



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

FOURTH SECTION

CASE OF KONIUSZEWSKI v. POLAND

(Application no. 619/12)

JUDGMENT

STRASBOURG

14 June 2016

FINAL

14/09/2016

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

In the case of Koniuszewski v. Poland,

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

András Sajó, *President*,
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 619/12) 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 Krzysztof Koniuszewski (“the applicant”), on 7 December 2011.

2. The applicant was represented by Mr T. Szychowski, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to freedom of expression had been breached.

4. On 29 September 2014 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1976 and lives in Warsaw.

6. The applicant is a journalist working for *The World of Cars* (*Auto Świat*) a weekly motoring magazine.

7. In August 2006 the Competition and Consumer Rights Office (*Urząd Kontroli Konkurencji i Konsumentów*) published a report on its official website, summarising the results of a countrywide survey concerning the

quality of motor fuel sold by petrol stations. It listed, *inter alia*, a number of petrol stations, including their names, addresses and owners, where samples of diesel and petrol taken during that survey did not meet the quality requirements imposed by the applicable regulations.

8. On 14 August 2006 the magazine published a series of articles. It presented the most drastic cases of fraud and described the impact that use of adulterated fuel had on the vehicles. It also summarized the results of the survey. It was divided into five parts: “You can make an official complaint” (*Tu można złożyć skargę*), “Brand names take care of the quality of fuel” (*Firmowe stacje dbają o jakość*), “Costly repairs” (*Kosztowne naprawy*) and “We go public with the names of fuel crooks” (*Ujawniamy oszustów paliw*). The latter article referred to the results of the survey and had the applicant’s name in the byline. The article also included a table entitled “Stations selling counterfeit fuel” (*Stacje fałszujące paliwa*).

9. The table shown was based on the Competition and Consumer Rights Office report and consisted of four columns listing the town, the name of the company running the station and information on the quality of the diesel and petrol sold there. The fuels were rated as either “good quality” or “bad quality”; at least one fuel in all the listed stations was rated as “bad quality”. No mention was made of the degree to which standards had been breached or of the kind of standards concerned in each case. The station owned by the complainant in the subsequent criminal proceedings (see paragraphs 12-26 below) was included into the list with the following information: “Diesel – good quality, gasoline – bad quality”.

10. The front page of the magazine bore the title “Report: stations selling adulterated fuel. Troubling results of survey. The World of Cars publishes addresses of petrol stations where you should not buy fuel.” (*Raport: które stacje sprzedają fałszywe paliwo. Niepokojące wyniki kontroli. Auto-Świat podaje adresy, gdzie nie należy tankować*).

11. On 30 August 2006 B.J., the owner of one of the stations listed in the table referred to above, asked the magazine’s editor to publish a retraction of the statement concerning his business. In a reply of 7 September 2006 the publisher replied that their article had been based on the report of the Competition and Consumer Rights Office.

A. Criminal proceedings

12. On 2 December 2006 B.J. brought a private prosecution against the applicant with the Hrubieszów District Court. He submitted that the press report had damaged his reputation and good name; that he sold fuel bought from renowned suppliers; that he did not adulterate it; and that the data published by the Office had not indicated that he had done so. He relied on Article 212 of the Criminal Code (defamation (*zniesławienie*)).

13. The case was subsequently transferred to the Warsaw-Mokotów District Court.

14. On 10 September 2008 that court, without holding a hearing discontinued the criminal proceedings, finding that the applicant had no case to answer. It noted that civil proceedings against the applicant had been instituted by B.J. and were at that time pending before the civil courts (see paragraphs 28-29 below). The facts of the case which the court had established on the basis of the case file of the civil proceedings were not in dispute between the parties. The applicant had not committed a criminal offence as information published in the impugned article had been based on official data publicly available via the Internet. He had therefore had good grounds to assume that it had been true. The editors of the magazine and the applicant had acted to protect the legitimate interests of car owners. As selling adulterated motor fuel had been known to be very common and as it had been causing serious damage to car engines, the issue had been hotly debated and had caused considerable public concern and anger.

