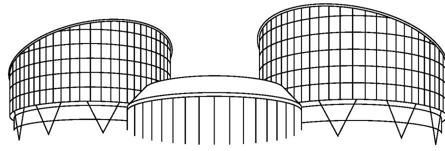

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF STANKIEWICZ AND OTHERS v. POLAND

(Application no. 48723/07)

JUDGMENT

STRASBOURG

14 October 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stankiewicz and Others v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 23 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 48723/07) 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 two Polish nationals, Mr Andrzej Stankiewicz and Ms Małgorzata Solecka and by the publishing company Presspublica sp. z o. o. (“the applicants”), on 29 October 2007.

2. The applicants were represented by Mr J. Kondracki, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicants alleged that the judgments finding them liable for infringement of W.D.’s personal rights had been in breach of their right to freedom of expression.

4. On 12 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first and second applicants, Mr Andrzej Stankiewicz and Ms Małgorzata Solecka, were born in 1974 and 1970 respectively and live in Piaseczno-Józefosław and Kraków. The third applicant, Presspublica sp. z o. o. is a limited liability company having its registered office in

Warsaw. The company is the publisher of the daily newspaper “Rzeczpospolita” where the first and second applicants worked as journalists.

A. Civil proceedings instituted by W.D.

6. It appears that A.F., the chief executive of the Polish branch of M.S.D. Inc. (“M.S.D.”), a large pharmaceutical company, approached journalists of the daily newspaper “Rzeczpospolita”. He informed them on condition of anonymity that the company had received a proposal to “arrange” the placement of its drug on the list of refunded drugs in exchange for a bribe.

7. On 12 May 2003 “Rzeczpospolita” published on the front and fourth pages an article entitled “Drugs for millions of dollars” (*“Leki za miliony dolarów”*), written by the first and second applicants. The subtitle read: “A pharmaceutical company asserts that the Head of the Private Office of the Minister of Health demanded a large bribe” (*“koncern farmaceutyczny twierdzi, że szef gabinetu politycznego ministra zdrowia żądał dużej łapówki”*).

8. The journalists alleged that in the summer of 2002 W.D., the Head of the Private Office of the Minister of Health (*Szef Gabinetu Politycznego Ministra Zdrowia*) had demanded a bribe from representatives of a pharmaceutical company, offering in return his assistance in having a drug manufactured by the company placed on the list of drugs refunded within the framework of the national health care scheme.

9. In the article, the applicants recounted the circumstances of two meetings which had taken place in Warsaw restaurants. They were attended by W.D., B.O. – director of a private osteoporosis clinic and W.D.’s friend, as well as two representatives of the pharmaceutical company – Ł.Z. and H.M.N. The meetings had been devoted to the plan to set up jointly, by the two companies, a network of osteoporosis clinics in Poland.

10. The relevant parts of the article read:

> “W.D., the Head of the Private Office of M.Ł. [Minister of Health], demanded a multi-million dollar bribe, offering his assistance in placing drugs on the list of refunded drugs – asserts foreign pharmaceutical company. W.D. rejects these allegations, and M.Ł. [the Minister] does not believe the version of events presented by the company. ...
>
> “It is the first such obvious case of a corruption proposal which has happened to me” – asserts the representative of the company. W.D. admits that he twice met the representatives of the company, but denies that he demanded money from them. ...
>
> Companies are keen to have their drugs placed on the list [of refunded drugs]. Why? Because the State pays part of their price so they are cheaper and more accessible to patients. It has been known for years that decisions concerning registration and placement of drugs on the list of refunded drugs were accompanied by

"informal payments". However, up to now the representatives of the pharmaceutical companies have never directly admitted that they were asked for a bribe. ...

According to the director of the pharmaceutical company, W.D. was trying to convince [them] that the osteoporosis clinic [of B.O.] was a serious project. ... "He [W.D.] offered us cooperation and demanded a one-off rapid payment of 1.5 million dollars and then annual payments of 1-1.5 million. Money was to be spent on "infrastructure"".

