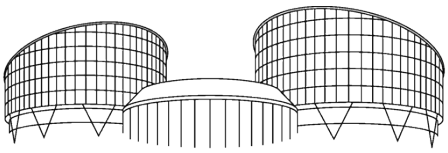

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BŁAJA NEWS SP. Z O.O. v. POLAND

(Application no. 59545/10)

JUDGMENT

STRASBOURG

26 November 2013

FINAL

26/02/2014

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

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In the case of Błaja News Sp. z o. o. v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 59545/10) 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 Błaja News Sp. z o.o., a limited liability company ("the applicant company"), on 20 July 2010.

2. The applicant company was represented by Mr M. Górski, a lawyer practising in Łódź. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant company complained that the court judgments given in its case had violated its right to freedom of expression.

4. On 18 June 2012 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 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Błaja News Sp. z o.o., is a limited liability company registered in Łódź. It was represented before the Court by Mr R. Kotliński, its director.

6. The applicant company publishes a weekly magazine entitled *Fakty I Mity*. In 2007 the magazine published an article - signed "Anna

Tarczynska" - written by the journalist M.Sz. It concerned allegations of unlawful dealings between the Łódź public prosecutor's office and various criminals involved in drug trafficking. Its opening paragraphs read as follows:

> "An elite group of prosecutors trusted by Minister Z. [the then Minister of Justice] are suppressing the truth about a colleague of theirs involved in drug trafficking.
>
> We presume that the Minister is not a drug addict, even though he sometimes does look bizarre. We also presume that the prosecutors said to be his most trusted collaborators are not junkies.
>
> Why then do they tolerate among themselves a well-known prosecutor in Łódź who is involved in drug trafficking?
>
> That's how [the State] creates an army of janissaries. The woman in question will now do whatever they want, knowing what they can accuse her of. On the other hand, they might be afraid that she will go public with some charges, because it is obvious that she did not consume almost one kilogram of amphetamines herself. Some time ago gossip was going around the town that the prosecutors amuse themselves at their parties by taking amphetamines – an officer of the Central Investigation Office (*Centralne Biuro Śledcze*) explains to us. ...
>
> But the woman is the most important person in the story. Prosecutor Anna currently works in the Investigation Division of the Łódź Regional Prosecutor's Office. As recently as April 2006 she was hailed in the media and at receptions as a spokesperson of the appellate prosecutor's office. Shortly after prosecutor B. became the chief of the latter, she disappeared from public view and [someone else] replaced her.
>
> The real reason for her disappearance from the public scene was fully understandable for a narrow circle of insiders, ... namely prosecutors who knew the details of investigations concerning a well-known case involving the disappearance of drugs stored as physical evidence by the prosecution. ...

7. The article went on to describe a drug-trafficking transaction on an unspecified date in a street in Łódź, referring to statements by two anonymous witnesses charged with drug trafficking, referred to as witness no. 1 and witness no. 2. They stated that they had handed over the drugs to M.K., who at the material time had been married to "prosecutor Anna".

> The beauty of it was that at the transaction scene [M.K.] had his own security. ... M.K. came to the scene in a blue Renault Clio driven by a woman ... It turns out that it was prosecutor Anna who, being present in the car throughout the transaction, provided a guarantee of security for her [former] husband. ...
>
> In the meantime M.K. disappeared. Even though we do not believe that he had been kindly forewarned that he would be arrested, the fact remains that prosecutor M. stayed the proceedings against his colleague's husband.
>
> ... Prosecutor Anna is unreachable. Even though the secretariat in the Investigation Division told us repeatedly that she was in her office, she never picked up the phone.

8. Subsequently the prosecutor described in the article as "prosecutor Anna" brought a civil claim against the applicant company and against R.K., its president and editor-in-chief of the magazine. She claimed protection of personal rights within the meaning of Articles 23 and 24 of the Civil Code.

9. By a judgment of 15 September 2008 the Łódź Regional Court allowed the claim and ordered the applicant company, jointly with the magazine's editor-in-chief, to publish an apology in the magazine. It was to be published once and was to read as follows:

> "The editors of *Fakty i mity* apologise to Ms ATK – prosecutor at the Łodź Regional Prosecutor's Office - for breaching her personal rights through publishing in its issue no. 41 in October 2007 untrue information, namely that she had links with criminal circles involved in drug trafficking, for slandering her with allegations of aiding and abetting drug dealing, and for suggesting that criminal proceedings had been instituted against her.

