



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

FOURTH SECTION

CASE OF KANIA AND KITTEL v. POLAND

(Application no. 35105/04)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kania and Kittel v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 35105/04) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Polish nationals, Ms Dorota Kania and Mr Bertold Knittel (“the applicants”), on 20 August 2004

2. The applicants were represented by Mr G. Rybicki, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicants alleged that the proceedings brought against them under the relevant provisions of the Civil Code had infringed their right to freedom of expression under Article 10 of the Convention.

4. On 7 June 2010 the President of the Fourth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 23 August 1997 the daily newspaper *Super Express* published a number of articles written by the applicants.

On the cover page the newspaper published a title, covering nearly half of the page. It read “The Warsaw prosecuting authorities confirm: the Minister took” (*Warszawska prokuratura ustaliła: Minister wziął*), and

underneath there was a photograph of a Mitsubishi Pajero with information that the price of the most expensive version was over 100,000 United States dollars (USD) and then a paragraph stating that Minister M.S., who was at that time the head of the National Security Office, had accepted such a car as a gift from the businessman W.W.

The paragraph read:

Minister M.S., the Head of the National Security Office, received from businessman W.W. a luxury car. The case came to light because the Mitsubishi Pajero, worth over 100,000 USD, was [subsequently] stolen. The head of the Mokotów prosecutor's office, Z. Ż., has confirmed that M.S. had been "using" that car. Minister [M.]S. did not want to talk to us about the car from the businessman."

On the same front page the editor published a note, accompanied by a photograph of M.S.:

"Sir, as you have refused to give us an interview about the car which you received from W.W., you are requested, in accordance with the Press Act, to answer the following questions: 1. Why did you accept a gift from W.W. in the form of a luxury car? 2. For how long did you use it? 3. Do you think it is correct for a State agent to accept for use a car owned by a businessman? 4. Were you not afraid that accepting that gift amounted to contracting a debt towards him which you would be obliged to pay back in the future?"

On the third page an article signed by both applicants was published, entitled "S. used" ("*S. używał*"). Its leading paragraph read:

"The presidential minister and Head of the National Security Office does not want, at least for the time being, to explain why he has accepted an expensive car from a Polish businessman with a Swedish passport.

The article went on:

"W.W., a well-to-do businessman with a Swedish passport, is the official owner of a car which was stolen from S. ... He has extensive contacts with politicians. He emphasises his close relationship with the President, Aleksander Kwaśniewski. ...

On 4 February the Minister's driver was driving the car to have it washed. When he stopped at traffic lights at Ursynowska Street in Warsaw, the car door was opened by a masked man who hit the driver in the face with a pistol he was holding and threw him out of the car onto the tarmac. Then he drove away, the tyres screeching.

The Warsaw prosecuting office started an investigation.

Witnesses have stated that M.S. had used the Mitsubishi – prosecutor Z. Ż. has told us: 'We discontinued the investigation in April as we could not identify the perpetrator.'

When *Super Express* spoke with him, W.W. lied. He tried to explain that he could not remember events which had taken place several months ago and told us that M. S. had never so much as sat in that car.

‘It was the driver who was my friend. And I did not know that he worked as [M.]S.’s driver’, he said. ‘[M.]S. himself never set foot in that car. ... ‘I don’t remember what the car’s documents stated’, he added, ‘I have no more time to talk’.

M.S. told us, via his secretary, that he did not have anything to say about the Mitsubishi.”

6. On 29 September 1997 M.S. brought a civil action in the Warsaw Regional Court requesting legal protection of his personal rights. He requested that the defendants be ordered to cease publishing allegations that the plaintiff had accepted an expensive car as a gift, that the newspaper publish an apology, and that damages of PLN 300.000 be awarded to him, which he undertook to pay to a charity.

7. On 23 February 2001 the Warsaw Regional Court partly allowed the plaintiff’s claim. It ordered the applicants and the editor-in-chief to publish an apology on the cover page of their newspaper for having published the untrue information that the plaintiff had accepted an expensive gift, which was to be worded as follows:

“The editors and authors of the articles entitled “[t]he Minister took” and “[M.]S. remains silent” apologise for publishing the untrue information that he had accepted an expensive car as a gift”.

