

**Statement on the Action for
Protection of the Reputation of
a Legal Entity**

I.

We have been given a notice of a lawsuit on November 29, 2018 where the Complainant seeks protection against the unwarranted invasion in the good reputation and compensation for court costs together with the appeal of the District Court Bratislava II for the statement. In this matter, we issue the following statement within the court deadline:

II.

The issue of fact

We do not detect the facts as stated by the Complainant. It is true that the article: "Slovak TV advertisers were deceived", (hereinafter referred to as „*Article*“) was published on February 4, 2017 on Defendant's blog on the website (www.macinga.com/blog <https://macinga.com/2017/02/04slovenski-tv-zadavatelja-boli-podvedeni?lang=sk>) and on the social network www.linkedin.com under the profile of the Defendant (<https://linkedin.com/pulse/slovak-tv-advertisers-were-deceived-pavol-macinga>)

III.

Lack of active legal standing of the complainant

We insist that the Defendant did not refer specifically to the Complainant's actions in his Article, statements of the Defendant contained in the disputed Article were not directed against the company AMA as such, the Defendant assesses the moral conduct and the course of action of the limited liability company PMT, so it is not clear to us by virtue of what title the Complainant claims compensations for the alleged reputation damage. The Complainant thus objects to facts which do not objectively arise from the article, based on his own interpretation of the facts and their assessment and not on the objective view of the public.

The Complainant is mentioned by name in the paragraph 1 in the last but one sentence of the Article:.....“It (PMT) is owned by *TV Markiza, TV JOJ, RTVS, TA3 and the Association of Media Agencies (AMA)*. So the change was agreed upon by media agencies and TV stations.

We do not see any reference in the mentioned statement or further in the Article to 1/ the Defendant having pointed out to the fact how the Complainant voted as he alleges in his Action. As the Complainant states and as it is apparent from extract from the Business Register of the Slovak Republic, the limited liability company PMT is, put simply, formed by televisions and the company covering media agencies. **In this respect, laicly perceived, it is clear that the change to the methodology is a result of PMT's decision as an agreement of TV stations and media agencies.** The term “agreed“ used by the Defendant cannot be perceived strictly or in legal terms where the agreement requires consent of all participants and where it would imply the statement on how the Complainant voted. **Anyhow, a private blog cannot be expected to provide the accuracy of a legal magazine and so the term “agreed” cannot be perceived in this given context defamatory.**

So we presume that the Article did not refer specifically to the Complainant and therefore could not damage his rights and good reputation. In this context, the **Complainant does not have an active legal standing for submission of such complaint.**

IV.

Law and order

Even provided that the court assessed that the Complainant has the active legal standing, we believe that Defendant's 1./ conduct did not damage or threaten the reputation of the legal entity. We justify this statement as follows:

