



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

FOURTH SECTION

**CASE OF ZIEMBIŃSKI v. POLAND**

*(Application no. 46712/06)*

JUDGMENT

STRASBOURG

24 July 2012

**FINAL**

***24/11/2012***

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



**In the case of Ziemiński 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,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 July 2012,

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

## PROCEDURE

1. The case originated in an application (no. 46712/06) 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, Mr Maciej Ziemiński (“the applicant”), on 13 November 2006.

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

3. The applicant alleged, in particular, that his conviction for defamation had been in breach of his right to freedom of expression.

4. On 28 March 2011 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 1944 and lives in Kłomnice.

6. He is the proprietor, editor-in-chief and journalist of a local weekly *Komu i Czemu*, published in the Radomsko and Bełchatów Districts.

7. At the end of May 2005 M.Dz., a local businessman providing services to a district hospital, visited M.D., the district mayor (*starosta*), to

complain about D.K., the director of the hospital. It appears that the hospital owed some money to the businessman. M.Dz. recorded the conversation and the following day passed it on to the applicant.

8. On 2 June 2005 the applicant wrote to the district mayor and asked him to explain why he had delayed informing the prosecution authorities about the alleged corruption at the district hospital. In reaction to the letter, the district mayor summoned D.K. to respond to those allegations. He also sent a copy of the applicant's letter to the prosecution service asking for the matter to be examined. In his letter to the prosecution service, the district mayor stated that the applicant's allegations were insinuations aimed at undermining the public trust in him. A copy of this letter was sent to the applicant.

9. On 6 June 2005 M.Dz. notified a local member of parliament ("MP") that the director of the hospital had received bribes from M.Dz. He stated that his recent conversation with the district mayor indicated that the latter had some knowledge about the bribe-taking. On 14 June 2005 the MP relayed this information to the Minister of Internal Affairs and Administration. Subsequently, the information was transmitted to the Ministry of Justice and then, in turn, to the Piotrków Trybunalski Regional Prosecutor's Office.

10. In the article "D.K. took bribes" published in issue no. 23 (8-14 June 2005), the applicant stated that "the hospital director was being protected by the district mayor who knew that the subordinate director had taken bribes". In the article "Corruption of Madame Director" published in issue no. 24 (15-21 June 2005) the applicant wrote that the district mayor had known that D.K. was corrupt but had not notified the prosecution authorities. The same allegation was made in the article published in issue no. 25 (22-28 June 2005). In the article "Young prosecutor examines Deszcz [the district mayor]" published in issue no. 28 the applicant stated that "the district mayor is obviously fibbing, because he received information that the director took [bribes] from at least two sources".

11. On an unspecified date in 2005 the district mayor lodged a private bill of indictment against the applicant with the Piotrków Trybunalski District Court. He accused the applicant of defamation committed through the mass media under Article 212 § 2 of the Criminal Code.

12. The bill of indictment related to two separate charges. The first concerned an article entitled "Hey those district roads" published in issue no. 1 of 2005 in which the applicant had discussed mismanagement of road works in the district. The second charge concerned four articles published by the weekly in June and July 2005 in which the applicant alleged that the district mayor had known that D.K. was corrupt but had failed to inform the prosecution service. The district mayor claimed that the impugned articles lowered his standing in the eyes of the public and undermined the public confidence necessary for the discharge of his duties.

13. On 8 February 2006 the Piotrków Trybunalski District Court gave judgment. It acquitted the applicant of the first charge and convicted him of defamation committed through the mass media in respect of the second charge. The District Court held that the applicant had wrongly alleged in his articles that the district mayor had known that D.K. accepted bribes but had not informed the police about it, despite having been under a duty to do so. Thus, the applicant had lowered D.K.'s public standing and undermined the public confidence necessary for the discharge of his duties. The District Court sentenced the applicant to a fine of 10,000 Polish zlotys (PLN; 2,600 euros (EUR)). It further ordered him to pay the private prosecutor's costs (PLN 300; EUR 80) and the costs of the State Treasury (PLN 1,000; EUR 260).

