



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

FOURTH SECTION

CASE OF DĄBROWSKI v. POLAND

(Application no. 18235/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dąbrowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 18235/02) 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 Olgierd Dąbrowski (“the applicant”), on 18 April 2002.

2. The Polish Government were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. The applicant alleged that there had been a violation of his right to freedom of expression within the meaning of Article 10 of the Convention.

4. By a decision of 25 August 2005 the Court declared the application admissible.

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

5. The applicant, who is a journalist, was born in 1952 and lives in Lubajny, Poland.

A. The press articles

6. On 15 September 1998 the applicant published in a daily newspaper, *Dziennik Pojezierza*, the following article:

“Turtle speed of the Ostróda judiciary. The governor just a witness.

Tomorrow, on Wednesday 16 September, at 9 o'clock another hearing will begin before the Ostróda District Court in a criminal case against Tadeusz L., deputy mayor of Ostróda and Lech K., legal adviser. The bill of indictment includes charges against them that three years ago, on 28 September 1995, they carried out a burglary in the office of TVK Vectra, a private company which legally worked and leased the office from the Housing Co-operative Jedność.

The case has already been pending for two and a half years. For several months, the court has been unable to take evidence from governor Zbigniew Babalski, at that time mayor of Ostróda, the most important witness. On numerous occasions, he was unsuccessfully summoned before Themis. Babalski was sending excuses to the court or did not attend hearings without any explanation.

For the first time, and so far the only time, the governor appeared before the court on 28 May. However, he could not be heard because the accused Tadeusz L. was absent, not for the first time, as he was quietly present at that time in the town hall situated ... 100 metres away. It was – according to the observers of the case – another instance of dodging the proceedings in order to delay the date of delivery of a judgment. Protracting the case leads to the likelihood that the case will be discontinued or the accused will be acquitted. A judgment convicting Tadeusz L. would mean an interruption of his very lucrative career in local government.

In addition, it is a very annoying and dangerous case for governor Zbigniew Babalski. The evidence taken so far from witnesses clearly shows that the burglary in Vectra took place with his knowledge and approval. On the day of the attempt to take over the TV cable operator he telephoned police and asked for 'assistance with eviction' – misleading the law enforcement officers. The day after the burglary he informed the people of Ostróda – through the TV cable operator he had taken over – that the action was lawful and served the interests of the TV audience.

It is not known whether the court will ask the governor to explain these disturbing facts. It is also not known whether the court will finally decide to clarify the role played in the burglary by Grzegorz Kierozalski, at that time the town secretary and today the governor's chef de cabinet. It appears from the evidence given by Henryk K., a locksmith employed by the Municipal Housing Administration, that Kierozalski instructed him to take tools and to force open a door to the Vectra's office. In the view of many former Ostróda councillors, the list of accused in this case is too short by at least half. However, it is not known whether governor Babalski will allow the court to finish this unusual case.”

7. On 17 September 1998 the applicant published in the same daily the following article:

“A gypsy did it, but they are going to hang the blacksmith. A case concerning the burglary in Vectra approaches the end.

Yesterday, on 16 September, the Ostróda District Court finished the taking of evidence in the case concerning the burglary in the office of the Vectra Cable Television in which the accused are Tadeusz L., deputy mayor of Ostróda and Lech K., legal adviser. The proceedings lasted two and a half years. A judgment will be delivered on 22 September.

The Ostróda court, after several months of waiting for the busy governor of Olsztyn, Zbigniew Babalski, was able at last to take evidence from him. The main witness in the case was hiding behind his lack of memory and the fact that on 28 September 1995, the day of the burglary, he had been for the whole day in Olsztyn attending a meeting with governor Janusz Lorenz. He called a local government team – which forced open a door and used violence against the employees of Vectra – an inventory commission established by the municipal management. Babalski did not remember who exactly was entrusted with that task. The court did not try to clarify the role played in this criminal event by the then mayor, Zbigniew Babalski. It did not ask him why he had publicly, on television, supported an attempt to take over the television operator or why he had asked the police to 'assist in the eviction of Vectra'. In the view of many Ostróda councillors Babalski knew about the burglary and agreed to it. This is also shown by the fact that he did not punish the burglars – his subordinates – but systematically promoted them in local government.

The accused Tadeusz L. filed three additional requests, which would have delayed the proceedings. The court dismissed them.

Counsel for Vectra suggested that Tadeusz L. had broken into the offices of the cable operator to take revenge for the termination of a contract allowing him to provide television equipment maintenance services. Tadeusz L. claimed that Vectra was taking revenge because he had discovered its 'swindles'.

