



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

FOURTH SECTION

CASE OF KURŁOWICZ v. POLAND

(Application no. 41029/06)

JUDGMENT

STRASBOURG

22 June 2010

FINAL

22/09/2010

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

In the case of Kurłowicz v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 41029/06) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Zbigniew Kurłowicz (“the applicant”), on 6 October 2006.

2. The applicant was represented by Ms Z. Daniszewska-Dek, a lawyer practising in Białystok. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the proceedings brought against him under the relevant provisions of the Criminal Code had infringed his right to freedom of expression under Article 10 of the Convention.

4. On 5 February 2009 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Knyszyn.

A. Session of the City Council and criminal proceedings against the applicant

6. At the material time the applicant was the President of the City Council in Knyszyn (*Przewodniczący Rady Miasta*).

7. On 30 December 2004 a session of the City Council took place. One of the points on the agenda was a vote on whether to adopt a resolution requesting the Education Inspector (*Kurator Oświaty*) to give a positive report on the continued operation of the Knyszyn School Complex (*Zespół Szkół Ogólnokształcących w Knyszynie*). Since 1998, the manager of the school complex had been K. Ch.

8. During the session on 30 December 2004 the applicant, together with other representatives, voted against the planned resolution. The City Council adopted another resolution and decided that they would not request from the Education Inspector a positive report referred to above.

9. At the next session of the City Council, on 28 February 2005, further discussion about the future of the school complex was held. During the session the applicant took the floor and presented some arguments which in his view supported the resolution adopted on 30 December 2004. The applicant accused K. Ch of:

- adopting an inappropriate timetable, unjustified division of students into groups, increasing overtime, which caused additional costs;
- mismanagement of the school complex finances, increase of heating costs;
- treating the school complex as private property, the lease of school premises without remuneration;
- poor organisation of the students' free time during the school holidays;
- spending money on teachers' training which was not appropriate or objective and which did not correspond to the school's needs;
- lack of discipline at school;
- irresponsibility – organising a disco above a room in which a mock exam was being held;
- failure to appoint the school council;
- failure to adopt clear and transparent rules for granting awards to teachers; awards were granted publicly to some and in private to others;
- failure to provide reliable information on granting “incentive bonuses” to teachers;
- granting overtime work only to certain teachers;
- failure to advertise the school complex;
- failure to cooperate with the municipality;
- disorder in the teachers' personal files;
- intimidating teachers with threats that they would be fired or deprived of bonus payments, and so on;

- inadequate educational standards; only ten out of twenty-six students passed their final exams.

10. K. Ch., the school manager, found the accusations defamatory and untrue. He demanded that the applicant provide the participants at the session with evidence substantiating his allegations.

11. The events that took place during the session of the City Council on 28 February 2005 were subsequently described in an article published in the local edition and on the internet site of *Gazeta Współczesna* and on the internet site of the Mońki Municipality.

B. Criminal proceedings against the applicant

12. On 4 April 2005 K. Ch. lodged a private bill of indictment against the applicant with the Białystok District Court (*Sąd Rejonowy*), complaining that the applicant's statements of 28 February 2005 were defamatory.

13. On 2 December 2005 the Białystok District Court found the applicant guilty of presenting untrue statements during the session of the City Council as regards the performance of K. Ch. in his professional duties, which amounted to defamation which could impact negatively on the necessary public respect and esteem required by K. Ch. in the execution of his duties as headmaster of a public school and as a teacher. Relying on Article 212 § 1 of the Criminal Code (*Kodeks Karny*), the court sentenced the applicant to a fine in the amount of PLN 750 and ordered that the judgment of conviction be published. The court also ordered the applicant to apologise for all his accusations.

14. On 30 December 2005 the applicant's lawyer appealed against the first-instance judgment. She argued that the Białystok District Court had wrongly assessed the evidence, in that it had considered that the applicant's intention had been to insult K.Ch., while he had been motivated solely by concern for the local community. In consequence, according to the applicant's lawyer, the applicant should not have been sentenced on the basis of having committed defamation. The lawyer also referred to a violation of Article 10 of the Convention.

15. On 30 March 2006 the Białystok Regional Court (*Sąd Okręgowy*) partly amended the first-instance judgment. It found that taking into consideration the social consequences of the prohibited act and the conduct of the applicant, as well as his personal and family situation, it was unnecessary to sentence the applicant. The Regional Court amended the first-instance judgment in that it conditionally discontinued the proceedings for a probationary term of one year, ordered the applicant to pay PLN 750 to charity and rescinded the publication of the applicant's conviction. The court also ordered that during a session of the Knyszyn City Council the applicant should make a statement that his accusations had been untrue and apologise to K.Ch.