14. When examining the first charge against the applicant, the trial court observed that the contours of the offence of defamation specified in Article 212 of the Criminal Code were delimited on one hand by the protection of reputation and dignity of a person and, on the other, by so-called legitimate criticism (*dozwolona krytyka*) which derived from Article 54 of the Constitution. It noted that in accordance with the Strasbourg case-law political or public activity inevitably resulted in subjecting officials to the judgment of the public opinion. Persons holding important offices were thus required to show a higher degree of tolerance to criticism.

15. In respect of the second charge, the trial court heard evidence from the applicant, the district mayor, M.Dz., D.K. and G.D. (spokesperson of the district mayor). It further heard the recording of the conversation between the district mayor and M.Dz.

16. The District Court observed that the applicant and the district mayor had once been good colleagues; however their relations had deteriorated since M.D.'s election as district mayor in 2002. From then onwards the applicant's newspaper had begun publishing articles virulently criticising the district mayor and his staff.

17. The court established that the local businessman M.Dz., who provided services to the local hospital and was dissatisfied with his cooperation with the hospital director (D.K.), had informed the district mayor that D.K. had been taking bribes. M.Dz. had recorded his conversation with the district mayor. Subsequently, he had provided the applicant with the content of the recording and informed him that he had given bribes to D.K.

18. The court found that the applicant had alleged in a series of articles published between 15 June and 19 July 2005 that the district mayor had covered up the corruption affair, without having verified the information received from M.Dz. and disregarding the actual content of the recording.

19. The court further established that the applicant, when publishing a series of articles about the alleged corruption affair, had relied exclusively

on the recorded conversation between the district mayor and M.Dz. It noted that neither the recording nor the statements of M.Dz. had confirmed the allegation that the district mayor had known about bribe-taking in the hospital, and thus the applicant's assertions had been untrue. Even if the district mayor had some misgivings about the management of the hospital it could not be inferred from that that he had specific knowledge about the corruption. The trial court noted that allegations of covering-up corruption were of immense gravity and that the applicant had published them without having them verified. It underlined that shortly after having received the applicant's letter of 2 June 2005 the district mayor referred the matter of corruption allegations to the prosecution service. In the court's view, the applicant had flagrantly breached the journalistic principles of diligence and objectivity. The court further noted that in none of the impugned articles had the applicant referred to the uncertain nature of the presented information. The applicant, as an experienced journalist, should have been particularly cautious with the information received from the disgruntled businessman as he had been aware of a sharp conflict between him and the hospital management. However, he had failed to display particular diligence and had exploited that information for sensational purposes in making the district mayor and his alleged cover-up of the corruption the central part of his articles. The trial court referred to section 12 of the Press Act which obliged journalists to display particular diligence in gathering and using the information, and, in particular, to verify the truthfulness of obtained information.

20. The District Court held, *inter alia*, as follows:

"There is no doubt that by imparting information clearly presupposing that M.D. [the district mayor] had allegedly covered up the corruption affair [the applicant] not only did not demonstrate the requisite diligence but in general did not take the trouble to confirm and verify in any way the information he had received. Without having regard to the gravity of the allegations made against M.D., the applicant hastily used the words of his informant for the purposes of settling his scores with M.D. ... The articles discrediting M.D. did not serve anything but the personal satisfaction of [the applicant], and the concern for the respect of law in the local hospital appeared to be of marginal importance.

Having read the series of the above-mentioned articles it is difficult to escape the conclusion that the attention of the applicant was focused on damaging the reputation of the district mayor, while the hospital director D.K. was put on the sidelines. ... Besides, these actions constitute not the only but certainly the most far-reaching element of the personal war with M.D. waged in the weekly *Komu i czemu*.

Defamation committed with the knowledge that information and opinions concerning the behaviour or characteristics of another person are false never serve to defend a justifiable public interest.

Such actions do not benefit from the protection granted to freedom of expression and the right to criticise under Article 31 § 3 of the Constitution or Article 10 § 2 of the Convention.

The real effect of the applicant's publication cannot be assessed in isolation from the public office held by M.D. It is obvious that the office of the district mayor must be based on public trust and respect. Imparting by means of mass communication information about the alleged participation of the district mayor in the cover-up of a corruption scandal does not enhance his popularity. It risks not only the loss of the office, but also lowers his public standing creating an atmosphere of scandal and suspicion. ... By attributing to M.D. behaviour constituting an offence and doing so by means of mass communication, M. Ziemiński made out all the statutory features of the offence specified in Article 212 § 2 of the Criminal Code."