It is widely felt that only 'small fry' appeared before the Ostróda court. The real instigators of the burglary remain unpunished."

8. On 23 September 1998 the applicant published the following article:

"The end of a career of a mayor-burglar? The end of Ostróda series.

Yesterday, on 22 September, the Ostróda District Court, after three years of considering a case concerning a burglary in [the premises of] the Vectra Cable Television, gave judgment. [The court] found Tadeusz L., deputy mayor and Lech K., legal adviser, guilty of an attempt by local government officials to take over a private company – unprecedented in this country. The criminal proceedings against both accused were conditionally discontinued for a year.

The court sentenced each of them to a fine of 150 zlotys, which will go to a nursing home in Sztyldak. They were each also ordered to pay a 50 zlotys fee and 50 percent of the costs of the proceedings.

Counsel for auxiliary prosecutor Mirosław Gąsiewski, who represented Vectra, declared that he would appeal, as he considered that the sentence was blatantly lenient. In his oral statement made before the judgment, he said that on 28 September 1995 'the municipal authorities had lynched Vectra'. In doing that, they showed 'a lack of basic legal culture' and 'by using bandit tactics' they wanted to resolve a dispute with a cable company. People like Tadeusz L. – underlined the counsel – should not hold prominent posts in the town hall. The action of both accused deprived Vectra of the ability to operate a network for a period of three months, which led to a loss of at least 1.5 billion old zlotys.

The advocate of the deputy mayor of Ostróda said that the list of accused was too short. He suggested that it should include also Zbigniew Babalski, mayor at that time

and today governor of Olsztyn, and Grzegorz Kierozalski, a former town secretary and today the governor's chef de cabinet, since a burglary in Vectra had been committed with their knowledge and approval. He defended his client by claiming that he had only wanted to make an inventory in Vectra.

The accused Lech K. asked to be acquitted. Tadeusz L. in his last statement attacked the counsel of Vectra, claiming that he had been so active because he had expected from that company 'a financial bonus in the future'.

Tadeusz L. stands in the next elections to the municipal council. If the Olsztyn Regional Court upholds the sentence or increases it, the deputy mayor of Ostróda – even if he wins a seat – will lose it by virtue of the law. That will mean the end of his eight-year long, stormy and lucrative career in local government.”

B. The prosecution on charges of defamation

1. The private bill of indictment

9. On unspecified date Tadeusz Lubaczewski lodged with the Olsztyn District Court a private bill of indictment. He charged the applicant with defamation. In particular, Tadeusz Lubaczewski submitted that in the articles published on 15 and 23 September 1998 the applicant made the following “untrue allegations”:

- “1. called him 'a mayor-burglar';
2. described his career in local government as 'stormy' and 'very lucrative';
3. stated that 'the action of both accused deprived Vectra of the ability to operate a network for a period of three months, which led to a loss of at least 1.5 billion old zlotys';
4. considered that '[the court] found deputy mayor Tadeusz L., guilty of an attempt by local government officials to take over a private company – unprecedented in this country'; and
5. disseminated untrue information that he 'was absent, not for the first time, as he was quietly present at that time in the town hall'.”

2. The trial

10. The applicant was tried by the Olsztyn District Court between 29 May and 7 November 2000. On 7 November 2000 he was convicted of defamation under Article 212 § 1 of the Criminal Code. The criminal proceedings against him were then conditionally discontinued and he was ordered to pay 1,000 zlotys to a charity. Furthermore, the applicant was ordered to reimburse the prosecutor 300 zlotys for the costs of the

proceedings. The trial court gave, in particular, the following reasons for its decision:

“(...) the accused did not show in a convincing manner that the allegations made by him were true.

Making a reference to 'a mayor-burglar' in the title of the article published on 23.09.1998 could be ambiguous and susceptible to various interpretations only because there was a question mark at the end of the title [sic].

In the court's view that [question] mark refers to the whole title and not only, as claimed by the accused, the words 'the end of career' because coming to such a conclusion would be unjustified [sic].

However, the court is of the view that although in the light of the court proceedings before the Ostróda court the description of T. Lubaczewski's career in local government as 'stormy' [was justified], the use of the adjective 'lucrative' with respect to that career cannot be considered as true. At the time of publication of that article, the private prosecutor was a mayor but his remuneration did not justify the use by the author of the article of such a term. In view of the evidence (...) one cannot consider as truthful the accused's claims that T. Lubaczewski was receiving a kind of special profit [The] amount of remuneration of a deputy mayor and the amount of councillors' allowances is usually decided by the local government authorities chosen in democratic elections and even against the background of the generally bad economic situation of the majority of Ostróda population cannot be considered as exceptionally lucrative. Moreover, in view of the declaration made by T. Lubaczewski it cannot be accepted that [his] participation in two foreign trips during his work in local government was a sort of special bonus.

