. 2012. 'Dôvodová správa k návrhu zákona č. 335/2012 Z.z. [Explanatory Memorandum to Act No. 335/2012 Coll.]'. Ministry of Justice of the Slovak Republic. <http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=4144>.
- MS SR. 2016. 'Najčastejšie žiadané informácie podľa infozákona [The Most Frequently Requested Information under the FOI Act]'. Ministry of Justice of the Slovak Republic. <https://www.justice.gov.sk/Stranky/Informacie/Statistiky.aspx>.
- Múdry, Pavol. 2013. 'Nepriateľom médií už nie je Fico [Fico Is No Longer the Media's Enemy] Interview by Marek Vagovič. Týždeň. <https://www.tyzden.sk/nazory/22378/nepriatelom-medii-uz-nie-je-fico/>.
- Múdry, Pavol. 2017. 'Exšéf IPI: Naši novinári si kontrolu moci pomýlili s bezbrehou kritikou [Our Journalists Have Mistaken Control of the Powerful with Boundless Criticism]. Interview by Iva Mrvová. Stratégie. <http://strategie.hnonline.sk/media/891852-exsef-ipi-novinari-si-pomylili-kontrolu-moci-s-bezbrehou-kritikou>.
- Mullis, Alastair. 2010a. 'Introduction'. In *Carter-Ruck on Libel and Privacy*, edited by Cameron Doley and Alastair Mullis, 6th ed., 1–15. London: LexisNexis.
- Mullis, Alastair. 2010b. 'The Law of Defamation - Introduction'. In *Carter-Ruck on Libel and Privacy*, edited by Cameron Doley and Alastair Mullis, 6th ed., 15–45. London: LexisNexis.
- Mullis, Alastair, and Andrew Scott. 2009. 'Something Rotten in the State of English Libel Law? A Rejoinder to the Clamour for Reform of Defamation'. *Communications Law* 14 (6): 173–83.
- Mullis, Alastair, and Andrew Scott. 2011. 'Worth the Candle? The Government's Draft Defamation Bill'. *Journal of Media Law* 3 (1): 1–17.

- Mullis, Alastair, and Andrew Scott. 2012a. 'Reframing Libel: Taking (All) Rights Seriously and Where It Leads'. *Northern Ireland Legal Quarterly* 63 (1): 5–26.
- Mullis, Alastair, and Andrew Scott. 2012b. 'The Swing of the Pendulum: Reputation, Expression and the Re-Centring of English Libel Law'. *Northern Ireland Legal Quarterly* 63 (1): 25–56.
- Mullis, Alastair, and Andrew Scott. 2014. 'Tilting at Windmills: The Defamation Act 2013'. *Modern Law Review* 77 (1): 87–109.
- Nicholson, Thomas. 2012. 'Slovakia's Left Emerges Triumphant from the Ashes of the Right'. *The Guardian*, 12 March 2012.
<http://www.theguardian.com/commentisfree/2012/mar/12/slovakia-left-election-victory>.
- Nicholson, Thomas. 2002. 'Case Halted Against Judge'. *The Slovak Spectator*, 15 November 2002. <https://spectator.sme.sk/c/20017637/case-halted-against-judge.html>.
- Nicholson, Thomas. 2012. *Gorila [Gorilla]*. Bratislava: Dixit.
- Nicholson, Thomas. 2018. Tom Nicholson: Nebol som pripravený na to, ako ľudia na Gorilu zareagujú [Tom Nicholson: I Wasn't Prepared to Public's Reaction to Gorilla]. Interview by Kopcsay Márius. SME. <https://domov.sme.sk/c/20758169/nebol-som-pripraveny-na-to-ako-ludia-na-gorilu-zareaguju.html>.
- Nimmer, Melville. 1968. 'The Right to Speak from Times to Time: First Amendment Theory Applied to Libel and Misapplied to Privacy'. *California Law Review* 56 (4): 935–67.
- Ondrášik, Branislav. 2010a. 'Media Systems. Slovakia'. *Otázky Žurnalistiky*, No. 1–2: 116–34.
- Ondrášik, Branislav. 2010b. 'Dve Desaťročia Slobodného Mediálneho Prostredia Na Slovensku: Od Komunizmu k Moci Biznisu a Politiky' [Two Decades of Free Media Environment in Slovakia: from Communism to the Power of Business]. In *Médiá a Novinári Na Slovensku 2010 [Media and Journalists in Slovakia 2010]*, edited by Samuel Brečka, Branislav Ondrášik, and Richard Kelak, 17–72. Bratislava: Eurokódex.
- Ondrášik, Branislav, and Martin Škop. 2011. 'Pressured Media - Two Nations, Different Problems. Development of the Media in Slovakia and the Czech Republic from the 1993 Split until Present Days'. In *Making Democracy in 20 Years: Media and Politics in Central and Eastern Europe*, edited by Bogusława Dobek-Ostrowska and Michał Głowacki, 111–33. Wrocław: Wydawn. Uniwersytetu Wrocławskiego.
- O'Neil, Patrick H. 1996. 'Introduction: Media Reform and Democratization in Eastern Europe'. *Journal of Communist Studies and Transition Politics* 12 (4): 1.
- O'Neill, Onora. 2002. 'A Question of Trust'. BBC Radio 4 - Reith Lectures 2002. Printable Version of Lecture, 1-6.
<https://www.bbc.co.uk/radio4/reith2002/lecture5.shtml>.
- Örnebring, Henrik. 2012. 'Clientelism, Elites, and the Media in Central and Eastern Europe'. *The International Journal of Press/Politics* 17 (4): 497–515.
- Örnebring, Henrik. 2013. 'Journalistic Autonomy and Professionalisation. Final Report for the MDCEE Project.' Oxford.

http://mde.politics.ox.ac.uk/images/Final_reports/ornebring_2013_final%20report_posted.pdf.

