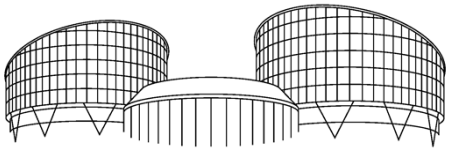

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STANISZEWSKI v. POLAND

(Application no. 20422/15)

JUDGMENT

Art 10 • Freedom of expression • Sanctioning of journalist in summary proceedings under the Election Code for publishing untrue statements about a local government election candidate • Fair balance struck by domestic courts between competing interests at stake in the context of election campaigns • Relevant and sufficient reasons • Summary proceedings during periods of election campaigns serving legitimate goal of ensuring fairness of electoral process • No indication of procedural unfairness or inequality

STRASBOURG

14 October 2021

FINAL

14/01/2022

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

In the case of Staniszewski v. Poland,

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

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 20422/15) 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 Jan Staniszewski ("the applicant"), on 22 April 2015;

the decision to give notice to the Polish Government ("the Government") of the complaints concerning the right to freedom of expression and the right to a fair trial and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 21 September 2021,

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

INTRODUCTION

1. The case concerns the sanctioning of the applicant for having published untrue statements about a candidate in local government elections.

THE FACTS

2. The applicant was born in 1956 and lives in Bulkowo. He was represented by Ms A. Bzdyń, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Ms J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. NEWSLETTER

5. Since 2010 the applicant has been the sole editor of a free monthly newsletter, "The Voice of the Municipality of Bulkowo" (*Gazeta Głos z*

Gminy Bulkowo), which he has distributed in shops and other public places. In 2014 ten editions of the newsletter were published, with 2,000 copies distributed for each edition. The newsletter, which consisted of a single double-sided piece of newsprint, reported on local issues and scrutinised the activities of G.G., the mayor of the municipality (*wójt gminy*) of Bulkowo.

6. In edition no. 9/2014, published on 10 September 2014, the applicant suggested that Mayor G.G. had chosen the village of Blichów for the harvest festival (*dożynki*) because he had hoped to generate support for his candidature in the upcoming elections. Furthermore, the edition reported on a construction project for a wind farm in the municipality. The article discussed the controversy arising from the negative implications of wind turbines for the health of local inhabitants and the adverse effect on land prices. Although the applicant did mention that the wind-turbine project had been commenced under the previous mayor, he sought to emphasise that its implementation was to be attributed solely to Mayor G.G. and to the local councillors currently in office. The applicant also wrote about a charity in which G.G.'s wife was treasurer, the disparity for which G.G. was responsible between the amount of allowances given to local councillors and those given to mayors to the detriment of the latter, and a decision reached by G.G. to take out a loan for 2,622,466 Polish zlotys (PLN, over 655,000 euros (EUR)).

7. In edition no. 10/2014, published on 10 October 2014, the applicant indicated that the municipal debt had risen to PLN 10,000,000, which would result in an increase in taxes and charges; that G.G. possessed more than 40 hectares of farming land; and that during his term of office as mayor, G.G. had made some extra money "on the side" (*fuchy*).

II. ELECTION CAMPAIGN

8. On 27 August 2014 the campaign for local government elections (*wybory samorządowe*) formally started.

9. On 22 September 2014 the Płock Electoral Commissioner (*Komisarz Wyborczy*) set up local electoral commissions. The applicant became a member of the Electoral Commission for the Municipality (*Gminna Komisja Wyborcza)* of Bulkowo.

10. On 7 October 2014 the Electoral Commission registered S.S. as a candidate for mayor of the municipality.

11. On the same date the Electoral Commission registered G.G. as a candidate for mayor of the municipality.

III. PROCEEDINGS AGAINST THE APPLICANT

12. On 21 October 2014 G.G., represented by a lawyer, lodged a claim against the applicant under Article 111 § 1 of the Election Code.

13. On 21 October 2014 at 10.45 a.m., the applicant was informed by a clerk of the Płock Regional Court (*Sąd Okręgowy*) of the claim and that a hearing was scheduled for the following day at 9.00 a.m. The claim, with various attachments, was sent to the applicant's email address at 12.09 p.m. The applicant claims that he opened the email some hours later, by which time it was too late to appoint a lawyer.

