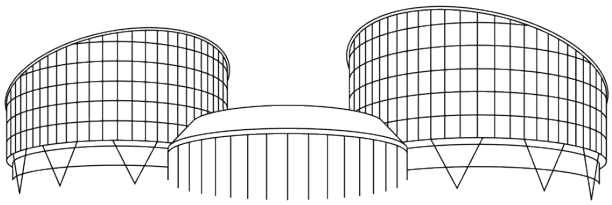

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CIESIELCZYK v. POLAND

(Application no. 12484/05)

JUDGMENT

STRASBOURG

26 June 2012

FINAL

22/10/2012

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

In the case of Ciesielczyk v. Poland,

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

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 12484/05) 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 Marek Ciesielczyk ("the applicant"), on 20 December 2004.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his freedom of expression had been violated.

4. On 27 November 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. On 16 July 2003 a television station, S.Tar TV Malopolska Telewizja Kablowa (hereafter "S.Tar TV"), and two individuals, Mr G. J. and Mr J. R., lodged with the Tarnow District Court (*Sąd Rejonowy*) a private bill of indictment against the applicant, charging him with several counts of defamation.

7. On 24 May 2004 the Tarnow District Court found the applicant guilty of five offences of defamation under Article 212 of the Criminal Code and acquitted him of the remaining charges. The applicant was ordered to pay a fine of 2,000 Polish zlotys (PLN), PLN 500 to a charity, and to reimburse the private prosecutors PLN 1,000 for the costs of the proceedings.

8. The court found him guilty of damaging the good name of S.Tar TV in that, between April 2002 and July 2003, through a means of mass communication, namely the Internet portal www.uczciwosc.org.pl, and by sending letters to the Tarnow Regional Prosecutor, the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*), the Minister of Justice, Bishop W. Sworc, and priests from several Tarnow parishes, he had made untruthful statements, in particular that S.Tar TV had been broadcasting pornographic material.

9. Secondly, the applicant was found guilty of disseminating, on the above-mentioned Internet site, inaccurate information about one of the journalists working for S.Tar TV, Mr G. J., which had debased the victim in the eyes of the public and had undermined public confidence in him: public confidence was necessary for his profession. The court referred to statements published by the applicant to the effect that the victim had "lacked objectivity and closely collaborated with the incompetent President of Tarnow, Mr M. Bień, and his political godfather, the Civic Platform's Member of Parliament, Mr A. Grad."

10. Thirdly, the applicant was convicted of disseminating, through the same Internet site, information to the effect that Mr J. R., another journalist employed by S.Tar TV, had provided viewers with inaccurate information, implying that the applicant had been pushing for the dismissal of the Tarnow President.

11. The fourth charge on which the applicant was convicted consisted of making statements during a session of the Tarnow Municipal Council, in full knowledge that the session was being broadcast by S.Tar TV, which were inaccurate and damaging to the station's good name. The statements in question included allegations that the station had been presenting one-sided information on city issues and had received money from the local authorities to present information in support of the latter's "official line".

12. Finally, the applicant was found guilty of disseminating inaccurate information aimed at debasing Mr G. J. and undermining public confidence in him, by stating, in the presence of 100 people, that he had been responsible for manipulation of the media and was one of the greatest manipulators of cable television.

13. The applicant was acquitted of the charge of making statements during a session of the Tarnow Municipal Council, which was broadcast by S.Tar TV, claiming that it was not objective and behaved in a totalitarian manner. The applicant was also acquitted of the charge that he had disseminated a leaflet entitled 'Demonstration in Tarnow'" in which he

made inaccurate statements to the effect that S.Tar TV had obtained a substantial sum of taxpayers' money following an agreement with the city council.