21. The trial court noted that the applicant published four separate articles containing defamatory statements in respect of the district mayor within the period of a few weeks. Those statements fell outside the limits of permissible criticism referred to in Article 213 § 2 of the Criminal Code since they had been untrue.

22. The trial court considered that the degree of the applicant's guilt was significant and for that reason the proceedings could not have been conditionally discontinued. As regards the sentence, the court found that, having regard to the circumstances of the case, a fine would be the most appropriate penalty. It imposed a fine of PLN 10,000, which it considered proportionate to the gravity of the offence, the degree of the applicant's guilt and his financial standing which was beyond average. With regard to the latter, it had regard to the profits from the ownership of one of the most widely read newspapers in the region. As regards other relevant factors, the court noted that the applicant had deliberately infringed the district mayor's reputation and had been motivated by personal animosity. At variance with the professional and deontological standards, he failed to respect the requirement of particular diligence when using information at his disposal. The trial court took further into account that the applicant had not in any way recognised that he had acted inappropriately.

23. The applicant appealed. He contested the factual findings of the first-instance court, in particular that the recorded conversation between M.Dz. and the district mayor had constituted the only source of information about the bribe-taking. He further alleged that the first-instance court had erroneously assessed the evidence.

24. On 23 May 2006 the Piotrków Trybunalski Regional Court upheld the first-instance judgment and found the applicant's appeal manifestly ill-founded. It ordered him to pay costs of PLN 1,000 for the appeal proceedings.

25. The Regional Court endorsed the lower court's findings. It noted that M.Dz. had been in conflict with the director of the hospital which was related to unpaid invoices of his company. In the past he had frequently complained to the district mayor about the director of the hospital.

26. The Regional Court held that the recorded conversation and information passed orally by M.Dz. to the applicant had constituted the only basis of the allegations made against the district mayor. According to the court, there was not a single statement of the district mayor in that conversation indicating that he had been aware of the alleged corruption of the director of the hospital. The allegations made by the applicant had been based on isolated parts of the conversation which were taken out of context. The Regional Court also noted that the applicant had not sought comments from D.K. At the time of the publication the applicant had not disposed of any information corroborating the alleged cover-up of the corruption. Nor had such information been disclosed during the trial. The Regional Court, having regard to the evidence heard by the trial court, found that the district mayor had learnt about the alleged corruption in the local hospital from his conversation with M.Dz. at the end of May 2005 and then from the applicant's letter of 2 June 2005. It accordingly confirmed that the allegations raised by the applicant in his articles had proved to be untrue.

27. Referring to the case-law of the Strasbourg Court, it recalled that the limits of acceptable criticism were wider with regard to politicians than with regard to private individuals. However, it did not follow from that that the insulting of a politician could go unpunished.

28. The judgment was served on the applicant on 13 June 2006.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitutional provisions

29. Article 14 provides as follows:

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

Article 31 § 3 of the Constitution, which lays down a general prohibition on disproportionate limitations on constitutional rights and freedoms (the principle of proportionality), provides:

“Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

Article 54 § 1 of the Constitution guarantees freedom of expression. It states, in so far as relevant:

“Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information.”



## **B. Relevant provisions of the Criminal Code**

30. Article 212 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.”

31. 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.”

## **C. The Constitutional Court’s judgment of 30 October 2006, case no. P 10/06**

32. On 30 October 2006 the Constitutional Court, ruling on a legal question referred to it by the Gdańsk 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 Constitutional 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 efficient as criminal law. Protection of personal rights by means of criminal law did not by itself infringe the relevant provisions of the Constitution.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicant complained that there had been a violation of his right to freedom of expression on account of his conviction and punishment for defamation. He relied on 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

34. The Court notes that this complaint 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 applicant's submissions*

35. The applicant averred that he had not harmed the good name or violated the rights of others. He had not even put in his article the initials of the officials of the Radomsko District Office. He claimed to have observed the principle of accuracy required of the journalists under the Press Act. Referring to the Constitutional Court's judgment of 12 May 2008, the applicant argued that a person accused of defamation should not be held liable if she or he had complied with the standards of accuracy and reliability while gathering and verifying information, even if eventually the allegations proved to be false.