It further determined the exact size of the apology. The court also ordered the applicants to pay, jointly with the newspaper’s publisher and the editor in chief, 10,000 Polish zlotys (PLN) as compensation for the non-pecuniary damage he had suffered. The defendants were also ordered to pay, jointly, PLN 1,600 in court fees.

8. During the proceedings the court questioned the applicants and the plaintiff. The court heard W.W. and D.Z., who had been driving the car on the day of the theft, as witnesses. The court had regard to the case file of the investigation into the theft of the car which had been conducted by the Warsaw-Mokotów District Prosecutor; to an authorisation to use the car from 15 January until 13 March 1997 which W.W. had drawn up for the plaintiff; and to a car insurance policy which he had had taken out in the plaintiff’s name for that period.

9. The court found that W.W. and the plaintiff had planned to go to Austria together for a skiing holiday. As W.W. had had to fly to the US for business purposes shortly before the holiday, it had been agreed that the plaintiff would take his car and drive it to Vienna where they would meet. W.W. had arranged for insurance for the plaintiff and prepared a document to the effect that he was authorised to use the car from 15 January to 15 March 1997. The plaintiff had taken the car from W.W. at the beginning of February. Subsequently, on 4 February 1997, when the plaintiff’s driver had been driving the car to have it washed, he had been attacked at traffic lights and the car had been stolen from him. An investigation concerning the theft was subsequently instituted by the District Prosecutor.

10. The court noted the steps which the applicants had taken when gathering the material for the article. The first applicant had become aware of the theft of the car in February 1997. On 6 February 1997 she had published a short article about it. Later on she had contacted the prosecuting authorities requesting information about the progress of the investigation. She had also contacted the President's Chancellery, where the plaintiff was working at that time, and requested to be given an interview concerning the theft. She was informed that the plaintiff would not give an interview on that subject.

In July 1997 the second applicant had started working on the case. He had interviewed W.W. and D.Z. The court noted that W.W. had given very evasive answers to the questions.

11. Nonetheless, the court was of the view that the available evidence indicated that the car had indeed been given to the plaintiff for use for a limited period of time. There was no indication that the car had been accepted as a gift. The relevant evidence given by the plaintiff, W.W. and D.Z. was fully coherent.

12. The court therefore accepted that there was nothing to suggest that the circumstances in which the plaintiff had come into the possession of the car indicated corruption. The court emphasised that he should not have avoided the journalists as it was his responsibility as a public official to ensure that his acts were transparent. It also noted that the newspaper had published the articles only after he had refused to provide information concerning the car.

The court accepted the defendants' assertion that they had been acting in the general interest and had wished to elucidate the circumstances surrounding the use of the car by the plaintiff. However, this motivation did not exempt them from the legal obligation to respect personal rights. They were obliged to act with diligence when gathering and publishing information.

The court accepted that the defendants had complied with this obligation when gathering material and information concerning the use of the car. They had had recourse to all the relevant sources.

13. However, the court could not endorse the defendants' conduct, having regard, firstly, to the titles of the articles. The title on the cover page, taking up almost half of it, insinuated that the plaintiff had taken a bribe and that the Warsaw prosecuting authorities had conducted an investigation in this regard. The suggestion, obvious to any reader, was not borne out by the facts and was not compatible with the information which the newspaper had received from the prosecuting authorities or from any other source. Secondly, the same suggestion was made in the questions published on the first page. Neither the title nor the questions corresponded to the actual content of the article concerning the car published on the third page. This

allegation, which had not been based on any facts, had breached the plaintiff's personal rights.

14. The court further considered that the amount of damages sought by the plaintiff was clearly excessive. However, as his personal rights had been breached, it considered that an amount of PLN 10,000 was appropriate in the circumstances as it was more than merely symbolic.

