

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

FIRST SECTION

# CASE OF RYWIN v. POLAND

*(Applications nos. 6091/06, 4047/07 and 4070/07)*

JUDGMENT
(extracts)

*This version was rectified on 22 February 2016 in accordance with Rule 81 of the Rules of Court*

STRASBOURG

18 February 2016

**FINAL**

06/06/2016

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



**In the case of Rywin v. Poland,**

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

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Pawel Wiliński, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 26 January 2016,

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

# PROCEDURE

1. The case originated in three applications (nos. 6091/06, 4047/07 and 4070/07) 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 Lew Rywin ("the applicant"), on 1 February 2006.

2. The applicant was represented by Mr W. Tomczyk, lawyer practising in Warsaw, and Mr J. McBride, lawyer practising in London. On 22 August 2013 Mr McBride informed the Court that on account of Mr Tomczyk's death, he was now the applicant's sole representative. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, and later by Ms J. Chrzanowska, both from the Ministry of Foreign Affairs.

3. Mr L. Garlicki, the judge elected in respect of Poland, was unable to sit in the case (Rule 28 of the Rules of Court). The Government accordingly appointed M. P. Wiliński[1] to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

4. The applicant submitted the following complaints in particular:

...

(b) Under Article 6 of the Convention, on account of the fact that his trial had taken place in parallel to the work of a parliamentary commission of inquiry which received wide media coverage, there had been a breach of his right to be presumed innocent and his right to an independent and impartial tribunal.

5. On 27 April 2010 notice of the applications was given to the Government. As permitted by Article 29 § 1 of the Convention, it was also

1. Rectified on 22 February 2016: the text previously read "Wilczyński".

decided that the Chamber would rule on the admissibility and merits at the same time. On the same day the Chamber decided to join the three applications.

6. Written comments were received from the Venice Commission, the President having given it leave to intervene in the proceedings (Rule 44 § 3 (a)).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1945 and lives in Konstancin Jeziorna.

8. On 27 December 2002 the *Gazeta Wyborcza* – a major daily newspaper – published an article with the headline: "A law in exchange for a bribe: when Rywin pops by to see Michnik*" (Ustawa za łapówke, czyli przychodzi Rywin do Michnika)*.

The article was about bribery in connection with the legislative procedure for the amendment of the Broadcasting Act. According to the article, in July 2002 Lew Rywin (the applicant), a well-known film producer, had offered a bribe to representatives of the company that published the *Gazeta Wyborcza* newspaper, Agora S.A. The applicant was said to have been acting on the instructions of a purported "group in power" (*grupa trzymająca władze*), which allegedly included certain high-ranking State officials, among them the Prime Minister. More specifically, the applicant had reportedly offered the representatives of Agora his assistance in amending the Broadcasting Act so that the company could buy the private television channel Polsat, and had asked for the following, among other things, in return: payment of 17.5 million United States dollars (USD), his appointment as chairman of the channel Polsat and an undertaking from the newspaper *Gazeta Wyborcza* to refrain from publishing any criticism of the government. The above-mentioned proposal was said to have been made by the applicant during a meeting with Adam Michnik, editor-in-chief of *Gazeta Wyborcza*. The meeting had been recorded by the latter and transcriptions from the recording were later included in the article published by his newspaper.

### A. The criminal proceedings against the applicant, the work of the Parliamentary commission of inquiry and the media coverage

9. After the case was revealed in the press, the public prosecutor at the Warsaw Court of Appeal brought proceedings against the applicant, on

31 December 2002, on a charge of influence peddling (*przestępstwo płatnej protekcji*), under Article 230 of the Criminal Code.

10. On 10 January 2003, the *Sejm* – lower house of Parliament – passed a resolution (*uchwała*) setting up a parliamentary commission of inquiry ("the commission"). Under that resolution the commission was set up with the following aims:

> "(1) To investigate the circumstances surrounding the attempted extortion by Lew Rywin of material and political gains in exchange for his assistance in preventing an amendment of the Broadcasting Act that would be unfavourable to private media and in guaranteeing that the Broadcasting Media Council would decide in favour of such media; and to determine the identity of any persons that may have taken steps to this effect, as revealed by the *Gazeta Wyborcza* newspaper and other media.
>
> (2) To examine, in the light of the circumstances mentioned in paragraph 1 above, the parliamentary procedure for the amendment of the Broadcasting Act.
>
> (3) To examine whether the authorities' response to the media revelations concerning the affair mentioned under point 1 above was regular."

The resolution stated that the commission's meetings would be held in public, unless otherwise provided by law or by the *Sejm*'s rules of procedure.

11. On 14 January 2003, the commission, consisting of ten MPs, began its work.

12. On the same day the public prosecutor questioned the applicant and notified him of the charge against him. The applicant was obliged to present security in the form of a registered charge against his property and his passport was seized.

13. On 23 February 2003 issue number 8 of the weekly magazine *Wprost* was published with, on the cover, a photomontage showing the applicant with his head emerging from a toilet bowl while three hands of unknown persons were pressing the flush button. The photomontage was accompanied by the following caption: "How many men in power will Rywin bring down with him?" *(Ilu ludzi wladzy pociagnie za soba Rywin ?)*. Inside the same issue of *Wprost* was an article headed "Rywinotherapy" (*Rywinoterapia*), on the subject of corruption in Poland.

14. Following that publication the applicant brought proceedings against *Wprost* for the protection of his reputation, complaining about a breach of his right to be presumed innocent.

On 25 June 2003 Warsaw Regional Court dismissed the applicant's claim, finding in particular as follows:

> "Until the final conviction has been handed down, the complainant must be treated as a person presumed innocent. It is nevertheless true that he had been charged with specific offences, that a bill of indictment had been preferred against him, and that the matter is being examined by a parliamentary commission of inquiry. It must be emphasised that the general public have been informed about the "group in power" [*sic*]. In that situation, the journalists had not only the right but also a duty, under the

> Press Act, to ask questions about any figures in power who may be implicated in this affair ...
>
> In the lower court's opinion, the complainant's picture was widely known to the public in the context of the 'Rywin affair' even before the article was published. The image of Lew Rywin had appeared on a number of occasions in the media in connection with this matter. The complainant was interviewed by the parliamentary commission of inquiry in the course of hearings that were broadcast on television. Having regard to this context, the publication by the weekly *Wprost* of the applicant's picture did not harm his reputation.
>
> ...
>
> What is important in the present case is the fact that the cover does not contain any material that may prejudge the complainant's guilt in [what is known as] the 'Rywin' affair. According to the court below, the cover may be seen by readers as a [mere] indication that the complainant was involved in the case. His implication in this affair, of which the public were well-informed before the impugned publication, is therefore not attributable to the latter. ...
>
> The seriousness of the bribery justified, in the present instance, the use of scathing expressions and very expressive symbols. ... Bribery is so harmful and blameworthy that the fact of representing it using a toilet bowl as a symbol is no exaggeration ... The picture where the complainant's head is seen emerging from the toilet bowl – a symbol of corruption – only means that he may be implicated in the affair and that its elucidation may lead to establishing the identities of others involved ..."

15. In the meantime, the criminal investigation and the work of the commission were ongoing. The commission sat throughout 2003 and until 5 April 2004, when its last session was convened.

The sessions held by the commission between 8 February and 21 November 2003 were devoted to the hearing of witnesses, such as the executives of Agora, high-ranking government officials starting with the Prime Minister, journalists, members of the Warsaw public prosecutor's office and businessmen representing the media. The applicant, who appeared before the commission on 22 February 2003, refused to answer any of its questions. The commission's hearings were public and broadcast live on radio and television. Only two of the witness hearings were apparently held in private. The transcripts of the commission's hearings, consisting of more than 8,000 typed pages, were systematically published on the Parliament's website.

16. The commission's work was widely reported in the media, including comments by its members.

17. Pursuant to the Parliamentary Commissions of Inquiry Act (see paragraph 83 below), the commission worked in close cooperation with the Warsaw public prosecutor conducting the criminal investigation in respect of the applicant.

Thus in February 2003 the president of the commission asked the public prosecutor's office to conduct certain investigative acts, and in particular: to obtain the transcripts of the applicant's telephone conversations; to determine the places where his documents were kept; to seize the hard drives from his computer; and to carry out a search of his private and professional premises.

On 6 February 2003 the public prosecutor conducting the investigation authorised the commission to disclose, in the context of the proceedings before it, the material in the criminal investigation file. On 6 March 2003 the national public prosecutor (*Prokurator Krajowy*) dismissed the applicant's appeal against this measure, observing that the disclosure of such material was authorised provided it was not prejudicial to the outcome of the case.

On 24 March 2003 the commission forwarded to the public prosecutor, at his request, the transcripts and recordings of its hearings, including the witness hearings.

18. Information was exchanged between the commission and the public prosecutor on several occasions. In that connection, members of the commission's presidium had meetings with the national public prosecutor and the public prosecutor leading the investigation.

19. In June 2003 the criminal investigation in respect of the applicant was completed and the indictment, together with a case file of eighteen volumes, was presented to Warsaw District Court. Mr Rywin was indicted for attempted influence peddling, an offence under Article 230 of the Criminal Code combined with Article 12 of the same Code.

20. On 8 August 2003 the Warsaw Court of Appeal ordered the case to be sent to Warsaw Regional Court on the ground of its exceptional nature and its importance (*sprawa szczególnej wagi*), having regard to the positions held by the individuals implicated in the case, the media and public interest and the work of the commission.

21. On 6 October 2003 Warsaw Regional Court declared that the public prosecutor's decision of 6 February 2003 (see paragraph 17 above) applied to the judicial phase of the criminal proceedings.

Noting that the commission had been privy to the whole of the investigation case file concerning the applicant, the court pointed out that if the material in the file were used in the proceedings before the commission it would have to be careful not to cause any prejudice to the persons concerned by that investigation, such as the witnesses and the applicant.