14. On 14 September 2004 the applicant lodged an appeal against the judgment.

15. On 19 November 2004 the Tarnow Regional Court (*Sąd Okręgowy*) allowed the appeal in part. The court acquitted the applicant of three charges of defamation of S.Tar TV and Mr J. R. However, the court agreed that the applicant had defamed Mr G. J. on two occasions, namely during the demonstration and on his Internet site. The court further decided to conditionally discontinue the proceedings for a probationary period of one year, as it had established that the guilt and social danger of the act committed by the applicant were not significant. The court ordered the applicant to pay PLN 500 to a charity and the private prosecutor's costs in the proceedings, in the amount of PLN 1,420. In setting the payment the court took into account the fact that the applicant had no previous convictions and had regard to his financial standing.

16. The appeal court considered that the nature and context of the statements regarding S.Tar TV had not exceeded the boundaries of permissible criticism. The court found that the applicant had acted in the public interest, that his statements were not defamatory and that they did not therefore constitute an offence under the Criminal Code. As regards the applicant's conviction for defamation of Mr J. R., the court quashed it and considered that there had been no evidence of an offence.

17. With regard to the part of the judgment which it upheld, concerning the defamation of Mr G. J., the court established that on 11 April 2003 the applicant had organised a demonstration against corruption, incompetence and poverty, which involved about 200 people. During the demonstration he pointed at Mr G. J., a journalist working for S.Tar TV, who was filming the event. The description of the subsequent events as established by the Regional Court and the latter's conclusions, read:

> ..."[the applicant pointing at Mr G. J.] described him in the following words: ...'this is the person responsible for manipulation'... 'this person is called [Mr G. J.] [and] is one of the greatest information manipulators of cable TV'... 'down with [him] (*precz*)!'...Some time later, on [his Internet site] there appeared a notice about the demonstration which included the following statements: ... 'during the demonstration local journalists, including Mr G. J. from Tarnów cable TV, on account of [the latter's] lack of objectivity and tight collaboration with the incompetent President of Tarnow, Mr M. Bień, and his political godfather the Civil Platform's MP, Mr A.Grad, was booed ("*wygwizdany"*) by Tarnow inhabitants... These were the statements which [the victim] considered defamatory.
>
> The legal analysis of these statements and the circumstances in which they were made allow the conclusion that the [applicant's] behaviour fulfilled the criteria of the offence set out in Article 212 §§ 1 and 2 of the Criminal Code.

> In the Regional Court's assessment it is beyond doubt that the term 'manipulation' has a highly negative connotation in the common understanding (in the Polish reality this is also caused by the negative experiences of the mass media before 1989).With regard to the process of transmitting information, this term means either telling direct untruths or presenting events in such a way as to make it impossible to see them as they are in reality – which also [amounts to telling] untruths.
>
> The same is true with regard to the term "collaboration", which means direct cooperation with an imposed authority, and is linked with servility and being at the latter's disposal...
>
> Thus, to make a charge against a journalist of participating in manipulation or collaboration with the city's authorities, or directly calling him an 'information manipulator' and stating that he was booed on account of his lack of objectivity, could indisputably debase him in the eyes of the public and undermine the public confidence necessary for his profession. Society expects from the mass media and their representatives independence, objectivity, and a true description of those events which are interesting to the public.
>
> In conclusion, it is established that [the applicant's] behaviour was verbally aggressive, had features typical of a personal attack, and was obviously aimed at debasing Mr G. J. in the estimation of those present at the demonstration...."

18. The court also dismissed the applicant's submissions that his statements were a value judgment. It considered that even if they could be considered value judgments, they were not in any event supported by facts. The court established that the basis of the applicant's statement was events which had taken place during the applicant's campaign for the post of Tarnow's President, which had its epilogue in the Regional Court's decision of 25 October 2002. The latter court found that S.Tar TV, but not Mr G. J., had made inaccurate statements regarding the applicant. During the election campaign S.Tar TV had broadcast a debate between the candidates; however, every time the applicant took the floor a notice appeared to the effect that the applicant had not given permission for his views to be presented to the voters; this was not true. In reality, the applicant had not agreed to the particular conditions for his presentation as proposed by S.Tar TV. However, Mr G. J. was merely a camera operator and had no influence on the station's policy or on the broadcasting of the inaccurate information about the applicant.

