

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

FOURTH SECTION

CASE OF KĄCKI v. POLAND

(Application no. 10947/11)

JUDGMENT

STRASBOURG

4 July 2017

FINAL

04/10/2017

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



In the case of Kącki v. Poland,

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

Vincent A. De Gaetano, *President,*
András Sajó,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 26 January 2016 and 16 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 10947/11) 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 Marcin Kącki ("the applicant"), on 5 February 2011.

2. The applicant was represented by Ms B. Czechowicz, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged that finding him criminally responsible for defamation of a politician amounted to an interference with his right to freedom of expression, in breach of Article 10 of the Convention.

4. On 27 August 2014 the complaint concerning the alleged violation of Article 10 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Poznań.

A. Background to the case

6. On an unspecified date A.R., a member of the political party Self-Defence of the Republic of Poland ("Samoobrona") sent *Gazeta Wyborcza*, a daily newspaper, an electronic mail containing information about an alleged "sex scandal" in the party.

7. The following day the applicant, who is a journalist, contacted A.R. on the telephone. After their conversation he informed her that he had recorded the call and that he intended to use the transcript for an article.

8. On 6 December 2006 the applicant published an interview with A.R. in the *Gazeta Wyborcza*. The interview, entitled "Payment for sex, the choice is yours" ("*Płaca ze seks, wybór należy do pani*") concerned the "sex scandal" story which had broken in Poland earlier in 2006. Public figures, including Samoobrona activists, had offered and accepted sexual favours in the course of exercising public functions. A.R. told the newspaper that she had begun working with the party through her contacts with A.K. Initially, she had been unpaid and when she had demanded payment, one of the activists, K.Z., had told her:

> "I will pay if you go to bed with me"

She also said that in July 2004 during a party organised by A.K. a prominent Samoobrona activist, B.S., had offered to find a post for her in a parliamentary deputy's office – specifically R.C.'s – in return for sexual favours. According to A.R., B.S. was so forward that she had to ask K.S. for help. K.S. then called a taxi to take B.S. home

9. Then the applicant asked A.R.:

> "Did you get the job?"

A.R. replied:

> "No, the job was given to M.C.'s daughter".

10. On the same page, to the right of the article, the newspaper quoted three prominent Samoobrona activists referred to in the interview, namely K.Z., B.S. and K.S. They all, denied that there had been any sexual propositions made to A.R.

11. Also on the same page the newspaper published a short interview with A.K. who confirmed that she knew A.R. but had never recommended her for any work. When asked about the "sex scandal" A.K. said:

> "What are you saying? I have never heard of it. This cannot be true."

B. Criminal proceedings against the applicant

12. On 30 November 2007 M.C., a Member of the European Parliament, lodged a private bill of indictment against the applicant. He demanded that the applicant be charged with defamation. According to the indictment the

defamation consisted of the publication of the interview with A.R. in which she said that B.S. could arrange a job for her in M.C.'s office in return for sexual favours. According to M.C. this suggested to readers that he had been involved in the "sex scandal". He also claimed that he had been defamed in the published interview at the point where A.R. had accused him of nepotism by saying that he had employed his own daughter.

13. On 16 March 2010 the Warsaw District Court ruled the indictment partially accurate: it then discontinued the proceedings for a probationary term of one year and ordered the applicant to pay 1,000 Polish zlotys (PLN – 232 euros (EUR)) to charity and to pay the costs of the proceedings.

14. The District Court found the applicant guilty of the defamation of M.C. with respect to his publication of the statements made by A.R. concerning nepotism (see paragraph 23 below). According to the court the applicant neglected his professional obligations because he did not verify that the job had been offered to M.C.'s daughter. At the trial it became clear that this information could not be accurate because M.C. did not have a daughter. It did not accept the applicant's argument that he had acted with due diligence because before publication he had sent the text of the interview to A.R. who had accepted its contents and returned it to the applicant without making any objection or comment *(autoryzacja)*.