22. On 20 October 2003 the case was assigned to a bench of three professional judges.

23. On 2 December 2003, when the trial opened, Warsaw Regional Court authorised the broadcasting of the hearings live on radio and television, emphasising that journalists should not impede the smooth

running of the proceedings and should abide by the rule that testifying witnesses were not to be apprised of the statements of the other witnesses.

The court also authorised the media disclosure of the applicant's identity and picture, observing that the public interest in following the proceedings prevailed over any contrary interest of the persons on trial.

24. Warsaw Regional Court heard testimony from a number of witnesses, including those who had already been interviewed by the commission. During these hearings, the court systematically compared the statements before it with those that the same witnesses had given to the commission.

25. The Regional Court and the commission exchanged, on a number of occasions, information they had gathered in their respective proceedings.

26. On 31 March 2004, after the closing of the witness hearings, the court made public all the evidence, including that which it had received from the commission.

The court informed the parties that there might be a change in the legal classification of the charges against the applicant, which might fall under Article 13 § 1 combined with Article 286 § 1 of the Criminal Code, corresponding to the offence of attempted fraud (*usiłowanie doprowadzenia do niekorzystnego rozporzadzenia mieniem*).

In response to a request by the defence for the adjournment of the proceedings for a maximum of one week, the court postponed the trial until 14 April 2004, fixing 16 April 2014 as the date of the last round of oral argument.

27. On 14 April 2004 the court rejected a defence request for the admission of new evidence.

In response to a request by the defence, the court then adjourned the trial until 20 April, declaring that judgment would be given on 26 April.

28. On 21 April 2004 the newspaper *Gazeta Wyborcza* published an article with the heading "Before the judgment" ("*Przed wyrokiem*"), beginning as follows:

> "The biggest corruption scandal of the Third Republic will certainly end in a failure for the justice system – regardless of the charges on which Lew Rywin is convicted or the sentence handed down.
>
> ... I think that the judgment will be disappointing in terms of the intention and capacity of the justice system to succeed in discovering the truth – this indeed being the mission of the courts and the public prosecutor – beyond the politics. After the Rywin affair, citizens will still be convinced that laws are not enacted but purchased and that even the high-ranking officials of the State – and I quote the public prosecutor – 'place their personal interests above those of society'; in other words – to call a spade a space – [that they] are corrupt.
>
> ..."

29. In a judgment of 26 April 2004 Warsaw Regional Court found the applicant guilty of attempted fraud, under Article 13 of the Criminal Code

combined with Article 286 § 1, Article 294 § 1 and Article 12 of the same Code, and sentenced him to two years and six months' imprisonment and a fine of 100,000 zlotys (PLN). In its reasoning the court found as follows:

(a) that it was established that between 15 and 22 July 2002, the applicant had attempted to incite Wanda Rapaczyńska, chair of Agora's board of directors, and Adam Michnik, editor-in-chief of *Gazeta Wyborcza*, to dispose of that company's property with detrimental effect thereto for a value equivalent to USD 17.5 million;

(b) that it had not been established that the applicant had been instructed by the Prime Minister or any figures in his entourage.

One of the judges on the bench submitted a separate opinion, taking the view that the applicant should have been given a suspended sentence with probation, in view of his age, his professional background and his state of health.

30. After the delivery of the judgment, the president of the trial court of Warsaw Regional Court published a statement. He commended the efforts of his fellow judges to bring the trial to its conclusion in a calm manner, notwithstanding the various comments about the procedure that had been reported in the media. Noting that some of those comments could be regarded as an attempt to influence the court's work, the president emphasised the following points: that throughout the trial the judges had acted pursuant only to the provisions of criminal law; that the purpose of the trial was different from that of the parliamentary commission of inquiry; and that as professional judges the members of the bench had been able to resist any pressure that might result from the media statements made in connection with the case by various journalists and politicians, or even by certain members of the commission. Pointing out that a statement such as his in the present case was unusual, in view of the judiciary's duty of discretion, the president explained that he could not refrain from mentioning the remarks made by the author of the article entitled "Before the judgment", which had been published in the period when the case was under deliberation and which could be regarded, in his view, as an attempt on the part of the journalist to influence the outcome; such statements were, in his view, inadmissible and blameworthy, even in connection with a case which, like the present one and rightly so, had attracted significant media interest.

31. On 23 August 2004 the applicant and the public prosecutor's office each appealed against the judgment of 26 April 2004. In his statement of appeal the applicant alleged, among other things, that on account of the influence of the commission's work on the judges, exacerbated by the press coverage of the two sets of proceedings, his trial had been devoid of the requisite fairness under Article 6 of the European Convention on Human Rights.

32. At the end of its last session on 5 April 2004, the commission adopted its final report, concluding that the applicant had acted alone.

Several commission members submitted their own draft reports to the *Sejm*. After examining it at the plenary of 28 May 2004, the *Sejm* rejected the commission's report and expressed its preference for that of the MP Zbigniew Ziobro, which was regarded as the most radical. It can be seen from the file that this report was drafted with a view to having the persons concerned held to account before the Tribunal of State. In view of doubts as to the weight of the vote of 28 May, the *Sejm* endorsed the report by the MP Zbigniew Ziobro by its final vote of 24 September 2004. The position taken in that report was as follows:

> "Leszek Miller, Prime Minister, Aleksandra Jakubowska, junior minister in the Ministry of Culture, Lech Nikolski, the Prime Minister's chief of staff, Robert Kwiatkowski, chair of the board of directors of the company TVP S.A., and Wlodzimierz Czarzasty, member of the Broadcasting Media Council, committed, by deliberate and concerted action in July 2002, the offence of bribery, within the meaning of Article 228 § 5 of the Criminal Code taken together with Article 13 § 1 thereof; in that they, [while] influencing the content of the Broadcasting Act being amended and the parliamentary proceedings related thereto, in July 2002, through the intermediary of Lew Rywin, acting as agent of the 'power-holding group', made a corrupt proposal to the representatives of Agora S.A, namely on 15 July 2002 to Wanda Rapaczyńska and Piotr Niemczycki and on 22 July 2002 to Adam Michnik, consisting in demanding a financial reward of 17.5 million US dollars (USD), the appointment of Lew Rywin as chairman of the channel Polsat and an undertaking from the company Agora that the newspaper *Gazeta Wyborcza* would refrain from publishing any criticism of the Prime Minister or government. In return, provisions would be inserted in the Broadcasting Act that would be beneficial for Agora, allowing it to purchase the television channel Polsat.
>
> The evidence gathered in this case renders highly plausible (*w wysokim stopniu uprawdopodabnia*) the above-mentioned account, to the extent of justifying the prosecution of the above-named persons."

33. The report, disseminated by the media, was widely discussed and commented on by the various public stakeholders.

...

35. In the meantime, the applicant's trial continued before the Warsaw Court of Appeal.

36. On 23 November 2004 the Court of Appeal informed the parties that the charge against the applicant was likely to be reclassified to aiding and abetting influence peddling (*pomocnictwo do płatnej protekcji*), an offence under Article 18 § 3 of the Criminal Code taken together with Article 230 of that Code.

The Court of Appeal adjourned the proceedings until 8 December 2004 to allow the defence to adapt its strategy to the intended change of classification. On the scheduled date the defence submitted their observations.

37. In a judgment of 10 December 2004 the Court of Appeal found Mr Rywin guilty of aiding and abetting influence peddling (*pomocnictwo do płatnej protekcji*), an offence under Article 18 § 3 of the Criminal Code

taken together with Articles 230 and 12 of that Code, and sentenced him to two years' imprisonment and a fine of PLN 100,000.

In its reasoning, the Court of Appeal found that the applicant had facilitated the perpetration by other individuals – whose identity had not been established – of the offence of bribery. In this connection it found it established that, on 15 and 22 July 2002, the applicant had presented to Wanda Rapaczyńska and Adam Michnik an offer devised by the above-mentioned individuals who, on the strength of their positions at the level of the State, had proposed their assistance as intermediaries to amend the Broadcasting Act in a manner favourable to Agora, thereby enabling it to purchase the television channel Polsat, in exchange for USD 17.5 million, a sum that was to be paid to the Social Democrat Party (SLD) via the bank account of a company belonging to the applicant.

38. In response to the applicant's complaint that the proceedings of the commission and their media coverage had undermined the fairness of his trial, the Court of Appeal found that this complaint was not substantiated by any tangible evidence; the applicant had not explained concretely how the media reports on the commission's work had influenced the reasoning of the judges in their deliberations or the outcome of the criminal proceedings, or how the commission's proceedings and report might have had any impact on the impartiality of the judges or on the reliability of the testimony given before the trial court. The Court of Appeal took the view, in sum, that this was tantamount to implying that only an adjournment of the criminal proceedings pending the outcome of the commission's work could have preserved its fairness. Noting that the courts were frequently confronted with media interest in a given case, the Court of Appeal was of the view that this fact, in itself, did not suffice for the fairness of the criminal proceedings against the applicant to be called into question.

39. As to the applicant's complaint that the testimony used in support of his conviction had been vitiated by the fact that the witnesses had been heard by the Regional Court after being questioned on the same circumstances by the commission, in public sittings that had received significant media attention, the Court of Appeal regarded it as ill-founded; testimony was always assessed by judges in accordance with the rules in Article 7 of the Code of Criminal Procedure and in the light of all the evidence. In the present case, the Court of Appeal could not identify any circumstance that would lead it to believe that the witnesses heard by the Regional Court had been influenced by the content of their previous statements to the commission or by those of other witnesses.