14. In the claim, G.G. requested that the applicant and the Contact National Trade Union (*Ogólnopolski Związek Zawodowy „Kontakt"*; the publisher of the newsletter – hereinafter "the trade union") be prohibited from disseminating untrue information about him. G.G. requested that the newsletters be confiscated and that the applicant and the trade union be ordered to publish a notice in a regional weekly magazine explaining that the statements in issue were untrue and offering an apology for publishing them. He also wanted a handwritten apology (*spisane własnoręcznie i podpisane oświadczenie*), and requested that the applicant and the trade union should pay PLN 10,000 (approximately EUR 2,500) to a charity and cover the costs of the proceedings.

15. G.G. provided evidence to show that all the statements made by the applicant about him had been untrue. The harvest festival in Blichów had been a tradition for many years and had been held in the same locality regardless of local elections. The suggestion that construction of the wind farm had been the sole responsibility of G.G. had been untrue as the investment had been approved prior to his term of office by the former mayor. It was not true that G.G., as mayor, had been involved in, or was responsible for, fixing the remuneration of local councillors and mayors. Domestic law clearly assigned responsibility in that regard to the local council. The applicant was incorrect in quoting the amount of debt incurred on behalf of the municipality (the correct amount was approximately PLN 7,800,000, not PLN 10,000,000); he was also incorrect in stating that an 80% increase in taxes was planned, when nothing of the sort had been considered. The debts were to be paid off from the municipality's own income derived from improvements in the collection of taxes, not from an increase in taxes. The claim that G.G. had 40 hectares of land was not true, as in reality he owned 19 hectares. Furthermore, contrary to the applicant's statements, G.G. had not been involved in any additional paid activity. Finally, the charity that had been operating since 2001, and in which G.G.'s wife had held various functions, had no links with the campaign.

G.G. complained about the sensationalist nature of the newsletters and about how they had been tarnishing his good name, something that was of particular importance during the election campaign.

16. During the hearing the applicant argued that the newsletters could not be considered as campaign material and that G.G. should not be allowed to use the procedure under Article 111 of the Election Code. He stated that he had been critical of G.G. in earlier editions of his newsletter but that the

court considered that the previous editions had not been relevant. According to the official minutes of the hearing, the applicant stated that the newsletters had been "based on available documents together with his own conclusions".

17. On 22 October 2014 the Płock Regional Court gave a decision in which it allowed the claim on almost all the points. The court ordered that:

(a) as requested by G.G., the applicant and the trade union refrain from disseminating the information;

(b) editions 9/2014 and 10/2014 of the newsletter be seized;

(c) the applicant and the trade union publish a notice in the regional magazine *Tygodnik Płocki* explaining that the impugned statements were untrue, with an apology;

(d) the applicant write a handwritten note to apologise for the untrue statements;

(e) the applicant and the trade union jointly pay PLN 10,000 (approximately EUR 2,500) to a charity; and

(f) the applicant and the trade union jointly pay PLN 377 (approximately EUR 94) in costs.

18. The Regional Court did not examine the part of the claim which related to the charity in which G.G.'s wife had been treasurer, ruling that the charity itself should have lodged a complaint.

19. The court considered that both the applicant and G.G. had participated in the election campaign. The two editions of the newsletter had been almost entirely dedicated to issues pertaining to the election and to Mayor G.G. as a person, whose activities had been analysed in detail and criticised. Therefore, the two editions of the newsletter had to be considered as campaign material and the case had to be examined under the procedure provided for by the Election Code.

The court emphasised that this summary procedure was intended to ensure fairness in the elections and to limit any adverse consequences of the dissemination of false information during that period. The press had a duty to disseminate information in a responsible manner and based on facts, otherwise the author and the publisher could be held liable as provided for by law.

20. The court considered that the applicant's newsletters were examples of a "negative campaign against G.G., consisting of gossip, insinuations, and allegations of a sensationalist and speculative nature that played on the emotions of readers". For instance, the applicant had intimidated readers with the allegedly negative impact of the wind farm on human health and had suggested that G.G. had "devised an uncertain future for local inhabitants". In connection with the charity's finances, the applicant had used expressions such as "the case reeks", a "new scandal was unfolding" and "the prosecutors should get involved". In connection with the false information about the increase in taxes, the applicant stated that G.G.