10. They were also ordered to pay 30,000 Polish zlotys (PLN) to the claimant as compensation for the breach of her personal rights.

11. The court established that the claimant had married M.K. in 1984. The marriage had been in difficulties since approximately 1995. Her former husband was a businessman. He had experienced considerable financial problems since at least 1995. The *de facto* breakdown of their marital life had occurred in 1998; the claimant did not know anything about her husband's professional activities. The family had one car, used essentially by the claimant's former husband for business purposes. However, he often drove their daughter to school and the claimant to the office so that they did not have to use public transport. In 2001 he left Poland. The parties divorced in 2002.

12. The impugned article referred to the claimant as "prosecutor Anna" and referred to her function as the prosecutor's office spokesperson. The court was of the view that it made her identity obvious to any reader familiar with legal circles in Łódź. It was furthermore stated in the article that on an unspecified date she had accompanied her former husband to a meeting held somewhere in a street in Łódź. A certain S.W., remanded in custody at the time of publication of the article, had told Ms O.H.B. - a researcher for the magazine - about that transaction, in which he had been involved together with P.T., a suspect in another set in criminal proceedings. P.T. was also remanded in custody at the time of publication. P.T. had been the claimant's former husband's business partner since approximately 1999. He had never met the claimant, but had known that she was a prosecutor.

13. The journalist M.Sz. - who wrote the article using a pseudonym - had failed to take into consideration the fact that S.W. was remanded in custody and that he had therefore had an interest in blackening the prosecutor's name, since she had been involved in certain cases against

him. His statements should therefore not have been taken at face value. Ms O.H.B. had met S.W. in prison, posing as a relative. However, neither the journalist nor the editor had taken any steps with a view to contacting P.T. in order to obtain information from him that would have corroborated S.W.'s allegations.

14. The court found that the author had failed to make reasonable efforts to contact the claimant before publication. The efforts on the part of the researcher and the journalist to get in touch with her had been completely inadequate, all the more so given that they were seasoned professionals. The journalist maintained that he tried to call the claimant at her office at least fifty times, but the evidence available to the court did not support his statement. It was further noted that other journalists had managed to contact her via her office, which cast doubt on the veracity of his statement. No reasonable grounds had been adduced to demonstrate that it had not been possible for the defendants to get in touch with a well-known prosecutor working at a publicly known address, namely that of the prosecutor's offices.

15. The court noted that the claimant had acted as a prosecutor in certain criminal cases against S.W. and P.T. In criminal proceedings against them - in which they had been convicted of drug trafficking - they had told the court that they had sold 700 g of amphetamines to the prosecutor's former husband in the presence of an unknown blonde woman who was allegedly waiting in the car. The criminal court noted that S.W. had told the court that the claimant's former husband had informed him at the time of the transaction that the woman with him was his wife. The civil court observed that the identity of that woman had never been corroborated by any other evidence. When questioned before the civil court, S.W. stated that he had seen the woman for a matter of seconds, and remembered that she was blonde, but did not recognise the claimant.

16. The court further observed that the claimant's former husband - against whom criminal proceedings were pending at that time - had gone into hiding and it had been impossible to establish his whereabouts in order to make him testify in the case.

17. The court found, having heard three witnesses from the claimant's professional working environment, that the impugned article made her identity obvious to anyone working in prosecutor's offices and to the police in Łódź. The article had given rise to numerous comments and conversations. It was regarded as an attempt to blacken the claimant's name and to slander her, motivated by the wish to damage her reputation and call into question her moral standing and professional principles. It was noted that she had been attacked by a criminal who had provided information to the journalists concerning his own criminal case. After the article was published, many people did not know how to behave towards the claimant or what to think of her. An embarrassing silence descended when she joined

in conversations. The claimant had suffered serious stress and had felt seriously wronged by the impugned article.

18. The court concluded that the article breached the claimant's personal rights, blackened her reputation and exposed her to difficulties and disrepute in her professional and social life. It lacked objectivity and was one-sided. Its tone was unduly sensationalist and it presented mere conjecture as hard facts.

