



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

FOURTH SECTION

CASE OF SEMIK-ORZECH v. POLAND

(Application no. 39900/06)

JUDGMENT

STRASBOURG

15 November 2011

FINAL

15/02/2012

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

In the case of Semik-Orzech v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 39900/06) 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 a Polish national, Ms Teresa Semik-Orzech (“the applicant”), on 6 September 2006.

2. The applicant was represented by Mr Ł. Korga, a lawyer practising in Katowice. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that the civil judgments given in her case had breached her right to freedom of expression.

4. On 7 July 2010 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Katowice.

6. On 9 December 2002 a hearing in a criminal case concerning a large-scale fraud and generating considerable media interest was held before the Kraków Śródmieście District Court. Advocate J.Z., representing three accused (K.W., A.D. and A.M.D.) submitted to the court a power of

attorney authorising another advocate, Ms D.K. who also represented A.M.D., to replace him for the purposes of representing his other two clients. The court accepted that document without any comment.

7. During the same hearing a heated exchange broke out between lawyers representing various defendants as to the possibility of a conflict of interest between various clients of lawyers involved in the case, including between J.Z.'s two clients K.W. and A.D. on the one hand and A.M.D., represented by advocate D.K., on the other. During that exchange advocate J.Z. declared that he would not represent A.M.D. any longer.

The court expressed the view that it was too early at that stage of the proceedings to determine whether there was any conflict of interest between the accused which would have prevented the same lawyers from representing them. The courts admonished the lawyers several times for allowing the debate to get out of hand and for their inappropriate conduct in the courtroom.

8. On 15 December J.Z. informed his clients K.W. and A.D. on the phone that he would not be able to attend the hearing scheduled for 16 December 2002. He referred to the authorisation he had given to Ms D.K. on 9 December 2002 to replace him for the purposes of that hearing. He also informed Ms D.K. accordingly.

9. On 16 December 2002 the court held the hearing. Advocate J.Z. was absent. Advocate D.K. informed the court that he had informed her that he had authorised her to replace him for the purposes of that hearing and referred to the authorisation submitted to the case file at the hearing of 9 December 2002.

Subsequently, the court declared, having regard to the testimony given by A.M.D. at the previous hearing, that there was a conflict of interest between K.W. and A.M.D. and that, accordingly, they could not be represented by the same lawyer.

The court adjourned the hearing having regard to the fact that advocate D.K. was to represent both her client A.M.D. and K.W. on the basis of the authorisation given to her by advocate J.Z. on 9 December 2002 (see paragraph 6 above).

10. On 17 December 2002 *Dziennik Zachodni*, a newspaper published in Katowice, published an article written by the applicant and entitled "A Lawyer's Nonchalance?"

The applicant alleged that J.Z., the advocate representing the accused in a major criminal case pending before the Kraków Śródmieście District Court, had failed to meet his professional obligations and act diligently by failing to attend the hearing held on 16 December 2002.

The relevant part of the text read:

“(…) ‘it is the absence of the defence lawyer which is a problem’ explained the presiding judge, E.S.

Advocate J.Z. failed to attend the hearing and did not justify his absence. He only asked another advocate to tell the court that he could not attend the hearing and requested that advocate (one day before the hearing) to replace him. The court could not accept that replacement, because the interests of the defendants represented by J.Z. and by that advocate were in conflict. The court could not but adjourn the hearing.

Advocate Z. was well aware of that conflict. Other defence lawyers in that case had drawn his attention to it. It is difficult not to see his absence as disrespect towards the court, the prosecutor (...), the parties who reside in Silesia. He is, after all, supposed to know how to justify an absence before a court.

‘I am baffled by the attitude of the defence lawyer’ said judge E.S.

The court informed the local Bar Council about the lawyer’s conduct.”