"would reach into peoples' pockets". According to the court, such statements were aimed at manipulating the emotions of readers and the information provided had lacked details or references to its sources. Such statements violated the principles of good journalism and breached the personal rights of the claimant. They unjustly placed him in a bad light and tarnished his good name.

21. The court further noted that G.G. had produced conclusive evidence that the applicant's statements of fact had been untrue. He had quoted inaccurate figures concerning the municipal debt, the size of G.G.'s landholding and the percentage of the planned increase in taxes. The point made about the mayor being solely responsible for commissioning the wind farm and for setting the amount of the allowances of local councillors and mayors and the assertion that, contrary to the law, he had been involved in additional paid activities, had all been untrue.

The court concluded as follows:

> "Taking into account the number and gravity of the allegations, [the applicant and the trade union] should cease disseminating such information, apologise publicly and privately to G.G., and receive a financial punishment for the unjustified breach of the personal rights of the claimant [in respect of] his good name, honesty, competency, responsibility for the financial standing of the municipality, and integrity ..."

22. On 23 October 2014 the applicant, represented by a lawyer, lodged an appeal against the decision. The applicant argued that the newsletters could not be considered campaign material and that the claimant could not receive protection under Article 111 of the Election Code. The applicant submitted that the September 2014 edition of the newsletter had been published prior to the date on which G.G. had officially become a candidate in the election. Moreover, the newsletters could not be campaign material as they had not supported any candidate running for election.

23. On 24 October 2014 the Płock Regional Court allowed an application by G.G. to supplement the decision of 22 October 2014 by adding a requirement that the correction of the false statements and the apology be published by 28 October 2014.

24. On 27 October 2014 the Łódź Court of Appeal dismissed the appeal. In the first sentence of its written reasons, the court stated as follows:

> "It should above all be emphasised that in his appeal, [the applicant] does not question the assessment by the [first-instance] court that the statements made in the publications in question were untrue."

25. The court examined the arguments raised in the appeal and dismissed them, taking the view that Article 111 of the Election Code covered all forms of speech linked to election campaigns. For speech to be covered by this provision, it did not have to originate from the campaign committee of a candidate: it included all statements made during the campaign and in connection with the election. The court emphasised that in election campaigning, the use of all available media was a common and

legal practice, provided that the information was true and that the value judgments were based on sufficient facts.

26. The newsletters in question, although apparently not supporting any particular candidate, had openly agitated against the incumbent mayor, G.G. They were representative of a negative campaign aimed at discouraging the electorate from voting for a candidate. The election campaign began in August 2014, so the dates on which both newsletters had been published fell within the period of campaigning; the date on which G.G. had formally been declared a candidate for the post of mayor of the municipality was irrelevant.

27. Lastly, the court observed that the applicant's engagement in the campaign had been in clear breach of the law since members of electoral commissions – of which he was one – were banned from active participation in the campaign.

28. On 30 October 2014 the Płock Electoral Commissioner warned the applicant that if he continued campaigning, his membership of the Electoral Commission for the Municipality of Bulkowo would be revoked.

29. The local government elections took place on 16 November 2014. G.G. was re-elected as mayor of the municipality of Bulkowo.

30. In 2015 the Płock Regional Court agreed to the applicant paying the remaining PLN 2,460 of the sum awarded in favour of the charity in monthly instalments.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT CONSTITUTIONAL PROVISIONS

31. Article 14 of the Constitution provides as follows:

> "The Republic of Poland shall ensure freedom of the press and other means of social communication."

32. 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."

33. Article 54 § 1 of the Constitution guarantees freedom of expression and provides in its relevant part as follows:

> "Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information."