15. The applicants appealed. They submitted that the court had wrongly found that the contested articles had suggested that M.S. had accepted a bribe and that the prosecuting authorities had conducted an investigation into the matter. They further argued that the first-instance judgment had breached Articles 54 and 61 of the Constitution and Article 10 of the Convention. They averred that the court had failed to take into consideration the standards set in the Court's case-law. They referred to the judgments given in the cases of *Jersild v. Denmark*, 23 September 1994, Series A no. 298, and *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313. As to the scope of the protection afforded to the private lives of politicians, they invoked the Court's judgment in the case of *Lingens v. Austria*, 8 July 1986, Series A no. 103.

They were further of the view that the court had erred in finding that they had failed to act with diligence when formulating the title for the article. It had clearly been formulated in a manner compatible with journalistic freedom.

16. On 13 November 2002 the Warsaw Court of Appeal dismissed the appeal. It agreed with the first-instance court that the text published on the cover page, including its title, had clearly suggested that the plaintiff had been suspected of corruption, that the prosecuting authorities had conducted an investigation concerning charges of corruption, and that the charges had proved well-founded. The court's findings in this respect were correct: this was indeed an impression which any reasonable reader might form, while it was clearly not borne out by the facts as established by the applicants. Likewise, the lower court's conclusion that the text on the third page did not balance the impact of the text on the front page was correct.

17. The appellate court accepted the applicants' argument that they had been motivated by the protection of the general interest and by their obligation to inform the public of issues of such interest. It held that they had exercised their freedom of expression protected by Article 10 of the Convention. Under this provision, politicians had to take into account that the limits of acceptable criticism were wider in respect of their acts. However, this freedom was not unlimited; it went hand-in-hand with certain obligations and restrictions. It was for the purpose of the effective protection of such rights that journalists were obliged to act with particular diligence; journalistic freedom could not be seen as conferring on journalists a right to act recklessly or arbitrarily. They had to check the veracity of the information which they intended to publish.

18. In the present case the information on the front page insinuated not only that the plaintiff had accepted the expensive car as a gift from W.W., but also that the plaintiff had been suspected of taking bribes, and that the prosecuting authorities had conducted an investigation into the matter and found that suspicion well-founded. That was not true. The conclusions of the lower court concerning the possible assessment of the information published on the cover page and the text on the third page by the readers were well-founded and logical and had to be upheld.

19. The applicants appealed, essentially reiterating their arguments and indicating that Article 10 of the Convention and the Court's case-law should be used as the frame of reference for the legal assessment of the case.

20. On 20 February 2004 the Supreme Court dismissed their cassation appeal, essentially sharing the conclusions of the appellate court.

In so far as the applicants complained that the appellate court had failed to address their arguments based on the Court's case-law concerning Article 10 of the Convention, the Supreme Court acknowledged that they were right to emphasise the importance of the right to the freedom of expression in a democratic society as interpreted by the Court. Any restrictions imposed on the exercise of that right had to be closely scrutinised. It referred to the case-law of the Court and reiterated that criticism in respect of politicians and their views and actions was acceptable in the context of a democratic society, even where it took the form of violent attacks, exaggeration or even provocation. However, these principles had always to be applied and fine-tuned in the context of concrete factual circumstances. In the present case, the applicants' interest in the circumstances of the case, given the public character of the plaintiff's function, was fully justified. Their diligence in gathering relevant information was not open to any criticism. It was only at the stage where they wrote and published the articles concerned that they had demonstrated negligence. Nothing in the material which they had gathered justified a conclusion that the plaintiff had received the car as a gift. This insinuation, placed on the first page of the newspaper, had clearly overstepped the limits of acceptable journalistic exaggeration.

21. The Supreme Court further held that the newspaper's editor-in-chief could not be held responsible as at the time when the articles had been published she had not been carrying out this function, and it dismissed the claim in so far as it had been directed against her.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Article 14 of the Constitution, adopted in 1997, provides as follows:

"The Republic of Poland shall ensure freedom of the press and other means of social communication."

23. Article 54 of the Constitution reads:

“1. The freedom to express opinions and to acquire and disseminate information shall be secured to everyone.