19. The Regional Court considered therefore that the applicant should have limited himself to the comment that Mr G.J. "was a representative of the institution which had transmitted inaccurate information".

20. On 16 December 2004 the Tarnow Municipal Council dismissed the applicant from his post as Vice-President of the Municipal Council. The Council considered that the applicant had been involved in unworthy conduct damaging its image by, in particular, insulting other people and constantly fighting and stirring up conflict. The Council referred to several court cases in which the applicant had been involved.

II. RELEVANT DOMESTIC LAW

21. Article 212 of the 1997 Criminal Code provides:

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

22. In so far as relevant, Article 213 § 2 provides:

> "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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant complained that his freedom of expression had been violated, in 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."

24. The Government contested that argument.

A. Admissibility

25. The Government submitted that the applicant had not exhausted all domestic remedies as required by Article 35 § 1 of the Convention. In particular, the applicant could have availed himself of the opportunity of lodging a constitutional complaint with the Constitutional Court. They relied on previous cases in which the Court had recognised the constitutional complaint as an effective remedy (see *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003, and *Pachla v. Poland*, no. 8812/02, 8 November 2005).

26. The applicant disagreed with the Government. He submitted that the constitutional complaint was not an effective remedy within the meaning of Article 35 § 1 of the Convention. The applicant claimed that he had appealed against the District Court judgment, by which means he had exhausted available domestic remedies.

27. The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address an allegation of a violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). The Court further reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints, and that it offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

28. Turning to the circumstances of the instant case, the Court notes that the applicant was found guilty of defaming a journalist under Article 212 § 2 of the Criminal Code and acquitted of other charges of defamation. The applicant's sanction was thus the result of judicial interpretation which applied this provision to the particular circumstances of the applicant's case. In this connection the Court points to the established jurisprudence of the Constitutional Court, which provided that constitutional complaints based solely on the allegedly wrongful interpretation of a legal provision were excluded from its jurisdiction (see *Palusinski v. Poland* (dec.), no. 62414/00, ECHR 2006-...).

Therefore the Court considers that the constitutional complaint cannot be regarded with a sufficient degree of certainty as an effective remedy in the applicant's case.

For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

29. The Court notes that the application 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

30. The applicant submitted that the statements he had used, such as "manipulation", "lack of objectivity" and "cooperation with the incompetent President of Tarnow" were value judgments which should not have been considered as a crime. He addressed such words not to private individuals but to journalists, and was acting in the public interest.

31. The applicant maintained that the sanction imposed was very harsh. As a direct consequence of the judgment against him he had lost his post of Vice-President of the Municipal Council and, having a criminal record, for one year he had not been able to apply for a job. The sums which he had been ordered to pay were also very substantial, given his difficult financial situation.

32. The Government admitted that the sanction against the applicant 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.

33. Furthermore, the Government pointed out that the second-instance court considered the majority of the applicant's statements to fall within the boundaries of permitted criticism. However, as regards his statements directed against Mr G. J., a journalist performing his professional duties, they were rightly considered defamatory and totally devoid of any factual basis. The applicant had overstepped the limits and undermined the credibility of a journalist.

34. The Government further considered that the applicant's resentment against the cable TV channel should not have led to an uncontrolled explosion of frustration directed at a private individual. They also submitted that the applicant had lost his position as Vice-President of the Council, not as a direct consequence of the adverse judgment of the Regional Court, but due to his general behaviour, which was considered by the City Council to be unworthy of that position.

Moreover, the sanction against the applicant was not severe, as the court conditionally discontinued the proceedings for one year and ordered the applicant to pay PLN 500 to charity and pay the costs of the proceedings. That sanction should be considered a proportionate reaction to the

applicant's defamatory allegations, was justified by a "pressing social need", and was proportionate to the legitimate aim pursued.

