



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

FOURTH SECTION

CASE OF ŁOPUCH v. POLAND

(Application no. 43587/09)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

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

In the case of Łopuch v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

Ledi Bianku,

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. 43587/09) 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 Maria Katarzyna Łopuch (“the applicant”), on 28 July 2009.

2. The applicant was represented by Mr Z. Barwina, a lawyer practising in Szczecin. 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 as provided for in Article 10 of the Convention had been breached.

4. On 21 June 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 1954 and lives in Szczecin.

6. The applicant was involved in two sets of civil proceedings for payment pending before the Szczecin District Court. In one of them she was a defendant and in another she represented her mother, H.K.

7. On 7 June 2007 the applicant submitted her pleadings in the second case to the Szczecin District Court. She argued that her mother had not given any grounds on which to institute execution proceedings against her, because she had already paid the amounts awarded to the plaintiff. She stated that the efforts to have that judgment executed was a result of “criminal activity of a group of persons acting with a view to intimidating, threatening and extorting money from [H.K.] and from the applicant and her family and threatening H.K.’s life. This amounted to a real danger to H.K., as she was 89 years old and in poor health. This group of a criminal nature was composed of [lawyer] D.N. acting in a corrupt mafia-like setup... under the aegis of J.S., the President of the Szczecin District Court.”

8. Upon receipt of her pleadings, the President of the Szczecin District Court forwarded it to the supervising judge of the Szczecin Regional Court with a view to examining whether it would be justified to inform the prosecutor that a criminal offence punishable under Article 212 of the Criminal Code had been committed.

9. On 11 July 2007 the President of the Szczecin Regional Court informed the Szczecin-Śródmieście Prosecutor of the applicant’s pleadings.

10. On 20 August 2007 the prosecutor instituted an investigation in the case.

11. On 20 August 2007 the applicant was summoned to the Szczecin-Śródmieście police station to be questioned on 10 September 2007 as a “witness” in a defamation case. She complied with the summons and was informed that in fact she was to be questioned as a suspect. She availed herself of her right to refuse to testify.

12. On 31 October 2007 she submitted pleadings to the Szczecin-Śródmieście Prosecutor’s Office, requesting that J.S. and three other persons be questioned in the case.

13. On 26 November 2007 the Szczecin-Śródmieście Prosecutor’s Office lodged a public bill of indictment against the applicant with the Szczecin-Śródmieście District Court. She was charged with the offence of defamation, punishable under Article 212 of the Criminal Code.

14. On 20 February 2008 the Supreme Court, acting upon a request submitted to it by the Szczecin Regional Court, ordered that the case should be transferred to the Gorzów Wielkopolski District Court.

15. On 18 August 2008 that court, acting in simplified proceedings, found the applicant guilty of committing an offence of defamation against Judge J.S. and imposed a fine on her in the amount of 150 Polish zlotys (PLN), equivalent to 100 daily fines in the amount of PLN 15 each.

16. The applicant lodged an objection against this judgment with that court and requested that it should be examined in normal criminal proceedings. She submitted, *inter alia*, that she had never made her pleadings of 7 June 2007 public, and argued that the contested judgment was “in line with the worst communist traditions and it undermined the foundations of the democratic rule of law of the state.”

17. Following her objection, the Gorzów Wielkopolski District Court examined her case anew.

18. In pleadings of 21 December 2008 the applicant requested that J.S., D.N.(who was representing the opposite party in her mother's case; see paragraph 7 above) and two other individuals should be questioned as witnesses. She also requested that L.W., a journalist who had published an article about her criminal case, entitled "A corrupt mafia-like setup" ("*Mafijno-korupcyjny układ*") in a local newspaper be questioned by the court. She stressed that information about the case must have leaked to the newspaper from the prosecutor's office, as she had not given information about the case to anyone.