19. The court reiterated that a person exercising a public office should accept that his or her activities were to be assessed by the public opinion and had to accept public criticism. It noted that freedom of expression could not be understood as arbitrariness. It referred to the provisions of section 6 of the Press Act 1984 which obliged journalists to present true facts to the public. The court further relied on numerous judgments of the Supreme Court by which that court had stressed that journalists were obliged to exercise particular diligence when gathering material and publishing articles. Such diligence was called for, *inter alia*, as regards the obligation to check the veracity of information obtained from third parties. In the present case, such diligence had not been exercised. While it was true that the claimant's former husband had purchased amphetamines from S.W. and P.T., no evidence had been presented to the court to show that the claimant had been present at the scene, let alone acting as "security" for the transaction.

20. The court observed, taking due note of the financial statements of the applicant company for 2007, that it was in a good financial position and that PLN 30,000 in damages was therefore an appropriate award in the circumstances of the present case.

21. The court questioned the journalist M.Sz., the researcher Ms O.H.B., P.T., S.W., and three other witnesses as to the impact that the article had had in the claimant's professional environment. The court referred to a note and an e-mail from the prosecutor's office listing the people who had tried to contact the claimant by phone and to the list of phone calls made to her office.

22. The applicant company appealed, referring, *inter alia*, to Article 10 of the Convention. It submitted that the first-instance court had erred in holding that the impugned article breached the claimant's personal rights, given that the defendant had been motivated by the desire to protect socially justified interests; that the court had refused to take evidence from the files of two criminal cases with a view to establishing that the claimant had been present at the scene of the transaction; and that the court had been arbitrary in establishing that the claimant had not known either what her former husband did for a living or the purpose of the meeting in the street, that the information contained in the article had made it possible for readers to identify the claimant, and that she had been ostracised by her colleagues as a result of the article.

23. By a judgment of 29 December 2008 the Łódź Court of Appeal dismissed the appeal. It shared the conclusions of the lower court as to the applicant company's failure to act with the diligence which could and should be expected of journalists. It stressed that the journalist and the researcher had failed to seek information that could have countered their version of events or dispelled doubts as to the facts. It endorsed the lower court's conclusion that the transaction itself had indeed taken place, but that the claimant's alleged involvement in it had been presented in a tendentious and unreliable manner. The court referred to Article 10 of the Convention and held that the interference was necessary as the applicant company had breached the claimant's rights through its insinuations, which were not based to any reasonable degree on the available evidence.

24. On 27 January 2010 the Supreme Court dismissed the applicant's company cassation appeal. It observed that the impugned article concerned an event which had indeed occurred, namely a drug-trafficking transaction between the claimant's former husband and P.T. and S.W. However, the allegations that the claimant had knowingly participated in that transaction - as well as insinuations that she was a drug addict and that she had been passing on drugs on her fellow prosecutors - were, in the light of the evidence gathered in the case, entirely unfounded. Her rights had been thereby breached.

25. The Supreme Court referred to its own case-law to the effect that journalists were obliged to be diligent when gathering material for the purposes of their articles but that, at the same time, they had a right to draw their own conclusions from material thus gathered (I CK 200/2008). The Press Act 1984 obliged them to comply with the obligation of diligence by contacting persons about whom they wished to write prior to the publication of such material (I CSK 385/07). Such an obligation was all the more important in the present case because, given the claimant's prosecutorial function in cases against P.T. and S.W., the testimony of the latter could not be accepted uncritically. The journalists had failed to try to contact the claimant, had accepted S.W.'s statements in an undiscriminating manner and had failed to contact P.T. prior to publishing the article.

26. The Supreme Court acknowledged that shocking or even insulting publications were also covered by the protection of Article 10 of the Convention. However, this protection was not absolute. It could be limited by the legitimate aims listed in paragraph 2 of this provision. Journalists making allegations about individuals were obliged to show that there was sufficient factual basis for their assertions (here it referred to *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, ECHR 2004-XI). Not only should statements of fact be consistent with the material gathered for the purposes of the press articles, but value judgments should also have a sound factual basis (here it cited *Dąbrowski v. Poland*, no. 18235/02, 19 December 2006). These principles were equally applicable to situations where the

administration of justice or judges or prosecutors were criticised by the press (citing *Barfod v. Denmark*, 22 February 1989, Series A no. 149; *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313; and *Lešník v. Slovakia*, no. 35640/97, ECHR 2003-IV). The Supreme Court reiterated that informing the general public of improper conduct on the part of public prosecutors served the general interest, but the guarantees enshrined in Article 10 could be successfully relied on only where journalists had reliable and precise information at their disposal that could justify levelling such serious charges against public officials. No such factual information had been put forward by the defendants in the present case. The courts had not therefore erred in finding against them.