11. After the hearing, advocate J.Z. first requested the newspaper to publish a rectification, within the meaning of Article 31 of the 1984 Press Act, arguing that the conflict of interest between his clients and the client of Ms D.K. had been officially acknowledged only on 16 December 2002. Hence, he could not reasonably have been expected to know that his absence on that date would entail the adjournment of the proceedings. He argued that at the hearing held on 9 December 2002 there had been an exchange between the lawyers involved in the case as to the possibility of a conflict arising between the various defendants, including between his two clients and Ms A.M.D., represented by Ms D.K. However, on that date the court had only expressed the view that it was inappropriate to have that argument in the courtroom. No finding in respect of the conflict of interest had been made on that date. In any event, he had stepped down as A.M.D.’s defence lawyer.

12. The newspaper refused to publish a rectification within the meaning of the 1984 Press Act. On 21 December 2002 it merely published the advocate’s letter under the heading “Letters”, accompanied by the applicant’s unfavourable comment, essentially reiterating the allegation of negligence on his part. The applicant wrote that J.Z. had informed his clients by phone on 15 December 2002 that he had given Ms D.K. his authorisation to act on his behalf in their defence. It was further stated that his clients had been unaware that he would be absent on 16 December 2002. “[t]his is what they told me” – the applicant concluded.

13. Subsequently, the advocate sued the newspaper, the applicant and the editor-in-chief of *Dziennik Zachodni* for breach of his personal rights within the meaning of Articles 24 and 25 of the Civil Code (see paragraph 30 below).

14. At a hearing in that case held on 26 June 2003 the Katowice Regional Court heard as witnesses K.W. and A.D., the claimant's clients and defendants in the criminal case. K.W. stated that the claimant had known as early as 9 December 2002 that he would not be able to attend the hearing scheduled for 16 December 2002 and that he had therefore authorised Ms D.K. to replace him. The criminal judge had accepted that authorisation without objections. A.D. made a similar statement. He added that after the hearing of 16 December 2002 he had briefly talked with a journalist in the court's corridor and that he had not told her that he had not been informed about the advocate's absence prior to that hearing.

15. The court had regard to the article published by the applicant on 17 December 2002 and to her comments on the claimant's letter published on 21 December 2002 (see paragraphs 10 and 12 above), to the correspondence between the claimant and the defendant editor-in-chief, to the minutes of the hearings held on 9 and 16 December 2002 and to the parties' statements.

16. The first-instance judgment was given on 18 September 2003. The Katowice Regional Court first recounted the exchange of views between the lawyers during the hearing held in the criminal case on 9 December 2002 as to the possible conflict of interest between their clients. It noted the criminal court's statement, recorded in the minutes of that hearing, that there had been no basis at that time to find that a conflict of interest had indeed existed. It further found that on 15 December 2002 the lawyer had informed his clients and Ms D.K. on the phone that he would not be able to attend the hearing scheduled for the next day. On 16 December 2002 the criminal court had made an official declaration, again recorded in the minutes, that a conflict existed between the interests of A.M.D. and K.W. and that they could therefore not be represented by the same lawyer, and adjourned the hearing until 6 January 2003.

The civil court noted that in her two articles the applicant had accused the claimant of unprofessional conduct. She had made an untrue statement to the effect that the claimant's clients had not known before the hearing of 16 December 2002 that the claimant would not attend it. The articles had been widely discussed in local legal circles and had had a negative impact on the claimant's situation. Some of his clients had lost their trust in him.

17. The court noted that the evidence before it had demonstrated that the applicant's allegation that K.W. and A.D. had been informed of the claimant's absence only at the hearing of 16 December 2002 was untrue. The claimant had already known about his absence on 9 December 2002. It was shown by the fact that on that date he had authorised another lawyer to act on his behalf in the defence of his clients. They had already been aware of it on that date. The criminal court had accepted this authorisation for Ms D.K. to act without comments or objections. On that date no finding had been made by that court that there had been a conflict of interest between

the clients represented by the claimant and those represented by Ms D.K. In these circumstances, the claimant had had no reason to expect that his absence on 16 December 2002 would disturb the conduct of the proceedings. Consequently, his non-attendance on 16 December 2002 could not be seen as unjustified or his conduct regarded as nonchalant or disrespectful.

18. The court was of the view that the articles concerned had breached the claimant's personal rights. The applicant had alleged that he had failed to attend the hearing and to justify his absence and that the hearing on 16 December 2002 had had to be adjourned because of his conduct.