15. The District Court did not hold that the applicant was guilty of defamation when he had suggested that M.C. had been involved in the "sex scandal". It found that in this respect the applicant had fulfilled his professional obligations because he had published the statement of B.S., who had denied propositioning A.R. For the above reasons, in the District Court's view, the average reader should not have had the impression that M.C. was involved in the "sex scandal".

16. The applicant and M.C.'s lawyer appealed against the first-instance judgment.

17. On 18 June 2010 the Warsaw Regional Court upheld the challenged judgment, repeating in essence the same reasoning as the District Court. Regarding the applicant's arguments concerning his right to freedom of expression under Article 10 of the Convention, it noted that "in the light of the journalist's right to publish critical comments *(prawo do krytyki dziennikarskiej),* an individual's right to legal protection of good name and reputation should also be taken into account".

18. On 3 February 2011 the applicant's lawyer requested the Ombudsman to lodge a cassation appeal on the applicant's behalf.

19. On 6 May 2011 the Ombudsman informed the applicant that she had found no grounds to lodge a cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions concerning freedom of expression

20. Article 14 provides as follows:

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

21. 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."

22. 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

23. 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 to fulfill a certain position or occupation or perform a type of activity, shall be liable to a fine or restriction of liberty.
>
> § 2. If the perpetrator commits the act described in paragraph 1 through a means of mass communication, he or she shall be liable to a fine, restriction of liberty or imprisonment not exceeding 1 year.
>
> § 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 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."

24. 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 shall be deemed not to have committed the offence specified in Article 212 § 1 or 2;
>
> 1. if the allegation concerns the activity of a person exercising a public function or

2. if the allegation is made in defence of a justifiable public interest.

If the allegation regards private or family life, the evidence of truth shall only be produced when it serves to prevent a danger to someone's life or to prevent abuse of a minor."

25. 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."

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

26. 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.

27. The Constitutional Court found that in some circumstances the protection of rights and freedoms like dignity, good name and privacy may prevail over the protection of freedom of expression. The Constitutional 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 in itself infringe the relevant provisions of the Constitution.

28. Three judges, out of twelve, expressed dissenting opinions on the Constitutional Court's judgment of 30 October 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicant complained that holding him criminally responsible for publication of the interview violated his 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

30. The Court notes that this complaint 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. Arguments of the parties

(a) The applicant

31. The applicant submitted that the interference with his freedom of expression had been in breach of Article 10 § 2 of the Convention. He alleged that the domestic courts had failed to take into account that M.C. was a public figure and so there should be a greater degree of tolerance of critical comments regarding him.

32. He also submitted that the domestic courts had failed to weigh the conflicting interests, in this case the protection of personal reputation and the value of open discussion of political issues. Likewise, they had not taken into account the political context of the interview which was published as part of an open debate on an issue of general interest, specifically the functioning of a political party which was part of the Government at the relevant time.

33. The applicant further asserted that the domestic courts had stated that he should distance himself from the quotes. In this respect he relied on the case of *Thoma v. Luxembourg* (no. 38432/97, § 64, ECHR 2001-III) where the Court had found that "a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas".

34. The applicant concluded that there was no "pressing social need" which would justify the interference with his freedom of expression and that the interference complained of could not be qualified as "proportionate" in the circumstances of the case.

35. The applicant finally submitted that he would have a criminal record even though the courts had conditionally discharged him.

(b) The Government

36. The Government submitted that the applicant had published a statement of fact which is susceptible of proof. However, he had failed to contact M.C. to confirm the information he had received from A.R. They further submitted that the allegations of nepotism had been of a serious nature and had created a serious risk that M.C. would lose public confidence. They admitted that the relevant material had been sent to A.R. before publication and that she had returned it without any comments or corrections. However, she had testified – in the course of the criminal proceedings against the applicant – that she had meant B.S.'s and not M.C.'s daughter.

37. They further admitted that the applicant had published information that fell within the framework of a general debate on a subject of general public concern. This however had not released the applicant from the obligation to act ethically with due respect for the personal rights of others.