With respect to the third charge, the accused's defence that it was in fact a quotation from counsel for TVK Vectra is bound to give rise to doubts in view of the fact that it was not put in quotation marks, especially as the other statements made by that counsel were clearly put in such marks.

In addition, the accused was unable to prove the losses of the cable television given in that paragraph by pointing to or submitting a document containing the calculation of those losses.

It also cannot be accepted as entirely true 'that [the court] found deputy mayor Tadeusz L., guilty of an attempt by local government officials to take over a private company – unprecedented in this country'.

Firstly, because at the time of delivery of a judgment the statement was not legally valid and the use of such a term could have been misleading and also because a conditional discontinuation of the proceedings is not identical to the conviction of an accused, but this is precisely how this part of the article could be understood.

As far as the last charge is concerned, it should be underlined that the accused also did not prove [his] allegation that at the time when a hearing was held on 28.05.1998 before the Ostróda court T. Lubaczewski was present in the town hall. (...) The evidence shows that the private prosecutor on that day was in Elbląg on a business trip. (...)

Even if one accepts that the accused really saw [T. Lubaszewski's] car in the early morning and subsequently [T. Lubaszewski] himself, approximately one hour after the end of the hearing, this did not entitle the author of the article to use the terms contained in the article.

In conclusion, it should be observed that, in the view of the court, the evidence did not give grounds for accepting that the allegations made by the accused were true, especially as the legislator added another condition for accepting the impunity of the offence of defamation, namely that (...) the allegation was made to defend a socially justified interest.

After analysing the degree of guilt and the danger to society of a continuous act committed by the accused, the court concluded that it could be described as insignificant. This conclusion was obviously influenced by the clearly visible antagonism between the accused and the private prosecutor.

The parties have been and are involved in at least several defamation cases, in which they play different roles. Those cases arise from the different political opinions of the parties and it is regrettable that they chose a courtroom as their arena for political disputes.

Contrary to the private prosecutor's claim, one cannot find motives of private vengeance in the press articles containing the defamatory allegations. The accused undoubtedly acted within the framework of acceptable press criticism [H]owever, in the court's opinion he overstepped its limits and did not convincingly display journalistic diligence as he made allegations which were not properly verified.

Furthermore, taking into account the fact that the accused has no criminal record and his character and personal circumstances, the court has concluded that the measure of discontinuation of the criminal proceedings should be used in respect of him and his acts.

The court is of the view that the fact of finding that the accused has committed the act with which he was charged will in itself be first of all a lesson for him for the future.

In order to increase the educational effects of that measure, the court has ordered the accused to make a payment to a charity in an amount proportional to his financial standing. (...)”

3. The appellate proceedings

11. The applicant appealed against his conviction but on 18 October 2001 the Olsztyn Regional Court dismissed his appeal.

II. RELEVANT DOMESTIC LAW

12. Article 212 of the 1997 Criminal Code reads 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 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 of liberty or imprisonment not exceeding 1 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 2 years.”

§ 4. The prosecution takes place under a private bill of indictment.”

13. Article 213 § 2 reads in so far as relevant:

“Whoever raises or publicises a true allegation in defence of a justifiable public interest shall be deemed not to have committed the offence specified in Article 212 §§ 1 or 2.”

14. Articles 66 et seq. of the 1997 Criminal Code concern the conditional discontinuation of criminal proceedings.

Article 66 reads, in so far as relevant:

“§ 1. The court may conditionally discontinue the criminal proceedings if the guilt and social danger of the act are not significant and the circumstances of its commission do not raise doubts, and that the attitude of the perpetrator not previously punished for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that, even in the event of the discontinuance of the proceedings, he will observe the legal order and in particular will not commit an offence.”

15. Article 67 provides, in so far as relevant:

“§ 1. The conditional discontinuance shall apply for a probationary term between one and two years, which shall run from the date the judgment becomes valid and final.

§ 3. In discontinuing conditionally the criminal proceedings, the court shall require the perpetrator to redress in whole or in part the damage...”

16. Article 68 provides:

“§ 1. The court shall resume the criminal proceedings, if the perpetrator has during the probation period committed an intentional offence, for which he has been finally convicted.

§ 2. The court may resume the criminal proceedings if the perpetrator during the probation period flagrantly breaches the legal order, and in particular if he committed an offence other than that specified in § 1, evades supervision, does not perform the obligations or penal measure imposed or if he does not fulfil the settlement concluded with the injured person.