2. Preventive censorship of the means of social communication and licensing of the press shall be forbidden. Statutes may require that permits be sought and obtained for the operation of a radio or television station.”

24. Article 61 of the Constitution, in so far as relevant, provides:

“1. Each citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include the obtaining of information on the activities of self-governing economic or professional organs, and other persons or organisational units, relating to the field in which they perform the duties of public authorities and manage municipal assets or property of the State Treasury.

2. The right to obtain information shall encompass the right of access to documents and entry to sittings of collective organs of public authority formed by universal suffrage, with the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paragraphs 1 and 2 above may be imposed by statute solely to protect the freedoms and rights of other persons ... public order, security, or important economic interests of the State.”

25. Article 23 of the Civil Code contains a list of the rights referred to as “personal” (*dobrze osobiste*). It reads:

“The personal rights of an individual, such as, in particular, the rights concerning health, liberty, reputation (*część*), freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements shall be protected by civil law regardless of the protection enshrined in other legal provisions.”

26. Article 24 of the Code provides for ways of redressing infringements of personal rights. A person facing the threat of an infringement may demand that the perpetrator desist from the wrongful activity, unless it is lawful. Where an infringement has taken place the person affected may, *inter alia*, request that the wrongdoer make a relevant statement in an appropriate form, or demand satisfaction from him/her. If the infringement of a personal right causes financial loss, damages may be sought before a civil court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicants complained that the judgments given in the civil case against them had breached their right to freedom of expression guaranteed by Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

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

B. Merits

1. The parties' arguments

29. The applicants submitted that at the relevant time the plaintiff had been a politician, a person holding one of the highest and most responsible positions in politics. It was therefore obvious that it had been both a right and an obligation for the journalists to investigate whether his use of a very expensive car owned by a third party raised a suspicion of corruption. In order to justify their judgments, the Polish courts referred only to part of the impugned press article, namely the titles. As a result, the applicants had been convicted on the basis of incomplete evidence, the courts having failed to take into consideration the text of the article.

30. The applicants further submitted that Article 10 of the Convention protected not only the substance of the ideas and information expressed, but

also the form in which they were conveyed. Journalistic freedom also covered possible recourse to a degree of exaggeration or even provocation. Freedom of expression applied not only to views deemed harmless or neutral, but also those which shocked, disturbed and offended. They referred to the Court's judgment in the case of *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24).

31. In the present case, the decisions of the domestic courts had to be seen as having a chilling effect on the freedom of democratic debate, in the context of which the transparency of politicians' conduct must take precedence over their right to respect for their private lives.

32. The Government acknowledged that the decisions of the domestic courts amounted to an interference with the applicants' right to freedom of expression. They were of the view that that the interference was prescribed by law and pursued a legitimate aim. The assertions made in the article concerned the conduct of a politician. It was accepted in the Court's case-law that the limits of acceptable criticism were wider with regard to a politician than with regard to a private individual. Where, as in the present case, journalists considered that it was their duty to alert public opinion to an important issue in the general interest, namely the alleged acceptance of a bribe, they were under an obligation to provide a sufficient factual basis for their allegations. The domestic courts had accepted, having regard to the fact that the applicants referred in their pleadings to their freedom of expression, that they had been motivated by the protection of the general interest. Moreover, the courts had focused on the essential aspect of the case, namely on the allegations of corruption advanced by the applicants.

33. The Government further argued that the first-instance court had heard evidence from all the persons involved, namely, the applicants themselves, the plaintiff, and witnesses D.Z. and W.W. They had analysed the terms used in the articles concerned and also the case-file of the investigation concerning the theft of the car.

34. The Government concluded that the domestic authorities, when justifying the interference, had relied on grounds which were both relevant and sufficient.

2. The Court's assessment

35. The Court reiterates that freedom 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 (see *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103).

In this context, the safeguards to be afforded to the press are of particular importance (*Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I). Not only does the press have the task of imparting information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" in imparting

information of serious public concern (see, among other authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216, and *Gawęda v. Poland*, no. 26229/95, § 34, ECHR 2002-II). Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart information and ideas on all matters of public interest (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and decisions* 1997-I).