35. The Government concluded that there had been no violation of Article 10 of the Convention.

2. The Court's assessment

(a) General principles

36. 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).

37. In its practice, the Court 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 judgment the proportionality of an interference may depend on whether there exists a sufficient factual basis for that statement, since even a value judgment may be excessive if it has no factual basis to support it (see, for example, *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, §§ 39-40, ECHR 2002-I; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

38. The notion of necessity implies a pressing social need. The Contracting States enjoy a margin of appreciation in this respect, but this goes hand in hand with European supervision, which is more or less extensive depending on the circumstances. In reviewing under Article 10 the decisions taken by the national authorities within their margin of appreciation, the Convention organs must determine, in the light of the case as a whole, whether the interference at issue was "proportionate" to the legitimate aim pursued and whether the reasons adduced by them to justify the interference are "relevant and sufficient" (see, for instance, *Hertel*, cited above, § 46; *Pedersen and Baadsgaard*, cited above, §§ 68-70; and *Steel and Morris*, cited above, § 87).

(b) Application of the general principles to the present case

39. Turning to the circumstances of the instant case, the Court observes that it is not disputed between the parties that the domestic courts' decisions

complained of by the applicant amounted to an "interference" with the exercise of his right to freedom of expression.

40. The Court also finds that the interference complained of was prescribed by law, namely Article 212 of the Criminal Code, and 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".

41. Hence, the only point at issue is whether the interference was "necessary in a democratic society" to achieve that aim.

42. In the instant case the applicant, a local politician, was sanctioned for defaming a journalist of a local cable TV company by, in particular, calling him an "information manipulator" and a "collaborator" with local politicians, and stating that he had been publicly booed on account of his lack of objectivity. The domestic courts, which had the advantage of direct examination of the evidence before them, assessed the statements made by the applicant as both value judgments and statements of fact, and found that they did not have any factual basis and were objectively untrue (see paragraph 18 above).

43. In particular, they examined the decision of 25 October 2002, in a case against the cable TV company, where it had been found that the station had indeed given inaccurate information to the applicant's detriment. However, in that set of proceedings all charges against the journalist, Mr G.J., were dismissed, as it had been established that he was not responsible for setting the policy of the station and had not been involved in any broadcasting decisions.

44. Thus although the applicant's resentment against the cable TV was justifiable, he extended his criticism to a person working for it who did not have any personal responsibility for its actions.

It does not appear that the applicant cited, either before the domestic authorities or before the Strasbourg Court, any other incident which could be considered as a justified basis for his assessment of Mr G. J. as a manipulator, a collaborator and a journalist lacking objectivity.

45. The Court reiterates that in the absence of any factual basis even value judgments can be considered excessive. In the light of the above, and taking into account the content of the statements in question and their context, the Court does not consider unreasonable the domestic courts' findings that the applicant's criticism lacked any factual basis and undermined the public confidence necessary for the exercise of the profession of a journalist.

46. In assessing the necessity of the interference, it is also important to examine the way in which the domestic courts dealt with the case, and in particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention. The judgment of the second-instance court revealed that the authorities had taken into account the special mission of the applicant, a city councillor, in matters of public

interest. The applicant was acquitted of several charges of defamation of the local cable television company and one of its journalists, as the domestic court considered his statements to be value judgments protected by Article 10 of the Convention. In finding that his other statements exceeded the limits of permissible criticism of Mr G.J., the domestic court carried out a detailed analysis of the statements in issue and their context, referring to the Convention case-law (see in this connection, *MGN Limited v. the United Kingdom*, no. 39401/04, § 144, 18 January 2011). Although the Court has accepted on many occasions that a recourse to a degree of exaggeration, provocation, or immoderate statements (see *Mamère v. France*, no. 12697/03, § 25, ECHR 2006-..., and *Dąbrowski v. Poland*, no. 18235/02, § 35, 19 December 2006), nevertheless, it must be left open to the domestic courts to punish gratuitous insult.