§ 3. The court may resume the criminal proceedings if, after the decision on the conditional discontinuance was given but before it became final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The criminal proceedings conditionally discontinued may not be resumed any later than 6 months after the expiration of the probation period.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

17. The applicant complained about a breach of Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. The parties' submissions

1. The applicant

18. The applicant submitted that his statements about a local politician were true. He reported on the criminal proceedings against the deputy mayor of Ostóda and expressed his opinions about him. The applicant complained that he had been found guilty for having made statements such as “stormy and lucrative career in local government” that were value judgments, the truth of which could not be proved. He argued that under Article 10 of the Convention he had the right to give his opinions. Unfortunately, the Polish judiciary did not understand the Convention standards as regards the right to freedom of expression.

19. The applicant argued that he had acted in the public interest with the aim of informing the local community about the actions of a politician and issues of importance for that community. His statements were not defamatory. The applicant concluded that as a citizen and a journalist he had a duty to express his views, including critical ones.

2. The Government

20. The Government admitted that the applicant's conviction for defamation amounted to an “interference” with his right to freedom of expression. However, they submitted that the interference was “prescribed by law” and pursued a legitimate aim as it was intended to protect the reputation and rights of others.

21. Furthermore, the Government pointed out that the domestic courts had found that the applicant's allegations had been untrue and defamatory. They submitted that all European legal systems provided for defamation as a criminal offence. The Government agreed that the limits of acceptable criticism were wider with regard to a politician, but they asserted that the applicant had overstepped this limit.

22. The Government further pointed out that the case originated in a private bill of indictment lodged by T.L. Moreover, the courts chose a “more lenient measure than conviction and conditionally discontinued the proceedings for a period of one year and ordered the applicant to pay PLN 1,000 to the charity ... and PLN 300 for the costs of the proceedings”. That, in the Government's opinion, should be taken into account when assessing the proportionality of the measure. The Government submitted that the “penal reaction to the applicant's defamatory allegations” was justified by a “pressing social need” and was proportionate to the legitimate aim pursued.

23. The Government concluded that the application was manifestly ill-founded. Alternatively they submitted that there had been no violation of Article 10 of the Convention.

B. The Court's assessment

24. The Court observes that it is undisputed that the impugned conviction amounted to an “interference” with the exercise of the applicant's right to freedom of expression. Such interference infringes the Convention if it does not satisfy the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was “prescribed by law”, whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was “necessary in a democratic society” to achieve such aims.

1. Prescribed by law

25. The Court finds, and this was not disputed, that the interference was “prescribed by law,” the applicant's conviction having been based on Article 212 § 1 of the Criminal Code (see paragraph 10 above).

2. *Legitimate aim*

26. The Court agrees with the Government that the interference with the applicant's right to freedom of expression was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely to protect “the reputation or rights of others”.

3. *Necessary in a democratic society*

(a) **The general principles**

27. The Court reiterates that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society” (see, among many other authorities, *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 57, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

28. There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, *Incal v. Turkey*, judgment of 9 June 1998, Reports 1998-IV, p. 1567, § 54; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI). No doubt Article 10 § 2 enables the reputation of others – that is to say, of all individuals – to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues (*Lingens v. Austria*, cited above, § 42).

29. The pre-eminent role of the press in a State governed by the rule of law must not be forgotten. Although it must not overstep various bounds set, *inter alia*, for the prevention of disorder and the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest. Freedom of the press affords the public one of the best means of discovering

and forming an opinion of the ideas and attitudes of their political leaders (*Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, § 43). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38).

30. One factor of particular importance (...) is the distinction between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (*Turhan v. Turkey*, no. 48176/99, § 24, 19 May 2005; *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

31. Although freedom of expression may be subject to exceptions they “must be narrowly interpreted and the necessity for any restrictions must be convincingly established” (see *The Observer and The Guardian v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, p. 30, § 59).

Admittedly, it is in the first place for the national authorities to assess whether there is a “pressing social need” for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In cases concerning the press, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1551, § 47 and *Feldek v. Slovakia*, no. 29032/95, § 78, ECHR 2001-VIII).

32. The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the “interference” complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52, and *Jerusalem v. Austria*, cited above, § 33).

(b) The application of the general principles to the above case

33. The applicant, who was a journalist, had published in a local newspaper articles that dealt with issues of public interest of importance for the local community. In three articles the applicant reported on criminal proceedings pending against a local politician and about the subsequent judgment of the Ostróda District Court. The Court considers that the content and the tone of the articles were on the whole fairly balanced. For example, the applicant called T. Lubaczewski a “mayor burglar” but only after the trial court had found him guilty of burglary. The applicant did not claim that that judgment was final and observed that the appellate court might give a different ruling.