40. With reference to the applicant's complaint that the reasoning of the Regional Court's judgment was insufficient, the Court of Appeal acknowledged that in certain respects the reasoning had been succinct. Nevertheless, it endorsed that reasoning to a large extent, noting that the

Regional Court had examined the relevant aspects of the case and that its conclusion was justified.

41. Lastly, the Court of Appeal dismissed the applicant's complaint concerning the Regional Court's refusal to admit in evidence certain items proposed by the defence; the court below had rightly found them superfluous for the outcome of the case. In the view of the Court of Appeal, the exercise of defence rights could not consist in requests made *ad infinitum* to elucidate the circumstances of the case, and in particular those that were irrelevant for its resolution.

42. The applicant and the public prosecutor's office appealed on points of law.

43. In a decision (*postanowienie*) of 20 October 2005 the Supreme Court dismissed the two appeals, endorsing the reasoning given by the Court of Appeal. ...

## II. RELEVANT DOMESTIC AND COMPARATIVE LAW AND PRACTICE

### A. Polish Constitution of 1997

82. The relevant provisions of the Polish Constitution read as follows:

**Article 111**

"1. The *Sejm* may set up a commission of inquiry in order to examine a given matter.

2. The administration of commissions of inquiry shall be governed by statute."

**Article 156**

"1. Members of the Cabinet shall be liable to proceedings before the Tribunal of State for any infringement of the Constitution or statutes, or for the commission of any offences in office.

2. On the proposal of the President of the Republic, or at least 115 members of parliament, a resolution to hold a Cabinet member to account before the Tribunal of State shall be passed by the *Sejm* by a majority of three-fifths of the number of members of parliament provided for by the Constitution."

**Article 175**

"The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the ordinary courts, the administrative courts the and military courts.

..."

...

**Article 198**

"1. For violations of the Constitution or of a statute committed by them in office, the following persons shall be constitutionally accountable before the Tribunal of State: the President of the Republic, the Prime Minister and members of the Cabinet, the President of the National Bank of Poland, the President of the Supreme Chamber of Audit, members of the National Council of Radio and Television Broadcasting, persons whom the Prime Minister has appointed to head a ministry and the Commander-in-Chief of the Armed Forces.

...

3. The sanctions which the Tribunal of State may impose shall be specified by statute."

## B. Parliamentary Commissions of Inquiry Act (*Ustawa o sejmowej komisji śledczej*) of 21 January 1999 (as worded at the relevant time)

83. The relevant provisions of the Parliamentary Commissions of Inquiry Act read as follows:

**Article 8**

"1. The existence of proceedings that are pending or terminated before another public authority does not preclude the opening of proceedings before the commission.

2. Assessment of the conformity of judicial decisions with the law does not enter into the commission's field of activities.

3. Subject to the agreement of the *Sejm*'s President, the commission may suspend its activities until proceedings pending before another authority are fully or partly terminated.

4. Proceedings before the commission may, in particular, be suspended in the event of a well-founded conviction that the evidence gathered in the proceedings before another body or a decision taken thereby could be useful to it for an in-depth examination of the matter."

**Article 14**

"1. At the request of the commission, State bodies and decision-making bodies of legal entities or of entities without legal personality shall provide it with written explanations or shall present to it any documents in their possession or the files concerning any matters pending before those bodies.

...

3. Where the material gathered by the commission is related to pending criminal proceedings, the commission shall authorise any court or public prosecutor that may so request to take cognisance of such material. Subject to the approval of the *Sejm*'s President, the commission may authorise another authority to take cognisance of the material gathered ... where it considers that this is the interest of the proceedings conducted by that authority."

**Article 15**

"1. The commission may request the Principal Public Prosecutor to carry out certain acts.

2. The chair of the commission may participate in the acts referred to in paragraph 1, or appoint a member of the commission for such purpose.

3. The Principal Public Prosecutor's office shall carry out the acts referred to in paragraph 1 in accordance with the provisions of the Code of Criminal Procedure and the Law of 20 June 1985 on the public prosecutor's office ..."

## C. Code of Criminal Procedure of 1997

84. The relevant provisions of the Code of Criminal Procedure read as follows:

**Article 5**

"§ 1. The defendant shall be presumed innocent until proven guilty in a final judgment.

..."

**Article 7**

"The authorities responsible for the investigation ... shall form their conviction [about the case] on the basis of their unfettered assessment of all the evidence, in accordance with the principles of logic and sound reasoning and based on their own experience."

**Article 8**

"§ 1. The court shall, in its discretion, rule on questions of fact and of law and shall not be bound by any decisions of another court or body.

..."

**Article 391**

"§ 1. Where a witness refuses without good reason to testify, clearly alters his testimony with respect to that previously given or states that he cannot recall certain particulars, or fails to appear on account of any unavoidable impediment, or where the president of a court decides not to take his testimony pursuant to Article 333 § 2, and also where a witness has died, [the court] may, in so far as it is deemed necessary, order the record of [the said witness'] previous testimony given in the course of a pre-trial investigation, or in court proceedings concerning the same matter, or in any other proceedings provided for by law, to be read out in open court.

..."

**Article 392**

"§ 1. Any records of testimony taken from witnesses or defendants during an investigation, court proceedings or any other proceedings provided for by law may be read out in open court, unless any of the parties present [at the hearing] object thereto or it is indispensible for the court to gather the evidence itself.

..."

...

### E. Case-law of the Constitutional Court

86. On 11 February 1999 the President of Poland invited the Constitutional Court to state whether section 8(1) of the Parliamentary Commissions of Inquiry Act complied with the Constitution.

87. In a judgment of 14 April 1999 (K 8/99 OTK 1999/3/41), the Constitutional Court found that section 8(1) of the Parliamentary Commissions of Inquiry Act was not in breach of the Constitution. ...

## THE LAW

...

### II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION CONCERNING THE PRESUMPTION OF INNOCENCE AND THE RIGHT TO BE HEARD BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL

152. The applicant complained that the conditions in which his trial took place had rendered it unfair.

More specifically, he alleged that there had been a violation of the principle of the presumption of innocence and of his right to be heard by an independent and impartial tribunal, on account of the proceedings conducted in parallel to his trial by the parliamentary commission of inquiry, which concerned the same facts and circumstances and involved the same evidence as the criminal proceedings. The applicant submitted in particular that his right to be presumed innocent had been undermined by certain "findings" in the commission's report, or even by the very wording of the Parliament's resolution setting up the commission. The media campaign surrounding the above-mentioned proceedings had moreover exacerbated, in his view, the unfairness of the criminal proceedings against him.

The applicant relied on Article 6 §§ 1, 2 and 3 (b), (c) and (d) of the Convention. The relevant parts of those provisions read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

...

## B. Merits

### *1. The parties' submissions*

#### (a) The applicant

154. Taking the view that his case raised questions that the Court had never previously had occasion to settle, the applicant argued that in view of the case-law set out in *Saunders v. the United Kingdom* (17 December 1996, *Reports of Judgments and Decisions* 1996-VI) and *Gillow v. the United Kingdom* (24 November 1986, Series A no. 109), it could not be ruled out that Article 6 of the Convention might be engaged as a result of the simultaneous conduct of two different sets of proceedings concerning the same facts and circumstances.

155. The applicant observed in this context that his trial had taken place in parallel to the work of the parliamentary commission of inquiry, made up of MPs and observing, *mutatis mutandis*, the relevant provisions of the Code of Criminal Procedure.

In the present case, the commission's proceedings had taken place in public and had been broadcast live by two national television channels, among other media. The subject-matter of those proceedings and the facts examined in that context coincided, in the applicant's view, with those of the criminal proceedings against him. The commission had taken a particular interest, he explained, in his alleged attempt to extort material and political gains in exchange for broadcasting legislation whose terms were advantageous for private media organisations, these being the same facts as those for which he had principally been charged and subsequently convicted.

The applicant further argued that, by investigating his conduct, the commission had breached the principle laid down by the Constitutional Court whereby the activities of individuals not holding public office fell outside parliamentary supervision.

156. Alleging that the commission's report had presented him as guilty of the acts with which he had been charged by the criminal authorities, even though his guilt had not been legally established, the applicant contended that his right to be presumed innocent had been breached. He emphasised that the adoption and dissemination of this report had taken place before the completion of the criminal proceedings against him.

In the applicant's view, his right to be presumed innocent had been breached initially through the very wording of the Parliament's resolution setting up the commission of inquiry: according to that resolution, he explained, the commission was to investigate his attempted extortion – without including the adjective "alleged" – of material and political gains. He added that this resolution had been passed at a time when the criminal proceedings against him were at the preliminary *in rem* investigation stage.

157. Moreover, according to the applicant, the breach of his right to be presumed innocent had been exacerbated by the press campaign surrounding the relevant proceedings. He described that campaign as virulent, lacking in objectivity and hostile towards him. But in his view that press campaign had actually been fuelled by a State body, namely the commission itself. In support of his claims the applicant referred to the articles published in the weekly *Wprost* and in *Gazeta Wyborcza* (see paragraphs 14 and 28 above) together with the statements given to the media by certain commission members when interviewed.

158. The applicant explained that, on account of their scope and importance, the commission's proceedings and their media coverage had influenced the course and outcome of his trial. On that point, he observed that the president of the bench of Warsaw Regional Court had himself declared that the members of the court had been subjected to pressure on account of the comments about the case by journalists and politicians in the media.

159. In the applicant's opinion, the fact that his trial had been conducted solely by professional judges did not suffice to preserve its fairness. He said that the judges had not taken the necessary steps to reduce the impact of the press campaign on the fairness of the trial. On the contrary, in his view, by authorising the broadcasting of the hearings, instead of restricting their publicity, the Regional Court had encouraged a press campaign that was hostile towards him.

160. The applicant submitted that the judgment given in the proceedings that he had brought against the weekly *Wprost* showed that the courts had endorsed the opinion conveyed by the media that he was guilty as charged.