The court noted that under the Press Act the press enjoyed freedom of expression. That freedom was not absolute; it could be restricted in certain circumstances. In particular, the press was obliged to respect the rights of other persons. The Press Act obliged journalists to show diligence and integrity in gathering materials and publishing articles, because press publications could potentially harm individuals in a manner much more powerful than any other means of defamation.

19. The court was of the view that the applicant should have contacted the claimant before the publication of the article on 17 December 2002 and ask for his comments. She had failed to do so.

20. The article published by the applicant had lacked objectivity, contained undeserved criticism of the claimant and had been sensationalist rather than aimed at informing readers about the criminal case in a balanced manner. In particular, its title was particularly sensationalist. The newspaper had a wide readership in the region and therefore the impact of the article on public opinion was likely to have been significant and seriously detrimental to the claimant's interests. Hence it was necessary to impose on the defendants an obligation to publish an apology and a rectification.

21. The court further imposed on the defendants an obligation to pay, jointly, 30,000 Polish zlotys (PLN) to a charity. It observed that that amount was significant enough to have an impact on the publisher, but not high enough to be seen as seriously detrimental to his financial position.

22. The applicant appealed, submitting that she had fulfilled her journalistic duties in reporting the case. Her view that the advocate had failed to act diligently in the representation of his clients had been well-founded and the first-instance court had wrongly established the facts of the case.

23. On 7 October 2003 the Katowice Court of Appeal upheld the contested judgment, essentially sharing the conclusions of the lower court.

24. It observed that the right to freedom of expression guaranteed both by the Constitution and the Convention could be restricted in a democratic society for the purposes of the protection of individual rights such as dignity or personal rights within the meaning of the Civil Code and in compliance with the principle of proportionality enshrined in the Constitution. Where

the exercise of the freedom of expression collided with the protection of the reputations of individuals, such a conflict had to be resolved with due regard being had to the case-law of the European Court of Human Rights.

25. The court noted that the applicant's article published on 17 December 2002 concerned the conduct of a criminal case generating considerable interest among the general public. However, that did not imply that an interference with the claimant's personal rights had been necessary. Judicial reporting had to be objective and strict priority had to be given to information, with due regard to the facts recorded by way of court records, which could be considered reliable; not to the reporter's opinions and views. In the light of this principle, nothing justified the title "A Lawyer's Nonchalance?", referring to the lawyer who had been named in the article. Moreover, the text had contained untrue information to the effect that the court had made clear its intention to complain about the lawyer's conduct to the local Bar Association. It had not been shown that the court had indeed made such a declaration or even suggested that it intended to do so. The applicant's intention to annoy the claimant and to undermine his professional reputation and integrity for the purposes of making the text more attractive or sensational could not be open to any doubt.

26. On 25 January 2006 the Supreme Court refused to entertain the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW

27. Article 54 of the Constitution provides:

"1. Freedom to express opinions, and to acquire and disseminate information shall be ensured to everyone.

2. Preventive censorship of means of social communication and licensing of the press shall be prohibited."

28. The relevant provisions concerning the correction of information in the press and other media are contained in the Press Act (*Prawo prasowe*) of 26 January 1984.

Section 31 provides, in so far as relevant, as follows:

"At the request of a natural or legal person or other organisational entity, the editor-in-chief of the relevant daily or magazine is under an obligation to publish, free of charge:

1. a factually based (*rzeczowe i odnoszące się do faktów*) rectification of untrue or inaccurate statements,

2. a factually based (*rzeczową*) reply to any statement which might infringe an individual's personal rights"

29. Article 23 of the Civil Code contains a non-exhaustive list of the rights known as “personal rights” (*dobra osobiste*). This provision states:

“The personal rights of an individual, such as, in particular, health, liberty, reputation (*cześć*), 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 the civil law regardless of the protection laid down in other legal provisions.”

30. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. Under that provision, a person facing a risk of an infringement of his or her rights may demand that the prospective perpetrator refrain from the wrongful activity, unless it is not unlawful. 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 claim just satisfaction from him/her. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

31. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

“The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) caused to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ...”