36. Not only the Press Act but also the Constitution enabled the free and independent media to criticise and assess phenomena which occurred in the exercise of power by the local government. Public figures had to accept the risk of being exposed to more severe assessment by the public opinion and that the limits of acceptable criticism with regard to them were wider. In the present case, he had not overstepped the limits of acceptable criticism.

37. The applicant disagreed with the domestic courts that journalistic criticism should have been deprived of personal feelings or emotional engagement. Journalists and their newspaper do not function as a government bulletin recording only facts and events. Publications deprived of emotions would not even be noticed by the readers, let alone read. Therefore, a journalist could not be forced to present events without emotional engagement.

38. The applicant further contested the severity of the punishment imposed on him, arguing that it had led to a progressive economic breakdown of the newspaper. He also maintained that in a case like this, the issue of the limits of acceptable criticism should be determined by means of civil rather than criminal law.

## *2. The Government's submissions*

39. The Government argued that the interference with the applicant's right to freedom of expression had been compatible with the terms of Article 10. The interference was prescribed by law, being based on Article 212 of the Criminal Code and pursued a legitimate aim, namely the protection of the reputation or rights of others.

40. With regard to the proportionality of the interference, the Government acknowledged that there was little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest. However, the interference in issue was necessary in a democratic society since the conviction and sentence had not been disproportionate to the legitimate aim pursued. Furthermore, the domestic courts gave "relevant and sufficient" reasons for their decisions and thoroughly justified their finding that the applicant's statements had amounted to defamation.

41. The Government argued that the applicant had overstepped the limits of acceptable criticism in respect of the district mayor. For that reason he had been sentenced to a fine of PLN 10,000 which had been calculated in light of his financial situation. The courts decided not to impose more severe measures, namely the penalty of restriction of liberty or a term of imprisonment for up to two years. The penalty actually imposed on the applicant was the most lenient of the applicable penalties and should be seen as proportionate to the degree of his guilt as well as the social danger of his act. Contrary to what was stated by the applicant, the Government observed that he had placed the district mayor's full name in his articles.

42. The Constitutional Court in its judgments in cases nos. P 10/06 (30 October 2006) and SK 43/05 (12 May 2008) underlined the importance of freedom of expression in a democratic society, while stressing that the dignity of an individual had also to be protected by the authorities. In the case of conflict between freedom of expression and the right to private life, the latter could prevail over the former. The Constitutional Court further held that protection of reputation and good name, which were inextricably linked with the dignity of a person, by means of criminal law did not by itself infringe the relevant provisions of the Constitution. Civil sanctions would be sufficient if they made it possible to re-establish the previous state of affairs. However, the consequences of the infringement of one's good name could not be reversed and the subsequent apologies could not eradicate the fact of the infringement. The Government lastly noted that the criminal proceedings in the applicant's case had at their origin a bill of indictment lodged by a private individual himself and not by a public prosecutor.

### *3. The Court's assessment*

43. It was common ground between the parties that the applicant's conviction and punishment constituted an interference by a public authority with his right to freedom of expression.

44. Such interference will be in breach of Article 10 if it fails to satisfy the criteria set out in its second paragraph. The Court must therefore determine whether it was "prescribed by law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society" to achieve that aim or aims.

45. The Court finds, and this has not been disputed, that the interference was "prescribed by law", namely by Articles 212 and 213 of the Criminal Code. It further pursued the legitimate aim of protecting "the reputation or rights of others".

46. It remains to be established whether the interference was "necessary in a democratic society". 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, 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.

47. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such 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” (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 79, 7 February 2012).

48. In the present case the applicant was convicted of aggravated defamation on account of assertions made in his articles about the district mayor. He alleged that the district mayor had covered up a corruption affair in a local hospital (see paragraph 10 above). The Court – concurring with the position of the domestic courts – considers that the applicant's articles contained specific allegations of fact, which as such were susceptible to proof (see, *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103; *De Haes and Gijssels v. Belgium*, 24 February 1997, § 42, Reports of Judgments and Decisions 1997-I; *McVicar v. the United Kingdom*, no. 46311/99, § 83, ECHR 2002-III). The applicant did not contend that they were value judgments.