47. The Court considers of relevance the Regional Court's analysis that words such as "manipulation" and "collaboration" had a clearly negative connotation, particularly taking into account the totalitarian regime in Poland before 1989. The domestic court, adjudicating in 2004, noted that such statements implied telling untruths and a lack of independence, behaviour that cannot be expected of journalists (see paragraph 17 above). Taking into account this wider context of the case and the crucial role of journalists in a democracy the domestic court accepted that protecting them from unfounded allegations of the type at issue was justified.

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

49. Lastly, the Court must satisfy itself that the penalty to which the applicant was subjected did not upset the balance between his freedom of expression and the need to protect Mr G.J.'s reputation (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). It notes that the proceedings against the applicant were conditionally discontinued. While discontinuation implies that the domestic courts found that the applicant had committed a criminal offence of defamation, it does not amount to a conviction. The applicant was also ordered to pay in total approximately 450 euros (EUR) at the material time (PLN 500 to a charity and reimbursement of costs of PLN 1,420).

The Court further observes that the criminal proceedings against the applicant originated in a private bill of indictment; no criminal proceedings on a public indictment were instituted or even envisaged against him (compare and contrast *Kurłowicz v. Poland*, no. 41029/06, § 54, 22 June 2010, and *Długołęcki v. Poland*, no. 23806/03, § 47, 24 February 2009).

50. The Court therefore considers that the penalty imposed on the applicant was relatively lenient and that the domestic court took into account various mitigating circumstances (see paragraph 15 above).

51. In sum, in view of the reasons adduced by the national courts and of the relative leniency of the punishment imposed on the applicant, the Court is satisfied that the authorities struck a fair balance between the interests of, on the one hand, protection of the private prosecutor's reputation and, on the other, the applicant's right to freedom of expression. The interference complained of may thus be regarded as "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 of the Convention.

52. In such circumstances, the Court considers that, having regard to the margin of appreciation accorded to decisions of national courts in this context, there has been no violation of Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. The applicant further raised some general complaints under Articles 6, 7, 13 and 14 of the Convention. He alleged that the courts had breached his defence rights, assessed the evidence wrongly, dismissed his appeal, and that he had been discriminated against.

54. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

55. The Court has examined the remainder of the complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints.

56. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by four votes to three that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	David Thór Björgvinsson President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges David Thór Björgvinsson, Hirvelä and De Gaetano is annexed to this judgment.

D.T.B.
F.A.

JOINT DISSENTING OPINION OF JUDGES DAVID THÓR BJÖRGVINSSON, HIRVELÄ AND DE GAETANO

1. We disagree with the majority's finding that there has been no violation of Article 10 of the Convention in the present case.

2. The majority's conclusion is based on three main arguments. First that the applicant, a politician, was not justified in calling the Mr. G.J., a journalist, a "manipulator" and a "collaborator" and in saying that the said Mr G.J. "lacked objectivity" as these allegations lacked a factual basis (see § 45). Second, as is clearly implied in § 47, because of the importance of the media and of journalists in a democratic society, journalists are in need of some "special protection" of a kind offered by defamation legislation. Third, that the penalty imposed on the applicant was relatively lenient and the domestic court took into account various mitigating circumstances (§ 50).

3. We accept that the penalties as such were modest and do not raise particular concerns under Article 10 § 1 of the Convention. However, since we cannot share the first and second argument (and, as a result, the conclusion based on those arguments), the leniency of the penalties is irrelevant in the present case: the conviction in the domestic defamation proceedings was already by itself an unjustified interference with the applicant's right to freedom of expression.