38. According to the Government the domestic courts managed to strike a fair balance between the applicant's freedom of expression and the need to protect the professional credibility of a politician; the domestic courts' reaction was thus proportionate to the legitimate aim pursued. They examined all relevant information in the case and gave "relevant and sufficient" grounds for their decisions.

39. As regards the severity of the penalty they submitted that although the applicant had faced criminal charges, the domestic courts had conditionally discontinued the proceedings and ordered him to pay the costs of the proceedings and PLN 1,000 to charity. Thus, in the Government's view, the penalty imposed on the applicant had been moderate and had corresponded to the seriousness of the injury caused by him.

Consequently, the Government requested the Court to find no violation of Article 10 of the Convention in the present case.

2. The Court's assessment

40. It was not disputed that the courts' decisions in the present case and the sanctions imposed on the applicant amounted to an "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 – specifically a Member of the European Parliament – within the meaning of Article 10 § 2 of the Convention.

41. 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

42. 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 of Article 10 of the Convention, 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 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).

43. 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 Court 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).

44. 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 leading to the interference with the applicant's rights and the context in which he made them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

45. 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, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII). 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-II) and the nature and severity of the penalties imposed (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV, and *Skałka 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-XIII).

46. The Court further observes that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate concerning questions of public interest (see *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV).

47. Furthermore, regard must be had to the pre-eminent role of the press in a State governed by the rule of law (see *Castells v. Spain,* 23 April 1992, § 43, Series A no. 236). Whilst the press must not overstep the bounds set, *inter alia*, for "the protection of the reputation of ... others", it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of imparting such 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" (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III; and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 89, ECHR 2015 (extracts)).

48. The Court also reiterates that the press is a vector for disseminating debates on matters of public interest, but it also has the role of revealing and bringing to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (see *Couderc and Hachette Filipacchi Associés,* cited above*,* § 114). At the same time, the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015).

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

49. In exercising its supervisory jurisdiction the Court must look at the alleged interference with the applicant's right to freedom of expression in the light of the case as a whole, including the content of the statements concerned, the context in which they were made and the particular circumstances of those involved. The Court will examine whether the journalist who carried out the impugned interview acted in good faith in accordance with the tenets of responsible journalism.

50. The Court notes at the outset that the domestic authorities had recourse to criminal proceedings against the applicant. He was found guilty of defamation. However, the courts conditionally discontinued the proceedings for a probationary period of one year and ordered him to pay PLN 1,000 to charity and to pay the costs of the proceedings. In spite of the conditional discharge, the applicant still has a criminal record (see paragraph 35 above).

51. The applicant is a journalist and, at the relevant time, worked for *Gazeta Wyborcza*, a daily newspaper. Following receipt of an electronic mail from A.R., he contacted her and interviewed her on the telephone (see paragraph 7 above). The interview concerned principally the "sex scandal" in Samoobrona, which had broken previously in Poland and which had been widely publicised and had attracted great public attention, particularly because that party had been part of the Polish Government at the relevant time. Thus, the subject matter of the published interview fell within the frame of a wider public debate.

52. Responsible journalism requires that the journalists check the information provided to the public to a reasonable extent. At the same time, in applying the standards of journalistic diligence it is necessary to consider the nature of the publications. In particular, differences between papers written by journalists and interviews have to be taken into account. The Court attaches importance to the fact that the material published by the applicant was an interview and not a general article. Thus the applicant did not publish his own statements but those made by a third person, namely A.R. The text of the interview had been sent to A.R. prior to publication in order to allow A.R. to ascertain whether her statements had been accurately cited and, possibly, to make corrections. A.R. returned the text to the applicant without any comments or corrections. This was confirmed by A.R. before the Regional Court in the course of criminal proceedings against the applicant (see paragraph 14 above). In the Court's view a journalist cannot always be reasonably expected to check all the information provided in an interview. There is no reason to doubt the good faith of the journalist in the instant case.