1. The Defendant 1./ published the Article on a private blog and the social network under his profile. „Blog“, in accordance with the consistent case law, can be considered exclusively the representation of one or several people who create them. From the character of blogs as self-representation, a conclusion can be drawn that opinions and criticism presented in them are assessing opinions (criticism, opinions) and so they cannot be untrue (e.g. the Verdict of the National Council of the Slovak Republic from February 25, 2009, case number 5, Cdo, 55/2008). In this context, it is necessary to also state that the Article in question and opinions it contained did not leave the line of generally recognized principles of morality in the democratic society and therefore did not lose the character of correct assessment (report, commentary, reflection) and did not fall outside the legal protection. We believe that the highlighted information has the character of assessment of relevant facts and is the appropriate assessment of the situation that has sufficient basis in fact. We also believe that the Article contains enough information for everyone to maintain their own opinion.
2. Freedom of expression does not apply only to information or opinions well received or considered harmless or insignificant but also to information and opinions that hurt, shock or raise concern as well as those that exaggerate opinions and that natural persons and legal entities are entitled to publicly express their opinions in the framework of freedom of expression (i.e. also by publishing on the website) (The Order of the Supreme Court of the Slovak Republic from September 23, 2009, case number 4 Cdo 212/2007). In this context, we also refer to rulings of the European Court of Human Rights Handyside v. UK, von Hannover v. Germany or Hrico v. Slovakia; rulings of Germany's Federal Constitutional Luth (7 Bverf GE 198) or Lebach (35 Bverf GE 202) of the finding of the Constitutional Court of the Czech Republic Rejzek v. Vondrackoav (I. Constitutional Court 367/03)
3. Under Article 26, Section 2 of the Constitution, everyone is entitled to express his/her opinion verbally, in writing, in press, in pictures or by other means as well as freely seek, accept and disseminate ideas and information regardless state borders. Under Article 26, Section 4 of the Constitution, the law may limit freedom of expression and the right to seek and disseminate information if it concerns measures in the democratic society inevitable for protection of rights and freedoms of others, security of the state, public order, protection of public health and morality.
4. As the Supreme Court of the Slovak Republic concluded in its ruling 5Cdo 55/2008: *“...in some cases the freedom of expression needs to be given preference although the expression in question can have some deficiencies in terms of standard statutory protection of personality.”*
5. In legal opinions of the Constitutional Court expressed for example in rulings filed under the case number II of the Constitutional Court 28/96 and case number II of the Constitutional Court 7/00, the Constitution does not guarantee pursuant to Article 26, Section 2 only the freedom of press or mass media. The freedom of expression and the right to accept, seek and disseminate ideas and information is guaranteed for every individual as his/her fundamental right. Freedom of expression allows everyone to express or withhold their feelings, ideas and opinions.
6. Legal precondition of provision of protection to the legal entity against unwarranted invasion is that unwarranted invasion in the good reputation can objectively cause the harm to the good reputation (The Ruling of the Supreme Court of the Slovak Republic 4Cdo 212/2017). Considering the fact that allegations of the Defendant 1./ are presented in the Article from February 2017, they are based on actions of the Complainant from 2016, when contracts of clients (advertisers) were negotiated for 2017, at the time of this statement, i.e. almost two years after the Article was published and at the time when contracts of clients for 2019 were agreed on and it is not justified to assume that the Article has or could have impact on the good reputation of the Complainant and can cause him any harm.

7. The Complainant did not deal in the text with the fact that **allegations of the Defendant 1./ were ultimately true. It is true and the Complainant does not dispute that in any way that the audience measurement underwent a methodological change.** He also did not prove in any way that PMT (since we still believe that the Article is about PMT's action, not about the action of the Complainant) properly and timely notified its clients about this methodological change. Although the Complainant claims that at the time of concluding contracts with clients (before the end of 2016), this change was now known since it was approved at the beginning of 2017, the truth is that the operation and effectiveness of all concluded contracts with clients for 2017 was postponed until 03/2017.
8. The term "deceive", "deceived", that the Complainant refers to, is only used in connection with the critical reflection of the Defendant 1./ of the situation when the decision was made at PMT that resulted in increase in the GRP (Gross Rating Point) by about 4%. As the author - Defendant states, he does not perceive this fact so negatively, content of the Article indicates that the fact of the timing of this change (decisions) of PMT is perceived and assessed very negatively. However, it is apparent that this term is used as common means of expression (also in media) to express dissatisfaction of clients in case of occurrence of unexpected problems (e.g. clients of travel agencies, insurance companies, consumers claiming performance of the contract and so on). As for the term "they have agreed", this terms cannot be interpreted strictly and in legal terminology. It is clear to all of us that **the Defendant 1./ did not refer to the fact that the subject matter of the crime of fraud was fulfilled so he did not make any defamatory statement, let alone directed these statements specifically at the Complainant.**
9. According to the consistent case law, not every publishing of the untrue (or more or less inaccurate) data, particularly in the view of inaccuracy of used means of expressions, has to automatically mean the unwarranted invasion in the credit, dignity or good reputation of a specific person. We are convinced that the information contained in the Article of the Defendant is true, it can be admitted that it is presented with a certain dose of overstatement, but in any case, it cannot be claimed that these statements are inappropriately critical. These statements need to be respected mainly with regard to the fact that the basic information that the Defendant disseminates through the Article is the fact that the audience measurement underwent a methodological change, this change caused for the client (advertiser) increased costs, while this change was not properly communicated.
10. We do not comment on allegations of the Complainant regarding the Defendant 2./, since the Defendant did not receive the complaint or the court's appeal for statement.

IV.

With regard to the presented facts, we call on the court to issue the following verdict:

The court has turned down the Action. The Complainant is obliged to refund the full amount of court costs to the Defendant..