161. Acknowledging that the media interest in a case like his was justified, the applicant found, however, that the authorities should have been more careful, in their handling of the case, to ensure that the principles of a fair trial were observed.

162. The applicant argued that the fairness of the criminal proceedings against him had been vitiated by the commission's particularly active cooperation with the criminal authorities. He explained that following exchanges between them, items of information that the commission had acquired in breach of the rules of criminal procedure had been added to the case file and used in evidence in support of his conviction. He added that the publicity given to the commission's proceedings had led to the disclosure of items that were protected by the secrecy of the investigation.

163. In the applicant's view, the conducting in parallel of the two sets of proceedings before the criminal court and the commission had undermined the reliability of the testimony on which his criminal conviction was based. He argued that certain commission members, at public hearings broadcast on television, had taken advantage of their prior knowledge of the criminal investigation to trap the witnesses by asking unexpected questions. They had, furthermore, been able to distort the meaning of testimony by their own verbal comments and to ask leading questions of witnesses.

The applicant added that, after being questioned by the commission, certain witnesses had been questioned by the court about the same circumstances. He asserted that on account of the publicity given to the hearings before the commission, the statements of the first witnesses had been known to those subsequently called to testify. Some witnesses, according to the applicant, had acknowledged being influenced as a result. The above-mentioned circumstances had, in his view, impeded the exercise of defence rights and the establishment by the judges of the substantive truth.

164. The applicant argued that, in the present case, on account of their very close cooperation, the parliamentary commission and the criminal authorities had been perceived by public opinion as working together. That impression, he explained, had been exacerbated by the questioning by the commission, in a closed session, of the public prosecutor who had conducted the criminal investigation; but also by the participation in the commission's work of two Supreme Court judges called as experts, until they were removed following an intervention by that court's president.

165. Lastly, the applicant submitted that the appeals he had lodged with the domestic courts had proved ineffective for the purpose of seeking redress for the breaches of his right to a fair trial.

#### (b) The Government

166. The Government contended that Article 6 of the Convention had not been breached.

They began by observing that the simultaneous conduct of proceedings before a commission and criminal or other proceedings, concerning the same facts and circumstances, was authorised under Polish law, namely by section 8(1) of the Parliamentary Commissions of Inquiry Act.

They emphasised that while section 8(4) of that Act admittedly allowed the commission to suspend its work where information gathered in proceedings pending before a different body would be useful to it in for the examination of its own case (paragraph 83 above), this suspension was not mandatory for the commission, but a mere possibility.

167. The Government pointed out that, pursuant to section 14(1) and (3) of the Parliamentary Commissions of Inquiry Act, the authorities conducting the above-mentioned proceedings were entitled – or even had a duty – to cooperate. Thus a commission could demand written explanations from another public authority and consult the file of the case before the latter. Conversely, if the evidence gathered by a commission was useful for the resolution of a case examined by the public prosecutor or a court, the commission would give them access to it. The commission could also request the assistance of the prosecuting authorities in order to carry out certain investigative acts, at which its president or one of its members was entitled to be present.

168. In the Government's view, the above-mentioned legislation could not reasonably be criticised as unduly allowing the commission to "interfere" in the proceedings that were being conducted simultaneously into the same matter by another public authority; they thus explained as follows:

(a) Investigative acts conducted by the public prosecutor's office at the request of a commission were not considered to be part of the acts of the criminal investigation.

(b) Their scope was limited to the commission's proceedings.

(c) As to the evidence obtained through the acts carried out by the public prosecutor's office at the request of the commission, their possible use in criminal proceedings followed the same rules as those governing the use by the criminal authorities of other evidence gathered by the commission.

169. The use of evidence gathered by the commission, the Government explained, was expressly authorised by domestic law. It was even an obligation for the criminal authorities, under Article 2 § 2 of the Code of Criminal Procedure, where the items concerned were useful to them for the purpose of establishing the "substantive" truth. This obligation went together with that of the president of the trial court, under Article 366 § 1 of the Code of Criminal Procedure (see paragraph 84 above), to ensure the elucidation of all the relevant circumstances of the case.

170. The admission in evidence, in the criminal proceedings, of testimony obtained in other proceedings was governed by law and took place in compliance with the guiding principles of criminal procedure. In so far as, according to the applicable rules, all evidence had in principle to be produced at the hearing, the court could not, without valid grounds, refrain from hearing a witness and substitute the mere reading aloud of prior statements given in different proceedings for direct examination in open

court. Such statements constituted evidence in the criminal proceedings only to the extent permitted by law, namely by Articles 391 § 1 and 392 § 1 of the Code of Criminal Procedure (see paragraph 84 above).

171. When the criminal authorities used information gathered by another public authority, the Government explained, they were not bound by the findings arrived at by the authority in question on the basis of that information. In the event of its admission in evidence in a criminal case, the relevant material would be assessed by the court in the same manner as evidence in general.

172. The Government claimed that the object and purpose of the parliamentary commission's work could be distinguished from those of the criminal proceedings against the applicant and that, moreover, the two sets of proceedings were not inter-dependent.

Under the Polish Constitution, justice was administered by the Supreme Court and the "common courts". In exercising their duties, the Government argued, judges were independent and subject only to the Constitution and to statute law. Specific provisions of the latter guaranteed the independence and impartiality of judges. Naturally, should there be any doubt as to a judge's impartiality, he or she would be subject to disqualification, either spontaneously or at the request of a party.

173. In accordance with the relevant provisions of the Constitution (paragraph 82 above), a commission of inquiry would be set up to investigate a particular matter under the conditions provided for by the Parliamentary Commissions of Inquiry Act, while the purpose of criminal proceedings was to identity the perpetrator of an offence and establish his or her criminal liability in compliance with principles such as the presumption of innocence, the court's judicial autonomy, the search for substantive truth and respect for defence rights.

174. Even though a parliamentary commission of inquiry, on the one hand, and a criminal court, on the other, might be called up to examine the same facts and circumstances, they would each assess them from a different perspective. In particular, the commission itself could not find any individual criminally liable: it was entitled only to express an opinion on the advisability of finding certain politicians liable at a constitutional level. In other words, the commission could only investigate the conduct of individuals holding a degree of public authority, having regard to their possible political or constitutional accountability; it could in no event adjudicate upon an individual's criminal liability, especially in the case of persons not holding any public office within the bodies subject to parliamentary supervision.

175. The Government explained that the material gathered by the commission and the conclusions of its report did not bind the criminal authorities and had no impact on the judicial activity of the courts. The findings in the commission's report on the subject of the possible criminal

liability of individuals concerned by its work could be regarded, at best, as notification to the prosecuting authorities that an offence might have been committed (Article 304 § 2 of the Code of Criminal Procedure). However, the discretionary decision whether or not to bring criminal proceedings would be left to the independent assessment of the criminal authorities.

The Government added that the commission could not become a party to the criminal proceedings or influence them in any manner; it could not, for example, suggest that the prosecuting authorities carry out a given investigative act.

176. The Government pointed out that, in the present case, the examination by the commission and by the criminal courts of the merits of their respective matters had not taken place simultaneously. In particular, only four sessions on purely technical questions had been held by the commission after the opening of the applicant's trial. At the same time, the judicial proceedings had been adjourned until after the commission had come to the end of its witness hearings. Lastly, the applicant had been convicted by the trial court before the vote in Parliament approving the commission's report.

177. Without disputing the fact that, in the present case, the criminal authorities and the commission had cooperated closely, especially in terms of material, the Government argued that, having regard to the provisions governing the relationship between the two sets of proceedings – criminal and parliamentary –, this cooperation had had no impact on the fairness of the applicant's trial.

Similarly, as the two sets of proceedings did not have the same purpose, the Government took the view that the adoption and issuing of the commission's report before the end of the applicant's trial had had no impact on the judges' impartiality.

In the Government's opinion, the applicant could not validly argue that the judges who had conducted the trial had been influenced by the findings of the commission's report, since the reasoning of Warsaw Regional Court's judgment showed that he had been found guilty after an in-depth and stringent examination of all the evidence by the judges. Moreover, they emphasised, the Court of Appeal's scrutiny of the first-instance judgment had not revealed any shortcoming in the assessment of evidence.

178. Even though the commission's report contained references to the applicant's conduct, the Government explained, it had not derived therefrom any assessment as to his potential criminal liability or reached any finding that might enable such liability to be engaged; the report's conclusion concerned only holders of public office.

179. The Government dismissed the idea that the successive hearing of certain witnesses by the commission and by the court had enabled any "collusion" between them.

The rules of criminal procedure against collusion between witnesses were effective only in respect of those witnesses who were called on the same day. It was clear that a witness could, without difficulty, learn of the statements of another witness on a different date, or even confer with another witness as to the content of their respective statements. Nevertheless, the law provided for measures to prevent such conduct.

Thus, for example, the Code of Criminal Procedure – which also applied to the procedure before the commission – rendered any false testimony liable to criminal prosecution.

Moreover, before admitting it in evidence, the court was legally bound to examine the testimony according to the principles set out in Article 7 of the Code of Criminal Procedure and in the light of the evidence as a whole.

180. Referring to the applicant's complaint about the press campaign surrounding the proceedings concerning him, the Government observed that the interest of the press in judicial proceedings could be justified to the extent that it contributed to informing public opinion about the cases examined in the courts and to a civic scrutiny of the justice system.

181. In the Government's view, the media coverage of court proceedings was nowadays so common that it had to be presumed that professional judges were capable of resisting any ensuing pressure. In other words, judicial proceedings could not be regarded as unfair purely because they aroused significant media interest. In order to establish that there had been a violation of the Convention, the applicant would have to demonstrate the existence of concrete circumstances, connected with the conducting or the outcome of the proceedings, capable of revealing an actual risk of a negative impact on the fairness of those proceedings.