II. RELEVANT DOMESTIC LAW

27. Article 14 of the Constitution provides as follows:

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

28. Article 31 § 3 of the Constitution, which lays down a general prohibition on disproportionate limitations of constitutional rights and freedoms (the principle of proportionality), provides:

> "Any limitation of 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."

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

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

29. Article 23 of the Civil Code contains a non-exhaustive list of the rights known as "personal rights" (*dobra osobiste*). This provision states:

> "The personal rights of an individual, such as, in particular, health, liberty, reputation (cześć), freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements shall be protected by the civil law regardless of the protection laid down in other legal provisions."

30. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. According to that provision, a person facing the risk of a breach may demand that the prospective perpetrator refrain from the wrongful activity, unless it is not unlawful. Where an infringement has taken place, the person affected may, *inter alia*, request that the wrongdoer make a relevant statement in an appropriate form, or

claim just satisfaction from him or her. If a breach of a personal right causes financial loss, the person concerned may seek damages.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant company complained that the court judgments in its case had violated its right to freedom of expression as provided in 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. Admissibility

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

B. Merits

1. The parties' submissions

33. The Government submitted that the interference with the applicant company's rights had been compatible with Article 10 of the Convention. There was no doubt that it had had a basis in law and had served the legitimate aim of protecting the reputation or rights of others. As to whether the interference had been necessary in a democratic society, the Government averred that the statements contained in the impugned article had for the most part been statements of fact. It had been stated that the then

Minister of Justice and Prosecutor General were tolerating a prosecutor who was a drug dealer. Furthermore, it had been stated as a fact that the claimant had been present at the scene of the drug transaction as a guarantee of security. Although the claimant had not been referred to by her full name, a detailed description had made her identity obvious to local legal circles, in particular as her position as spokesperson for the Appellate Prosecutor's Office had been mentioned. One of the witnesses had confirmed this. The claimant had suffered negative consequences immediately after the article had been published.

34. The Government averred that the domestic courts had found that the allegations about the claimant's conduct had not been confirmed by the evidence taken during the proceedings. Although the drug transaction between the claimant's former husband on the one hand and P.T. and S.W. on the other had taken place, the claimant's presence at the scene had not been confirmed. The witnesses had seen a woman inside the car, but they had not known the claimant personally and had not recognised her before the civil court. They had only referred to the fact that her former husband had told them at that time that it was her. She had not seen him since 2001 when he had abandoned the family.

35. The Government submitted that the allegations of drug trafficking levelled against the claimant - who was a public official - were of a very serious character. The subject matter of the case was therefore of general public concern. However, the applicant company had failed to comply with its duties as the journalists had not acted with due diligence and had failed to verify the information on which their allegations were based. They should have relied on a sufficiently accurate and reliable factual basis, since the more serious the allegation, the more solid the factual basis must be. Crucially, the journalists had failed to contact the claimant.

36. The Government submitted that the journalists had had recourse to unnecessarily sensational and provocative language. Admittedly, journalistic freedom also covered possible recourse to a degree of exaggeration or even provocation. However, in a political context it was legitimate to ensure that debate observed a minimum degree of moderation and propriety. The same applied to public officials, such as prosecutors.

37. The domestic courts had established that the allegations concerning the claimant had been in breach of her personal rights as they had had adverse consequences for her private and professional life. The courts had provided extensive reasoning in support of their decisions, relying essentially on the journalists' failure to contact the claimant and P.T., on their lack of reasonable efforts to verify S.W.'s submissions against other information, and on their uncritical acceptance of S.W.'s story. The Government were of the view that the reasons relied on by the domestic courts had been both relevant and sufficient.

38. As regards the nature and severity of the penalties imposed on the applicant company, the Government argued that no criminal proceedings had been instituted in the present case. The applicant company had been held liable under the provisions of the civil law only. The Łódź Regional Court had merely ordered the apology to be published in the form requested by the claimant. The domestic courts' order for the payment of PLN 30,000 as compensation and to cover the claimant's legal costs had borne a reasonable relationship of proportionality to the damage she had suffered. The compensation had been based on a careful examination of the applicant company's financial statements for the previous year and had thus not been excessive.

39. The Government concluded that courts had struck a fair balance between the restriction of the applicant company's freedom of expression and the claimant's reputation.