49. The Court notes that that in principle the manner in which a local official carried out his official duties was a matter of general interest to the community (see, among others, *Sokołowski v. Poland*, no. 75955/01, § 45, 29 March 2005; *Kwiecień v. Poland*, no. 51744/99, § 51, 9 January 2007). It readily agrees with the applicant that the role of the press was to assess and criticise the exercise of power by local government officials. It is further well established that the limits of acceptable criticism are wider with regard to politicians than with regard to a private individual (see *Lingens*, cited above, § 42; *Oberschlick v. Austria* (no. 2), 1 July 1997, § 29, Reports of Judgments and Decisions 1997-IV; *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII; *Kwiecień*, cited above, § 47).

50. However, 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 and relating to politicians or public officials. Under the terms of its second paragraph, the exercise of this freedom carries with it “duties and responsibilities”, which also apply to the press. These “duties and responsibilities” are liable to assume significance when, as in the present case, there is a question of attacking the reputation of named individuals and undermining the “rights of others”. By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, 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, among other authorities, *Bladet Tromsø and Stensaas*, cited above, § 65; *Kasabova v. Bulgaria*, no. 22385/03, § 63, 19 April 2011). The Court has also found that politicians should 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, exercising its freedom of expression, and a politician’s right to protect his or her reputation is called for (see *Sanocki v. Poland*, no. 28949/03, §§ 61-62, 17 July 2007; *Kania and Kittel v. Poland*, no. 35105/04, § 43, 21 June 2011).

51. The applicant alleged that the district mayor had known for long time about the alleged corruption affair in the district hospital and had failed to notify the prosecution service about it. The Court reiterates that according to its case-law, the more serious an allegation is, the more solid its factual basis should be (see, *Cumpănă and Mazăre*, cited above, § 101; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78 *in fine*, ECHR 2004-XI; *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 64, 14 February 2008; *Kasabova*, cited above, § 65 *in fine*). It considers that the allegation made against the district mayor was indeed quite a serious one. In those circumstances the applicant was required to provide a sufficient

factual basis for his assertions, especially seeing that they were made in a popular local weekly.

52. Nonetheless, the applicant failed to prove his factual allegations against the district mayor. The domestic courts meticulously examined all the relevant evidence before them and found that the applicant's assertions had been untrue. Neither the statements of M.Dz. nor the content of the recorded conversation between the latter and the district mayor confirmed the applicant's unqualified assertions. Furthermore, as established in the domestic proceedings, the district mayor learnt about the alleged corruption affair from the local businessman at the end of May 2005 and then from the applicant's letter of 2 June 2005. Shortly after the receipt of that letter, the district mayor requested the prosecution service to examine the issue of alleged corruption. He also denied the applicant's allegations (see paragraph 8 above).

53. Next, the Court needs to determine whether the applicant acted as a responsible journalist. In situations where, on the one hand, a statement of fact is made and insufficient evidence is adduced to prove it, and, on the other, the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount (see, *Flux v. Moldova* (no. 7), no. 25367/05, § 41, 24 November 2009). On this point, the Court attaches particular significance to the trial court's findings that the applicant blatantly disregarded the principle of special diligence required of a journalist under the Press Act with respect to his duty to verify information in his possession. It underlines that, unless the presence of special grounds is established, the journalists cannot be dispensed from their ordinary obligation to verify the factual allegations and the accuracy of their sources (see, *Bladet Tromsø and Stensaas*, § 66; *Rumyana Ivanova*, §§ 63-65, both cited above). The domestic courts established that, notwithstanding the gravity of the allegations, the applicant had relied exclusively on the story put to him by M.Dz. and on the recorded conversation between the latter and the district mayor. However, as established by the Piotrków Trybunalski Regional Court, the content of the conversation could not possibly serve as the basis for the applicant's allegations against the district mayor (see paragraph 26 above).