15. The court lastly noted that a civil forum was more appropriate for the purposes of dealing with similar cases.

16. B.J. appealed against the decision.

On 18 June 2009 the Warsaw Regional Court allowed the appeal. It noted that the contested decision had been taken with the court referring to a civil case which had previously been lodged by the garage owner and which had been pending at that time. However, this decision had been premature as a hearing should have been held in order to establish all the relevant facts. The court acknowledged that the applicant had relied on the official report, but noted that phrases such as “fuel crooks” had not been included therein. Consequently, it could not have been determined at that point in time whether these statements had been true. The court remitted the case for reconsideration to the Warszawa-Mokotów District Court.

17. On 10 November 2009 the Warszawa-Mokotów District Court found the applicant guilty of the offence of defamation under Article 212 of the Criminal Code. It imposed on him a fine of 2,000 Polish zlotys (PLN, approx. 500 euros (EUR)), ordered him to pay PLN 500 (approx. EUR 125) to a charity and to reimburse B.J.’s legal costs in the aggregate amount of PLN 2,760 (approx. EUR 690).

18. The court noted concordant testimony from a number of witnesses that the problem of selling adulterated motor fuel had been a serious one and that it had given rise to an ongoing discussion and to measures being taken by the State authorities in order to prevent and penalise it. It accepted that it had been an issue of public interest.

It noted that J.K., a witness in the case, had testified that after the article many clients in the town had stopped buying fuel at the station owned by B.J.

19. It had regard to an expert opinion which confirmed that the petrol sold by B.J. had not corresponded to the official standards. The expert had indicated a number of possible causes. Adulteration of the petrol by the addition of heating oil had been one of them. He stated that the non-compliance of the fuel sold by B.J. at the time of the survey had not been significant and that it could not have damaged car engines.

20. The court was of the view that it had not been demonstrated to its satisfaction that B.J. had adulterated the petrol he had sold. The applicant had not shown that this had indeed been the case. The deterioration of its quality could have been caused by other factors over which the owner of the station had had no control. The applicant had failed to show proper diligence by publishing the results of the survey made by the Competition and Consumer Rights Office and by referring, in the title of the table referred to above, to “[s]tations selling adulterated fuel”. The title of that table was a simplification which clearly ascribed negative intentions and conduct to the owners of the stations concerned.

21. While it was true that an administrative fine had been imposed on B.J., the prosecuting authorities had decided not to institute criminal proceedings against him because the applicable standards had been breached only minimally at his station. Hence, in the court’s view it had been inappropriate to include the name of his company in the table entitled “Fuel crooks”. Prior to the publishing of the impugned information, the applicant should have checked how exactly B.J. had breached the official standards and whether these shortcomings could indeed have caused damage to car engines. Instead, he had uncritically published the information from the Competition and Consumer Rights Office report, putting B.J. on a par with those who pursued the dangerous practice of adulterating petrol by adding heating oil to it and breaching the quality standards a hundred- or a thousand-fold.

22. The court acknowledged that the applicant’s intentions had been legitimate, but the use of words such as “crook” or “forger” to describe B.J.’s conduct had not been justified. The newspaper should have used more appropriate and precise language.

23. The applicant appealed. He argued, *inter alia*, that his conviction had been incompatible with Article 10 of the Convention in so far as the court had failed to address substantive issues arising under this provision in the case, including the case-law of the Court; that the issues raised by him had been the subject of an ongoing public debate, a fact which had not been sufficiently taken into consideration by the court; that the information contained in the article had consisted merely of data relayed from an official document prepared by the State; that it had not been for the applicant to assess the veracity of this information; that he had therefore had a right to assume that it had been true and had therefore not been obliged to contact the owner of the station prior to the article’s publication. He lastly argued

that the court had failed to make a distinction between untrue information and information which the applicant had been justified in thinking had been true. He concluded that the interference had been excessive and not necessary in a democratic society.