Ostrander, Susan A. 1995. “‘Surely You’re Not in This Just to Be Helpful’”: Access, Rapport, and Interviews in Three Studies of Elites.’ In *Studying Elites Using Qualitative Methods*, edited by Rosanna Hertz and Jonathan B. Imber, 133–50. Thousand Oaks, Calif.: Sage Publications.

Pacherová, Soňa. 2010. ‘Slovenská žurnalistika trie biedu, novinári idú do politiky [Slovak Journalism Starves, Journalists Leave for Politics]’. *Pravda*, 17 July 2010. <https://spravy.pravda.sk/domace/clanok/166937-slovenska-zurnalistika-trie-biedu-novinari-idu-do-politiky/>.

Papp, Tibor. 2003. ‘Who Is in and Who Is out? Citizenship, Nationhood, Democracy and European Integration in the Czech Republic and Slovakia’. In *The Road to the European Union*, edited by Jan Zielonka and Jacques Rupnik, Volume 1:138–63. Manchester: Manchester University Press.

Parkes, Richard, Alastair Mullis, Godwin Busuttil, Andrew Scott, Adam Speker, and Clement Gatley. 2013. *Gatley on Libel and Slander*. 12th edition. The Common Law Library. London: Sweet & Maxwell.

Paletz, David L., Karol Jakubowicz, and Pavao Novosel, eds. 1995. *Glasnost and After: Media and Change in Central and Eastern Europe*. Cresskill, N.J.: Hampton Press.

Pataj, Roman. 2002. ‘Sudca, čo prepustil Ľuboša F., viedol kedysi politické procesy [Judge Who Released Ľuboš F. Led Political Trials]’. *SME*, 17 September 2002. <https://www.sme.sk/c/664766/sudca-co-prepustil-lubosa-f-viedol-kedysi-politicke-procesy.html>.

Pataj, Roman, and Daniel Vražda. 2004. ‘Samuel: Najvyšší súd nás nútil odsúdiť nevinných [Samuel: Supreme Court Forced Us to Sentence Innocents]’. *SME*, 9 December 2004. <https://www.sme.sk/c/1852490/samuel-najvyssi-sud-nas-nutil-odsudit-nevinnych.html>.

Patton, Michael Quinn. 2002. *Qualitative Evaluation and Research Methods*. Thousand Oaks, London, New Delhi: Sage.

Petková, Zuzana. 2011. ‘Harabinova kritická uspela na Ústavnom súde [Harabin’s Critic Succeeded before Constitutional Court]’. *SME*, 21 June 2011. <https://domov.sme.sk/c/5945952/harabinova-kriticka-uspela-na-ustavnom-sude.html>.

Pettigrew, Andrew. 1997. ‘What Is a Processual Analysis?’ *Scandinavian Journal of Management* 13: 337–48.

Pfetsch, Barbara. 2004. ‘From Political Culture to Political Communication Culture. A Theoretical Approach to Comparative Analysis’. In *Comparing Political Communication: Theories, Cases, and Challenges*, edited by Frank Esser and Barbara Pfetsch, 344–66. Cambridge: Cambridge University Press.

Phillipson, Gavin. 2013. ‘Leveson, the Public Interest and Press Freedom’. *Journal of Media Law* 5 (2): 220–40.

Pierson, Paul. 2004. *Politics in Time: History, Institutions, and Social Analysis*. Princeton: Princeton University Press.

- Pisárová, Martina. 2002. 'Press Council to Defend Public'. *The Slovak Spectator*, 22 April 2002. <https://spectator.sme.sk/c/20014064/press-council-to-defend-public.html>.
- Plus 1 deň. 2015. 'Koniec 7-ročného sporu: Sudkyňa Benešová je nevinná [End of 7-Year-Long Dispute: Judge Benesova Is Innocent]'. *Plus 1 Deň*, 11 March 2015. <http://www.pluska.sk/krimi/domace-krimi/koniec-7-rocneho-sporu-sudkyna-benesova-je-nevinna.html>.
- Poláš, Martin. 2015. 'V Plus 7 dní končí šéfredaktor Luknár, vymení ho Závodská [Editor-in-Chief Luknár Quits Plus 7 dní, Závodská Will Replace Him]'. *Medialne.sk*. 2 October 2015. <https://medialne.etrend.sk/tlac/v-plus-7-dni-konci-sefredaktor-luknar-vymeni-ho-zavodska.html>.
- Post, Robert C. 1986. 'The Social Foundations of Defamation Law: Reputation and the Constitution'. *California Law Review* 74 (3): 691–742.
- Przeworski, Adam. 1991. *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America*. Cambridge: Cambridge University Press.
- Pridham, Geoffrey. 1999. 'Complying with the European Union's Democratic Conditionality: Transnational Party Linkages and Regime Change in Slovakia, 1993–1998'. *Europe-Asia Studies* 51 (7): 1221–44.
- Pridham, Geoffrey. 2002. 'The European Union's Democratic Conditionality and Domestic Politics in Slovakia: The Mečiar and Dzurinda Governments Compared'. *Europe-Asia Studies* 54 (2): 203–27.
- Prosser, William. 1960. 'Privacy'. *California Law Review* 48 (3): 383–423.
- Prušová, Veronika. 2009. 'O odškodnenie bojujú vyše sedem rokov'. *MY Nitra*, 6 July 2009. <https://mynitra.sme.sk/c/4922638/o-odskodnenie-bojuju-vyse-sedem-rokov.html>.
- Prušová, Veronika. 2012. 'Harabina bránili pri sporoch s novinármi aj nahnevanou svokrou [In Disputes Against Journalists Harabin Has Been Defended by Mentioning Angry Mother-In-Law]'. *SME*, 14 November 2012. <https://domov.sme.sk/c/6604048/harabina-branili-pri-sporoch-s-novinarmi-aj-nahnevanou-svokrou.html>.
- Rachels, James. 1984. 'Why Privacy Is Important'. In *Philosophical Dimensions of Privacy: An Anthology*, edited by Ferdinand David Schoeman, 290–99. Cambridge: Cambridge University Press.
- Radičová, Iveta. 2013. Interview with Professor Iveta Radičová. Interview by Nikola Belakova. <http://mde.politics.ox.ac.uk/index.php/component/content/article/2-news/173-interview-with-professor-iveta-radiova->.
- Raz, Joseph. 1991. 'Free Expression and Personal Identification'. *Oxford Journal of Legal Studies* 11 (3): 303–24.
- Reuters. 2016. 'Slovakia's PM Calls Journalists "Dirty Anti-Slovak Prostitutes"'. *The Guardian*, 23 November 2016. <http://www.theguardian.com/world/2016/nov/23/slovakias-pm-calls-journalists-dirty-anti-slovak-prostitutes>.
- Rice, Gareth. 2010. 'Reflections on Interviewing Elites'. *Area* 42 (1): 70–75.