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant alleged that the civil judgments given in her case had breached her 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

33. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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' submissions

34. The applicant submitted that the civil judgments given in the case against her had been in breach of her right to freedom of expression and that the interference with that freedom had been unjustified and disproportionate.

35. The Government argued that the freedom of expression enshrined in Article 10 of the Convention was not absolute. Paragraph 2 of Article 10 formulated certain conditions and restrictions concerning its exercise. Journalists, in order to comply with the duties and responsibilities referred to in that provision, were obliged to act in good faith and to provide accurate and reliable information to the public.

36. The Government averred that the applicant had failed to respect those obligations. They drew the Court's attention to discrepancies between the facts as established by the courts having examined the applicant's case and the statements contained in the applicant's articles. The applicant had failed to get in touch with the advocate concerned, J.Z., in order to establish the relevant facts. Furthermore, in her comment to the advocate's letter to the editor-in-chief, published on 21 December 2002, she had stated that his clients had been unaware that he would not attend the hearing scheduled for 16 December 2002. However, they had confirmed before the civil court that they had been informed thereof prior to that hearing.

37. The Government stressed that the domestic courts had correctly considered that the statements the applicant made in her articles were presented as statements of fact. On the basis of witness testimonies, the courts had found that the statements lacked a sufficient basis.

38. The Government submitted that the interference complained of by the applicant had been prescribed by law, pursued a legitimate aim and had been necessary in a democratic society to achieve that aim. The restrictions imposed on the applicant had been necessary as they had met a pressing social need, namely the protection of the legal profession. This profession

played a special role in the system of administration of justice. The decisions of the domestic courts constituted an appropriate reaction to defamatory accusations made by the applicant against advocate J.Z., accusations which had been devoid of any factual foundation and had been made in bad faith.

39. The Government further argued that the domestic courts had given relevant and sufficient reasons for their decisions. In particular, the courts had justified in detail, with reference to the evidence before them, the reasons why they had considered that the applicant's statements amounted to an infringement of the advocate's personal rights.

40. The Government concluded that the interference with the applicant's right to freedom of expression had been necessary in a democratic society.

2. The Court's assessment

41. 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, p. 26).

42. 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 1997-I).

43. This duty extends to reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas: the public has a right to receive them (see *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, §§ 55-56, ECHR 2000-I; *Worm v. Austria*, 29 August 1997, § 50, Reports 1997-V; and *Egeland and Hanseid v. Norway*, no. 34438/04, § 49, 16 April 2009).

44. Nonetheless, 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. 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-...; *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 61, 14 February 2008 and *Weigt v. Poland* (dec.), no. 74232/01, 11 October 2005).

45. In its practice the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. Where a statement amounts to a value judgment, the proportionality of the interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *De Haes and Gijssels*, cited above, § 47, and *Feldek v. Slovakia*, no. 29032/95, § 76, ECHR 2001-VIII).

46. The Court observes that in the present case the domestic courts found against the applicant in civil defamation proceedings, which as a rule will suffice to amount to an “interference” with the exercise of his right to freedom of expression (see, for example, *Kuliś and Różycki v. Poland*, no. 27209/03, § 34, 6 October 2009, and *Myrskyy v. Ukraine*, no. 7877/03, § 37, 20 May 2010).

47. The Court also finds that the interference complained of was prescribed by law, namely, Articles 23 and 24 of the Civil Code. It further notes that in her articles published on 17 and 21 December 2002 the applicant formulated statements which presented the professional conduct of advocate J.Z. in a negative light. The judicial decisions complained of were therefore intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely to protect “the reputation or rights of others”.

48. Hence, the only point at issue is whether the interference was “necessary in a democratic society” to achieve that aim. This determination must be based on the following general principles emerging from the Court’s case-law (see, among other authorities, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 88-91, ECHR 2004-XI;

Kasabova v. Bulgaria, no. 22385/03, § 54, 19 April 2011, with further references):

(a) The test of “necessity in a democratic society” requires the Court to determine whether the interference corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by independent courts. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10.

(b) The Court’s task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the statements held against the applicant and the context in which he or she has made them.

(c) In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10.

(d) The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention.

49. The nature and severity of the penalties imposed are also factors which should be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Skalka v. Poland*, no. 43425/98, §§ 41-42, 27 May 2003; *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007).