19. During a hearing held on 10 February 2009 Judge J.S. was questioned. He submitted that he knew the applicant, as he had been the President of the Szczecin District Court. The applicant had on many occasions written to him complaining about various alleged shortcomings in civil proceedings in which she had been involved.

20. He submitted that he had answered many of her complaints in writing, including those couched in strong terms, but that, as a matter of principle, he had not requested the prosecutor to institute criminal proceedings against her.

21. In pleadings submitted to the court on the same date the applicant cited Article 54 of the Constitution, which guaranteed freedom of expression, and Article 10 of the Convention. She submitted that the offence punishable under Article 212 was to be examined in proceedings instituted by private prosecution. However, in her case it was the public prosecutor who had brought the bill of indictment to the court. She reiterated that the proceedings against her were part of a campaign of intimidation against her and her elderly mother. She had made the submissions concerned in the case in the context of a civil case and they should have been regarded as legitimate means of defending her interests protected by civil law. She reiterated that she had never made those pleadings public and that the journalist who had published the article about that letter must have been informed of it by the prosecuting office.

22. By a judgment of 13 February 2009 the court found the applicant guilty of the offence of defamation punishable under Article 212 of the Criminal Code and imposed a fine of PLN 700 (seventy daily fines of PLN 10) on her. The court referred to her pleadings of 7 June 2006 and held that the facts of the case had not given rise to any doubt. The allegations of lack of impartiality and the alleged failure to respect standards of professional conduct contained in the pleadings could clearly lower Judge J.S. in the estimation of the public or undermine public confidence in his capacity to hold his judicial position. The applicant's document had a public character as it was formulated in official pleadings to a court, the files of judicial proceedings being accessible to all the parties to these proceedings.

Moreover, there was a risk that its content could become known to the members of the public in the courtroom if it was read out during the proceedings. The allegations thus placed in the public domain were untrue and capable of undermining J.S.'s good reputation. They had to be seen in the context of a possible threat of loss of public trust in his capacity to carry out his judicial profession.

23. The court further found that the applicant had written a number of letters to Judge J.S. in his capacity as President of the court, making various allegations about the judges of that court. She alleged that certain judges were party to a "mafia-like setup", and complained that Judge J.S. had been interfering with the conduct of cases in which the applicant was involved, to her detriment. She had alleged that he had passed a "death sentence" on the applicant's family. In his replies, Judge J.S. had repeatedly drawn the applicant's attention to the inappropriate terms she used and requested her to stop using offensive language.

24. The court was of the view that the applicant had acted with the direct intention (*zamiar bezpośredni*) of insulting the judge. However, the offence was not particularly dangerous, because the offence of defamation breached only the honour of an individual person concerned, without violating other legally protected interests or values. Hence, the fine in the amount of PLN 700 was justified, as being capable of having both a dissuasive and a punitive effect on the applicant. The court noted that the applicant was unemployed, but she was young, had a good education and was able to find work and pay the fine, in instalments if need be.

25. The applicant appealed. She again referred to Article 54 of the Constitution, guaranteeing the freedom of expression, and Article 10 of the Convention, arguing that the judgment breached them.

26. By a judgment of 15 May 2009 the Gorzów Wielkopolski Regional Court upheld the contested judgment. It was of the view that the lower court had correctly established the facts of the case. The applicant's allegations about J.S.'s involvement in any "mafia-like setup" could not be regarded as legitimate criticism. The applicant did not have objective grounds on which to formulate such a view and she had thereby overstepped the limits of acceptable criticism.

II. RELEVANT DOMESTIC LAW

27. Article 212 of the Criminal Code 1997 provides as follows:

"§ 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 the public's opinion or undermine public confidence in their capacity necessary for a certain position, occupation or type of activity, shall be liable to a fine, a restriction on their liberty or imprisonment not exceeding one year.

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

§ 3. When sentencing for an offence specified in § 1 or 2, the court may adjudge a supplementary payment in favour of the injured person or the Polish Red Cross, or of another social purpose designated by the injured person (*nawiazka*).