- Richards, David. 1996. 'Elite Interviewing: Approaches and Pitfalls'. *Politics* 16 (3): 199–204.
- Rolph, David. 2008. *Reputation, Celebrity and Defamation Law*. Aldershot; Burlington: Routledge.
- Rössler, Beate. 2004. *The Value of Privacy*. English Ed edition. Cambridge, UK; Malden, MA: Polity.
- RTVS. 2011. 'Štatút programových pracovníkov a spolupracovníkov Rozhlasu a televízie Slovenska [Statutes of Programme Employees and Collaborators of the Radio and Television of Slovakia]'. RTVS. <http://cdn.srv.rtv.sk/a542/file/item/sk/0000/statut-programovych-pracovnikov-a-spolupracovnikov-rtvs.52.pdf>.
- Rupnik, Jacques. 2003. 'Joining Europe Together Or Separately? The Implications of the Czecho-Slovak Divorce for EU Enlargement'. In *The Road to the European Union*, edited by Jan Zielonka and Jacques Rupnik, Volume 1:16–50. Manchester: Manchester University Press.
- Rupnik, Jacques. 2007. 'From Democracy Fatigue to Populist Backlash'. *Journal of Democracy* 18 (4): 17–25.
- Rybář, Marek, and Darina Malová. 2004. 'Exerting Influence on a Contentious Polity: The European Union's Democratic Conditionality and Political Change in Slovakia'. In *Driven to Change: The European Union's Enlargement Viewed from the East*, edited by Antoaneta L. Dimitrova, 38–58. Manchester; New York: Manchester University Press.
- Sack, Robert D. 1980. *Libel, Slander, and Related Problems*. New York: Practising Law Institute.
- Samson, Ivo. 2001. 'Slovakia: Misreading the Western Message'. In *Democratic Consolidation in Eastern Europe Volume 2: International and Transnational Factors*, edited by Jan Zielonka and Alex Pravda, 363–82. Oxford: Oxford University Press.
- Scanlon, Thomas. 1972. 'A Theory of Freedom of Expression'. *Philosophy & Public Affairs* 1(2): 204–26.
- Scanlon, Thomas. 1979. 'Freedom of Expression and Categories of Expression'. *University of Pittsburgh Law Review* 40: 519–50.
- Schauer, Frederick. 1978. 'Fear, Risk and the First Amendment: Unraveling the Chilling Effect'. *Boston University Law Review* 58: 685.
- Schauer, Frederick. 1992. 'Uncoupling Free Speech'. *Columbia Law Review* 92: 1321–57.
- Schelling, Thomas C. 1998. 'Social Mechanisms and Social Dynamics'. In *Social Mechanisms: An Analytical Approach to Social Theory*, edited by Peter Hedström and Richard Swedberg, 32–44. Cambridge: Cambridge University Press.
- Schimmelfennig, Frank, Stefan Engert, and Heiko Knobel. 2003. 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey'. *Journal of Common Market Studies* 41 (3): 495–518.
- Schudson, Michael. 2005. 'Four Approaches to the Sociology of News'. In *Mass Media and Society*, edited by James Curran and Michael Gurevitch, 172–97. London: Hodder Arnold.

- Scott, Andrew. 2010. 'Introduction: Privacy and Publication'. In *Carter-Ruck on Libel and Privacy*, edited by Cameron Doley and Alastair Mullis, 6th ed., 573–86. London: LexisNexis.
- Scott, John. 1990. *A Matter of Record: Documentary Sources in Social Research*. Cambridge: Polity.
- Segal, Jeffrey A., and Albert D. Cover. 1989. 'Ideological Values and the Votes of U.S. Supreme Court Justices'. *The American Political Science Review* 83 (2): 557–65.
- Segal, Jeffrey A., and Harold J. Spaeth. 1998. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge, UK; New York: Cambridge University Press.
- Shapiro, Martin M. 1981. *Courts: A Comparative and Political Analysis*. Chicago; London: University of Chicago Press.
- Silverman, David. 2013. *Doing Qualitative Research*. 4th edition. Los Angeles: Sage.
- Šimečka, Martin M. 2009. 'Central Europe's Laboratory of Freedom - The Quest for a Media Culture in Slovakia'. *Eurozine*, 15 September 2009. <http://www.eurozine.com/articles/2009-09-15-simecka-en.html>.
- Šípoš, Gabriel. 2007a. 'Slovenské médiá 2006 – Etika sa zlepšila, profesionalita Sstagnuje [Slovak Media 2006 - Ethics Has Improved, Professionalism Stagnates]'. *Slovak Press Watch Blog* (blog). 2 February 2007. <https://spw.blog.sme.sk/c/80526/Slovenske-media-2006-etika-sa-zlepsila-profesionalita-stagnuje.html>.
- Šípoš, Gabriel. 2007b. 'Slovenské médiá 2007 – Plusom nové technológie, mínusom politizácia [Slovak Media 2007 - New Technologies a Plus, Politicisation a Minus]'. *Slovak Press Watch Blog* (blog). 19 December 2007. <https://spw.blog.sme.sk/c/125353/Slovenske-media-2007-plusom-nove-technologie-minusom-politizacia.html>.
- Šípoš, Gabriel. 2008. 'Slovenské médiá 2008 – Pod tlakom vlády i vlastných biznis záujmov [Slovak Media 2008 - Under Pressure of Government and Own Business Interests]'. *Slovak Press Watch Blog* (blog). 12 December 2008. <https://spw.blog.sme.sk/c/175975/Slovenske-media-2008-pod-tlakom-vlady-i-vlastnych-biznis-zaujmov.html>.
- Šípoš, Gabriel. 2009. 'Čo pre krajinu urobili v roku 2009 hlavné slovenské médiá [What the Main Slovak Media Did for the Country in 2009]'. *Slovak Press Watch Blog* (blog). 30 December 2009. <https://spw.blog.sme.sk/c/214510/Co-pre-krajinu-urobili-v-roku-2009-hlavne-slovenske-media.html>.
- Šípoš, Gabriel. 2010. 'Denník Pravda sa vracia do svojej populistckej minulosti [Daily Pravda Returns to its Populist Past]'. *Slovak Press Watch Blog* (blog). 7 July 2010. <https://spw.blog.sme.sk/c/234338/Dennik-Pravda-sa-vracia-do-svojej-populistickej-minulosti.html>.
- Šípoš, Gabriel, and Samuel Spáč. 2013. 'Kto je s kým rodina na našich súdoch [Who is Family with Whom in our Court]'. *Transparency International.blog.sme.sk* (blog). 20 November 2013. <https://transparency.blog.sme.sk/c/342665/Kto-je-s-kym-rodina-na-nasich-sudoch.html>.