Significantly, the Court notes that the applicant had not taken any effective steps to verify the accuracy of his information prior to its publication (see paragraphs 20 and 26 above). The Piotrków Trybunalski Regional Court unequivocally confirmed that at the time of the publication the applicant had not had at his disposal any information corroborating the alleged cover-up of the corruption. Even though he knew about the conflict between M.Dz. and the hospital director he failed to treat the information received from the former with caution and had not sought comments from the latter. Moreover, he acted with unusual haste when publishing his

articles and cast them in absolute terms (see paragraph 10 above). Having regard to those elements, the Court cannot but hold that the applicant manifestly failed to respect the tenets of responsible journalism, such as the obligation to act professionally and in good faith. The applicant's claim to the contrary, namely that he complied with the relevant professional standards does not find support in the facts of the case.

54. The Court also notes that the applicant's *modus operandi* in the case gives credence to the domestic court's finding that – when publishing a series of articles about the district mayor – the applicant was motivated by personal malice against him and not by genuine concern to shed light on the alleged irregularities in the district hospital (see paragraphs 20 and 22 above). In this respect, it is noteworthy that the applicant put the district mayor at centre stage in his articles, while putting the hospital director on the sidelines, even though it was she who had allegedly accepted bribes.

55. Furthermore, the domestic courts clearly recognised that the present case involved a conflict between the right to freedom of expression and the protection of reputation and they carried out the relevant balancing exercise, having regard to the Convention standards (see paragraph 14 and 27 above). This point is well illustrated by the trial court's analysis of the first charge of defamation against the applicant of which he was acquitted with reference to the wider limits of acceptable criticism with regard to persons holding public office.

56. Having regard to the foregoing, the Court considers that the reasons adduced by the national courts for convicting the applicant were relevant to the legitimate aim of protecting the district mayor's reputation as well as sufficient within the meaning of its case-law.

57. It remains to be determined whether the interference in issue was proportionate to the legitimate aim pursued, in view of the sanctions imposed. While the use of criminal-law sanctions in defamation cases is not in itself disproportionate (see, *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II; *Lindon, Otchakovsky-Laurens and July*, cited above, § 59; *Długolecki v. Poland*, no. 23806/03, § 47, 24 February 2009), the nature and severity of the penalties imposed are factors to be taken into account, because they must not be such as to dissuade the press or others who engage in public debate from taking part in the discussion of matters of legitimate public concern (see, *Cumpănă and Mazăre*, cited above, § 111).

58. In the instant case, the applicant was sentenced to a fine of 10,000 PLN (EUR 2,600) and ordered to pay various costs which amounted to an aggregate amount of PLN 2,300 (EUR 600). The domestic courts found that the amount of the fine was proportionate to the applicant's financial situation, the gravity of the offence and the degree of his guilt. The Court sees no reason to hold otherwise, considering that the domestic courts, when setting the amount of the fine, took into account the relevant



factors, such as the profits made by the applicant as a proprietor of one of the most widely read newspapers in the region (compare and contrast, *Kwiecień*, cited above, § 56). That assessment is not affected even if the costs of proceedings that the applicant had to bear were to be taken together with the amount of the fine (compare and contrast, *Kasabova*, cited above, § 71, in which the aggregate amount of fine, damages and costs imposed on the applicant was equivalent to more than thirty-five times her monthly salary). The domestic courts also had regard to the fact that the applicant had deliberately infringed the reputation of the district mayor and had failed to respect professional journalistic standards.

59. The Court further notes that the applicant was not sentenced to any other additional penalties, such as the loss of civil rights or prohibition to work as a journalist (compare and contrast, *Cumpănă and Mazăre*, cited above, §§ 117-118). Moreover, the criminal proceedings against him had their origin in a bill of indictment lodged by the local politician himself and not by a public prosecutor (see, *Długolecki*, cited above, § 47).

60. In conclusion, the Court is satisfied that the authorities struck a fair balance between the interests of, on the one hand, the protection of the district mayor's reputation and, on the other, the applicant's right to exercise his freedom of expression as a journalist. In view of the reasons adduced by the domestic courts for convicting the applicant and of the relative lenience of the punishment imposed on him, the Court finds that the interference complained of may be regarded as "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

61. There has therefore been no violation of Article 10 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicant also complained under Article 6 of the Convention that the proceedings against him had been unfair. He further alleged a breach of Article 7 and 17 of the Convention.

63. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

64. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

Done in English, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

David Thór Björgvinsson  
President