36. Nonetheless, Article 10 of the Convention does not guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of this provision, freedom of expression carries with it “duties and responsibilities” which also apply to the media, even with respect to matters of serious public concern. By reason of these “duties and responsibilities”, 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 (see, for example, *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports* 1996-II.; *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 67, ECHR 2007-...).

37. The Court observes that in the present case it is not in dispute between the parties that the domestic courts’ decisions complained of by the applicants amounted to “interference” with the exercise of their right to freedom of expression.

38. The Court also finds that the interference complained of was prescribed by law, namely Articles 23 and 24 of the Civil Code, and was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely to protect “the reputation or rights of others”.

39. Hence, the only point at issue is whether the interference was “necessary in a democratic society” to achieve that aim.

40. The test of “necessity in a democratic society” requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see, among many other authorities, *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30; and *Skalka v. Poland*, no. 43425/98, § 35, 27 May 2003).

In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of

appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. In sum, the Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire v. France*, cited above, § 45).

41. The Court's task, in exercising its supervisory jurisdiction, is not limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to determine whether the reasons adduced by the national authorities to justify the interference are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see, among many other authorities, *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports* 1998-VI; *Pedersen and Baadsgaard*, cited above, §§ 68-71; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II; and *Mamère v. France*, no. 12697/03, § 19, ECHR 2006-...;). The Court must look at the interference with the applicant's right to freedom of expression in the light of the case as a whole, including the statements concerned and the context in which they were made and also the particular circumstances of those involved (see *Feldek v. Slovakia*, no. 29032/95, § 77, ECHR 2001-VIII).

42. In the instant case the impugned articles and their titles concerned allegations of improper conduct levelled against the plaintiff, a well-known politician who was at the material time Head of the National Security Office.

43. In this connection, the Court reiterates that the limits of acceptable criticism are wider with regard to a politician than with regard to a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by journalists and the public at large. Therefore, such persons must display a greater degree of tolerance (see, for example, *Incal v. Turkey*, 9 June 1998, § 54, *Reports* 1998-IV, and *Dąbrowski v. Poland*, no. 18235/02, § 28, 19 December 2006). Nonetheless, it does not follow from this that politicians should not be given an opportunity to defend themselves when they consider that publications about them are erroneous and capable of misleading public opinion. In the Court's view, in such cases a fair balance between the privileged position of the press in exercising its freedom of

expression, and the politician's right to protect his or her reputation is called for (see *Sanocki v. Poland*, no. 28949/03, §§ 61-62, 17 July 2007).

44. In the present case the allegations made against the plaintiff on the first page of the newspaper were that he had accepted an expensive car as a gift from a businessman. The domestic courts accepted that the facts as they became initially known to the applicants were capable of raising a legitimate concern of possible corruption. Hence, the Court considers that the subject-matter of the articles can be said to concern public-interest issues. The impugned article did not amount to a gratuitous personal attack.

Moreover, the courts found that the applicants, when gathering information for their article, had acted with the requisite diligence and that they had had at their disposal sufficient and reliable information for concluding that the plaintiff had indeed been using a car owned by a third party.

45. However, as regards the reasons cited by the courts to justify the interference with the applicants' right to freedom of expression, the courts were of the view that the title and questions on the first page strongly suggested that the applicants had taken a bribe and that an investigation into the matter had been conducted by the prosecuting authorities. The Court notes that it has not been argued, let alone proved, either in the domestic proceedings or before the Court, that that was indeed the case.

Moreover, the Court notes that when the impugned article was published, the applicants already knew that only an investigation concerning the theft of the car had been conducted as they had previously contacted the prosecuting authorities. Hence, the suggestion that suspicions of corruption on S.'s part were investigated by the prosecution was incorrect and the applicants were aware of it.