- SITA. 2010. 'Najvyšší súd žaluje Expres. Žiada 200-tisíc eur [The Supreme Court Sues Express. It Claims 200-Thousand Euro]'. *SME*, 5 May 2010. <https://domov.sme.sk/c/5361433/najvyssi-sud-zaluje-expres-ziada-200-tisic-eur.html>.
- SITA. 2013. 'Prieskum: Polovica opýtaných spája nedôveru v justíciu s Harabinom [Survey: Half of Respondents Link Distrust in the Judiciary with Harabin]'. *Pravda*, 19 July 2013. <https://spravy.pravda.sk/domace/clanok/287424-prieskum-polovica-opytanych-spaja-nedoveru-v-justiciu-s-harabinom/>.
- Školkaý, Andrej. 1996. 'Journalists, Political Elites and the Post-Communist Public: The Case of Slovakia'. *Journal of Communist Studies and Transition Politics* 12 (4): 61.
- Školkaý, Andrej. 2007. 'Nečakané súvislosti [Unexpected Connections]'. JeToTak.Sk. 16 December 2007. <http://www.jetotak.sk/editorial/necakane-suvislosti->.
- Školkaý, Andrej. 2011a. 'Media and Political Relation in Slovakia'. In *Making Democracy in 20 Years: Media and Politics in Central and Eastern Europe*, edited by Bogusława Dobek-Ostrowska and Michał Głowacki, 91–110. Wrocław: Wydawn. Uniwersytetu Wrocławskiego.
- Školkaý, Andrej. 2011b. *Media Law in Slovakia*. Kluwer Law International.
- Školkaý, Andrej. 2017. 'Media, Politics and Democracy in Slovakia in Retrospective: From a "Black Hole in the Heart of Europe" to Central/Eastern European "Statistical Average"'. In *Media in Third Wave Democracies: Southern and Central/Eastern Europe in a Comparative Perspective*, edited by Péter Bajomi-Lázár, 182–209. Budapest: L'Harmattan.
- Školkaý, Andrej, and Mária Ondruchová Hong. 2012. 'Slovakia: Reinventing Media Policy Without a Practical Perspective'. In *Understanding Media Policies: A European Perspective*, edited by Evangelia Psychogiopoulou, 182–97. Palgrave Macmillan.
- Školkaý, Andrej, Mária Ondruchová Hong, Ivan Brada, and Ľubica Gállová. 2010. 'Media Policies and Regulatory Practices in a Selected Set of European Countries, the EU and the Council of Europe: The Case of Slovakia'. <http://www.mediadem.eliamep.gr/findings/>.
- SLSA. 2009. 'Statement of Principles of Ethical Research Practice'. http://www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_final_%5B1%5D.pdf.
- SME. 2002a. 'Žilinský okresný sudca Polka podal viac ako 30 žalôb na ochranu osobnosti [Žilina District Judge Polka Submitted More than 30 Personality Protection Lawsuits]'. *SME*, 10 April 2002. <https://domov.sme.sk/c/510480/zilinsky-okresny-sudca-polka-podal-viac-ako-30-zalob-na-ochranu-osobnosti.html>.
- SME. 2002b. 'Sudca Polka vyhral na okresnom súde už štvrtý spor na ochranu osobnosti [Judge Polka Won Already His Fourth Dispute at District Court]'. *SME*, 24 April 2002. <https://domov.sme.sk/c/524270/sudca-polka-vyhral-na-okresnom-sude-uz-stvrtý-spor-na-ochranu-osobnosti.html>.
- SME. 2007. 'Vláda chce naprávať médiá', *SME*, 26 April 2007. <http://dennik.sme.sk/c/3266050/vlada-chce-napravat-media.html>.

