



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

FOURTH SECTION

CASE OF GAŚSIOR v. POLAND

(Application no. 34472/07)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

09/07/2012

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

In the case of Gaśior v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 34472/07) 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 Wanda Gaśior (“the applicant”), on 24 July 2007.

2. The applicant was represented by Mr A. Bodnar from the Helsinki Foundation of Human Rights. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that her right to freedom of expression under Article 10 of the Convention was infringed.

4. On 12 January 2010 the application was communicated to the Government. It was 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 1931 and lives in Kraków.

6. The applicant’s son-in-law, J.D., owns a construction company. In 2002 he built a villa for Z.W., a prominent politician, former prosecutor and deputy in the Polish parliament.

7. On 4 April 2003, the applicant wrote a letter to E.J. – the chief editor of a television programme (“*Sprawa dla reportera*”). She stressed in particular:

“For 6 months Z.W. has owed 240,000 Polish zlotys to a small construction company. On 15 November [2002] he moved into a villa built by this company and until today, 4 April 2003, he has not paid a cent. No one can help us. The deputies from the “Law and Justice” Party (*Prawo i sprawiedliwość*) do not reply to our letters, they are silent because how could they touch the great W. They believe in his lies and fibs, no one is persuaded that he owes 240,000 Polish zlotys (PLN) to poor, hard working people (...).

My son-in-law had contacts with different investors, but this is the first time in his life that he met such a greedy and mendacious person. He never expected such dishonesty from a public person – a deputy from the Law and Justice Party. This is why he [Z.W.] managed to trick him out of such a significant sum.”

8. In a second letter, dated 2 June 2004, addressed to the President of the board of the Polish Television, the applicant expressed the view that the media forgot about small enterprises that went bankrupt as they could not afford to pay the costs of civil proceedings. She further stated that:

“Z.W. managed to deceive and ruin three [...] Polish companies and to successfully intimidate their owners and employees.”

9. Z.W. was informed about both letters by Polish Television journalists, who asked him for his comments.

A. Criminal proceedings

10. On 8 July 2004 Z.W. lodged a private bill of indictment against the applicant. He charged the applicant with defamation. In particular, Z.W. submitted that in the letters sent to Polish Television on 4 April and 2 June 2004 the applicant had wrongly alleged that he had not paid J.D.’s company. The applicant had also referred to his using words indicating dishonesty, deceitfulness and fraudulent actions on his part.

11. The applicant was tried by the Kraków District Court. On 31 August 2006 she was convicted of defamation under Article 212 § 1 of the Criminal Code. The criminal proceedings against her were conditionally discontinued and she was ordered to pay PLN 1,000 to Z.W. She was also ordered to publish a written apology. In addition, the applicant was ordered to reimburse PLN 300 to Z.W. for the costs of the proceedings.

12. The trial court held that the content of the letter and in particular the expressions used, such as “liar”, “greedy and mendacious person”, “dishonest” could have resulted in Z.W. losing the public trust necessary for his political career. The background of this case was a civil dispute between Z.W. and J.D. over the villa that the latter had built. The court noted that both parties had their arguments, more or less justified, but it was not the court’s role to adjudicate on this conflict, since its final outcome was already before a civil court. The court further referred to expert evidence (several opinions) obtained in the criminal and civil proceedings from which it appeared that indeed part of Z.W.’s allegations against J.D. as regards the quality of the construction works was substantiated. More importantly, the villa was not a faultless construction as claimed by the applicant and her family.

13. The court further held that it was impossible to accept that the words used by the applicant were true. They gave the applicant’s private opinion about Z.W., which had no objective justification in the facts of the case. In addition, the court noted that the applicant could not have been mistaken about the genuineness of her statements as she was well aware of the civil dispute between J.D. and Z.W. The court also observed that the evidence before it had not confirmed in any way that three companies had been ruined.

14. In the court’s opinion the applicant’s letters formed an unjustified personal attack on Z.W. The applicant consciously circulated untrue facts concerning an alleged non-compliance with a financial obligation between Z.W. and J.D. The allegations concerned the private life of Z.W. and therefore could not be protected in the same way as statements concerning his political activities.