II. ELECTION CODE

34. The Election Code (*Kodeks wyborczy*) of 5 January 2011 came into force on 1 August 2011. It provides in its relevant parts as follows:

Article 111

"1. In the event of dissemination, including in the press ..., of campaign material, in particular posters, leaflets, slogans, as well as statements, or other forms of election campaigning containing untrue information, a candidate or representative of the campaign committee concerned has the right to lodge a claim with a regional court seeking:

(1) a prohibition on the dissemination of such information;

(2) confiscation of such material;

(3) the correction of information;

(4) an order to publish a response to statements that infringe personal rights;

(5) an order to apologise to the aggrieved party;

(6) an order to pay up to PLN 100,000 to a charity.

2. A regional court shall examine applications under paragraph 1 above within twenty-four hours in non-contentious proceedings. ... The court shall, without undue delay, serve on the interested party referred to in paragraph 1 and the person required to execute the court's ruling a decision which will bring the proceedings in the case to a close.

3. The decision of the regional court can be appealed against within twenty-four hours to a court of appeal, which has twenty-four hours to examine it. No appeal shall lie against the decision of the court of appeal and its decision shall be enforceable immediately."

Article 153

"3. Members of electoral commissions shall not campaign for specific candidates or lists of candidates."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicant complained, under Articles 6 and 10 of the Convention, that his right to freedom of expression as provided for in Article 10 had been violated in the summary proceedings under the Election Code. The Court considers that the applicant's complaints should be examined solely from the standpoint of Article 10, bearing in mind that, since the Court is master of the characterisation to be given in law to the facts of the case, it is not bound by the characterisation given by an applicant or a government (see *Radomilja and Others v. Croatia* [GC],

nos. 37685/10 and 22768/12, § 126, 20 March 2018). Article 10 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

36. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicant emphasised the privileged role that the press occupied in a democratic society, particularly in the context of free elections. The applicant was a journalist and enjoyed protection as a public "watchdog". G.G., on the other hand, was a politician who should have displayed a greater degree of tolerance towards criticism. The applicant considered that the interference by the authorities had not had a legitimate aim. He submitted that the publications in question had not affected G.G.'s reputation and had not influenced the outcome of the elections. Moreover, ultimately the applicant had not been removed as a member of the electoral commission, which would have been the case had his actions constituted election campaigning.

38. In the newsletters the applicant had not commented on the private life of G.G.; he had concentrated on matters important for the municipality. The articles had dealt with financial matters and other crucial issues such as the construction of the wind farm. They had been aimed at raising awareness among local inhabitants of the actions of the local government. Moreover, the applicant had scrutinised the measures undertaken by G.G. over his entire four-year term of office, not solely prior to the election. It was not clear why G.G. had waited until the period of the election campaign to raise complaints about the applicant's conduct. The applicant considered that the only explanation was that G.G. had intended to take advantage of

the special procedure provided for by Article 111 of the Election Code. According to the applicant, this procedure "offered protection to politicians against any insult or defamation and should be regarded as incompatible with Article 10" of the Convention.

39. The applicant emphasised that he had obtained most of the information directly from the municipal office and from other publicly available documents. The applicant claimed that during the hearing at first instance, he had been deprived of the opportunity to adduce evidence proving the veracity of his statements. Moreover, owing to time constraints he had been unable to appoint a lawyer or to apply for legal assistance.

40. Finally the applicant emphasised that the penalty imposed on him had been unduly harsh and not proportionate to the offence.

41. The Government considered that the interference with the applicant's right to freedom of expression had been "prescribed by law", namely Article 111 § 1 of the Election Code. It pursued a legitimate aim as it had been intended to protect the reputation and rights of others. In addition, the Government emphasised the particular context of safeguarding the proper process of elections, as it had been necessary to protect a candidate during an election campaign from the dissemination of untrue information.

42. The Government emphasised that the domestic courts had carried out an analysis of two conflicting interests, in conformity with the principles enshrined in Article 10 of the Convention. The interference had therefore been proportionate and necessary to protect the candidate during the election campaign. The Government accepted that there was little scope under Article 10 for restrictions on political speech and on debate on questions of public interest. They acknowledged that the applicant had been involved in journalistic activity and that G.G., as a politician, had been a public figure. However, journalists had duties and responsibilities and had to comply with journalistic ethics. The case in hand showed that the applicant had failed in those duties, as the newsletters had contained statements of facts that had been untrue. In the domestic proceedings the applicant had not presented any evidence proving the veracity of the statements in question. Nor had he contested the first-instance court's assessment that they were untrue. The applicant had not demonstrated that he had collected the material for the articles with due diligence. Consequently, it could not be considered that he had acted in good faith.