11. The journalists sought comments from W.D. before the publication of the article. They put to him questions about his presence as a high-ranking State official at a business meeting between two companies. W.D. initially denied that he had participated in it. However, two days later he recalled that he had in fact participated in the second meeting. Contrary to his earlier assertions, he also stated that the issue of the list of refunded drugs had been discussed at the meeting but at the initiative of the pharmaceutical company. Eventually, W.D. admitted that his participation at the meetings had been inappropriate and stated that he had felt uncomfortable in his role of an official.

12. The Minister M.Ł. refused to speak to the journalists. In his written statement he asserted that W.D.'s participation at the meetings had not been inappropriate and that he did not believe the version of events as presented by the pharmaceutical company.

13. The journalists included in the article critical comments made by A.N., the Deputy Minister of Health responsible for drugs policy at the relevant time. A.N. stated that "W.D. was not authorised to participate at such meetings. It is not the role of the Head of the Private Office." He also stated that "The Head of the Private Office should not be dealing with his business future in the course of carrying out his official duties".

14. The article also included a report on the career of W.D. entitled "Doctor, businessman, official". It described, *inter alia*, his activities in the Mazowiecki branch of the Alliance of the Democratic Left (*Sojusz Lewicy Demokratycznej*) and his association with M.Ł., the future Minister of Health. On the recommendation of his party W.D. was appointed a member of the Board of the Mazowiecki Health Insurance Fund (*Mazowiecka Kasa Chorych*). After the parliamentary elections in the autumn 2001, won by the Alliance of the Democratic Left, W.D. together with the Minister of Health M.Ł. and the Deputy Minister A.N. became one of the most influential figures in the health ministry to the exclusion of three other deputy ministers. In September 2002 W.D. suddenly resigned from his position as the Head of the Private Office of the Minister.

15. On 22 May 2003 W.D. lodged a civil action with the Warsaw Regional Court against the applicants for infringement of his personal rights. He demanded that the defendants publish an apology and further sought 500,000 Polish zlotys (PLN) in compensation for non-pecuniary damage. Subsequently, he modified the latter claim and sought instead

50,000 PLN to be paid to a charity. W.D. submitted that the information about the alleged request for a bribe in exchange for the placement of a drug on the list of refunded drugs had been misleading and untrue. The newspaper's allegations against W.D. had been based on unverified information originating from the representatives of the pharmaceutical company.

16. The applicants argued that the version of events presented in the article was credible and that they had observed due diligence in gathering information for their article. They further argued that the disclosure of the facts presented in the article had been justified in the public interest.

17. During the proceedings, the Warsaw Regional Court heard several witnesses, including the participants at the business meetings, i.e. B.O., H.M.N., Ł.Z., the claimant W.D. as well as A.F. and the journalists.

18. Ł.Z., an employee of the pharmaceutical company, testified that the meetings had been devoted to M.S.D. Inc.'s possible involvement in the project of setting up a network of osteoporosis clinics in Poland. This involvement, according to the expectations of B.O.'s company, was to be limited to making a payment of approximately PLN 400,000, i.e. approximately between USD 100,000 and USD 150,000, to a given bank account. According to Ł.Z.'s testimony, this proposal was not accepted by M.S.D. Inc., whose participation in the project was thereby terminated. Ł.Z. further testified that while indeed the participants had also talked about the possibility of placing a certain drug on the list of refunded drugs, there had been in fact no causal link between the two matters.

19. H.M.N., the finance director of the pharmaceutical company, testified that he had met W.D. and B.O. to discuss the same project. W.D. had introduced himself as a person representing a group which had been interested in the project. According to H.M.N., he expressed his surprise that the representative of the Government would be interested in the project involving a drug which had not been placed on the list of refunded drugs. At that point W.D. had stated that he would look into this issue. H.M.N. further stated that from the company point of view "there had been no connection between the project and the placement of the drug on the list". The pharmaceutical company refused to participate financially in the project on the terms proposed by W.D. and B.O.