15. The applicant appealed against her conviction. On 24 January 2007 the Kraków Regional Court partly upheld the first-instance judgment. However it ordered the applicant only to publish an apology and reimburse Z.W.’s costs. The court referred to the reasons given by the District Court. It considered that the applicant’s allegations were not true and the applicant had been aware of this. Furthermore, she had not acted in the public interest but had presented her personal negative and unsubstantiated opinion of Z.W.

B. Civil proceedings

16. On 21 April 2004 J.D. lodged with the Kraków Regional Court a claim against Z.W. and his wife seeking payment of 40,492 Polish zlotys for the works carried out by his company.

17. On 22 June 2004 the Kraków Regional Court in a summary procedure (*postępowanie uproszczone*) ordered Z.W. and his wife to pay J.D. the requested sum together with interest.

18. On the defendants' appeal the case was transferred to the ordinary procedure.

19. On 10 June 2008 the Kraków Regional Court gave judgment and dismissed J.D.'s claim. The court held that the plaintiff's claims were unsubstantiated since, as proved by expert opinions, the construction works carried out by his company had been faulty. In addition Z.W. had had to spend about PLN 100,000 in order to repair the building. The court concluded that Z.W. could have requested to have this amount offset against J.D.'s claim.

20. On 28 November 2008 the Kraków Court of Appeal upheld the first-instance judgment and dismissed J.D.'s claim.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code

21. Article 212 of the Criminal Code provides in so far as relevant:

"§ 1. Anyone who imputes to another person, a group of persons, an institution, a legal person or an organisation without legal personality, such behaviour or characteristics as may lower this person, group or entity in public opinion or undermine public confidence in their capacity necessary for a given position, occupation or type of activity, shall be liable to a fine, a restriction of liberty or imprisonment not exceeding one year.

§ 2. If the perpetrator commits the act described in paragraph 1 through the mass media he shall be liable to a fine, a restriction of liberty or imprisonment not exceeding two years."

Article 213 provides as follows:

"§ 1. The offence specified in Article 212 § 1 is not committed, if the allegation made in public is true.

§ 2. Whoever raises or publicises a true allegation in defence of a justifiable public interest shall be deemed not to have committed the offence specified in Article 212 §§ 1 or 2; if the allegation regards private or family life evidence of truthfulness shall be admitted only when it serves to prevent a danger to someone's life or to prevent the demoralisation of a minor."

B. The Constitutional Court's judgment of 30 October 2006, case no. P 10/06

22. On 30 October 2006 the Constitutional Court, ruling on a legal question referred to it by the Gdansk District Court, declared Article 212 §§ 1 and 2 of the Polish Criminal Code compatible with Articles 14 and 54 § 1 of the Constitution read in conjunction with Article 31 § 3. The court found that in some circumstances the protection of rights and freedoms like dignity, good name and privacy might prevail over the protection of freedom of expression. The Court further found that there was no basis to assume that protection of personal rights through the civil law alone would be equally effective as criminal law. Protection of personal rights by means of the criminal law did not by itself infringe the relevant provisions of the Constitution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant alleged a breach of 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

24. 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. Arguments of the parties

(a) The Government

25. The Government admitted that the domestic courts' decisions had amounted to an interference with the applicant's right to freedom of expression. They submitted, however, that the interference had been justified under Article 10 § 2 of the Convention. It was prescribed by law, namely Article 212 of the Criminal Code, and pursued a legitimate aim: the protection of the "reputation or rights of others".

26. The Government submitted that in the course of the criminal proceedings the applicant had failed to demonstrate the truthfulness of the statement that Z.W. owed money to J.D. In addition, the allegations made by the applicant concerned Z.W.'s private life and thus could not have been protected in the same way as statements concerning the political activities of Z.W.

27. The Government argued that the penalty imposed on the applicant was proportionate to her acts: she was only ordered to publish an apology and reimburse Z.W.'s costs in conditionally discontinued proceedings. In addition, the present case originated in a bill of indictment lodged by a private individual and not by a public prosecutor.

28. Furthermore, they referred to the result of the civil proceedings and stressed that the outcome of the civil proceedings for payment against Z.W. confirmed that the applicant had defamed Z.W.

29. In conclusion, the Government submitted that the interference with the applicant's freedom of expression could be reasonably considered "necessary" in a democratic society for the protection of the reputation or rights of others and was proportionate within the meaning of Article 10 § 2.