§ 4. Prosecution of an offence specified in § 1 or 2 shall occur upon a private charge.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

28. The applicant complained that her right to freedom of expression as provided for in Article 10 of the Convention had been breached. This provision 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

29. 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

30. The Government argued that the interference with the applicant's right to freedom of expression was prescribed by law, as it had its legal basis in Article 212 § 1 of the Criminal Code as it stood at the relevant time.

31. They were further of the view that it pursued a legitimate aim of protection of the reputation or rights of others and maintaining the authority and impartiality of the judiciary. The applicant had made totally unfounded allegations concerning the President of the Szczecin District Court. Her allegations could not be considered reasonable criticism, but rather were a defamation unsupported by any evidence.

32. As to the proportionality of the interference, the Government averred that prior to her submissions concerned in the present case the applicant had on numerous occasions sent insulting letters to the court and various public authorities (see paragraphs 20 and 23 above). In his testimony to the Gorzów Wielkopolski District Court the President of the Szczecin District Court had stated that he had replied to those letters, addressed the applicant's grievances and warned her that she was using inappropriate and offensive terms. He had also requested the applicant to abstain from insulting judges and courts in her letters. It was only the letter of 7 July 2007 which had prompted him to react.

33. Furthermore, the applicant had made her allegations in the context of a pending civil case. Her pleadings had to be included in the case file and were accessible to the parties to the case.

34. In addition, parts of her pleadings had been published in the article published by the newspaper. They had thereby become available to the public and were capable of seriously undermining the authority of the judge concerned and of the judiciary as a whole.

35. With regard to the question whether the domestic courts had given "relevant and sufficient" reasons for their judgments, the Government maintained that such reasons had been provided. The courts had found that the applicant's allegations could clearly lower J.S. in the estimation of the public and undermine public confidence in his capacity to hold his position. The courts had also stressed that the applicant's submissions were of a public character, as it had been formulated as official pleadings to the court. The files of the proceedings had been accessible to all parties to these proceedings. The impugned content could also become known to the public present in the courtroom if it was read out.

36. The Government emphasised that the penalty imposed on the applicant had been very lenient. The courts had neither imposed a prison sentence on the applicant nor a penalty of restriction of liberty. They had had decided that she should pay the fine amounting to 70 daily fines of

PLN 10, the lowest daily rate at that time. The highest daily fine rate had at that time been PLN 2,000. The fine to be paid by the applicant had therefore been very close to the minimum which could be imposed.

37. The Government contrasted the present case with the case of *Skalka v. Poland*, no. 43425/98, 27 May 2003, where for proffering insults against a non-identified judge the court had imposed on the applicant a sentence of eight months' imprisonment. In the present case not only was the sentence far more lenient, but also the allegations made by the applicant had been more serious, and had been directed against a specific judge.

38. The Government reiterated that in its case-law the Court attached considerable weight to the protection of the judiciary. In certain cases it found that even if the judge's conduct had been open to criticism, disparaging statements made by the applicants had exceeded what could be considered acceptable. Furthermore, in a number of cases it had found that offensive language against the Court itself amounted to an abuse of the right of petition.

39. The Government concluded that there had been no violation of the applicant's right to freedom of expression.

40. The applicant argued that the interference complained of was not prescribed by law. Investigation in defamation cases was normally instituted by way of a private prosecution. The investigation in the applicant's case had been instituted *ex officio*, but the prosecutor had failed to provide reasons for which he had considered that the public interest required an investigation of the case.

41. The applicant further averred that the interference did not pursue a legitimate aim.

42. The applicant submitted that the penalty imposed on her was manifestly disproportionate. The phrases she had used had obviously been critical, but she had had no intention of insulting anyone. The phrases relied on by the Government had been quoted out of context. They had not exceeded what could be regarded as admissible criticism. The applicant was a linguist and her language was literary and full of suggestive metaphors. It should be obvious that when saying that the judge had "passed an informal death sentence on her and her family" she had not meant that the judge intended to assassinate her. She had not used any vulgar expressions and had not insinuated that the judges were intellectually not up to their judicial tasks.