16. At the same time however the Regional Court confirmed the District Court's finding that the applicant's statements had been untrue and that the applicant had been acting on his own behalf rather than out of concern for the interests of the municipality. The court further dismissed the argument of a violation of Article 10 of the Convention as manifestly ill-founded, holding that that provision did not guarantee unlimited freedom of expression.

17. On 26 May 2006 the applicant's lawyer requested the Ombudsman to lodge a cassation appeal on the applicant's behalf.

18. On 9 August 2006 the Ombudsman refused her request, finding that the arguments contained in the judgments of the first and second-instance courts had not raised any doubts.

19. On 11 October 2006 at the session of the Knyszyn City Council the applicant read out the statement required by the Regional Court's judgment and apologised to K.Ch.

C. The applicant's constitutional complaint

20. On 16 August 2006 the applicant's lawyer lodged a constitutional complaint with the Constitutional Court (*Trybunał Konstytucyjny*), arguing that Article 212 of the Criminal Code was incompatible with the relevant provisions of the Constitution.

21. On 17 October 2007 the Constitutional Court refused to hear the constitutional complaint (*odmówił nadania dalszego biegu skardze*), holding that a similar matter had already been examined by the court in its judgment of 30 October 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions concerning freedom of expression

22. Article 14 provides as follows:

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

23. 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.”

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

“The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.”

B. Relevant provisions of the Criminal Code

25. 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. The prosecution of the offence specified in § 1 or 2 shall occur upon a private charge.”

26. Article 213 provides as follows:

“§ 1. The offence specified in Article 212 § 1 is not committed if the allegation not made in public is true.

§ 2. Whoever raises or publicises a true allegation in defence of a justifiable public interest shall be deemed not to have committed the offence specified in Article 212 § 1 or 2; if the allegation regards private or family life the evidence of truth shall only be carried out when it serves to prevent a danger to someone's life or to prevent demoralisation of a minor.”

27. Article 214 provides as follows:

“The absence of an offence resulting from a reason specified in Article 213 does not exclude the liability of a perpetrator for the insult, by reason of the manner of announcing or publicising the allegation.”

Article 215 provides as follows:

“On the motion of the injured person the court may order the judgment of conviction to be punished.”

C. The Constitutional Court's judgment declaring Article 212 of the Polish Criminal Code compatible with the Constitution

28. On 30 October 2006 the Constitutional Court, ruling on a legal question referred to it by the Gdańsk District Court, declared Article 212 §§ 1 and 2 of the Polish Criminal Code compatible with Articles 14 and 54 § 1 read in conjunction with Article 31 § 3 of the Constitution.

29. The court found that in some circumstances the protection of rights and freedoms such as dignity, good name and privacy may prevail over the protection of freedom of expression. The court further found that there was no basis to assume that protection of freedom of expression merely by means of civil law (provisions on personal rights) would be as efficient as criminal law. Protection of freedom of expression by means of criminal law did not of itself infringe the relevant provisions of the Constitution.

30. Three judges expressed their dissenting opinions to the Constitutional Court's judgment of 30 October 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant alleged 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. ...

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 ... for the protection of the reputation or rights of others ...”

A. Admissibility

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

(a) The applicant

33. The applicant's lawyer submitted that the interference with the applicant's freedom of expression had been in breach of Article 10 § 2 of the Convention. She considered that the domestic courts had failed to take into account that the impugned statements had been made at a session of the City Council, in the course of public debate devoted to the future functioning of the Knyszyn School Complex. The applicant's lawyer considered that, by holding the applicant criminally responsible for his statements, the domestic courts had failed to strike a fair balance in weighing the interests of K.Ch.'s right to respect for his private life and the right to freedom of expression as guaranteed by Article 10 of the Convention. In this respect she considered that in the present case there had been no element of “pressing social need”. Finally, she criticised the provisions which provide for criminal sanction for defamation without leaving any room for exceptions for matters of public debate; in her view such a construction of responsibility for defamation deprived the public debate of any sense.

(b) The Government

34. The Government decided not to comment on the merits of the application. However, in their comments on the applicant's just-satisfaction claims they expressed the opinion that there had been no violation of Article 10 in the present case.

2. The Court's assessment

35. It was not disputed that the courts' decisions against the applicant and the sanctions imposed on him amounted to “interference” with his right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. The interference was undoubtedly prescribed by law, namely Article 212 of the Criminal Code. The Court further accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others – Mr K. Ch., the manager of the Knyszyn School Complex, in this instance, within the meaning of Article 10 § 2 of the Convention.