182. In order for the authorities' responsibility to be engaged on account of any statements in the media which might have improperly presented a defendant as guilty prior to any conviction, it would be necessary to show that those statements had been inspired, instigated or supported by the authorities. This had not been the case here, in the Government's submission. Even supposing that the statements in the media by certain members of the commission might have been controversial as regards the applicant's right to the presumption of innocence, the Government claimed that Article 6 did not apply to the procedure before the commission.

The Government emphasised that the commission's work on the "merits" of the case had been closed before the opening of the proceedings in Warsaw Regional Court. Accordingly, any media statements connected with the commission's proceedings could not have had any impact on the fairness of the trial, which had not yet begun. The applicant had failed to show, in the Government's view, to what extent the statements in the press had fuelled the media campaign concerning him, and he had not even precisely indicated which statements he was criticising.

183. Relying on the case-law from *Craxi v. Italy (no. 1)* (no. 34896/97, 5 December 2002), and *Garaudy v. France* (dec.) (no. 65831/01, ECHR 2003-IX), the Government observed that the interest of the media and of public opinion for the case in which the applicant was implicated could be explained by the fact that its backdrop was the issue of bribery and unlawful interference by high-ranking politicians in parliamentary procedure. That interest stemmed from the very political context of the case and from the presumed involvement of cabinet members, including the Prime Minister. In that context it was inevitable that harsh comments should be expressed by journalists about individuals suspected of being implicated.

184. The Government observed that the applicant was not disputing the "subjective" impartiality of the judges, but was arguing that the bench on which they sat was influenced by the proceedings of the commission of inquiry and by the press campaign surrounding it.

In the Government's view, even supposing that the principles of a fair trial had not been respected by the commission in the proceedings before it, that did not mean that any anomalies that might have affected the parliamentary inquiry should necessarily and automatically have repercussions for the applicant's trial.

185. The Government emphasised in this connection that the adjudicating judges in the applicant's case enjoyed the same guarantees of impartiality and independence as those applicable to other judges in the Polish legal system. The trial court, made up of judges who were appointed in accordance with the relevant provisions of domestic law, was fully independent from the Parliament: the commission of inquiry, or the MPs individually, did not have any power which would enable them to influence the composition of the trial court or the course or outcome of the trial itself. Even though the information gathered by the commission had been examined by the judges, that examination had taken place in accordance with the same rules as those which applied to criminal proceedings in general, ensuring the autonomous evaluation of evidence in compliance with Article 7 of the Code of Criminal Procedure.

186. In so far as the applicant claimed that, for his trial to be fair, the commission's proceedings should have been suspended pending its outcome, the Government pointed out that, according to the Polish Constitutional Court, the fact that the commission's proceedings could take place in parallel to criminal proceedings concerning the same facts and circumstances was not at odds with the Constitution, and in particular did not have an adverse effect on the impartiality and independence of the judges.

187. The Government further observed that the commission proceedings and the press campaign did not dispense the trial court from the duty of handing down its judgment within a reasonable time. The use by the criminal authorities of information gathered by the commission was

intended to facilitate the decision in the applicant's case. Before being admitted in evidence in the criminal proceedings, the testimony received by the commission had been examined comprehensively by the judges. Moreover, the defence itself had asked the court for the transcripts of the commission's hearings to be added to the criminal case file.

188. While acknowledging that the press campaign surrounding the above-mentioned proceedings had not facilitated the conducting of the applicant's trial, the Government nevertheless observed that he had failed to show that the judges had disregarded their duty to remain uninfluenced by media comments about the case. In the Government's view, the statement given by the president of the bench of Warsaw Regional Court after the judgment against the applicant was handed down demonstrated, on the contrary, that the judges had sought to make sure that the case was conducted in such a way that there could be no complaints about a lack of impartiality.

189. The Government emphasised that the authorities had taken additional measures to prevent the particular circumstances of the case from having any adverse effect on the fairness of the criminal proceedings: first, the case had been transferred to a higher court that was one of the more experienced in such high-profile cases; secondly, the trial bench had been extended to three judges rather than having just one.

**(c) Third-party intervention by the Venice Commission**

190. In its observations, the European Commission for Democracy through Law, known as the Venice Commission, emphasised the essentially political nature of proceedings conducted by parliamentary commissions of inquiry, which were not to be confused with criminal investigations or proceedings. Such commissions should not make any assessment or adjudication as to the criminal liability of persons covered by the inquiry, those powers being reserved for the public prosecutor and the courts.

At the same time, it was in the nature of political "scandals" – whether alleged or real – that they might give rise to parallel processes. A case under parliamentary inquiry might at the same time be subject both to administrative inquiries and to court proceedings. However, this situation required all parties involved to ensure that proper distance was kept between the parliamentary (political) inquiry and the criminal investigations or proceedings.

191. The Venice Commission took the view that in the event of the discovery of elements suggesting a criminal offence, the commission of inquiry would naturally have to notify the public prosecutor and provide the latter with the relevant information and documents, to the extent that it was allowed to do so under national law.

Such discovery should not in itself stop an otherwise legitimate parliamentary process of inquiry. There was no such legal obligation under

international or European law. In accordance with the principle that Parliament – as an autonomous institution separate from the judiciary – cannot be impeded from carrying out its own inquiries, the commission should continue to look into the case and make its own (political) assessment on the basis of its own examination. It should in particular have full discretion to continue examining the facts, even if they may constitute criminal charges.

192. The Venice Commission pointed out that, even when a commission looked into the possible criminal conduct of individuals, its process was essentially one of a political nature and was not to be confused with criminal investigations and proceedings. The results of a parliamentary inquiry would not alter the legal order. The report which closed its work was in itself only an incentive to parliamentary discussion. The ultimate aim of the inquiry was transparency with a view to ensuring that the public were informed of matters affecting the *res publica* (the public good).

193. In the Venice Commission's opinion, searching for offences could not be the only goal of an inquiry conducted by a parliamentary commission, or even the main purpose of its creation. This would be unconstitutional, even if domestic law did not provide for any sanction. The means granted to a commission of inquiry always had to serve the jurisdiction of the parliament in a system of separation of powers – either to establish the responsibility of government and ministers or to collect information necessary for more effective legislation or to present political recommendations to government.

Even if identical items might be subject to both criminal proceedings and a parliamentary inquiry, the aim of the two processes should always be different. The criminal investigation should lead to an individual legal measure: the conviction or acquittal of the accused. The commission of inquiry, for its part, had no power over individuals, except to call them to testify.

194. The Venice Commission stressed the fact that proper procedures had to be established for cooperation and the exchange of information and evidence between the commission of inquiry and the public prosecutor, while respecting the differences between the two processes and the procedural rights of the person suspected of committing a criminal offence or other persons appearing before the commission.

195. During its inquiries, hearings and deliberations, a parliamentary commission had to take proper account of the pending criminal investigations or proceedings. Its members had to exercise caution so as not to make assessments or statements on the issue of guilt, or in other ways disregard the presumption of innocence principle. A commission had to take great care to ensure that its inquiries did not obstruct or in any other way unduly interfere with the criminal investigation or proceedings.

When drafting its report, a parliamentary commission had to take care not to make any assessments of a criminal legal nature and in particular not to pass judgment on the criminal liability of the persons concerned. It should, however, remain free to describe and analyse all the facts of the case and to assess these from a political perspective.

196. The fact that persons not holding public powers were involved should not prevent a parliamentary commission from enquiring into the conduct of such person to the extent that it was relevant. If a public scandal was being scrutinised, the fact that a person did not occupy any public role should not exempt him or her from appearing before the commission.

197. The Venice Commission took the view that it should primarily be for the national law to determine whether and to what extent the hearings of a parliamentary commission should be open to the public. This applied regardless of whether the witnesses summoned to give testimony were private individuals or official figures (ministers or civil servants).

From a legal perspective this was only problematic if the process led to the disclosure of secret or classified information, or if the persons summoned to give testimony were forced to publicly disclose information that was protected as confidential by law, or if their rights to privacy under national or European law were infringed.

As regards the summoning before a commission of inquiry of individuals holding public office, any restriction to the public nature of their hearing should be exceptional and justified by specific objectives such as national security or the protection of secret or confidential information.

198. When private persons were summoned to testify before parliamentary commissions, they would usually be asked to give information about their relations and dealings with government figures. In such cases the public might well have a legitimate interest in full openness and transparency. At the same time, the right of private individuals to respect for their private and family life might more easily justify or necessitate the conduct of proceedings behind closed doors. There might be circumstances where this was necessary to ensure conformity with the European Convention on Human Rights, in particular Article 8 thereof. Moreover, holding closed-door meetings of some sessions of the commission of inquiry might also contribute to their effectiveness, as witnesses tend to feel freer is the proceedings are covered by secrecy.

199. In the Venice Commission's view, the "best model" was one under which a balance of interests was maintained by the parliamentary commission's members on the basis of the case at hand. This should preferably be provided for expressly in the inquiry's procedure, whether laid down in statute law or in parliamentary rules of procedure.

*2. The Court's assessment*

200. The applicant complained that the conditions in which his trial took place had undermined its fairness.

201. Having regard to the nature of the allegations made, the Court finds it appropriate to focus its examination on the applicant's right to be presumed innocent and to be tried by an independent and impartial tribunal, under Article 6 §§ 1 and 2 of the Convention.

202. The Court will first examine whether the circumstances of the case entail a violation of the applicant's right to be presumed innocent.

**(a) Respect for the applicant's right to be presumed innocent**

203. The Court reiterates that the presumption of innocence enshrined in the second paragraph of Article 6 is one of the principles of fair criminal proceedings (see, among other authorities, *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013). This principle will be breached if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he may be guilty even though his guilt has not legally been established. It will suffice, even in the absence of any formal record, for the official to give some reasoning which suggests that he considers the person to be guilty.