46. The first-instance court also criticised the fact that the allegation of corruption made on the cover page had corresponded neither to the actual content of the information on the situation published on the same page nor to the article about the plaintiff using a car published on the third page. The courts had examined the way in which the plaintiff had come into the possession of the car, namely that it had been lent to him for a limited period of time and with the purpose of his taking it to Vienna where he was to meet the owner for a skiing holiday. When doing so, the courts had had regard to the evidence submitted to them during the proceedings, namely the owner's testimony, the insurance which the owner had arranged for the plaintiff and the authorisation for him to use the car from 15 January to 15 March 1997.

The Court notes that the applicants did not submit any evidence, either to the domestic courts or in the proceedings before the Court, capable of showing or even suggesting that the plaintiff had come into the possession of that car in circumstances different than those established by the domestic courts.

47. It is true that, when taking part in a public debate on a matter of general concern – like the applicants in the present case – an individual is allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Mamère*, cited above, § 25). However, the Court considers that there is a difference between acceptable exaggeration or provocation, or somewhat immoderate statements, and the distortion of facts known to the journalists at the time of publication. In the present case, the title and questions criticised by the domestic courts cannot be said to amount to an acceptable journalistic technique consisting of giving a sensationalist title or leading paragraph to a text providing a reader with objective information. Given the discrepancy between the text published on the third page and the impugned title and questions published on the cover page, the Court is of the view that they seriously – and to the plaintiff's detriment – misrepresented the reality as established by the applicants.

48. In the light of the above, the Court accepts the conclusion of the domestic courts that the applicants, by publishing a title and information implying corruption on the plaintiff's part without having shown that there was a solid factual basis for such a serious allegation had distorted the facts known to them.

49. The Court further notes that in its judgment the appellate court examined the applicants' arguments in which they had relied on Article 10 of the Convention. It observed that they had indeed exercised their freedom of expression protected by that provision, but noted that this freedom was not unlimited; the appellate court observed that it went hand-in-hand with certain obligations and restrictions, in particular with regard to the protection of the rights of third parties. It was for the purpose of the effective protection of such rights that journalists were obliged to act with particular diligence; journalistic freedom could not be seen as conferring on journalists a right to act arbitrarily. It also reiterated that the plaintiff had erred in that he had chosen not to give, early on, exhaustive information on the circumstances surrounding the use of the car.

The Court further notes that the Supreme Court emphasised the importance of the Court's case-law in the context of the right to freedom of expression and reiterated that criticism in respect of politicians and their views was acceptable in the context of a democratic society,

The Court is therefore satisfied that the domestic authorities examined the applicants' case also from the standpoint of Article 10 of the Convention.

50. The Court concludes that the domestic authorities, when justifying the interference at issue in the present case, relied on grounds which were both relevant and sufficient.

51. The Court further observes that the applicants were found only to be civilly liable: no criminal proceedings for a public indictment were

instituted or even envisaged against them (compare and contrast *Kurlowicz v. Poland*, no. 41029/06, § 54, 22 June 2010, and *Długolecki v. Poland*, no. 23806/03, § 47, 24 February 2009).

52. The Court further notes that the applicants were ordered to arrange for the publication of an apology in the press for having published inaccurate information of a defamatory character. The correction ordered was neutrally worded, no bad faith or lack of diligence on the applicants' part being implied.

53. The Court observes that the courts awarded damages to the plaintiff in the amount of PLN 10,000, having noted that the damages of PLN 330,000 sought would have been manifestly excessive. It notes that this amount is equivalent to approximately 3% of the amount which the applicant claimed and that it was not argued, let alone shown, that an award of that amount would have had any serious impact on the financial standing of the newspaper concerned. It therefore considers that the requirement of proportionality between damages for defamation and the injury suffered which was set out in *Tolstoy Miloslavsky v. the United Kingdom* (13 July 1995, Series A no. 316-B, § 49) has been respected.

54. The Court is therefore satisfied that the authorities struck a fair balance between the interests of, on the one hand, the protection of the plaintiff's reputation and, on the other, the applicants' right to exercise their freedom of expression where issues of public interest are concerned.

55. Having regard to the circumstances of the case seen as a whole, the Court is of the view that the interference complained of may be regarded as "necessary in democratic society" within the meaning of paragraph 2 of Article 10 of the Convention.

56. There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President