(b) The applicant

30. The applicant claimed that her letters to the journalists had a private character and she had not wished them to be published. Her aim was to share with journalists her views about Z.W. She did not want to defame him. She had acted in good faith and wished to inform the community about Z.W. Her statements had been value judgments and therefore not susceptible to proof.

31. She disagreed with the Government that the result of the civil proceedings confirmed that she had defamed Z.W. She stressed that the first instance court in a summary procedure held that Z.W. owed J.D. PLN 40,492. Furthermore, the statements contained in her letters concerned a public figure, a prominent politician and a member of the Government. Therefore, the degree of acceptable criticism should have been greater.

2. *The Court's assessment.*

(a) **Existence of an interference**

32. There is no dispute that the domestic courts' judgments ordering the applicant to publish an official apology amounted to an interference with the exercise of her right to freedom of expression. The Court sees no reason to conclude otherwise.

(b) **Prescribed by law**

33. The interference referred to above was "prescribed by law" since it was based on Article 212 of the Criminal Code.

(c) **Legitimate aim**

34. The Court is ready to accept the Government's submissions that the interference with the applicant's freedom of expression pursued a legitimate aim, namely the protection of the reputation or rights of others.

(d) **Necessary in a democratic society**

(i) The relevant principles

35. 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. Subject to paragraph 2, it is 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 that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see the following judgments: *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24, p. 23, § 49; *Lingens v. Austria*, 8 July 1986, Series A no. 103, p. 26, § 41; and *Jersild v. Denmark*, 23 September 1994, Series A no. 298, p. 23, § 31).

36. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of 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 a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. 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 (see the above-mentioned *Lingens* judgment, p. 25, § 39).

37. There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54; and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI).

38. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which she made them. In particular, it must determine whether the interference in issue was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” (see *Lingens*, cited above, pp. 25-26, § 40, and *Barfod v. Denmark*, judgment of 22 February 1989, Series A no. 149, p. 12, § 28). 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 based their decision on an acceptable assessment of the relevant facts (see *Jersild*, cited above, p. 24, § 31).

(ii) *Application of the above principles to the instant case*

39. The Court has to examine whether, taking into consideration all the relevant circumstances of the present case, the final domestic court’s judgment, by which the applicant was ordered to publish an apology to Z.W. amounted to a disproportionate interference with her right to freedom of expression.

40. In the present case, the applicant’s son-in-law constructed a villa for a prominent politician Z.W. Allegedly, Z.W. failed to pay part of the agreed sum to J.D. In reaction to this, the applicant sent two letters to journalists complaining about dishonesty on his part. On account of these statements the applicant was ordered to publish an apology (see paragraph 12 above).

41. The Court firstly notes that the domestic courts considered that the impugned assertions contained in the applicant’s letters were statements of fact and that the applicant had failed to prove that they were true (see paragraphs 13 and 14 above). The applicant argued that they were value judgments as she had only wished to share her point of view with the journalists (see paragraph 27 above).

42. The Court accepts that it may sometimes be difficult to distinguish between assertions of fact and value judgments. However, in the present case, the Court agrees with the domestic courts and considers that the applicant's letters contained specific allegations of fact, which as such were susceptible to proof (see, *McVicar v. the United Kingdom*, no. 46311/99, § 83, ECHR 2002-III). What is more the applicant's allegations appear quite serious as she, in fact, accused Z.W. of dishonesty, greed and tricking her son-in-law out of a significant sum of money. Those allegations therefore required substantial justification. Nevertheless, it would appear that the applicant based them mainly on guess-work. In this respect the Court notes that the applicant alleged in her letters to the chief editor of the television programme that Z.W. owed J.D. PLN 240,000 (see paragraph 7 above). However, in the civil proceedings J.D. filed a claim against Z.W. seeking payment of a significantly smaller sum: PLN 40,492 (see paragraph 16 above). Furthermore, in the civil proceedings the courts confirmed that the construction works carried out by J.D.'s company were defective and Z.W. in fact had a claim against J.D. for reimbursement of repair costs (see paragraph 16 above).