36. Accordingly, the only outstanding issue is whether the interference with the applicant's right to freedom of expression was “necessary in a democratic society”.

(a) The general principles

37. According to the Court's case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for 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". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among many other authorities, *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I; *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII; and *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103).

38. 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 delivered by an independent court. 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 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 88, ECHR 2004-XI).

39. 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 (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). 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 applicant and the context in which he made them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

40. 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 measures taken were "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the

principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2547-48, § 51). In addition, the fairness of the proceedings, the procedural guarantees afforded (see, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-...) and the nature and severity of the penalties imposed (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV, and *Skalka v. Poland*, no. 43425/98, §§ 41-42, 27 May 2003) are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 171, ECHR 2005-...).

41. The Court further observes that 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).

(b) Application of the principles

42. The Court has to examine whether, taking into consideration all the relevant circumstances of the present case, the domestic court's judgment, by which the criminal proceedings were conditionally discontinued and the applicant ordered to pay damages and to make an apology to K. Ch. at the session of the Municipal Council, amounted to a disproportionate interference with the applicant's right to freedom of expression. In other words, the Court has to assess whether the sanction applied to the applicant answered a "pressing social need" and was "proportionate to the legitimate aim pursued", as well as whether the reasons adduced by the national authorities in justification thereof were "relevant" and "sufficient".

43. The Court notes at the outset that the second-instance court partly amended the first-instance court's judgment in that it reduced the applicant's sentence to a fine and rescinded the compulsory publication of the applicant's conviction.

44. The Court also notes that in spite of the second-instance court's judgment the applicant still has a criminal record since the criminal proceedings against him were only conditionally discontinued.

45. At the relevant time the applicant was a member of the City Council and his speech was made in that capacity during the session of the City Council. The session was devoted partly to the adoption of a resolution requesting the Education Inspector to give a positive report on the continued operation of the city school complex, the manager of which was K.Ch. The Court considers that this was the best time and place to discuss any financial or organisational irregularities in the functioning of the school complex. In this respect the Court reiterates that while freedom of expression is important for everybody, it is especially so for elected representatives of the people. They represent the electorate, draw attention to their preoccupations

and defend their interests. Accordingly, interference with their freedom of expression calls for the closest scrutiny on the part of the Court (see *Castells v. Spain*, judgment of 23 April 1992, Series A no.236, pp.22-23, § 42).

46. In the light of the above, the Court finds that the applicant's allegations of financial and organisational irregularities made at the City Council Session were a part of a public political debate. It further recalls that, although an individual taking part in a public debate on a matter of general concern – like the applicant in the present case – is required not to overstep certain limits as regards – in particular – respect for the reputation and rights of others, he or she is allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Mamère v. France*, no. 12697/03, § 25, ECHR 2006-...).

47. Even if the applicant's statements contained critical words, they were made in the course of a discussion devoted to the question of whether the city council should continue to finance the further functioning of the school complex. It is precisely the task of an elected representative to ask awkward questions when it comes to public spending.

48. Furthermore, very strong reasons are required to justify restrictions on political speech. Allowing broad restrictions on political speech in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see, among many other authorities, *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII, and *Sürek*, cited above, § 61).

49. The Court further notes that, in contrast to cases such as *Sanocki v. Poland*, no. 28949/03, § 5, 17 July 2007, or *Janowski v. Poland* [GC], no. 25716/94, § 14, ECHR 1999-I, the statements made by the applicant did not contain any offensive statements *ad personam*. They all concerned alleged irregularities in the management of the school complex in question.

50. The statements were made against a particular person, K. Ch. who, at the relevant time, was the school complex manager. The Court considers that a person who manages an institution financed from public money should be prepared to accept hard-hitting criticism particularly in the course of a public debate where matters of funding the institution in question are discussed.

51. As regards the reasons given by the domestic courts, the Court notes that the second-instance court examined the applicant's case also from the standpoint of Article 10 of the Convention. The latter court found that the right to freedom of expression was not unlimited and that the Convention did not provide for protection for those who, by exercising their freedom of expression, breached another's right to good name and reputation. However, the domestic court did not carry out a balancing exercise of the competing interests at stake seen in the context in which the impugned remarks were made.

52. Secondly, the Court notes that in its practice it has distinguished 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. Where a statement amounts to a value judgement, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive without any factual basis to support it (see *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, Reports 1997-I, p. 236, § 47, and *Feldek v. Slovakia*, no. 29032/95, § 76, ECHR 2001-VIII).