In this regard the Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see, among many other authorities, *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X).

204. What is important, however, is the actual meaning of the impugned statements given the particular circumstances in which they were made (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 44, 28 October 2004).

205. A distinction must be made between decisions or statements which reflect the feeling that the person concerned is guilty and those which merely describe a state of suspicion. The former will breach the principle of the presumption of innocence while the latter are not normally incompatible with the spirit of Article 6 of the Convention (see, among other authorities, *Marziano v. Italy*, no. 45313/99, § 31, 28 November 2002).

206. A breach of the right to be presumed innocent may be committed not only by a judge but also by other public officials: the Head of State (see *Peša v. Croatia*, no. 40523/08, § 149, 8 April 2000); the President of the Parliament (*Butkevičius v. Lithuania*, no. 48297/99, §§ 49, 50, 53, ECHR 2002-II); the Prime Minister (*Gutsanovi v. Bulgaria*, no. 34529/10, §§ 194-196, ECHR 2013); the public prosecutor (see *Daktaras*, cited above, § 44); the Minister of the Interior or police officers (*Allenet de Ribemont v. France*, 10 February 1995, Series A no. 308, §§ 37 and 41); or the Minister of Justice (see *Konstas v. Greece*, no. 53466/07, § 16, 24 May 2011).

207. However, regard being had to the freedom of expression guaranteed by Article 10 of the Convention, which includes the right to receive and impart information, Article 6 § 2 can neither prevent the authorities from informing the public about criminal investigations, nor prevent discussion of the subject in the media or in the course of a parliamentary debate (see *Konstas*, cited above, § 34). Nonetheless, such reference should be made with all the discretion and restraint which respect for the presumption of innocence demands (*Allenet de Ribemont*, cited above, § 38). In particular, statements by public officials about an applicant's guilt cannot have the effect of encouraging the public to believe the latter to be guilty or of prejudging the assessment of the facts by the competent judicial authority (see *Pe*ša, cited above, § 141, and *Konstas*, cited above, §§ 34-35).

208. In the present case, the Court observes that the applicant complained both about the wording of the resolution of the lower house of parliament setting up the commission of inquiry and about the findings in its report.

Noting that the statements complained of by the applicant had been made before his final conviction by the Warsaw Court of Appeal for complicity in influence peddling, the Court takes the view that the authorities concerned were bound by the obligation to respect the principle of the presumption of innocence (see *Y.B.*, cited above, § 43). It thus finds that Article 6 § 2 is applicable in the present case (see *Konstas*, cited above, § 36).

209. The Court observes that the impugned remarks were made at the time of the setting-up of the commission and in the course of the proceedings before it. It notes in this connection that the relevant domestic legislation, as interpreted by the Polish Constitutional Court, shows that the work of a parliamentary commission of inquiry is political in nature. The commission's report is intended to be used as a starting point or basis for a discussion in Parliament about any shortcomings identified in the sphere of public authorities and institutions subject to parliamentary oversight.

210. Under the above-mentioned legislation, as interpreted by the Polish Constitutional Court in its judgment of 14 April 1999 ..., the conduct of individuals who do not hold public office can only be examined by the commission if that would appear necessary for the identification of shortcomings in the functioning of public authorities and institutions. It further transpires from the above that the commission must abstain from ruling on the question of the criminal liability of individuals who do not hold public office. Any "finding" to such effect, in a parliamentary resolution or a report by a parliamentary commission of inquiry, would be incompatible with the Polish Constitution.

211. The Court further observes that the provisions of the relevant domestic law and related case-law of the Constitutional Court allow the commission's investigations to be conducted at the same time as any criminal proceedings concerning the same facts and circumstances: in such

cases the commission is required to ensure that it does not breach – by any observations or findings – the rights of the individuals concerned by the parallel criminal proceedings and in particular their right to be presumed innocent.

212. Turning now to the facts of the present case, the Court observes that the work of the parliamentary commission of inquiry, in the context of which the offending remarks were made, was conducted in parallel to the criminal proceedings against the applicant. Both sets of proceedings had been brought following media reports suggesting that there may have been some misconduct by public officials during the parliamentary procedure for the amendment of the Broadcasting Act. The reports implied that the applicant had been asked by the officials to propose his assistance to representatives of private media outlets in securing favourable amendments to the Broadcasting Act in exchange for material, political and personal gains.

213. The Court observes that the offending remarks were made in the context of the case's broad media coverage, which was precisely what had led to the setting-up of the commission, to investigate allegations of corruption and unlawful interference by high-ranking figures of the State in the conducting of the legislative process. There were therefore major reasons in the public interest for the procedure before the commission to be conducted publicly and transparently, and for public opinion to be informed about the findings of its report (see *Montera v. Italy* (dec.), no. 6471/01, 9 July 2002, and *Hoon v. the United Kingdom* (dec.), no. 14832/11, 13 November 2014).

214. The Court notes that the applicant complained of certain expressions used in Parliament's resolution setting up the commission of inquiry, in particular its reference therein to an "attempt [by him] to obtain material and political gains by extortion". In his view, this wording reflected the existence of a preconceived idea among Members of Parliament that he was guilty.

The Court cannot agree with the applicant. It takes the view that the impugned remarks, considered in the light of the resolution as a whole, must be seen as a means by which Parliament informed the commission of the factual circumstances into which it was to conduct its inquiry. The wording of the resolution in question showed that the applicant's conduct was only deemed worthy of mention in so far as it was necessary in order to identify any shortcomings on the part of the authorities and public officials. The Court takes the view that, in its reference to the applicant's conduct as it had been presented by certain media publications at the time, the resolution does not contain any remark that may be regarded as an observation as to his guilt.

215. As to the report by the parliamentary commission of inquiry, the Court notes that it was approved by the lower house on 24 September 2004,

that is to say after the applicant's conviction at first instance and while the case was pending on appeal.

It notes that the conclusion of the commission's report found that the high-ranking figures of the State identified therein had

> "committed ... the offence of bribery, within the meaning of Article 228 § 5 of the Criminal Code taken together with Article 13 § 1 thereof; in that they ..., through the intermediary of Lew Rywin, acting as the agent of the 'power-holding group', made a corrupt proposal to the representatives of Agora S.A. ...".

The Court must ascertain whether the observations in the commission's report were capable of breaching the applicant's right to be presumed innocent.

216. The Court would observe in this context that in the above-mentioned case of *Gutsanovi* the question arose as to whether statements made by certain high-ranking officials concerning the applicant, a well-known politician, in connection with criminal proceedings brought against him for embezzlement of public funds, had respected his right to be presumed innocent. It found that the remarks made by the Prime Minister and by the Regional public prosecutor on the occasion of their media statements about the case had not breached Article 6 § 2 of the Convention. In reaching its conclusion the Court took account of the spontaneous nature of their remarks, of the fact that they contained no reference to the criminal proceedings against the applicant, nor to his presumed accomplices with whom he had been charged in that context, and the fact that they merely described a state of suspicion (see *Gutsanovi*, cited above, §§ 195-197).

However, as regards the remarks made by the Minister of the Interior in an interview published by the press, the Court found that there had been a violation of Article 6 § 2 of the Convention. It relied on the fact that the Minister had disclosed concrete evidence about the criminal case against the applicant and that he had expressly identified the latter, suggesting that he was one of the main perpetrators of the offence in question. Emphasis was also laid on the position held by the Minister and on the fact that his statements had been made at a time when there was a strong public interest in the case (ibid., §§ 198-201).

The Court takes the view that the above-mentioned criteria are pertinent for the present case.

217. Taking those criteria into account, the Court is of the view that, read in the light of the report as a whole and the context in which they were made, the commission's findings had to be seen as a means for it to inform Parliament that, having regard to the material gathered, the high-ranking public officials identified therein were strongly suspected of committing the offence of bribery. Even though the report described the applicant as the "agent" of the individuals in question, it did not accuse him directly or pass any judgment on his conduct. The report's conclusion did not include any finding as to whether criminal proceedings should be brought against him,

nor any comment on his possible criminal liability for complicity in bribery. The commission's report made no reference to the criminal proceedings brought against the applicant or to the offences with which he had been charged by the competent criminal authorities (contrast, *mutatis mutandis,* ibid., § 200).

218. The Court observes that, taking into account their actual meaning and context, the impugned terms of Parliament's resolution setting up the parliamentary commission of inquiry and the findings of the latter's report did not concern the question of the applicant's guilt – a question which clearly fell outside the remit of such a commission (see *Daktaras*, cited above, § 44).

219. Accordingly, the Court concludes that the impugned statements did not breach the applicant's right to be presumed innocent and that there has been no violation of Article 6 § 2 of the Convention.

**(b) Respect for the applicant's right to be tried by an independent and impartial tribunal**

220. The Court reiterates that the term "independent", appearing in Article 6 § 1 of the Convention, has been interpreted as meaning that the courts must be independent of the Executive, of the parties, and of Parliament (see *Crociani v. Italy*, nos. 8603/79, 8722/79, 8723/79 and 8729/79, Commission decision of 18 December 1980, Decisions and Reports 22, p. 147).

In order to establish whether a tribunal can be considered "independent", regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an "appearance" of independence (see, among many other authorities, *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports* 1997-I).

221. There are two tests for assessing whether a tribunal is "impartial" within the meaning of that Article: the first consists in seeking to determine the personal conviction of a particular judge in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, for example, *Gautrin and Others v. France*, 20 May 1998, *Reports* 1998-III).

222. The personal impartiality of a judge can be presumed unless evidence is adduced to the contrary (see *Daktaras*, cited above, § 30).