43 The applicant argued that her aim was to inform the public about Z.W.'s allegedly dishonest conduct. The Court observes that in the present case the applicant's grievances were set out in letters to the chief editor of a television programme and the President of the board of the Polish Television. The Court considers that the applicant's remarks could have formed part of an open discussion of matters of public concern since she informed the journalists about alleged misconduct on the part of Z.W. who was a public figure. However, it should be noted that while the limits of acceptable criticism as regards politicians are wider, yet, 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 (see *Sanocki v. Poland*, no. 28949/03, §§ 61-62, 17 July 2007).

44. The Court further considers that the reasons given by the domestic courts were "relevant" and "sufficient" to justify the interference. It cannot find that they failed properly to balance the various interests concerned. In particular the Court observes that the terms used by the applicant in her letters had a very pejorative connotation (see paragraphs 7 and 8 above). In addition, as was established by the courts, they had no justification in the facts of the case.

45. Lastly, the Court reiterates that the nature and severity of the penalty imposed are factors to be taken into account when assessing the proportionality of the interference (see, for example, *Sürek v. Turkey (no. 1)* [GC], cited above, § 64, and *Chauvy and Others v. France*, no. 64915/01, § 78, ECHR 2004-VI). In the present case the applicant was only ordered to publish an apology (see paragraph 12 above). The criminal proceedings were thereafter discontinued. Moreover, the criminal proceedings in the present case had their origin in a bill of indictment lodged by the politician himself and not by a public prosecutor (compare and contrast, *Dhugolecki v. Poland*, no. 23806/03, § 45, 24 February 2009).

46. The Court recalls that, in view of the margin of appreciation left to Contracting States, a criminal measure as a response to defamation cannot as such be considered disproportionate to the legitimate aim pursued (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, §59, ECHR 2007-IV; *Dhugolecki* cited above § 47). For the reasons given in paragraph 45 above, the Court finds that the domestic courts did not overstep their margin of appreciation and that there was a reasonable relationship of proportionality between the measures applied by them and the legitimate aim pursued.

47. There has consequently been no breach of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* by six votes to one that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge David Thór Björgvinsson is annexed to this judgment.

D.T.B
T.L.E

DISSENTING OPINION OF JUDGE DAVID THÓR BJÖRGVINSSON

I disagree with the majority's finding of no violation in the present case.

Upon receiving the allegedly defamatory letters, and with all due diligence, the journalists contacted Z.W. and informed him about their content. However nothing in the letters was ever published (see paragraph 9 of the judgment).

The case raises a novel issue, since the defamation claim is born out of the applicant's statements, admittedly strong and intemperate, made in the context of her private correspondence with journalists which were never in fact published. The case is therefore different from the vast majority of defamation cases where the claim relates to the publication of defamatory material.

There are several cases where a claim has its roots in defamatory statements made in the context of private correspondence with State authorities (see, for example: *Kazakov v. Russia*, no. 1758/02, 18 December 2008; *Zakharov v. Russia*, no. 14881/03, 5 October 2006; *Sofranschi v. Moldova*, no. 34690/05, 21 December 2010 and *Siryk v. Ukraine*, no. 6428/07, 31 March 2011). In the first case, *Kazakov v. Russia*, the Court unanimously found that the defamation proceedings against the applicant, in particular the order made against him to issue an apology, had been excessive and disproportionate and therefore in breach of his Article 10 rights. In the second case, *Zakharov v. Russia*, the Court considered that the expressions used by the applicant, such as "outrageous conduct", "anti-social behaviour", "ostensibly makes an exemption", were value judgments that represented the applicant's subjective appraisal of the moral dimension of the behaviour of the leader of the town council. The Court found that the burden of proof in respect of these expressions was obviously impossible to satisfy and that the Russian authorities had failed to adduce "relevant and sufficient" grounds for the interference with the applicant's right to impart information and found a violation of Article 10. In the third judgment, *Sofranschi v. Moldova*, the applicant complained about civil proceedings brought against him for defamation in which he had been ordered to pay compensation to the leader of a collective farm and candidate in local elections for the office of mayor. The applicant had criticised the latter in a letter addressed to the President of Moldova and other authorities. The letter contained indeed strong and intemperate statements, with a very weak factual basis. The applicant described the plaintiff in the following terms: "shameless", "cannot even read properly", "illegally possesses shares in the collective farm", "he has guns and threatens people with them ..." All the same, the Court unanimously found a violation of Article 10. In the last case, *Siryk v. Ukraine*, the applicant sent a letter to the tax authorities in

which she accused officials of corruption, for which she was condemned by the national court. The Court unanimously found a violation of Article 10.