40. The applicant company submitted that a situation where a public prosecutor's former husband had been involved in drug trafficking and the prosecutor had herself participated in an illegal transaction called for the closest public scrutiny. That situation had justified the strong language used in the article. The motivation of the magazine's editors had not been idle curiosity but the question of whether the State should tolerate the shocking conduct of its official.

41. At the material time the magazine had been opposed to the government in power. Its conduct should in fact be regarded as diligent, restrained and moderate. In the impugned article the claimant had been referred to merely as "prosecutor Anna". The courts dealing with the case had entirely failed to take into consideration the fact that a person with her position and visibility should be beyond reproach.

42. The applicant company was further of the view that the statements referred to by the Government were, for the most part, not statements of fact but rather value judgments. Her highly inappropriate presence at the scene of the drug trafficking offence had been confirmed by the testimony given by the witnesses. Her presence had been intended to serve as a security measure for the illegal transaction. This assessment of the situation by the author of the article should also have been seen as a value judgment. In any event, the statements had a sufficient basis in the material available to the courts. The claimant had been present at the scene and had subsequently confirmed this in the proceedings, saying that she could not rule out that she might have been in the car at that time. Even assuming that she had been unaware of the nature of the transaction, her lack of vigilance should be seen as disqualifying her from serving as a prosecutor.

43. The applicant company further submitted that the national courts had found it well established that the information about the claimant contained in the text made her identity obvious to the public. This assumption had been borne out by the testimony given to the court by her friend P.K., an

officer of the special police forces. However, he had also said that only people who knew her would have been able to make out her identity on the basis of that information.

44. The applicant company submitted that the allegations had had a sufficiently accurate and reliable factual basis. When preparing the article, Ms O.H.B. had met S.W., one of the drug dealers, and interviewed him. She had also sent a letter to the spokesman for the prosecutor's office, asking whether any disciplinary proceedings had been instituted against any prosecutors in Łódź. There had been no reply to that letter.

45. The applicant company argued that the crucial issue for the case was that the claimant, a high-profile prosecutor, had been present at the scene of the drug-trafficking offence. No appropriate explanation had ever been provided. She should have been dismissed from her position. Instead, she had won a case against the pro-opposition magazine, which had been critical of the moral condition of the prosecuting authorities. The claimant had not suffered any negative consequences. The witnesses before the court said that they were aware of a "funny article" and that "there were some mean comments". The claimant did not specify what negative consequences she had suffered. No disciplinary proceedings against her had been instituted, and she had been neither dismissed nor transferred to another prosecutor's office.

46. The applicant company reiterated that the freedom of the press was strongly protected under Article 10 of the Convention; the press could have recourse to a degree of exaggeration or even provocation (it cited *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). It was allowed to use sarcastic, satirical or inelegant language (referring to *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, §§ 25-26, 22 February 2007). It was the right of the press to be shocking, offensive and disturbing and the test of proportionality should focus on whether a proper balance had been struck between the legal interests involved. That had not been the case in the proceedings concerned in the present case. The press could be expected to be unbiased and neutral in the forms of expression (it cited, for example, *Standard Verlagsgesellschaft mbH v. Austria (no. 2)*, no. 37464/02, § 40, 22 February 2007). The magazine published by the applicant company was of a generally satirical character and, consequently, the article concerned had also been couched in satirical terms. Satirical statements concerning matters of public interest were by their very nature exaggerated and distorting and as such they enjoyed a wider margin of tolerance (it cited, for example *Alves da Silva v. Portugal*, no. 41665/07, § 27, 20 October 2009).

47. As to the penalty imposed on the applicant company, it had not been proportionate in the circumstances of the present case.

48. The applicant company concluded that the interference complained of was, in the circumstances of the present case, in breach of the

proportionality requirement imposed on the State under Article 10 § 2 of the Convention.

2. The Court's assessment

49. The Court reiterates that 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 (see Lingens v. Austria, 8 July 1986, § 41, Series A no. 103.

50. In this context, the safeguards to be afforded to the press are of particular importance (see *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I). Not only does the press have the task of imparting information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" in imparting information of serious public concern (see, among other authorities, Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; *Gawęda v. Poland*, no. 26229/95, § 34, ECHR 2002-II; and *Kaperzyński v. Poland*, no. 43206/07, § 56, 3 April 2012). Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart information and ideas on all matters of public interest (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298 1994, Series A no. 298, p. 23, § 31, and *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I).