43. The applicant further referred to the Government's argument that the President of the Szczecin District Court had not thought it fit to institute a criminal investigation in response to the applicant's numerous allegedly insulting letters. This, in the applicant's view, supported the view that there was no pressing social need for criminal proceedings to be instituted against her in the first place.

44. The applicant was of the view that the courts had failed to give sufficient and relevant reasons for their judgments. The mere facts that they had been of the view that the impugned document had lowered Judge J.S. in the estimation of the public, and referred in this respect to the provisions of Article 212 of the Criminal Code, could not be deemed sufficient. They had failed to indicate why and how this could have happened as a result of that document. They had limited themselves to repeating the terms of the legislation, but had not applied them to the specific circumstances of the case.

45. The applicant further stressed that the applicant's pleadings were not of a public character, because access to court files was restricted. In principle, only parties to the proceedings had access to the file.

46. In so far as the Government relied on the fact that details of the proceedings had been made public by an article published by the local press (see paragraph 34 above), the applicant stated that the applicant had not been responsible for that publication. She had not contacted any journalists in connection with her case and she should not be penalised by the fact that such access had been made possible by an unidentified third party.

47. The applicant was also of the view that in the assessment of the proportionality of the interference it had to be taken into consideration that in the civil proceedings she had been acting as her elderly mother's non-professional representative and that she had been trying to protect her mother's legal interests.

48. The penalty imposed on the applicant could not be regarded as proportionate. The assessment of the severity of that penalty must be done with regard to the fact that the fine imposed on her had been changed into community service for twenty hours per month for a seven-month period. This cannot but be seen as a harsh penal measure.

49. In addition, as a result of the criminal sentence imposed on her and the entry in the National Criminal Register resulting from it, the applicant had been deprived of the opportunity to participate in professional life. She had thereby been rendered ineligible for any employment organised by public institutions, and could not work as a teacher. Considering her profession of art historian and linguist and the fact that she could only be employed by cultural or educational institutions, this amounted to a serious restriction on her rights and life prospects. This entry was to remain on her register for a very long period, of five years.

50. The applicant finally argued that Polish law offered many legal avenues for victims of alleged defamation to defend their rights and reputation in civil proceedings. Hence, the continued existence of Article 212 of the Criminal Code and its application to the applicant's case were in breach of the proportionality requirement.

2. *The Court's assessment*

51. It was not disputed that the applicant's conviction by the national courts amounted to "interference" with her right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. The Court sees no reason to conclude otherwise.

52. The Court is of the view that the interference referred to above was "prescribed by law" since it was based on Article 212 of the Criminal Code.

(a) **Whether the interference pursued a legitimate aim**

53. An interference with a person's freedom of expression entails a violation of Article 10 of the Convention if it does not fall within one of the exceptions provided for in paragraph 2 of that Article (see *The Sunday Times v. the United Kingdom* (no. 1), judgment of 26 April 1979, Series A no. 30, p. 29, § 45, and *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 85, ECHR 2004-XI). The Court is of the view that in the present case the interference pursued a legitimate aim of maintaining the authority of the judiciary.

(b) **Whether the interference was necessary in a democratic society**

54. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment. Subject to paragraph 2 of Article 10, 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 pluralism, tolerance and broadmindedness, without which there is no "democratic society".

55. The test of "necessity in a democratic society" that an interference with this freedom must meet the requirement of the Court to determine whether the interference complained of 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 an independent court (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III; *Cumpănă and Mazăre*, cited above, § 88; and *Bezymyanny v. Russia*, no. 10941/03, § 36, 8 April 2010).