43. The Government emphasised that in the context of the forthcoming elections, the dissemination by the applicant of untrue information about a candidate had necessitated a firm and quick response by the authorities. That reaction had been justified and the sanction imposed had not been disproportionate. In that connection the Government submitted that the financial penalty that the courts had imposed, namely PLN 10,000, payable

to a charity, was modest considering that it could legally have been as high as PLN 100,000.

2. The Court's assessment

44. It is common ground between the parties that the decisions given by the courts in the case against the applicant and the sanctions imposed constituted interference by a public authority with the applicant's right to freedom of expression. The interference was undoubtedly prescribed by law, namely Article 111 of the Election Code (see paragraphs 34 and 41 above). The Court further accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others – in this case G.G. as a candidate in local elections – within the meaning of Article 10 § 2 of the Convention. It also served to protect the integrity of the electoral process and thus the rights of the voters.

45. It remains to be established whether the interference was "necessary in a democratic society". In this regard the following general principles emerge from the Court's case-law (see, for instance, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68-70 and 76 *in limine*, ECHR 2004-XI, with further references).

(a) The test of "necessity in a democratic society" requires 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 given 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 of the Convention.

(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 in accordance with their margin 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 comments held against the applicants and the context in which they 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 has held that the requirement to prove to a reasonable standard that a factual statement was substantially true does not contravene Article 10 of the Convention (see *Rumyana Ivanova v. Bulgaria,* no. 36207/03, §§ 39 and 68, 14 February 2008; *Makarenko v. Russia*, no. 5962/03, § 156, 22 December 2009; and *Rukaj v. Greece* (dec.), no. 2179/08, 21 January 2010), and has held that a lack of effort to make out that defence against applicants (see *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, § 44, 18 December 2008). However, it has also held that if an applicant is clearly involved in a public debate on an important issue he should not be required to fulfil a more demanding standard than that of due diligence. In such circumstances, the obligation to prove the factual statements may deprive the applicant of the protection afforded by Article 10 (see *Kurski v. Poland*, no. 26115/10, § 56, 5 July 2016, *Braun v. Poland*, no. 30162/10, § 50, 4 November 2014 and *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 75, 19 July 2018).

46. In the present case the applicant was sanctioned in summary proceedings under the Election Code for statements made in two editions of his newsletter published during the local election campaign in 2014. The domestic courts found against him and in particular ordered him to pay a sum to a charity and to apologise to G.G., who was a politician and a candidate for the post of mayor of the municipality of Bulkowo (see paragraph 17 above).

47. The Court reiterates that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113). The two rights are interrelated and operate to reinforce each other. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see *Bowman v. the United Kingdom*, 19 February 1998, § 42, *Reports* 1998-I). This principle applies equally to national and local elections (see *Kwiecień v. Poland*, no. 51744/99, § 48, 9 January 2007). At the same time the Court recognises the importance of protecting the integrity of the electoral process from false information that affect voting results, and the need to put in place the procedures to effectively protect the reputation of candidates (*mutatis mutandis, Brzeziński v. Poland*, no. 47542/07, § 35, 25 July 2019).

48. It should further be observed that, as a politician holding public office and a candidate in elections, G.G. had inevitably and knowingly laid himself open to public scrutiny (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 59, Series A no. 204). Article 10 of the Convention does not, however, guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern and of political figures.

Under the terms of paragraph 2 of that Article, 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, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

49. Having examined the statements in question, the Court agrees with the domestic courts that they were to a large extent statements of fact. The Regional Court considered that the claimant had proved, having produced material evidence, that each of the applicant's statements was untrue (see paragraph 21 above). It is clear from the minutes of the hearing at first instance that the applicant did not rely on any particular evidence in support of the veracity of his statements or request the court to admit new evidence (see paragraph 16 above). He limited himself to stating that the information was in the public domain or came from official sources, without naming them. The applicant cannot therefore claim that his statements of facts have been supported by the material he had gathered.