- SME. 2009. 'Sudkyňu preradili na nižší stupeň. Myslí si, že kvôli Harabinovi [Judge Demoted to Lower Instance. Believes It Was because of Harabin]'. *SME*, 8 July 2009. <https://domov.sme.sk/c/4924968/sudkynu-preradili-na-nizsi-stupen-mysli-si-ze-kvoli-harabinovi.html>.
- SME. 2012. 'Súdne Rozhodnutia Sú Už Na Internete [Court Decisions Are Already Online]'. *SME*, 16 January 2012. <http://www.sme.sk/c/6218575/sudne-rozhodnutia-su-uz-na-internete.html>.
- Smith, Katherine E. 2006. 'Problematising Power Relations in "Elite" Interviews'. *Geoforum* 37 (4): 643–653.
- Soloski, John, and Randall P. Bezanson. 1992. *Reforming Libel Law*. The Guilford Communication Series. New York: Guilford Press.
- Solove, Daniel J. 2002. 'Conceptualizing Privacy'. *California Law Review* 90 (4): 1087–1155.
- Solove, Daniel J. 2003. 'The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure'. *Duke Law Journal* 53 (3): 967–1065.
- Solove, Daniel J. 2006. 'A Taxonomy of Privacy'. *University of Pennsylvania Law Review*, GWU Law School Public Law Research Paper No. 129, 154 (3): 477.
- Solove, Daniel J. 2007. *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*. New Haven: Yale University Press.
- Solove, Daniel J. 2008. *Understanding Privacy*. Cambridge, Mass.; London: Harvard University Press.
- Sparks, Colin. 2009. 'After Transition: The Media in Poland, Russia and China'. In *Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective*, edited by Karol Jakubowicz and Miklós Sükösd, 43–71. Chicago: Chicago University Press.
- SPW, and DBM. 2008. 'Názory slovenských novinárov na vybrané otázky mediálneho prostredia na Slovensku: Výsledná správa z prieskumu [Opinions of Slovak Journalists on Selected Questions of Media Environment in Slovakia: The Final Survey Report]'. Bratislava; Praha: Slovak Press Watch and Donath-Burson-Marsteller. <http://www.dbm.cz/pfile/2Vysledna%20sprava.pdf>.
- Steffensmeier, Darrell, and Chester L. Britt. 2001. 'Judges' Race and Judicial Decision Making: Do Black Judges Sentence Differently?' *Social Science Quarterly* 82 (4): 749–64.
- Štětka, Václav. 2012. 'Slovakia. A Country Report for the Project Media and Democracy in Central and Eastern Europe'. http://mde.politics.ox.ac.uk/images/stories/documents/slovakia%20report_updated_aug12_final.pdf.
- Stetka, Vaclav. 2012. 'From Multinationals to Business Tycoons Media Ownership and Journalistic Autonomy in Central and Eastern Europe'. *The International Journal of Press/Politics* 17 (4): 433–56.
- Štětka, Václav. 2013. 'Media Ownership and Economic Pressures. Final Report for the MDCEE Project.' Oxford.

http://mde.politics.ox.ac.uk/images/Final_reports/stetka_2013_final%20report_posted.pdf.

Štětka, Václav. 2015. 'The Rise of Oligarchs as Media Owners'. In *Media and Politics in New Democracies: Europe in a Comparative Perspective*, edited by Jan Zielonka, 85–98. Oxford: Oxford University Press.

Stetka, Vaclav, and Henrik Örnebring. 2013. 'Investigative Journalism in Central and Eastern Europe: Autonomy, Business Models, and Democratic Roles'. *The International Journal of Press/Politics* 18 (4): 413–35.

StratégieOnline. 2002. 'Vydavateľ denníka Pravda sa musí za lži sudcovi Polkovi ospravedlniť a zaplatiť [Publisher of Daily Pravda Must Apologise to and Pay Judge Polka for Lies]'. *Strategie.hnonline.sk*. 27 June 2002.

<https://strategie.hnonline.sk/media/759730-vydavatel-dennika-pravda-sa-musi-za-lzi-sudcovi-polkovi-ospravedlnit-a-zaplatit>.

StratégieOnline. 2016. 'Slováci najviac čítajú Nový Čas, Plus 7 dní a Záhradkár [Slovaks Read Nový Čas, Plus 7 Dní and Záhradkár Most Often]'. *Strategie.Hnonline.Sk*. 1 February 2016.

<http://strategie.hnonline.sk/media/782601-slovaci-najviac-citaju-novy-cas-plus-7-dni-a-zahradkar>.

Suchman, Mark C., and Lauren B. Edelman. 1996. 'Legal Rational Myths: The New Institutionalism and the Law and Society Tradition'. *Law and Social Inquiry* 21: 903–41.

Szomolányi, Soňa. 1999. *Kľukatá Cesta Slovenska k Demokracii [Slovakia's Zig-Zag Road to Democracy]*. Bratislava: Stimul.

Tansey, Oisín. 2007. 'Process Tracing and Elite Interviewing: A Case for Non-Probability Sampling'. *PS: Political Science and Politics* 40 (4): 765–72.

TASR. 2004. 'Mečiar s asistentkou žiadajú od Nového Času 5 miliónov Sk [Mečiar and His Assistant Request 5 Million SKK from Nový Čas]'. *SME*, 15 June 2004.

<https://domov.sme.sk/c/1642216/meciar-s-asistentkou-ziadaju-od-noveho-casu-5-milionov-sk.html>.

TASR. 2009. 'Plus 7 dní musí zaplatiť Harabinovi 31500 eur [Plus 7 Days Must Pay Harabin 31,500 Euro]'. *Hospodárske noviny*, 18 February 2009.

<https://dennik.hnonline.sk/260743-plus-7-dni-musi-zaplatit-harabinovi-31500-eur>.

TASR. 2010. 'Harabin chráni dobrú povesť súdu. Žaluje denník Pravda [Harabin Protects Good Reputation of the Court. He Sues Daily Pravda]'. *SME*, 3 April 2010.

<https://domov.sme.sk/c/5313477/harabin-chrani-dobru-povest-sudu-zaluje-dennik-pravda.html>.

Terenzani, Michaela. 2009. 'Controversy over "Vote-Buying"'. *The Slovak Spectator*, 9 February 2009. <https://spectator.sme.sk/c/20031771/controversy-over-vote-buying.html>.