The second test, when applied to a body sitting as a bench, means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not

decisive. What is decisive is whether their fear can be held to be objectively justified (see *Gautrin and Others*, cited above, and *Werner v. Poland*, no. 26760/95, § 39, 15 November 2001).

223. The notions of independence and objective impartiality being closely linked, the Court will examine those two questions together (see, *mutatis mutandis, Findlay*, cited above, § 73, and *Hirschorn v. Romania*, no. 29294/02, § 72, 26 July 2007).

224. In the present case, the Court observes that none of the applicant's judges has been criticised for demonstrating any personal bias against him. The tribunal's subjective impartiality is therefore not at issue.

It remains to be established whether the doubts expressed by the applicant as to the independence and objective impartiality of the courts can be regarded as objectively justified, in view of the fact that the proceedings against him took place in parallel to the work of the parliamentary commission of inquiry and the proceedings in question were given significant media coverage.

225. The Court notes in this connection that the relevant domestic law, and in particular section 8 of the Parliamentary Commissions of Inquiry Act, allows the work of such a commission to take place at the same time as any procedure that may be conducted by a different public authority into the same facts and circumstances. In its leading judgment on this issue ..., the Constitutional Court found that the possibility for a parliamentary commission to examine facts and circumstances that also formed part of criminal proceedings did not render section 8 of that Act unconstitutional; and that, in particular, this possibility did not affect the impartiality or independence of the judges. The Constitutional Court emphasised the fact that the object and purpose of a parliamentary inquiry were different from those of criminal proceedings.

The Court observes that the principle of the separation of powers prevents a commission from interfering in the exercise of the prerogatives vested in the judiciary. Thus, where a judicial procedure is opened concerning the same facts as those being examined by a commission, the latter must maintain the requisite distance between its own investigations and the parallel procedure; in particular, it must refrain from making any statements as to the merits of decisions taken by the courts or as to how the judicial proceedings are being conducted.

The Court notes that in such cases the commission is not legally bound to suspend its work pending the outcome of the judicial proceedings but nevertheless has the possibility of doing so.

226. In the present case, the information available to the Court shows that, even though the facts being investigated by the parliamentary commission were the same as those being examined in the criminal proceedings against the applicant, the aims underlying the two sets of proceedings were different. The commission had been set up to investigate

alleged shortcomings on the part of public authorities or officials in connection with the procedure to amend the broadcasting legislation. The Court would refer back to its observation in paragraphs 214 and 218 above, where it pointed out that the parliamentary commission did not address the applicant's criminal liability and made no finding that breached his right to be presumed innocent.

227. The Court takes note of the Government's observations to the effect that the applicant's judges offered all the safeguards provided for in Polish law in terms of the impartiality and independence of the judiciary.

228. The material before the Court shows that a parliamentary commission, under Polish law, does not have the authority to influence any criminal proceedings that may be conducted in parallel to its work in respect of the same facts and circumstances. Firstly, the statements of members of the commission and the findings of its report have no legal effect *vis-à-vis* the courts which are examining the criminal aspects of the case. Secondly, the commission cannot intervene as a third party in the criminal proceedings, affect their outcome, or influence the implementation of procedural rules or the composition of the bench.

229. In so far as the applicant perceives, in the cooperation between the commission and the judicial authorities conducting the criminal proceedings against him, a legitimate reason to suspect a lack of independence and impartiality on the part of the courts, the Court notes that such cooperation is permitted, and even in certain circumstances required, by domestic law; however, that cooperation must comply with the applicable domestic legal framework which is intended, precisely, to preserve the said independence and impartiality.

230. In the present case, the Court observes that the exchanges between the parliamentary commission and the criminal authorities had led the commission to bring the information it had gathered to the attention of the public prosecutor's office and the courts. The documents available to the Court show, moreover, that the defence itself had asked for the records of the commission's work to be added to the criminal case file. There is nothing to suggest that the use of the information in question as evidence in the criminal proceedings took place in breach of the relevant legal rules, and in particular those laid down by Article 7 of the Code of Criminal Procedure (see paragraph 84 above).

231. The Court reiterates that the assessment of the evidence is primarily the responsibility of the trial court. It is for the national authorities, especially the courts, to resolve problems of interpretation of facts and domestic legislation (see, *mutatis mutandis, Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports* 1997-VIII, and *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, *Reports* 1999-I), and the Court will not substitute its own assessment of the facts and law for that of the domestic courts in the absence of arbitrariness (see, among other

authorities, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII), bearing in mind that it is in principle for those courts to police the conduct of their own proceedings.

232. In so far as the applicant complains of the press coverage of the above-mentioned proceedings, the Court reiterates that the fact that criminal proceedings have been accompanied by a virulent press campaign could, in certain cases, prejudice the fairness of the trial by influencing public opinion and, consequently, the jurors called upon to decide on the guilt of a defendant (see *Akay v. Turkey* (dec.), no. 34501/97, 19 February 2002; *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001; and *Abdulla Ali v. the United Kingdom*, no. 30971/12, §§ 87 et seq., 30 June 2015).

At the same time the domestic authorities cannot be held responsible for the acts of the press (see, *mutatis mutandis, Y.B. and Others*, cited above, § 48).

233. There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they alone have jurisdiction to decide on guilt or innocence in determining a criminal charge, this does not mean that there can be no prior or simultaneous discussion elsewhere of the issues involved, be it in specialised journals, in the general press or among the public at large (see, *mutatis mutandis, Sunday Times (no. 1) v. the United Kingdom*, 26 April 1979, § 65, Series A no. 30, and *Papon v. France (no. 2)* (dec.), no. 54210/00, ECHR 2001-XII).

234. Without overstepping the bounds imposed in the interests of the proper administration of justice, reports on judicial proceedings, including commentaries, contribute to a better knowledge of those proceedings and are thus compatible with the requirement of conducting them in public under Article 6 § 1 of the Convention. Not only do the media have the task of imparting such information and ideas: the public also have a right to receive them (ibid.). This is particularly true where, as in the present case, the proceedings concern a well-known figure. Such a person inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large (see, among other authorities, *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103). Accordingly, the limits of acceptable criticism are wider as regards a public figure, in that capacity, than as regards a private individual (ibid.).

235. In the present case, the Court notes that the media interest in the applicant's case could be explained by its background, namely the suspicion that high-ranking public figures had been implicated in bribery, creating a major political scandal when first revealed. It was, undoubtedly, an important question of general interest on which the press had the right, or even the obligation, to report any information available to it. The importance of the case for public opinion could be explained by the fact that the matter was unusual and concerned serious acts in which the applicant, who was himself a well-known figure, was suspected of involvement.

The Court takes the view that it was inevitable, in a democratic society, that harsh comments should be expressed in the press on such a sensitive case, which called into question the morality of high-ranking public figures and relationships between politics and business (see *Craxi,* cited above, § 103, or *Jiga v. Romania*, no. 14352/04, § 93, 16 March 2010).

236. The Court observes that in the present case, in support of his complaint about the press coverage of proceedings concerning him, the applicant referred in particular to the press publications mentioned in paragraphs 13 and 28 above. Having analysed their content, the Court finds that the opinions expressed did not emanate from the State authorities and were not in any way inspired or supplied by representatives of the domestic authorities: those opinions were only those of the journalists (see *Jiga*, cited above, § 94).

The Court further observes that the action brought by the applicant against the weekly *Wprost* was dismissed by Warsaw Regional Court in a judgment against which the applicant did not appeal (see paragraph 14 above). In addition, even though he could have done so, the applicant did not complain to the domestic authorities about the publication of *Gazeta Wyborcza* or about the statements made by members of the commission.

237. The Court observes that the domestic courts called upon to examine the case were entirely made up of professional judges, who normally have sufficient experience and training to be able to dismiss any suggestion from an external source. Moreover, the applicant did not provide the Court with any evidence to show that the press statements had influenced the judges' opinion or the outcome of the deliberation in the criminal proceedings against him (see *Jiga*, cited above, § 95, and *Rosa Stanesçu v. Romania* (dec.), no. 49357/08, § 39, 28 January 2014).

The Court notes, moreover, that in view of the media coverage given to the case, additional measures were taken by the authorities to counter the risk of undermining the fairness of the proceedings (see paragraph 189 above). Concerning the statement by the president of the bench of Warsaw Regional Court, made after the applicant's conviction, the Court takes the view that it reflects the concern on the part of the judges to ensure objectivity and impartiality and certainly does not support, but rather contradicts, the applicant's allegations.

238. The Court further observes that the applicant's complaint that Warsaw Regional Court had been influenced by the work of the parliamentary commission of inquiry and by the press coverage had been dismissed by the Warsaw Court of Appeal on the ground that no tangible evidence to that effect had been adduced.

239. The Court notes that the applicant was convicted after adversarial proceedings during which it had been open to him to submit to the courts any arguments that he deemed useful for his defence. The reasoning of the judgments delivered by the criminal courts against the applicant does not

reveal anything to suggest that, in their interpretation of domestic law or in their assessment of the parties' arguments and the evidence for the prosecution, the trial court judges were influenced by the statements of the members of the commission or by any findings in its report (see *Craxi*, cited above, § 104.)

240. Having regard to the foregoing, the Court does not detect, in the present case, any infringement of the principle of fairness in the criminal proceedings against the applicant or, in particular, any breach of his right to be tried by an independent and impartial tribunal.

241. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

...

## FOR THESE REASONS, THE COURT

...

3. *Holds*, by four votes to three, that there has been no violation of Article 6 § 2 of the Convention;

4. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention;

Done in French, and notified in writing on 18 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| André Wampach | Mirjana Lazarova Trajkovska |
| Deputy Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lazarova Trajkovska, Bianku and Sicilianos is annexed to this judgment.

M.L.T.
A.M.W.