24. By a judgment of 21 April 2011, served on the applicant's lawyer on 7 June 2011, the Warsaw Regional Court essentially upheld the contested judgment (save for a part amended for a technicality). It further increased the legal costs to be paid to a total of PLN 4,244. It shared the conclusions of the lower court as to the legal assessment of the facts of the case.

25. In so far as the applicant relied on Article 10 of the Convention and referred to the Court's case-law, the court noted that both this provision and the provisions of the Constitution guaranteed a right to freedom of expression, but this freedom was not unlimited. It could be restricted for the purposes of, *inter alia*, the protection of the rights of others. In the present case the impugned article contained offensive terms and had thereby breached B.J.'s rights. It could not therefore be accepted that it had served any legitimate public aim. In particular, it could not be accepted that the article had amounted to a mere retransmission of the information contained in the report of the Competition and Consumer Rights Office.

26. In so far as the applicant relied on the case-law of the Court, the Regional Court observed that the Polish courts, as in any other continental jurisdiction, were not bound by the judgments of the Court as the Polish legal system was not based on precedent. It had not been necessary for the lower court to rely on the Court's case law. According to the appellate court, although it shared the applicant's views based on the Court's case law on the freedom of expression presented in his appeal, those views were not relevant for the adjudication of the case (*nie mają one znaczenia dla rozstrzygnięcia niniejszej sprawy*). The applicant's point in this matter had therefore been wholly erroneous (*całkowicie chybyony*). The appellate court was well aware of the role of the media in a pluralist and democratic society, but the press was obliged to present truthful or at least carefully verified information to the public and to show diligence and thoroughness. The applicant had failed to do so and the information he had published had seriously damaged B.J.'s reputation.

B. Civil proceedings

27. On 31 January 2008 the Warsaw Regional Court gave a judgment in the civil case for the protection of personal rights brought by B.J. against the applicant, the editor-in-chief of the magazine and its owner.

28. On 25 March 2009 the Warsaw Court of Appeal partly amended this judgment. The defendants were obliged, jointly, to pay PLN 10,000 (approx. EUR 2,500) to the plaintiff and to apologise to the plaintiff.

II. RELEVANT DOMESTIC LAW

29. 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 (nawiązka).

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained that his right to freedom of expression had been breached, in violation of Article 10 of 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

31. The Government raised a preliminary objection that the applicant had failed to comply with the six-month time-limit as required under Article 35 § 1 of the Convention. They referred to the fact that the final judgment in the applicant’s criminal case had been given on 21 April 2011

and served on his lawyer on 7 June 2011. The time-limit provided for by Article 35 of the Convention had expired on 7 December 2011. The applicant had lodged his application with the Court on 2 January 2012, as shown by the receipt stamp of the Registry on the application form.

32. The applicant argued that the application had been sent to the Court by post on 7 December 2011.

33. The Court's normal practice is to accept that the date of introduction of the application was the date of the postmark when the applicant dispatched a duly completed application form to the Court (see *Abdulrahman v. the Netherlands* (dec.), no. 66994/12, 5 February 2013). In the present case the applicant's application form was, as shown by the postmark, posted on 7 December 2011, while the six-month time-limit for lodging an application with the Court had started to run on 8 June 2011 (see *Otto v. Germany* (dec.), no. 21425/08, 10 November 2009) and expired on 8 December 2011.

34. The Government's objection must therefore be dismissed.

35. 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

36. The applicant submitted that he had simply republished an official report. He had made it clear in the domestic proceedings that it had not been his intention that B.J.'s income suffer.

37. The applicant argued that consumers and society at large had a right to form their own opinions on the basis of available and diligently gathered information. The applicant had simply circulated information which had previously been made public. As a journalist, he had had a right and a duty to warn interested persons of the problems with the quality of fuel.