Terenzani, Michaela. 2010. 'Journalists Get New Code'. *The Slovak Spectator*, 15 November 2010. <https://spectator.sme.sk/c/20038026/journalists-get-new-code.html>.

Terenzani, Michaela. 2012a. 'Judiciary to Become a Little Less Cosy'. *The Slovak Spectator*, 7 February 2012. <https://spectator.sme.sk/c/20038791/judiciary-to-become-a-little-less-cosy.html>.

- Terenzani, Michaela. 2012b. 'Evaluation System Proposed for Judges'. *The Slovak Spectator*, 25 July 2012. <https://spectator.sme.sk/c/20040572/evaluation-system-proposed-for-judges.html>.
- Terenzani, Michaela. 2014. 'Plus 7 Dni to Publish a 54-Page Apology'. *The Slovak Spectator*, 26 March 2014. <https://spectator.sme.sk/c/20050229/plus-7-dni-to-publish-a-54-page-apology.html>
- Terenzani, Michaela, and Adriana Petková. 2016. 'Watchers Expect Media Freedom to Drop'. *The Slovak Spectator*, 17 December 2016. <http://spectator.sme.sk/c/20398905/watchers-expect-media-freedom-to-drop.html>.
- Tettinger, Marek. 2007. 'Každý piaty Slováč pozná korupciu [Every Fifth Slovak Familiar with Bribery]'. *Hospodárske noviny*, 13 August 2007. <https://hn.hnonline.sk/ekonomika-2/282074-kazdy-piatty-slovak-pozna-korupciu>.
- The Slovak Spectator. 2002. 'Lest We Forget: Kováč Jr Abductors Still at Large'. *The Slovak Spectator*, 26 August 2002. <https://spectator.sme.sk/c/20016857/lest-we-forget-kovac-jr-abductors-still-at-large.html>.
- The Slovak Spectator. 2009. 'Judge Says Her Independence Was Pressured'. *The Slovak Spectator*, 20 July 2009. <https://spectator.sme.sk/c/20033385/judge-says-her-independence-was-pressured.html>.
- The Slovak Spectator. 2014. 'Bonanno Stories Part of Attacks on Judiciary, Former Top Prosecutor Says'. *The Slovak Spectator*, 22 January 2014. <https://spectator.sme.sk/c/20049514/bonanno-stories-part-of-attacks-on-judiciary-former-top-prosecutor-says.html>.
- Thelen, Kathleen. 1999. 'Historical Institutionalism in Comparative Politics'. *Annual Review of Political Science* 2 (1): 369–404.
- Tódová, Monika. 2008a. 'Súdca chce milióny aj od policajtov [Judge Wants Millions Also From the Police]'. *SME*, 14 August 2008. <https://www.sme.sk/c/4020993/sudca-chce-miliony-aj-od-policajtov.html>.
- Tódová, Monika. 2008b. 'Bývalý Twist parafrázoval Palka, dostal miliónovú pokutu [Former Twist Paraphrased Palko, Got a Million in Fines]'. *SME*, 14 November 2008. <https://www.sme.sk/c/4175212/byvaly-twist-parafrazoval-palka-dostal-milionovu-pokutu.html>.
- Tóthová, Lívia. 2007. 'What Happened to All the Good Journalists?' *The Slovak Spectator*, 22 January 2007. <https://spectator.sme.sk/c/20004212/what-happened-to-all-the-good-journalists.html>.
- Townend, Judith. 2014. 'Defamation, Privacy and the "Chill". A Socio-Legal Study of the Relationship between Media Law and Journalistic Practice in England and Wales, 2008-13'. PhD Thesis. London: Centre for Law, Justice and Journalism, City University London.
- Townend, Judith. 2017. 'Freedom of Expression and the Chilling Effect'. In *The Routledge Companion to Media and Human Rights*, edited by Howard Tumber and Silvio Waisbord, 73–82. London; New York: Routledge.
- Transparency International. 2013. 'Global Corruption Barometer 2013: Slovakia'. 2013. <https://www.transparency.org/gcb2013/country?country=afghanistan>.

- Transparency International Slovakia. 2010a. 'Úplné Výsledky Slovenskej Časti Prieskumu Spolu s Dotazníkom [Complete Results of the Slovak Part of the Survey with the Questionnaire]'. https://www.transparency.sk/wp-content/uploads/2010/12/GCB_vysledky.pdf.
- Transparency International Slovakia. 2010b. 'Barometer Korupcie 2010 - Každá Deviatá Domácnosť Bola Požiadaná o Úplatok [Corruption Barometer 2010 - Every Ninth Household Was Asked for a Bribe]'. *Transparency International Slovakia* (blog). 9 October 2010. <http://transparency.sk/sk/gbk2010/>.
- Transparency International Slovakia. 2013. 'Globálny barometer korupcie 2013. Korupcia na Slovensku: dôsledok kultúry? [Global Corruption Barometer 2013. Corruption in Slovakia: A Result of Culture?]'. Transparency International Slovensko. 2013. https://transparency.sk/sk/projekty/archiv-vsetkych/gbk2013_1/.
- Transparency International Slovakia. 2019. 'Prieskumy: Aktuálne Prieskumy [Surveys: Current Surveys]'. Transparency International Slovensko. 2019. <https://transparency.sk/sk/vystupy/prieskumy/>.
- Trend. 2010. 'Š. Harabin žiada od Trendu 200-tisíc eur [Š. Harabin Requests 200,000 Euro from Trend]'. *Trend*, 24 March 2010. <https://www.etrend.sk/ekonomika/harabin-ziada-od-trendu-200-tisic-eur.html>.
- Vagovič, Marek. 2015. Marek Vagovič: Keby ma zažalovali všetci, dnes som bezdomovec [If Everyone Sued Me, I Would Be Homeless Nowadays]. Interview by Zuzana Petková. Medialne.sk. <https://medialne.etrend.sk/tlac/marek-vagovic-keby-ma-zazalovali-vsetci-dnes-som-bezdomovec.html>.
- van Hoecke, Mark. 2011. 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' In *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?*, edited by Mark van Hoecke. European Academy of Legal Theory Series. Oxford: Hart Publishing.
- Via Iuris. 2015. 'Dôvera voči súdom opäť klesla [Trust in Courts Fell Again]'. *VIA IURIS* (blog). 7 October 2015. <https://viaiuris.sk/aktuality/dovera-voci-sudom-opat-klesla/>.
- Via Iuris. 2016a. 'Novými sudcami sú najčastejšie ženy do 35 rokov [New Judges are Mostly Women under 35]'. *VIA IURIS* (blog). 13 September 2016. <https://viaiuris.sk/aktuality/novymi-sudcami-su-najcastejsie-zeny-do-35-rokov/>.
- Via Iuris. 2016b. 'Dôvera občanov k súdom vzrástla [Citizens' Trust in Courts Increased]'. *VIA IURIS* (blog). 19 October 2016. <https://viaiuris.sk/aktuality/dovera-obcanov-k-sudom-vzrastla/>.
- Vilikovská, Zuzana. 2010a. 'Slovakia's Supreme Court Appellate Panel Demotes Judge Benešová'. *The Slovak Spectator*, 8 June 2010. <https://spectator.sme.sk/c/20036466/slovakias-supreme-court-appellate-panel-demotes-judge-benesova.html>.
- Vilikovská, Zuzana. 2010b. 'Dozens of Slovak Judges Launch Petition against Demotion of Judge Benešová'. *The Slovak Spectator*, 21 June 2010. <https://spectator.sme.sk/c/20036621/dozens-of-slovak-judges-launch-petition-against-demotion-of-judge-benesova.html>.