# PARTLY DISSENTING OPINION OF JUDGES LAZAROVA-TRAJKOVSKA, BIANKU AND SICILIANOS

*(Translation)*

1. We regret to say that we cannot share the majority's view that the principle of the presumption of innocence has not been infringed in the present case. We disagree with the majority as regards both the application of this principle to the case at hand and the method they have adopted to interpret it.

**(a) Application of the presumption of innocence in the present case**

2. As indicated in paragraph 203 of the judgment, the Court's settled case-law holds that the presumption of innocence enshrined in Article 6 § 2 will be breached if an official statement concerning a person charged with a criminal offence reflects an opinion that he may be guilty, even though his guilt has not legally been established. It will suffice, even in the absence of a formal finding, for a judge's reasoning to suggest that he considers the person in question to be guilty.

3. There is no doubt that the opinions given by a parliamentary commission of inquiry, in the form of findings or remarks expressed during the proceedings, fall within the scope of Article 6 § 2. The situation of remarks made by such a commission must therefore be added to the other cases of remarks by public authorities enumerated in paragraph 206 of the judgment. The judgment in *Corbet and Others v. France* (nos. 7494/11, 7493/11 and 7989/11, §§ 35 and 38, 19 March 2015) confirms this analysis.

4. The Court has, in a number of cases, emphasised the importance of the choice of words by public officials in statements made by them before a person has been tried and found guilty of an offence (see, among many other authorities, *Daktaras v. Lithuania*, no. 42095/98, § 41, 10 October 2000, *Arrigo and Vieille v. Malta* (dec.), no. 6569/04, 10 May 2005, and *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008). In the case of *Huseyn and Others v. Azerbaijan* (nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 232, 26 July 2011), the Court held that the authorities should have exercised particular caution in the choice of words used to describe the pending criminal proceedings and the events that had led to the applicants' prosecution. It has also pointed out, in *Konstas v. Greece* (no. 53466/07, § 36, 24 May 2011), that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory, and that therefore the presumption of innocence cannot cease to apply in appeal proceedings simply because the accused was convicted at first instance.

5. On a more practical level, and in comments that are directly relevant to the facts of the present case, the Venice Commission stated as follows in

its third-party intervention: "when formulating its report, the parliamentary [commission] should take great care not to make any assessments of a criminal legal nature or pronounce itself on the criminal responsibility of the persons concerned. It should however remain free to describe and analyse all the facts of the case and to assess these from a political perspective" (see paragraph 195 of the judgment).

6. For these reasons, the words used by the parliamentary commission of inquiry are the key to determining whether or not there has been a violation in the present case.

7. It should first be noted that the title of the resolution of the lower house of the Polish Parliament (the *Sejm*) setting up the commission of inquiry was formulated in terms that were hardly nuanced; the title indicated that the commission had been set up: "(1) To investigate the circumstances surrounding the attempted extortion by Lew Rywin of material and political gains ..."

In the title of that resolution, the *Sejm* was not therefore cautious in its choice of language, because it referred outright to an "attempted extortion" – a criminal offence – on the part of the applicant, and not to a "purported" or "alleged" attempt. Accordingly, the starting point of the parliamentary commission of inquiry would seem to have been an already established fact. While the Venice Commission and the Polish Constitutional Court have stated that "the work of a parliamentary commission of inquiry is political in nature", the purposes for which the commission was set up in the present case seem to go beyond a strictly political framework.

8. However, what we find even more important is the final report of the *Sejm* dated 24 September 2004. The impugned remarks of this report are set out in paragraph 32 of the judgment, namely the conclusion that the politicians investigated by the commission

> "committed, by deliberate and concerted action in July 2002, the offence of bribery, within the meaning of Article 228 § 5 of the Criminal Code taken together with Article 13 § 1 of that Code; in that they, [while] influencing the content of the Broadcasting Act being amended and the parliamentary proceedings related thereto, in July 2002, through the intermediary of Lew Rywin acting as agent of the 'power-holding group', made a corrupt proposal to the representatives of Agora S.A ..."

9. The highly legal nature of the language used by the parliamentary commission of inquiry is clear. At this juncture it is appropriate to look also at the language used in the findings of the Warsaw Court of Appeal. It held that the defendant Lew Rywin had

> "... in a premeditated manner and with the intention of facilitating the commission by others of the offence of influence peddling, facilitated the commission of this offence by his conduct, [that is] committed acts fulfilling the conditions set out in Article 18 § 3 of the Criminal Code combined with Articles 230 and 12 of that Code ..."

It convicted him "on the charges thus described and characterised under Article 19 § 1 of the Criminal Code, taken together with Article 230 of that Code" and sentenced him to "two years' imprisonment and, pursuant to Article 33 § 1, 2 and 3 of the Criminal Code, 50 day-fines of PLN 2,000".

10. A basic comparison of the findings of the parliamentary commission of inquiry with those of Warsaw Court of Appeal suffices to show that the meaning of the terms used by the former is not substantially different from the findings of criminal guilt by the latter.

11. We are of the view that in the present case the impugned remarks are much more explicit and serious than the words used, for example, by the Minister of the Interior in the *Gutsanovi* case (see *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 200-201, ECHR 2013). In that case the Minister had only spoken of "modus operandi". In the present case, the remarks are much more precise and they refer back to the criminal-law provisions which provided for the conduct mentioned by the commission, whose report expressly described the applicant as the "agent" who had enabled the offence of influence peddling to be committed. Consequently, we do not agree with the findings in paragraph 217 of the judgment.

12. The impugned remarks were formulated in categorical terms taken from criminal law; moreover, they were expressed before the applicant had finally been found guilty of complicity in influence peddling. In addition, the wording of the findings of the report of the commission of inquiry shows (see paragraphs 32 and 214) that the authors referred to the criminal proceedings brought against the applicant and to the offences for which he was being prosecuted at the time by the competent criminal authorities. The only difference between those findings, formulated in that manner and with such precise references to criminal law, and a judgment of conviction handed down by a court, lies simply in the determination of the sentence.

13. Having regard to their content and the context in which they were formulated, those remarks were, in our opinion, capable of creating in the minds of the general public the impression that the commission considered the applicant to be guilty of complicity in corruption (see, *mutatis mutandis*, ibid., § 200).

14. Furthermore, the impugned findings of the commission's report were formulated following a formal procedure before a constitutional organ of Parliament. That organ was made up of MPs and applied the relevant rules of the Code of Criminal Procedure. It took its decision on the basis of material gathered by the commission and of that transmitted to it by the authorities which had conducted the criminal proceedings against the applicant (see, *mutatis mutandis*, ibid., § 199).

15. It should not be overlooked that the commission's report was adopted in the context of widespread media coverage, at a time when the general public was expressing a keen interest in the case (see paragraph 213 of the judgment and, *mutatis mutandis*, ibid., § 200).

16. We admit without hesitation that the commission of inquiry was acting legitimately and that in the present case the nature of the suspicions about a number of individuals obliged it to shed light on the case and to inform public opinion of its findings. We thus recognise that the report's conclusions have to be interpreted in their context, namely that of a political procedure concerning a group of high-ranking civil servants of which the applicant himself was never part.

17. However, we take the view that on account of its authority, of the scope of its findings, of the particular circumstances surrounding its proceedings – which were conducted in parallel to the criminal proceedings against the applicant – and the significant media coverage of the case, the commission should have been particularly careful in using terms that could be interpreted as undermining the presumption of the applicant's innocence (the remarks in question can thereby be distinguished from those of the commission of inquiry of the French National Assembly in the case of *Corbet and Others* (cited above, §§ 15-16)).

18. As the Venice Commission indicated in paragraph 20 of its third-party comments,

> "... it is in the nature of (alleged) political 'scandals' that they may give rise to parallel processes, so that a case which is under parliamentary inquiry may at the same time be subject both to administrative inquiries and to legal investigations or proceedings. There is in itself nothing unusual or illegitimate in this. But it does put extra responsibility on all parties involved to ensure that proper distance is kept between the parliamentary (political) inquiry and the criminal investigations and legal proceedings before the courts."

We believe that the requisite distance has not been maintained in the present case.

19. Having regard to the above-mentioned considerations, in particular the wording of the findings in the report of the parliamentary commission of inquiry and the context in which those findings were forthcoming, we take the view that the applicant's right to the presumption of innocence has been breached. Accordingly, we are of the opinion that, to that extent, there has been a violation of Article 6 § 2 of the Convention.

**(b) Problems of the methodological approach adopted by the majority**

20. In arriving at their conclusion, the majority applied a test which consisted in considering the impugned remarks as a whole (at paragraph 214 as regards their reading of the resolution setting up the commission of inquiry, then at paragraph 217 for their analysis of the findings of the commission's report).

21. It should again be emphasised that the Court has always found the important point to be the actual meaning of the impugned statements, having regard to the particular circumstances in which they were formulated (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 44, 28

October 2004). In situations that are similar to that of the present case where the respondent State has sought to dilute the effect of the impugned remarks by placing them in the context of the information, the Court has rejected that argument and focussed on their meaning and content (see *Allenet de Ribemont v. France*, 10 February 1995, §§ 40-41, Series A no. 308; *Khuzhin and Others*, cited above, § 96; and, more specifically, *Gutsanovi*, cited above, § 196, where it took into account, in reaching its conclusion, the "literal and figurative meaning of the expressions used").

22. With all due respect to the majority, we believe that the approach they have adopted risks diminishing in practice the protection provided by Article 6 § 2 of the Convention. This provision seeks to prevent the impression being given that an individual is guilty before being convicted in a final judicial decision. If the public had to engage in an overall analysis of the remarks made, which can be very difficult and in any event always subjective, even where the remarks are clear and precise – and all the more so where they are worded in categorical language taken from criminal law and indicate that the person concerned aided and abetted a criminal offence –, this might seriously undermine the effectiveness of the Article 6 § 2 protection.