50. In the instant case the applicant was found to have defamed the lawyer. The impugned assertions contained in the articles written by the applicant alleging improper professional conduct on the part of the advocate representing defendants in a criminal case were presented as factual statements.

51. The Court has already held that a lawyer’s behaviour in the exercise of his or her profession, particularly during court proceedings held in public

is a matter of public interest (see *Aquilina and Others v. Malta*, no. 28040/08, § 46, 14 June 2011).

52. The applicant alleged, in the article published on 17 December 2002, that at the hearing held in the criminal case on 9 December 2002 the advocate had been negligent, because he had known about the existence of a conflict of interest between his clients and their co-accused, who was at the same time the client of another lawyer, Ms D.K. The applicant presented the situation in such a way that it could be understood that the advocate, knowing that, had subsequently chosen simply not to attend the subsequent hearing and requested Ms D.K. to replace him which, in turn, must have led to the hearing being adjourned. The lawyer's negligence was suggested by the title of the article concerned.

53. In this connection, the Court notes that the civil courts found that at the hearing held on 9 December 2002 in the criminal case there had been a heated exchange between various lawyers as to the possibility of a conflict arising between their clients, including between the applicant's two clients and another co-accused, Ms D.K.'s client. However, on that date the criminal court merely expressed the view that it was inappropriate to hold that argument in the courtroom and that at that stage of the proceedings the issue of a conflict of interest did not arise (see paragraphs 6-7 above). The civil court dealing with the applicant's case examined the issue of a potential conflict of interest. It had regard to the minutes of the hearing held on 9 December 2002 and noted that on that date the criminal court had expressly stated that there were no grounds on that date to hold that such a conflict existed. The civil court concluded that it could not therefore be said that prior to 16 December 2002 the lawyer had known that his absence on that date would lead to the hearing being adjourned.

54. The Court further notes that the criminal court found that there was a conflict of interest and made a formal declaration to that effect only on 16 December 2002.

55. The Court is therefore satisfied that there were no grounds on which to accept that the existence of the conflict had already been established prior to the hearing of 16 December 2002 or that it should have prevented the lawyer from failing to attend the next hearing.

56. Moreover, the applicant alleged that the advocate had informed his clients of his absence only one day before that hearing. She presented the facts in such a way as to make him appear responsible for the adjournment of the hearing on 16 December 2002. In particular, she alleged that he had failed to present a justification for his absence to the court. However, the civil court established that the advocate had authorised Ms D.K. to act on his behalf for the defence at the hearing of 9 December 2002 and that the criminal court had accepted this.

57. It is further noted that the courts found that the applicant, when gathering information for her article, had failed to act with the requisite

diligence. The first-instance court noted that the applicant had failed to get in touch with the advocate as to the reasons for his absence on 16 December 2002 before publishing her article on 17 December 2002. No arguments have been advanced either before the domestic courts or before the Court to justify that failure on the applicant's part. The Court would point out in that connection that according to its case-law, the more serious an allegation is, the more solid its factual basis should be (see *Cumpănă and Mazăre*, § 101; *Pedersen and Baadsgaard*, § 78 *in fine*; cited above, and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 64, 14 February 2008). The allegation in the instant case was serious as it undermined the lawyer's professional integrity and called his diligence into question (see *Wolek and Others v. Poland* (dec.), no. 20953/06, 21 October 2008, *mutatis mutandis*), and thus called for thorough research on the part of the applicant.

58. In this connection, it is noted that it was open to the applicant to consult the court records in order to check whether and at which stage of the proceedings the conflict of interest between the accused had arisen in the case. Likewise, she could have contacted the lawyer in order to clarify the situation. However, it has not been argued, let alone shown, that she as much as tried to do so. The applicant, in her desire to get the news out quickly, failed to consult trustworthy sources (see *Rumyana Ivanova*, cited above, § 64).

59. The Court observes that the civil courts were of the view that the title of the applicant's article published on 17 December 2002 was sensationalist, misleading for the reader and that, on the whole, the applicant had sacrificed accuracy for the sake of sensation. In the light of the above conclusions concerning the weak factual basis for the allegations made by the applicant, this conclusion of the domestic courts is not open to criticism.