- Vilikovská, Zuzana. 2011. 'Žitňanská Fires 14 Top Judges'. *The Slovak Spectator*, 11 May 2011. <https://spectator.sme.sk/c/20039801/zitnanska-fires-14-top-judges.html>.
- Vojčík, Peter. 2010. *Občiansky zákonník [Civil Code]*. 3rd ed. Bratislava: Wolters Kluwer.
- Voltmer, Katrin, ed. 2006. *Mass Media and Political Communication in New Democracies*. London; New York: Routledge.
- Voltmer, Katrin. 2008. 'Comparing Media Systems in New Democracies: East Meets South Meets West'. *Central European Journal of Communication* 1 (1): 23–40.
- Voltmer, Katrin. 2012. 'How Far Can Media Systems Travel? Applying Hallin and Mancini's Comparative Framework Outside the Western World'. In *Comparing Media Systems beyond the Western World*, edited by Daniel C. Hallin and Paolo Mancini, 224–45. Cambridge: Cambridge University Press.
- Vondracek, Theodor Jan. 1975. 'Defamation in Czechoslovak Law as a New Legal Concept'. *Review of Socialist Law* 1: 281.
- Vondracek, Theodor Jan. 1988. *Commentary on the Czechoslovak Civil Code*. Law in Eastern Europe. Nijhoff.
- Vozár, Jozef. 2015. 'Sloboda prejavu a vývoj tlačového práva na území SR [Freedom of Expression and the Evolution of Press Law on the Slovak territory]'. In *Sloboda prejavu v rozhodnutiach súdov [Freedom of Expression in Court Decisions]*, edited by Jozef Vozár. Publisher Accepted Manuscript, 10-26. Bratislava.
- Bratislava: Veda.
- Vozár, Jozef, Katarína Ficová, Peter Kerecman, Ivan Humeník, and Ľubomír Zlocha. 2015. *Judikatúra vo veciach nemajetkovej ujmy [Case-law in Matters of Non-Pecuniary Damages]*. Bratislava: Wolters Kluwer.
- Vozár, Jozef, Ernest Valko, and Lukáš Lapšanský. 2009. *Tlačový zákon: Komentár [Press Act: A Commentary]*. Bratislava: C. H. Beck.
- Vozár, Jozef, and Ľubomír Zlocha. 2014. *Judikatúra vo veciach slobody prejavu a ochrany osobnosti [Case-law in Matters of Freedom of Expression and Protection of Personality]*. Bratislava: Wolters Kluwer.
- Wacks, Raymond. 1993. *Privacy*. New York University Press.
- Warren, Samuel D., and Louis D. Brandeis. 1890. 'The Right to Privacy'. *Harvard Law Review* 4 (5): 193–220.
- Weaver, Russell, Andrew Kenyon, David F. Partlett, and Clive P. Walker. 2006. *The Right to Speak Ill: Defamation, Reputation and Free Speech*. Durham, N.C.: Carolina Academic Press.
- Welch, Catherine, Rebecca Marschan-Piekkari, Heli Penttinen, and Marja Tahvanainen. 2002. 'Corporate Elites as Informants in Qualitative International Business Research'. *International Business Review* 11 (5): 611–28.
- Wengraf, Tom. 2001. *Qualitative Research Interviewing*. London: Sage.
- Wilfling, Peter, and Eva Kováčechová. 2011. *Sloboda prejavu a žaloby na ochranu dobrej povesti. Porovnanie prístupu súdov na Slovensku, v USA a Erópskeho súdu pre*

ľudské práva k žalobám verejných činiteľov [Freedom of Expression and Personality Protection Lawsuits: A Comparison of the Approaches of Court in Slovakia, USA and of the European Court of Human Rights]. Pezinok: Via juris.

Yates, Jeff, and Andrew Whitford. 1998. 'Presidential Power and the United States Supreme Court'. *Political Research Quarterly* 51 (2): 539–50.

Yin, Robert K. 1994. *Case Study Research: Design and Methods*. 2nd ed. London: Sage Publications.

Youm, Kyu Ho. 2007. 'The Rights of Reply and Freedom of the Press: An International and Comparative Perspective'. *George Washington Law Review* 76: 1017.