53. As regards the categorisation of the applicant's statements, the Court observes that the Polish courts unreservedly qualified all of them as statements without a factual basis. It is prepared to accept that most of the statements, such as the assertion that the claimant “failed to appoint the school council” or “granted overtime work only to certain teachers” could be considered as statements which lacked a sufficient factual basis. However, the Court considers, contrary to the view taken by the domestic courts, that the applicant's speech also included statements which could reasonably be regarded as value judgements, such as the statement that the claimant “mismanaged the school complex finances”, “spent money on teachers' training in an inappropriate and non-objective way not corresponding to the school's needs” or that the school “lacked discipline”. The Court considers that these value judgments on a matter of public interest enjoy the protection of Article 10 of the Convention.

54. 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*, cited above, § 64, and *Chauvy and Others*, cited above, § 78). In the present case, although the second-instance court rescinded the fine imposed on the applicant and conditionally discontinued the criminal proceedings, the applicant still has a criminal record (see paragraph 44 above). Although the Court has found on many occasions that a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II) it considers that, in cases such as the present one, which concern an open, candid political debate, recourse to a criminal prosecution resulting in the applicant's conviction must be seen as a wholly disproportionate measure (see, *mutatis mutandis*, *Długolecki v. Poland*, no. 23806/03, § 47, 24 February 2009).

55. Taking into account the above considerations the Court finds that the domestic courts overstepped the narrow margin of appreciation afforded to member States, and that there was no reasonable relationship of proportionality between the measures applied by them and the legitimate aim pursued.

56. The authorities therefore failed to strike a fair balance between the relevant interests of, on the one hand, the protection of the school complex manager's right to reputation and, on the other, an elected representative's right to freedom of expression in exercising this freedom where issues of public interest are concerned.

57. In those circumstances the Court finds that the interference with the applicant's exercise of his right to freedom of expression was not "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed PLN 20,000, equivalent to 5,000 euros (EUR), in respect of pecuniary damage and PLN 35,000, equivalent to EUR 8,750 in respect of non-pecuniary damage.

61. The Government considered that there was no causal link between the pecuniary damage sought by the applicant and the alleged violation of Article 10 of the Convention. The Government did not comment on the applicant's claim for non-pecuniary damage.

62. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage as long as the applicant referred to the amount which he was ordered to pay by the domestic courts (see *Busuioc v. Moldova*, no. 61513/00, § 101, 21 December 2004, and *Kuliś v. Poland*, no. 15601/02, § 59, 18 March 2008). Although the applicant claimed this amount (PLN 750, equivalent to EUR 185, which he was ordered to pay to charity) under costs and expenses (see paragraphs 64-66 below), the Court considers that it should be granted as pecuniary damage and awards the applicant the sum claimed in part, that is EUR 185 (see paragraph 15 above). The Court does not find the remainder of the claim in respect of pecuniary damage justified. It therefore rejects the remainder of the claim.

63. The Court also accepts that the applicant suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation

of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

64. The applicant, who was represented by a lawyer, also claimed PLN 14,260, equivalent to EUR 3,520, for costs and expenses incurred before the domestic courts and before the Court, which included PLN 3,000, equivalent to EUR 740, for legal representation before the domestic courts, PLN 3,000, equivalent to EUR 740, for the costs of his constitutional complaint and PLN 6,000, equivalent to EUR 1,500, for his legal representation before the Court, as well as PLN 360, equivalent to EUR 90, paid by the applicants to the plaintiff as reimbursement of the costs of the proceedings, PLN 750, equivalent to EUR 185 paid to a charity, as ordered by the domestic courts, and the costs of the applicant's transport to and from the courts and to and from his lawyer.

65. The Government submitted that costs and expenses should be awarded only in so far as they had been necessarily incurred and in a reasonable amount.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant sufficiently substantiated that most of these sums had been actually and necessarily incurred, by submitting relevant invoices and other evidence. As regards the amount paid by the applicant to the plaintiff as reimbursement of the costs of the proceedings and to a charity as ordered by the domestic courts, these have been granted under the pecuniary damage head (see paragraph 62, above). The Court does not find it sufficiently proved that the costs of the applicant's transport had been necessarily incurred. Regard being had to the information in its possession and the above criteria, the Court awards the applicant the sum of EUR 3,070 covering costs under all heads.

C. Default interest

67. 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. Declares the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zlotys at the rate applicable on the date of settlement:
 - (i) EUR 185 (one hundred and eighty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 3,070 (three thousand and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President