60. In the article published on 21 December 2002 the applicant referred to her conversation with the two defendants in the criminal case, K.W. and A.D. She unequivocally stated that they had told her that they had been informed of their lawyer's absence only one day before the hearing scheduled for 16 December 2002. However, when questioned by the first-instance civil court both defendants denied that they had given such information to the applicant. The civil courts relied, *inter alia*, on that evidence when concluding that the applicant's allegations lacked a solid factual basis.

61. Furthermore, the Court notes that the advocate requested the newspaper to publish a rectification in respect of the article published on 17 December 2002 and submitted to the newspaper a detailed explanation of the relevant facts (see paragraph 11 above). The newspaper refused to publish the rectification. Instead, on 21 December 2002 the advocate's letter was published with the applicant's comment, essentially reiterating the allegations of negligence. Hence, the applicant was given an opportunity of

rectifying the errors concerning the events of 9 December 2002, but failed to do so.

62. The Court notes that the appellate court suggested that journalists in judicial reporting were obliged to limit their reports to statements of fact and abstain from presenting their own opinions (see paragraph 25 above). There is no authority in the Court's case-law for such a statement and such an approach does not appear to be compatible with the role of the press in ensuring the public character of judicial proceedings and their transparency and fairness. While the Court has stressed the importance of journalistic objectivity and balance in the context of judicial reporting (see *Egeland and Hanseid*, cited above, § 49; *Reinboth and Others v. Finland*, no. 30865/08, § 78, 25 January 2011), it is of the view that it is of primary importance for the proper functioning of judicial systems that journalists are free not only to inform the general public about the factual aspects of cases examined by the courts, but also to formulate and disseminate their views and opinions on important issues involved in or connected with the subject-matter of cases under judicial consideration. In the same vein, it is important that the courts have an opportunity to obtain feedback on how their acts and judicial decisions are understood and regarded by the public. Such knowledge contributes to the quality of judicial decision-making and to a better understanding by society at large of the complexity of the issues involved in the administration of justice.

63. The Court further notes that the civil courts recognised that the case before them involved a conflict between the applicant's right to freedom of expression and the protection of her reputation and the rights of the advocate. They carried out a careful balancing exercise between the interests involved (compare and contrast *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006 and *Kwiecień v. Poland*, no. 51744/99, § 52, ECHR 2007-...). In particular, the first-instance court adopted the test of adequate diligence in assessing whether the journalist had discharged her obligations. The approach taken by the courts is therefore compatible with freedom of expression guaranteed by Article 10 of the Convention (contrast *Sokołowski v. Poland*, no. 75955/01, § 46, 29 March 2005; *Zakharov v. Russia*, no. 14881/03, §§ 29 and 30, 5 October 2006; and *Karman v. Russia*, no. 29372/02, §§ 42 and 43, 14 December 2006). The Court notes that the present case is to be distinguished from the case of *Aquilina and Others v. Malta*, cited above, where all the evidence heard by the domestic courts in the defamation proceedings against the applicants clearly indicated that the magistrate hearing the bigamy case had made a finding of contempt of court in respect of the lawyer appearing for the accused. In that case, however, the domestic courts (in the defamation proceedings) paid little or no attention to this evidence, preferring to rely on the brief and apparently incomplete record of the proceedings before the Court of Magistrates (see paragraphs 47 – 49 of that judgment). Moreover in that case the court

reporter had shown due diligence in attempting to verify the facts, and the newspaper had published an apology two days later (paragraph 50).

64. The Court observes that the defendants were found only to be civilly liable: no criminal proceedings were instituted or even envisaged against them.

65. Furthermore, the defendants were ordered, jointly, to pay PLN 30,000 to a charity. While the amount was significant, the pecuniary impact of the interference complained of cannot be said to have been excessive (contrast *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 46-51, Series A no. 316-B, *mutatis mutandis*). Moreover, the defendants in the civil case had to pay that amount jointly; the applicant was not obliged to pay that amount alone.

66. 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.

67. There has accordingly been no violation of this provision of the Convention in the present case.

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 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President