51. Nonetheless, Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of this Article, freedom of expression carries with it "duties and responsibilities". Hence, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, for example, *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II; *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 67, ECHR 2007-IV; and *Kania and Kittel v. Poland*, no. 35105/04, § 36, 21 June 2011).

52. 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 the interference may depend on whether or not there exists a sufficient factual basis for the

impugned statement, since even a value judgment may be excessive if it has no factual basis to support it (see *De Haes and Gijsels*, cited above, § 47, and *Feldek v. Slovakia*, no. 29032/95, § 76, ECHR 2001-VIII). The more serious such an allegation, the more solid the factual basis has to be (see *Pedersen and Baadsgaard*, cited above, § 78; *McVicar v. the United Kingdom*, no. 46311/99, § 84, ECHR 2002-III; and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 66).

53. The Court observes that in the present case the domestic courts' decisions complained of by the applicant company amounted to "interference" with the exercise of its right to freedom of expression.

54. The Court also finds that the interference complained of was prescribed by law, namely Articles 23 and 24 of the Civil Code, and was intended to pursue one of the legitimate aims referred to in Article 10 § 2 of the Convention, namely to protect "the reputation or rights of others".

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

56. The test of necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it are relevant and sufficient (see, among many other authorities, The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30, and *Skałka v. Poland*, no. 43425/98, § 35, 27 May 2003).

57. In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. In sum, 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, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Fressoz and Roire*, cited above, § 45; *Axel Springer AG v. Germany* [GC], no. 39954/08, § 86; 7 February 2012; Von Hannover v. Germany (no. 2) [GC], nos, 40660/08 and 60641/08, § 105, ECHR 2012). The nature and severity of the penalties imposed are also factors which should be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (*Skałka*, cited above, §§ 41-42, and *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007).

58. The Court's task, in exercising its supervisory jurisdiction, is not limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith. The Court must look at the interference with the applicant's right to freedom of expression in the light

of the case as a whole, including the statements concerned and the context in which they were made and also the particular circumstances of those involved (see *Feldek*, cited above, § 77). 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 relied on an acceptable assessment of the relevant facts (see, among many other authorities, *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI; *Pedersen and Baadsgaard*, cited above, §§ 68-71; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II; and *Mamère v. France*, no. 12697/03, § 19, ECHR 2006-XIII).

59. In the instant case, the impugned article published in 2007 contained allegations that the claimant, who was a prosecutor at the local public prosecutor's office at the material time, had been involved in drug trafficking. The article alleged that she had been present at a meeting held on an unspecified date in a street in Łódź while her former husband was purchasing amphetamines from certain persons against whom criminal proceedings were pending at the time of the publication. It further alleged that the prosecuting authorities knew about her involvement in the alleged drug trafficking but chose not to prosecute her. It also insinuated that she was a drug addict herself and that it was likely that she was sharing drugs with her colleagues (see paragraphs 6 – 7 above).

60. The Court has stated on many occasions that issues concerning the functioning of the justice system constitute questions of public interest (see *Kudeshkina v. Russia*, no. 29492/05, § 46, 26 February 2009, *mutatis mutandis*). Public prosecutors are civil servants whose task it is to contribute to the proper administration of justice. In this respect they form part of the judicial machinery in the broader sense of this term (see *Lešník,* cited above, § 54). The Court takes note of the applicant's argument that the character of the claimant's public function was such as to justify close public scrutiny (see paragraph 45 above). The Court accepts that personal integrity of public prosecutors is a subject which may be of legitimate interest to the general public. However, it may be necessary to protect public servants from offensive, abusive and defamatory attacks which are likely to affect them in the performance of their duties and to damage public confidence in them and the office they hold (see *Janowski.* [GC], cited above, and *Lešník*, cited above, § 53). The extent to which such protection might be deemed necessary depends on the particular circumstances of the case. Whilst in the present case the applicant company considered that it was its duty to alert the public to an important issue of general interest, the fact that the article concerned a prosecutor did not exempt it from the obligation to provide a sufficient factual basis for the allegations.

61. As regards the categorisation of the statements contained in the article, the Court observes that the Polish courts considered in their analysis

that the statements concerning the transaction itself were not devoid of any factual basis. However, the courts found that the same could not be said of the statements by S.W. to the effect that the claimant had been aware of and had participated in the transaction, still less that she had acted as illicit "protection" for her former husband. In this connection, the courts found that S.W. had never met the claimant, that he had relied only on what her former husband had told him and, crucially, that he had not recognised the claimant before the civil court. Taken as a whole, the courts found that the statements contained in the article referring to the claimant's conduct, both in connection with the drug-trafficking transaction and the insinuations concerning her alleged involvement in drug trafficking, were not supported by the evidence.