53. The Court notes also that M.C. did not request a correction or retraction from the newspaper. He did not institute civil or criminal proceedings against A.R. Likewise, he did not institute civil proceedings against the applicant or editor of the newspaper through which the alleged interference with his right to reputation could have been remedied. Instead, he chose to lodge a private bill of indictment against the applicant with a criminal court (see paragraph 12 above).

54. As regards the Government's arguments that the applicant should have distanced himself from the statements made by A.R., the Court notes that the interview concerned the "sex scandal" and the applicant's attempts to obtain information on this matter. A.R. stated that two men – K.Z. and B.S. – had sexually propositioned her. She also mentioned K.S. from whom

she had allegedly requested help at a party (see paragraphs 8 and 9 above). All three of those men were asked to comment and their statements were printed next to the interview (see paragraph 10 above). M.C.'s name did not appear in the interview in the context of the "sex scandal"; it was mentioned by A.R., who said that B.S. had promised to support her candidature for a position at M.C.'s office in Brussels. The applicant only then asked whether she had got the job and A.R. replied that the job had been given to M.C.'s daughter. The Court notes in this context that the interview did not focus on M.C.; his name only appeared there because A.R. had mentioned it only in connection with B.S.'s promise. In these circumstances the Court is of the opinion that the applicant could not have been reasonably expected to ask M.C. to comment, as he did with K.Z., B.S. and K.S. who, according to the applicant's statements, were either directly involved in the "sex scandal" or witnessed the situation discussed in the interview (as regards the requirement of establishing the truth of reported statements made by third persons see, *mutatis mutandis*, *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 65, Series A no. 239, and as regards the requirement that a journalist distance himself from the reported statements, see *Thoma*, cited above, § 64).

55. In the present case, the applicant published in the press another person's statement concerning a public figure in a widely discussed public debate.

56. As regards the reasons given by the domestic courts proving the applicant's criminal responsibility, the Court notes that the second-instance court, addressing the applicant's argument raised in his appeal, examined the case also from the standpoint of Article 10 of the Convention. This court found that freedom of expression was not unlimited and that the Convention did not provide for protection of those who in exercising their freedom breached another's right to good name and reputation (see paragraph 17 above). However, the domestic court did not carry out a balancing exercise of the competing interests at stake seen in the context in which the disputed remarks were made (as regards the requirement of carrying out a balancing exercise, see *Cumpănă and Mazăre,* cited above, §§ 113-115, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 108, ECHR 2012; and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-84, 7 February 2012).

57. 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 the courts conditionally discharged the applicant; however the information about this fact appears in the National Criminal Register (see paragraph 35 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 the instant case, which concerns recourse to a criminal prosecution resulting in a finding of criminal responsibility must be seen as a wholly disproportionate measure (see, *mutatis mutandis, Długołęcki v. Poland*, no. 23806/03, § 47, 24 February 2009).

58. Taking into account the above considerations the Court finds that the domestic courts overstepped the 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.

59. The authorities therefore failed to strike a fair balance between the relevant interests of, on the one hand, the protection of the politician's right to maintenance of reputation and, on the other, a journalist's right to freedom of expression, especially where issues of public interest are concerned.

60. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed EUR 5,000 in respect of non-pecuniary damage.

64. The Government considered this claim exorbitant and unsubstantiated, stating that no infringement of the applicant's rights had occurred in the present case.

65. The Court accepts that the applicant suffered non-pecuniary damage which is not sufficiently compensated by finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed EUR 500 for costs and expenses incurred before the Court.

67. 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. The Government asked the Court to make a decision in this regard, relying on the case of *Zimmermann and Steiner v. Switzerland* (13 July 1983, § 66, Series A no. 66).

68. In the present case, regard being had to the documents in its possession and fact that the applicant failed to substantiate his claim for costs and expenses, the Court rejects it.

C. Default interest

69. The Court considers it appropriate that the default interest rate 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 complaint under Article 10 of the Convention 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 4 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Vincent A. De Gaetano
President