4. Before proceeding further, we would underscore the fact that the case is somewhat unusual in that it originates from defamation proceedings brought by a journalist against a politician (the applicant) by way of reaction to the latter's statements concerning the journalist's alleged lack of impartiality and his alleged affiliation with, or leanings towards, certain political circles. Thus, this time round, the applicant before our Court, and who is claiming a violation of his right to freedom of expression, is a politician who, according to the domestic courts, has damaged the honour and reputation of a journalist.

5. As to the first point – namely the lack of a factual basis for the allegedly defamatory words – we agree that these statements may, on one view being taken, be considered as statements of fact susceptible of being proven or at least of being supported by reference to known facts. However we consider them to be more in the nature of value judgments, which express in a simple, crude or perhaps even angry way the applicant's subjective appraisal of Mr. G.J. as a journalist. In either case, whether viewed as mere statements of fact or as value judgments, it is not in dispute in the present case that the Mr. G.J. was at the relevant time a journalist for the S .Tar TV. It is also established as a fact that Mr. G.J. was present at the broadcast of the TV debate described in § 18 of the judgment. Regardless of Mr. G.J.'s role as a camera operator during this particular broadcast, his presence there and his position as a journalist at the TV station are facts

susceptible of being legitimately interpreted in such a way as the applicant did. In other words, regardless of whether the applicant's appraisal of Mr. G.J.'s qualifications as a journalist is right or wrong, the existence of these facts is, in our considered view, a sufficient factual basis to explain the applicant's resentment towards Mr. G.J., and thus his appraisal of him as a journalist. Moreover the domestic courts, and in particular the Tarnow Regional Court (see § 17), relied heavily on the negative connotations of the words "manipulation" and "collaboration" in Polish society while at the same time apparently ignoring the wider reality of the media's agendas and their ability of, and the necessity for, selective reporting and nuanced presentation of facts if only to survive in a highly competitive and increasingly global market. The observation by Jock Young that the mass media "selects events which are atypical, presents them in a stereotypical fashion and contrasts them against a backcloth of normality which is overtypical" is as valid today as when it was first made in the early 1970's[1]. The parochial approach of the domestic courts in this case is in direct contradiction to the very *raison d'être* of an international regional instrument safeguarding the right to freedom of expression.

6. With regard to the second point, the Court has in numerous cases emphasised the essential role of the media in a democratic society, as also its duty to impart – in a manner consistent with its obligations and journalistic responsibilities – information and ideas on all matters of public interest (see, among the many authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Bearing in mind the importance of the media and the possible impact the media and journalists can have on public debate, the media, and journalists in particular, must be ready, like politicians, to tolerate and accept criticism and commentary to a far greater extent than private individuals (see *Petrina v. Romania*, no. 78060/01, § 19, 14 October 2008, § 40). A journalist, just like a regular blogger on the internet, becomes to a greater or lesser extent a public figure. In the same way as the applicant, as a politician and participant in public debate, was expected to be thick-skinned enough to allow his every word and act to be critically examined, so also Mr. G.J., as a
journalist, should have been prepared for harsh, exaggerated and even unfair commentary on his past and present work in the media field, not only in the form of value judgments but also as concerns the presentation of "facts" (see, for instance, the observation in case no. 41486/04 *Seleckis v. Latvia* (dec.) 2 March 2010, § 32). Moreover, it is also highly relevant that as

1. Young J 'The role of Police as Amplifiers of Deviancy, Negotiators of Reality and Translators of Fantasy' in S Cohen (ed) *Images of Deviance* Penguin Harmondsworth.

a journalist Mr. G.J. had ample opportunity to reply publicly to any insinuations which allegedly were directed at him concerning his work as a journalist, rather than resorting to defamation proceedings to suppress or punish such criticism. This is how a media-driven public debate in a democratic society works and should have worked in the instant case.

7. On the basis of the foregoing we believe that the interference with the applicant's right to freedom of expression was not justified, and that there has therefore been a violation of Article 10 of the Convention in this case.