50. Moreover, in his appeal against the decision at first instance, lodged by a lawyer of his choice, the applicant did not contest the conclusion of the first-instance court that his statements of fact had not been true (see paragraph 22 above). Consequently, he did not submit any evidence at the appellate level relating to his sources of information or otherwise pointing to the veracity of his statements. This fact was noted by the Łódź Court of Appeal in the opening remarks of its judgment of 27 October 2014 (see paragraph 24 above). The applicant failed to give any plausible explanation for his failure to supplement the evidence at the appellate level.

51. Furthermore, in the domestic proceedings the applicant failed to indicate the sources of his information and why they had not been accurate. Likewise, in the proceedings before the Court, the applicant failed to specify his sources and to demonstrate that he had acted with due diligence. The applicant also failed to demonstrate that the research done by him before the publication of the untrue statements of fact was in good faith and complied with the ordinary journalistic obligation to verify a factual allegation (see *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 64, 14 February 2008).

52. The domestic courts balanced two conflicting interests, namely the interest of all participants in election campaigns in being able to use every mean possible to influence voters, and the right of a candidate to be protected from untrue allegations. The Płock Regional Court emphasised the duties of the press to report in a diligent manner and on the basis of facts

(see paragraph 19 above). The appellate court noted that even value judgments had to be based on sufficient facts (see paragraph 25 above). The Court reiterates that "[w]here the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its own view for that of the domestic courts" (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012).

53. Having regard to the foregoing, the Court is satisfied that the reasons adduced by the national courts for sanctioning the applicant were relevant and sufficient within the meaning of its case-law.

54. In this connection, the Court observes that it is unable to subscribe to the applicant's argument that the very use of summary proceedings provided for in Article 111 of the Election Code was in violation of Article 10 of the Convention. The Court notes that the proceedings of this type are conducted within very short time frames and they are aimed at ensuring the proper conduct of the election campaign by preventing infringements of the candidates' personal rights, which are capable of affecting the outcome of the elections. The Court reiterates that the provision of such a summary remedy during periods of election campaigns, be they at local or national level, serves the legitimate goal of ensuring the fairness of the electoral process and as such should not be questioned from the Convention standpoint (see *Kwiecień*, cited above, § 55).

55. At the same time, as desirable as the expeditious examination of election-related disputes may be, it should not result in the undue curtailment of the procedural guarantees afforded to the parties to such proceedings, in particular the defendants. In this regard the Court notes that the applicant was informed of the case on the morning of 21 October 2014 and that the hearing had been scheduled for the following day (see paragraph 13 above). Although that clearly constituted short notice, it would still have been possible for the applicant to instruct a lawyer on that day; there is nothing to indicate that the applicant made such an attempt. The proceedings concerned the two most recent editions of the newsletter, which had been edited exclusively by the applicant. The applicant did not adduce any evidence before the trial courts (compare and contrast *Kwiecień*, cited above § 55). It is therefore not apparent that the case was of any particular complexity such that it would have been difficult for the applicant to present it effectively before the court. The applicant instructed a lawyer after the hearing on 21 October 2014 and was represented in the subsequent appellate proceedings. The Court is therefore not persuaded that the circumstances of the instant case amounted to a lack of procedural fairness and equality that could give rise to an issue under Article 10 of the Convention (compare and contrast *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II).

56. The nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). In this connection the Court notes that the applicant was found liable for defamation in summary proceedings instituted by the aggrieved party. The applicant and the trade union were jointly ordered to publish an apology and to pay the equivalent of EUR 2,500 to a charity. The applicant has not submitted details of his personal financial situation and the Court is unable to assess whether such an award against him was excessive and imposed a disproportionate burden on him. Moreover, it is not clear what amount was actually paid by the applicant given the fact that he was found jointly liable with the trade union.

57. In the light of the preceding considerations, and given the State's margin of appreciation in applying the summary procedure under the Election Code, the Court is of the view that the interference complained of may be regarded as "necessary in a democratic society" and was proportionate to the legitimate aim pursued within the meaning of paragraph 2 of Article 10 of the Convention.

58. 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 14 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Renata Degener	Ksenija Turković
Registrar	President