62. The Court notes that the domestic courts took into consideration the fact that the applicant company had invoked Article 10 of the Convention during the proceedings. The first-instance court referred to the case-law of the Supreme Court regarding the obligation of journalists to exercise diligence (see paragraph 19 above). It also applied the test of adequate diligence in assessing whether the journalists had discharged their obligations. The first-instance court found that the journalists had not exercised sufficient diligence when making their allegations about the claimant's involvement, which were, in the court's view, not sufficiently supported by the facts. In particular, the first-instance court regarded the effort of the researcher and the journalist to get in touch with the claimant as "completely inadequate" and observed that no evidence had been submitted showing that M.Sz. had indeed tried to call her before publication of the impugned article.

63. Likewise, in their successive decisions the courts criticised the fact that neither the journalist nor the editor had got in touch with P.T., who had been present at the scene during the transaction and could have confirmed the claimant's identity and involvement or dispelled any doubts in that regard.

64. In its detailed analysis the Supreme Court subsequently referred to the case-law of the Court and to the principles formulated in connection with the exercise of the freedom of expression. In particular, the Supreme Court noted the distinction which had to be made between facts and value judgments. It carried out a careful balancing exercise between the interests involved (see *Semik-Orzech v. Poland*, no. 39900/06, § 63, 15 November 2011; compare and contrast *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006, and *Kwiecień*, cited above).

65. The Court is therefore satisfied that the approach taken by the courts is compatible with the freedom of expression guaranteed by Article 10 of the Convention (contrast *Sokołowski v. Poland*, no. 75955/01, § 46, 29 March 2005; *Zakharov v. Russia*, no. 14881/03, §§ 29 and 30, 5 October

2006; and *Karman v. Russia*, no. 29372/02, §§ 42 and 43, 14 December 2006).

66. Furthermore, as regards the reasons cited by the courts to justify the interference with the applicant company's right to freedom of expression, the courts observed that the thrust of the allegations against the claimant concerned her alleged involvement in the drug trafficking transaction. Consequently, the courts focused their examination on this essential aspect of the case.

67. As to whether these grounds were sufficient, the Court notes that, with a view to establishing the impact which the article had had on the claimant's professional life and reputation, the first-instance court heard evidence from seven witnesses, namely: the author of the article, the researcher working for the applicant company, both individuals who had participated in the transaction, and three further witnesses. It also had regard to documentary evidence gathered for the purposes of establishing the measures taken by the journalists in an effort to contact the claimant prior to publication.

68. In the light of the above, the Court concludes that the domestic authorities, when justifying the interference concerned in the present case, relied on grounds which were both relevant and sufficient.

69. The applicant company did not argue that the courts refused to gather evidence which it considered to be relevant for the outcome of the case. The Court is therefore satisfied that the Polish courts gave the applicant company ample opportunity to demonstrate that its allegations had a sufficient factual basis (contrast *Sabou and Pircalab v. Romania*, no. 46572/99, § 15, 28 September 2004; see also *Wołek, Kasprów and Łęski v. Poland* (dec.) no. 20953/06, 21 October 2008).

70. The Court further observes that the applicant company was found only to be civilly liable. No criminal proceedings were instituted against them by the prosecution authorities.

71. The Court further notes that the applicant company was ordered to publish an apology in their newspaper for having published inaccurate information of a defamatory character. The correction was neutrally worded, no bad faith or lack of diligence on the applicants' part being implied. Furthermore, the Court reiterates that in specific circumstances an exceptional and particularly high amount of damages for libel (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 51, Series A no. 316-B, and *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, no. 55120/00, § 115, ECHR 2005-V (extracts)), may raise an issue under Article 10 of the Convention. However, in the present case the courts, when deciding on the amount to be paid by the applicant company as compensation, had regard to its financial situation and held that the amount of PLN 30,000 was not excessive. It has not been argued, let

alone shown, that that amount was such as to threaten the economic foundations of the applicant company in any way.

72. Having regard to the circumstances of the case as a whole, the Court is of the view that the interference complained of may be viewed as "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 of the Convention. There has therefore been no violation of that Article.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President