Zakaria, Fareed. 1997. 'The Rise of Illiberal Democracy'. *Foreign Affairs* 76 (6): 22–43.

Žemlová, Monika. 2002a. 'Súdili disidentov, sú na Najvyššom súde [They Tried Dissidents, They're at Supreme Court Now]'. *SME*, 12 August 2002.
<https://www.sme.sk/c/627670/sudili-disidentov-su-na-najvyssom-sude.html>.

Žemlová, Monika. 2002b. 'Sudcovia: Naša minulosť je vecou svedomia [Judges: Our Past is a Matter of Conscience]'. *SME*, 13 August 2002.
<https://www.sme.sk/c/628840/sudcovia-nasa-minulost-je-vecou-svedomia.html>.

Zielonka, Jan, ed. 2015. *Media and Politics in New Democracies: Europe in a Comparative Perspective*. Oxford: Oxford University Press.

Cited European Court of Human Rights Judgments

Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece, No. 72562/10, 22 February 2018.

Bergens Tidende and Others v. Norway, No. 26132/95, ECHR 2000-IV.

Bladet Tromsø and Stensaas v. Norway [GC], No. 21980/93, ECHR 1999-III.

Brambilla and Others v. Italy, No. 22567/09, 23 June 2016.

Cumpănă and Mazăre v. Romania [GC], No. 33348/96, ECHR 2004-XI.

Independent News and Media and Independent Newspapers Ireland Limited v. Ireland, No. 55120/00, ECHR 2005-V (extracts).

Jerusalem v. Austria, No. 26958/95, ECHR 2001-II.

Kasabova v. Bulgaria, No. 22385/03, 19 April 2011.

Lindon, Otchakovsky-Laurens and July v. France [GC], Nos. 21279/02 and 36448/02, ECHR 2007IV.

Lingens v. Austria, 8 July 1986, Series A No. 103.

McVicar v. the United Kingdom, No. 46311/99, ECHR 2002-III.

Observer and Guardian v. the United Kingdom, 26 November 1991, Series A No. 216.

Öztürk v. Turkey [GC], No. 22479/93, ECHR 1999-VI.

Riolo v. Italy, No. 42211/07, 17 July 2008.

Scharsach and News Verlagsgesellschaft mbH v. Austria, No. 39394/98, ECHR 2003-XI.

Steel and Morris v. the United Kingdom, No. 68416/01, ECHR 2005-II.

Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995, Series A No. 316-B.

Vajnai v. Hungary, No. 33629/06, ECHR 2008.

Cited Judgments of Slovak Courts in High-profile Plaintiffs' Disputes

Fico v. Spoločnosť 7 Plus No. 1, Bratislava V District Court Decision No. 39C/234/2005 of 31 January 2007, involving Plus 7 dní article "Who Stole from Ficová?" (linked to IV. ÚS 492/2012).

Fico v. Spoločnosť 7 Plus No. 2, Bratislava V District Court Decision No. 11C/293/2005 of 19 February 2007, involving Plus 7 dní article "Is he Going to be Good Now?"

Fico v. Spoločnosť 7 Plus No. 3, Bratislava V District Court Decision No. 11C/366/2006 of 12 April 2010, involving Plus 1 deň article "Doing Business with Fico Pays off."

Fico v. Petit Press No. 1, Bratislava IV District Court Decision No. 16C/155/2007 of 22 April 2008, involving SME article "Fico again Commented on Journalists".

Fico v. Petit Press No. 2, Bratislava IV District Court Decision No. 16C/250/2009 of 13 July 2010, involving SME caricature depicting Fico's x-ray picture without a backbone.

Fico v. Spoločnosť 7 Plus No. 4, Bratislava V District Court Decision No. 39C/106/2007 of 25 March 2009, involving Plus 7 dní article "At Imperialists' Throats?".

Petition to commence proceedings in *Fico v. Trend Holding* of 22 October 2007, involving Trend articles "Clients will Definitely Loose" and "Thief of Future Pensions".

Harabin v. Petit Press, Bratislava I District Court Decision No. 19C/139/2005 of 18 June 2007, involving SME article "Judges who Tried for Faith Manifestation Haven't Apologised".

Harabin v. Spoločnosť 7 Plus No. 1, Bratislava V District Court Decision No. 7 C 239/2007 of 6 December 2007, involving Plus 1 deň article "Harabin Protects Murderers" (linked to II. ÚS 340/2009).

Slota v. Petit Press, Žilina District Court Decision No. 4C/124/2008 of 31 March 2010, involving SME article "Slota Stole on the Run".

Slota v. Spoločnosť 7 Plus No. 1, Bratislava V District Court Decision No. 39C 269/2005, of 31 January 2007, involving Plus 7 dní article "A Primitive?".

Slota v. Spoločnosť 7 Plus No. 2, Bratislava V District Court Decision No. 8C/89/2007 of 5 January 2011, involving Plus 1 deň article "Slota Hands out Property to his People".

Slota v. Spoločnosť 7 Plus No. 3, Žilina District Court Decision No. 27C/134/2008 of 20 March 2013, involving *Plus 1 deň* article “Although he Stole, he Avoided Punishment”.

Slota v. Ringier No. 1, Žilina District Court Decision No. 12C 844/99 of 11 August 2000 involving *Nový Čas* article “Slota ‘Presented’ himself on Monday”.

Slota v. Ringier No. 2, Žilina District Court Decision No. 14C/112/2008 of 11 June 2009, involving *Nový Čas* article “He became a boss of car thieves” (Linked to IV. ÚS 448/2012).

Stiffel v. Petit Press, Bratislava V District Court Decision No. 46 Coch 2/2003 of 14 April 2004, involving a series of SME articles, including “They Tried Dissidents, They're at Supreme Court Now”, “They Used to Send Dissidents to Jail and Try Till Today”, “Judges: Our Past is a Matter of Conscience”, “Lipšic: Judge Can Take Lexa into Custody”.