Just as in these cases, where the Court has unanimously found a violation, I find that there has been a violation in the present case. These are my reasons:

First, the starting point must be that in an open and free society private individuals should not be discouraged from contacting the media if they believe they have information about prominent members of society, including high-ranking politicians, which may be of interest to the public. If individuals are discouraged from doing so under the threat of defamation proceedings or other sanctions, it potentially weakens the public “watchdog” role of the media, which goes hand-in-hand with the individual’s right to impart information, a right secured under Article 10 of the Convention.

Second, in similar cases where statements have been made in the context of private correspondence the Court has found the non-publication of the defamatory material to be a highly relevant consideration. Thus, in *Sofranschi v Moldova* (cited above, § 33) in assessing the proportionality of the sanctions, the Court gave weight to the “limited impact of the impugned statements, due to the fact that the applicant addressed his complaint by way of private correspondence to State officials and did not make it public to the outside world” (see also *Grigoriades v. Greece*, 25 November 1997, § 47, Reports of Judgments and Decisions 1997 VII, and *Bezmyanny v. Russia*, no. 10941/03, § 42, 8 April 2010). Although the letters were addressed to the media in the present case, but not State officials, similar considerations must apply. The real impact, if any, of the letters on Z.W.’s reputation could only have been very limited given that their content was never made known to the public. It would seem that they only became known to the outside world when Z.W. himself lodged a bill of indictment for defamation against the applicant.

Third, I refer to paragraph 43 of the judgment where the majority states that, although agreeing that acceptable criticism of politicians is wider it does not follow from this that politicians should not be given an opportunity to defend themselves. It goes without saying that high-ranking politicians, just as everyone else, have the right to defend themselves, if not by other means, at least by refuting allegations through the instrument of public debate, which is, for a prominent politician in a democratic society, a much more appropriate form of reply than lodging a private indictment before the courts. However, in the present case Z.W. was informed about the letters and their content. By doing so the journalists respected his right to defend himself, and the material was never published as a result. In my opinion, this was enough to satisfy Z.W.’s right to defend his reputation.

Fourth, I believe that the status of the applicant, a private individual and not a trained journalist with professional duties and responsibilities, is

highly relevant. While it may be accepted that the distinction between statements of facts and value judgments, and the need to provide some kind of a justification or factual basis for the former, are relevant considerations in relation to journalistic work, they have less, if any, bearing in relation to the content of letters of private individuals which have not been published. Even accepting that they may have some limited bearing in relation to such letters, I believe the most intemperate statements in the letters were, in any case, clear value judgments, simply stating the applicant's subjective appraisal of the moral character of Z.W., a prominent politician at the time. In addition, while accepting that some of the statements made regarding the financial relations between Z.W. and the applicant's son-in-law may indeed have been highly inaccurate, it cannot be said that they were completely devoid of any relevant factual basis, having in mind that there was an on-going financial dispute between the two.

Fifth, I note that under Article 212 of the Polish Criminal Code the applicant faced a term of imprisonment of up to one year. I find this legislation in itself highly inappropriate and disproportionate in the context of defamation proceedings. As regards the sanction finally imposed on the applicant I refer to the case of *Kazakov v. Russia* (cited above). In that case the Court unanimously found that the defamation proceedings against the applicant, in particular the decision ordering him to issue an apology, had been excessive and disproportionate. Indeed, I believe that the sanction imposed on the applicant in the instant case should not be underestimated since she was ordered to apologise publicly for statements made in unpublished private letters. In addition, the information about her conviction was recorded in the Criminal Convictions Register for about 2 years and 6 months. Therefore, in my view, the sanctions imposed on the applicant were disproportionate in the circumstances of the present case.

On the basis of the foregoing I find that the restrictions on the applicant's right to freedom of expression and to impart information have not been sufficiently justified and the sanctions imposed must be considered disproportionate. Moreover, these restrictions are certainly not, in the circumstances of the present case, necessary in a free and open democratic society. Accordingly, there has, in my view, been a breach of Article 10 of the Convention.