56. This Article of the Convention does not guarantee wholly unrestricted freedom of expression. The exercise of this freedom carries with it "duties and responsibilities" (see, for example, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 58, 22 October 2009). As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established

convincingly (see, for example, *Skalka v. Poland*, no. 43425/98, § 32, 27 May 2003).

57. In particular, the Court must determine whether the measure taken was “proportionate to the legitimate aims pursued” (see, among many other authorities, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). 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 (see, among many other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, pp. 2547-48, § 51).

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 in which the remarks by the applicant were made.

58. In addition, 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, among many other authorities, *Skalka*, cited above, §§ 41-42; *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007; and *Semik-Orzech v. Poland*, no. 39900/06, § 49, 15 November 2011).

59. The Court has to examine whether, taking into consideration all the relevant circumstances of the present case, the final domestic court’s judgment amounted to a disproportionate interference with the applicant’s right to freedom of expression. In so doing the Court must ascertain whether on the facts of the case a fair balance was struck between, on the one hand, the need to protect the authority of the judiciary and, on the other, the protection of the applicant’s freedom of expression.

60. The Court notes that, unlike in the vast majority of cases it has examined so far, the defamation proceedings in the present case did not originate in the publication in the media. When writing her letter the applicant did not act as a journalist, but in her personal capacity as a party to judicial proceedings.

61. The Court observes in this connection that the work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed by the rule of law, needs to enjoy public confidence. It should therefore be protected against unfounded attacks (see, for instance, *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-234, § 37). The phrase “authority of the judiciary” includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person’s guilt or innocence on a criminal charge (see *Worm v. Austria*, judgment of 29 August 1997, *Reports* 1997-V, p. 1549, § 40). What is at stake as regards protection of the authority of the judiciary is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal

proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30).

The courts, as with all other public institutions, are not immune from criticism and scrutiny (see *Skalka*, cited above, § 34). Therefore, while parties are certainly entitled to comment on the administration of justice in order to protect their rights, their criticism must not overstep certain bounds (see *Saday v. Turkey*, no. 32458/96, § 43, 30 March 2006). In particular, a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention (see *Skalka*, loc.cit.).

62. In the present case, in her pleadings of 7 June 2007 the applicant stated that the Szczecin District Court was engaged in “criminal activity by a group of persons acting with a view to intimidating, threatening and extorting money from the applicant and her family and aiming at [her mother]...This group of a criminal character was composed of [lawyer] D.N. acting in a corrupt mafia-like setup... under the aegis of J.S., the President of the Szczecin District Court.” The impugned statement, framed in sweeping and unbalanced terms, implied that Judge J.S. not only lacked impartiality and failed to respect applicable professional standards, but, even more seriously, was also involved in activities bordering on the criminal. The applicant did not indicate any factual basis which could have reasonably grounded her allegations. If the applicant wished to express dissatisfaction with the way the proceedings were conducted by the judge, there is nothing to suggest that she could not have raised the substance of his criticism without using the impugned language (see *A. v. Finland* (dec.), no. 44998/98, 8 January 2004).

63. The Court reiterates that it is one of the precepts of the rule of law that citizens should be able to notify competent State officials about conduct of civil servants which to them appears irregular or unlawful (see *Zakharov v. Russia*, no. 14881/03, § 26, 5 October 2006, *mutatis mutandis*). The important role that the judiciary plays in a democratic society cannot in itself immunise judges from being targets of citizens’ complaints. However, if the applicant was dissatisfied with the way in which the judge handled her case, she could have acted within the framework established by law for making complaints (see, in a similar context, *Zakharov v. Russia*, (cited above). It has not been argued, let alone shown, that it was not open to the applicant to do so.

64. The Court further notes that the applicant made her allegations in her pleadings to the civil court. The impugned statements cannot therefore be regarded as being a part of a public debate about the state of the judiciary. Consequently, the applicant cannot successfully rely on the fullest protection which statements made in the context of an open and public

debate on issues of public concern enjoy under the provisions of Article 10 of the Convention.