34. The Court further agrees that some of the applicant's statements were value judgments on a matter of public interest which cannot be said to have been devoid of any factual basis. Moreover, the applicant's statements were not a gratuitous personal attack on a politician. It also cannot be said that the purpose of the statements in question was to offend or to humiliate the criticised person.

35. As regards the reasons given by the domestic courts, the Court considers they failed to have regard to the fact that the applicant, as a journalist, had a duty to impart information and ideas on political questions and on other matters of public interest and in so doing to have possible recourse to a degree of exaggeration. The Court next notes that neither the first-instance nor the appellate courts took into account the fact that Mr Lubaczewski, being a politician, should have shown a greater degree of tolerance in the face of criticism. In sum, the Court is of the opinion that the reasons adduced by the domestic courts cannot be regarded as relevant and sufficient to justify the interference at issue.

36. Lastly, the Court reiterates that the nature and severity of the penalty imposed are factors to be taken into account when assessing the proportionality of the interference (see, for example, *Sürek v. Turkey (no. 1)* [GC], cited above, § 64, and *Chauvy and Others v. France*, no. 64915/01, § 78, ECHR 2004-VI). In that connection, it notes that, while the penalty imposed on the applicant was relatively light (a fine of PLN 1,000 and costs of PLN 300 – approximately EUR 330), and although the proceedings against him were conditionally discontinued, nevertheless the domestic courts found that the applicant had committed a criminal offence of defamation. In consequence, the applicant had a criminal record. Moreover, it remained open to the courts to resume the proceedings at any time during the period of his probation should any of the circumstances defined by law so justify (see paragraph 16 above).

37. Furthermore, while the penalty did not prevent the applicant from expressing himself, his conviction nonetheless amounted to a kind of censorship which was likely to discourage him from making criticisms of that kind again in the future. Such a conviction is likely to deter journalists

from contributing to public discussion of issues affecting the life of the community. By the same token, it is liable to hamper the press in the performance of its task of purveyor of information and public watchdog (see, *mutatis mutandis*, *Barthold v. Germany*, judgment of 25 March 1985, Series A no. 90, p. 26, § 58, and *Lingens v. Austria*, cited above, p. 27, § 44).

Having regard to the above considerations, the applicant's conviction was disproportionate to the legitimate aim pursued, having regard in particular to the interest of a democratic society in ensuring and maintaining the freedom of the press.

38. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant requested in respect of pecuniary damage 40,000 Polish zlotys (PLN), equivalent to 10,177 euros (EUR) on 26 October 2005, the date on which the claims were submitted. This sum covered financial losses sustained by the applicant due to the difficulties he had experienced in obtaining a good job because of his criminal record.

41. As to non-pecuniary damage, the applicant claimed PLN 30,000, the equivalent of EUR 7,633, by way of compensation for his moral suffering and for damage to his image as a journalist.

42. The Government were of the view that there was no causal link between the violation complained of and the amount claimed by the applicant for the pecuniary damage. As to the amount claimed under the head of non-pecuniary damage, they were of the view that it was excessive. They added that, in any event, a finding of a violation of Article 10 would in itself provide sufficient just satisfaction to the applicant.

43. With regard to the alleged pecuniary damage resulting from the reduction of the applicant's salary, the Court observes - even assuming that there could be a causal link between the violation of Article 10 of the Convention and the alleged damage - that the applicant failed to submit any documents proving that he had actually sustained the damage.

On the other hand, the Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary

damage insofar as the applicant refers to the amount which he was ordered to pay by the domestic courts (see *Busuioc v. Moldova*, no. 61513/00, § 101, 21 December 2004). Deciding on an equitable basis, the Court awards him the sum of EUR 350.

44. The Court accepts that the applicant has also suffered non-pecuniary damage – such as distress and frustration resulting from the criminal proceedings against him, and the adverse judgment and sentence – which is not sufficiently compensated by the finding of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

45. The applicant claimed a total amount of PLN 2,250.40, equivalent to EUR 572, by way of costs and expenses relating to the fines and costs he was ordered to pay by the courts and the travel expenses incurred by him during the proceedings before the domestic courts.

46. The Government contested his claims.

47. The Court firstly notes that it has already dealt with a part of the applicant's claim covering the fine and costs he was ordered to pay in the domestic proceedings under the head of pecuniary damage. As regards the remainder of his claim, the Court reiterates that according to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim.

C. Default interest

48. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 10 of the Convention;
2. *Holds*
 - (a) 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 350 (three hundred and fifty

euros) in respect of pecuniary damage and EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President