38. The publication of information about B.J.'s business based on an official and publicly available report could not be deemed as a violation of his right to a good reputation. All professionals were obliged to run their businesses properly and to respect, as a minimum, the standard of care commonly required within a given industry. Adulteration of fuel was harmful to the environment. Consumers had a right to choose petrol stations selling fuel complying with the applicable quality standards.

39. As regards the title of the impugned article, the applicant argued that it was the function of all titles of press articles to focus or attract readers' attention. However, a title could not be seen in isolation from the actual content of the article. They constituted a whole. While the title of the

impugned article could possibly be considered as running against good taste, depending on individual notions of good taste, the facts presented therein had been established by the State administration prior to its publication.

40. The applicant emphasised that B.J., as an entrepreneur, had been obliged to comply with applicable laws. By entering business he had knowingly exposed himself to a higher degree of public scrutiny. The applicant had based his article on an official report, prepared on the basis of testing carried out by a duly authorised public institution. The results had been published on the Competition and Consumer Rights Office website. A journalist could have felt secure in deeming that report to be truthful. This was further confirmed by the fact that an administrative fine had been imposed on B.J. for fuel adulteration (see paragraph 21 above).

41. The applicant concluded that there had not been sufficient grounds for a justified interference with his right to freedom of expression.

42. The Government were of the view that the interference complained of had been lawful as it had been effected on the basis of Article 212 of the Polish Criminal Code. It had served the legitimate aim of protection of the rights and freedoms of others, specifically B.J.'s good name and reputation.

43. The Government further stressed the serious nature of the applicant's allegations. They had challenged B.J.'s reliability as a businessman. Running the petrol station referred to in the impugned article had been an essential part of his business; during the proceedings the courts had verified whether the article had indeed negatively affected his business and, by reference to the testimony given by J.K. (see paragraph 18 above), found this to be the case.

44. The Government were of the view that the accusation of selling adulterated fuel and the use of excessive language to describe that conduct had violated B.J.'s rights. The statement made by the applicant had not been a critical opinion aimed at an entrepreneur but simply an insult directed at a private person. The applicant, as a journalist working for a specialist magazine, had had particular knowledge concerning this field of business. When writing the article he had had access to the report of the Competition and Consumer's Rights Office. It was expected of a journalist to undertake a detailed study of such a report which he had failed to do. Even the fact that the issue had been of public concern had not justified treating B.J. in the article on a par with other petrol station owners who had breached applicable standards manifold.

45. The Government were further of the view that the applicant had been negligent in two aspects. Firstly, he had oversimplified the findings of the report. Secondly, he had used the same negative terms ("*crook*", "*forgery*") in respect of various types of non-compliance with the applicable standards.

46. The domestic courts had duly examined the case and provided detailed reasoning for their decisions. Thorough justification had been

provided for the conclusion that the applicant had gone beyond the limits of freedom of expression protected by Article 10 of the Convention. The domestic courts had examined the applicability of this provision to the circumstances of the case and had referred to the Court's case-law. The conclusion had therefore been warranted that the interference complained of corresponded to a pressing social need. The Government concluded that the values applied by the domestic courts had been based on and had been compatible with those fostered by the Court.

47. The Government were of the view that a criminal response to an offence of defamation could not, as such be considered disproportionate to the aim pursued, referring to *Lindon, Otchakovsky-Laurens and July v. France* ([GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-IV)). At the material time Article 212 of the Criminal Code provided for a fine, restriction of liberty or imprisonment for up to one year. In the present case the sanctions imposed on the applicant were on the milder end of the scale as the possible fines that could have been imposed, calculated on the basis of daily rates, ranged from PLN 10 to PLN 2,000 for periods ranging from ten to 360 days. In addition, the redress awarded to B.J. in civil proceedings in the amount of PLN 10,000 could not be regarded as excessive, especially as it had been imposed on the applicant jointly with the magazine's owner and editor-in-chief. Hence, it could not be regarded as having been disproportionate to the aim pursued.