65. The Court observes that prior to the events which form the basis of her case before the Court the applicant wrote to the Szczecin District Court, formulating various complaints about the civil proceedings. Her letters were not left unanswered. In his replies, Judge J.S. repeatedly drew the applicant's attention to the inappropriate terms she used and requested her to use appropriate language. The applicant was thereby made aware that the terms in which she had couched her complaints were inappropriate and that her conduct was open to criticism. The first-instance court, finding the applicant guilty of the offence of defamation, had regard to this aspect of the case and also to the applicant's failure to heed the advice she had received (see paragraph 23 above).

66. In so far as the applicant argued that she could not be blamed for the contents of her submissions being leaked to the public and published in the press article, the Court observes that the domestic courts had neither made reference to this article in their judgments nor had regarded it as a circumstance indicating her guilt.

67. Furthermore, the Court notes that the applicant in the present case was ultimately fined PLN 700. This represented 70 daily fines of PLN 10, the lowest daily rate used for the purposes of calculating fines applicable at the material time. The penalty imposed on her cannot therefore be considered excessive.

68. Lastly, the Court observes that the applicant's case was transmitted for examination, at the request of the Szczecin Regional Court, from the Szczecin-Śródmieście District Court to the Gorzów Wielkopolski court. The Court is therefore satisfied that appropriate steps have been taken to dispel any doubts as to the impartiality of the courts examining the applicant's case, based on the fact that the case concerned defamation of the President of the Szczecin District Court, so the question of impartiality could have arisen had the case been dealt with by the courts in Szczecin.

69. In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of their decisions were "relevant and sufficient" and that the fine imposed on the applicant was not disproportionate to the legitimate aim pursued, namely maintaining the authority of the judiciary. Therefore, the interference with the applicant's freedom of expression was "necessary in a democratic society".

70. There has accordingly been no violation of Article 10 of the Convention

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 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy 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.
F.A.

CONCURRING OPINION OF JUDGE DAVID THÓR BJÖRGVINSSON

I have voted with the majority with some hesitation.

The defamation proceedings against the applicant were born out of the applicant's statements made in her pleadings before the Szczecin District Court. Apparently the president of the Court, J.S., saw fit to forward the issue to the supervising judge of the Szczecin Regional Court who informed the Szczecin-Śródmieście Prosecutor of the applicant's pleadings with the result that a public bill of indictment was issued against the applicant. She was later found guilty of defamation.

The reasons for my hesitations are the following.

Firstly, it is questionable whether it was at all appropriate for the president of the Szczecin District Court to take the initiative to have public defamation proceedings brought against a party to a dispute before his court for statements made in court pleadings. Interestingly, the case was only investigated as a defamation case. However, no investigation was conducted into the veracity of the allegations made by the applicant in her pleadings, which can only mean that nobody took them seriously enough to even suggest such an investigation. I do not imply that there was any basis for them whatsoever, but only that nobody took them seriously, and thus they would seem to be, in practical terms and albeit being intemperate, at least harmless to J.S.'s reputation.

Secondly, I do not agree that the statements were made in public, as they were made in civil court proceedings. Although such proceedings are public within the meaning of procedural law the overall effect of it for J.S.'s reputation certainly cannot be equated with material published in the media. Their possible harmful effect for J.S., if any, must be assessed in light of that fact.

Thirdly, the case raises the question as to whether defamation proceedings are at all the right tool to address inappropriate statements made in the context of court proceedings. I believe that these kinds of "procedural irregularities" are more appropriately dealt with within the framework of procedural rules on contempt of court and such, rather than resorting to independent defamation proceedings where Article 8 and Article 10 rights become the central issue. In any case, as reflected in the judgment, there seems to be ample support in the case-law of this Court for the position taken in the judgment. This has for me, with some hesitation, tilted the balance in favour of finding no violation of Article 10 of the Convention.