48. The Government argued that the domestic courts had not disregarded the Convention standards in the present case. The phrase used by the appellate court to the effect that the judgments of the Court were not relevant for the present case (see paragraph 26 above) could not be reasonably construed as meaning that they had not been applied. The courts had merely wished to say that the cases referred to by the applicant were not applicable to the circumstances of the present case.

49. The Government concluded that the interference complained of, seen as a whole, had complied with the requirements of Article 10 of the Convention.

2. The Court's assessment

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

51. 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.

52. It has not been disputed that the interference was "prescribed by law", specifically by Article 212 of the Criminal Code.

53. The Court further considers that the interference pursued the legitimate aim of “protection of the reputation of others” within the meaning of paragraph 2 of Article 10 of the Convention.

54. 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, *Morice v. France* [GC], no. 29369/10, § 124, 23 April 2015 and *Bédat v. Switzerland* [GC], no. 56925/08, §§ 48–50, 29 March 2016, 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.

55. 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 there is a question of attacking the reputation of a named individual and infringing 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 *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III and *Kasabova v. Bulgaria*, no. 22385/03, § 63, 19 April 2011).

56. In previous cases, when the Court has been called upon to decide whether to exempt newspapers from their ordinary obligation to verify factual statements that are defamatory of private individuals, it has taken into account various factors, particularly the nature and degree of the defamation and the extent to which the newspaper could have reasonably regarded its sources as reliable with regard to the allegations (see *Bladet Tromsø and Stensaas*, cited above, § 66). These factors, in turn, require consideration of other elements such as the authority of the source (*ibid.*), whether the newspaper had conducted a reasonable amount of research before publication (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 37, Series A no. 313), whether the newspaper presented the story in a reasonably balanced manner (see *Bergens Tidende and Others v. Norway*, no. 26132/95, § 57, ECHR 2000-IV) and whether the newspaper gave the persons defamed the opportunity to defend themselves (*ibid.*, § 58). Hence, the nature of such an exemption from the ordinary requirement of verification of defamatory statements of fact is such that, in order to apply it in a manner consistent with the case-law of this Court, the domestic courts have to take into account the particular circumstances of the case under consideration. If the national courts apply an overly rigorous approach to the assessment of journalists’ professional conduct, the latter could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings not only on the individual cases before them but also on the media in general (see *Kasabova*, cited above, § 55, and *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 48, 2 October 2012).

57. In the present case, the applicant published a text concerning the widespread fraudulent practice of selling fuel which did not fulfil the quality standards set out by relevant legislation. The issue was the subject of an ongoing debate, as shown by the fact that the phenomenon triggered countrywide supervision by a State authority dealing with the defence of consumers’ rights. A relevant report was prepared by that authority on the basis of its findings and subsequently made public. The first-instance court dealing with the case accepted the seriousness of the problem. It further that it had given rise to a public discussion and to measures taken by the State authority in order to prevent and penalise wrongful practices. Hence, a very

close scrutiny of the restrictions imposed on the applicant is called for in the present case.

58. The impugned article was based on an official report drawn up by that authority. That report was available on its website prior to the publication of the article. The Court has held that the press should normally be entitled to rely on the content of official reports without having to undertake independent research (see *Bladet Tromsø and Stensaas*, cited above, § 68 and 72, ECHR 1999-III; *Colombani and Others v. France*, no. 51279/99, § 65, ECHR 2002-V; and *Yordanova and Toshev*, cited above, § 51, 2 October 2012). It expanded the scope of application of that principle, saying that journalists must be free to report on events based on information gathered from official sources without further verification (see *Selistö v. Finland*, no. 56767/00, § 60, 16 November 2004, and *Yordanova and Toshev*, cited above, § 51). The situation in the present case presents no material difference. The veracity of information concerning the unsatisfactory quality of the petrol sold by B.J. was not contested by the courts. The first-instance court called an expert witness who confirmed this (see paragraph 19 above). That court also referred to the fact that an administrative fine had been imposed on the plaintiff for this failure to comply with the applicable standards (see paragraph 21 above). Nonetheless, the first-instance court was of the view that the applicant had also been obliged to check which technical standards the fuel sold by B.J. had not complied with.

59. The Court further notes that the first-instance court considered it relevant for the assessment of the case that the fuel sold by B.J. had breached applicable standards only minimally and that therefore it has not been shown that it could in fact have caused damage to car engines. The Court is of the view that the degree to which the standards were breached does not detract from the veracity of the findings concerning that fuel made by the Consumer's Rights Office in their report.

60. It is further noted that in its analysis the first-instance court focused essentially on the title on the cover page of the magazine and on the title of the part of the text referring to the sellers of counterfeit fuel as "fuel crooks". Even if the phrase seems harsh, the Court reiterates in this connection that persons taking part in a public debate on a matter of general concern – like the applicant in the present case – are allowed to have recourse to a degree of exaggeration or even provocation (see *Dalban v. Romania* [GC], no. 28114/95, § 60, ECHR 1999-VI). In the Court's view, it does not appear exaggerated to label selling of fuel which did not comply with the applicable quality standards as fraud. The title remains within the acceptable limits as it is closely connected with the factual information provided by the applicant in his article (compare and contrast *Kania and Kittel v. Poland*, no. 35105/04, § 47, 21 June 2011). On the other hand, it

has not been argued or shown that the content of the article was in any way exaggerated or unbalanced.

61. The Court observes that the impugned text did not contain any statements amounting to a gratuitous personal attack on B.J. (see *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 34, ECHR 2000-X). It did not concern his private life and his name was not mentioned. It cannot therefore be said that aspects of his life other than his business activity were exposed to public scrutiny.

62. The nature and severity of the penalties imposed are also factors which should be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Skalka v. Poland*, no. 43425/98, § 41-42, 27 May 2003; *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007; and *J.B. v. Poland*, no. 57675/10, § 57, 3 November 2015). The Court must apply the most careful scrutiny when the sanctions imposed by a national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see, among other authorities, *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 88, ECHR 2007-III).

63. The Court notes in this connection that the courts imposed on the applicant a fine of 2000 Polish zlotys (PLN), ordered him to pay PLN 500 to charity, and to reimburse B.J.'s legal costs in the aggregate amount of PLN 4,244. The financial impact of these decisions, taken together, cannot but be regarded as significant.

64. It is further noted in this context that when the criminal court of appeal ruled on the case on 21 April 2011, the judgment by the civil court in the case for protection of personal rights brought by B.J. against the applicant was already final. In that case the civil court found against the applicant and the magazine he worked for (see paragraphs 28-29 above). The defendants (the applicant, the magazine's editor-in-chief and its owner) had been ordered to pay damages to the plaintiff in the amount of PLN 10,000.

The Court is mindful of the fact that the civil proceedings have not been complained of in the present case. It is also well aware that the legal issues to be determined by the criminal court were not the same as those examined in the civil proceedings. However, the fact that sanctions in respect of the same article were imposed twice, in civil and criminal proceedings, is of relevance for its assessment as to whether the interference complained of in the context of criminal proceedings respected the standards of freedom of the press guaranteed by the Convention.

65. Having regard to the above, the Court concludes that the interference was not necessary in a democratic society.

66. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

68. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government were of the view that the applicant’s claim was unreasonably high. They asked the Court to hold that a finding of a violation would provide, in the circumstances of the case, sufficient satisfaction to the applicant.

70. The Court accepts that the applicant suffered non-pecuniary damage – such as distress and frustration resulting from the conviction – which is not sufficiently compensated by the finding of a violation of the Convention and awards the amount claimed in full.

B. Costs and expenses

71. The applicant, who was represented by a lawyer, did not make any claim for costs and expenses incurred before the domestic courts or the Court.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five

thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

András Sajó
President