20. A.F., the chief executive of the company, testified that the participants at the meetings had discussed the project of setting up a network of clinics treating osteoporosis. He was informed by two of his employees present at the meeting that W.D. had proposed to the company to invest a certain amount in that project. According to A.F., W.D. had also discussed the issue of placement of the company's drug used for treating osteoporosis on the list of refunded drugs. He considered that the two issues, namely the financial investment in the project and the placement of the company's drug on the list were interconnected. He understood, basing

himself on the information from his employees, that if the company had decided to invest in the project then the placement of its drug on the list of refunded drugs would have been possible.

21. B.O., director of a private osteoporosis clinic and friend of W.D., stated that the participants had discussed osteoporosis and the setting up of a network of clinics treating that illness. According to B.O., Ł.Z. had requested a meeting with W.D. and he had arranged it accordingly. B.O. denied that the participants at the meeting had discussed the issue of the placement of the company drug on the list of refunded drugs or that W.D. had demanded a bribe.

22. By a judgment of 17 June 2005 the Warsaw Regional Court dismissed W.D.'s claim.

23. The court established that in their article the applicants, besides their critical assessment of the Ministry of Health's decision-making process concerning the registration and placement of drugs on the list of refunded drugs, described the events related by the anonymous representatives of the Polish branch of one of the large pharmaceutical companies. Their article was also based on the information received from A.N. (the Deputy Minister of Health), B.O., W.D. and the statement received from the Minister of Health. The assertions of the representatives of the pharmaceutical company were confronted with the statements of W.D. The journalists further presented W.D.'s professional and political career. In the article they pointed to specific contradictions and ambiguities in W.D.'s account of his meetings with the representatives of the pharmaceutical company. The article presented the claimant who was a high-ranking official in a negative light, but the readers were offered two versions of the relevant events and could make their own assessment of it. It was undisputed that W.D. had met twice in restaurants with H.M.N. and Ł.Z., the representatives of the American pharmaceutical company M.S.D. Inc. and introduced himself as the Head of the Private Office of the Minister of Health.

24. The Regional Court further established that W.D. assisted at the meetings with B.O., his friend and the owner of the Mokotów Osteoporosis Centre. The participants discussed the possibility of a joint undertaking of the two companies in developing a network of osteoporosis clinics in Poland. The pharmaceutical company was interested in the placement of its drug for the treatment of osteoporosis on the Ministry's list of refunded drugs. The parties discussed the organisational and financial details of the joint project as well as the issue of the pharmaceutical company's difficulties in securing the placement of its drug on the list. Eventually, the joint project failed because the pharmaceutical company had not accepted the financial terms of the Polish company. A.F. and H.M.N., respectively the chief executive and finance director of the Polish branch of M.S.D. Inc. approached the press and informed the journalists that W.D. had demanded

from their company a bribe in exchange for the placement of the company's drug on the list.

25. Two journalists, M. Solecka, who specialised in the public health issues, together with A. Stankiewicz became interested in the story. Before publishing the article, the journalists had spoken to A.F., H.M.N., B.O. and W.D. as well as high-ranking officials in the Ministry of Health in order to verify their information. A.F., the chief executive of the pharmaceutical company was considered by the journalists as a reliable source, especially as he had undertaken to confirm his story before the court if necessary. The court further noted that the version of events presented to the applicants by A.F. and H.M.N. had been consistent, while the version presented by W.D. had been varying and proved inaccurate upon verification. Faced with divergent accounts, the journalists decided to present two versions of the meetings between the parties. M. Solecka had observed for years irregularities in the process of placement of drugs on the list of refunded drugs and received anonymous information about them.

26. The Regional Court considered that the testimonies of A.F., H.M.N. and Ł.Z. in respect of the course of the meetings were in principle similar. Witness Ł.Z. stated that the claimant (W.D.) had undertaken to check the list of refunded drugs and the chances of placing on it the drug manufactured by M.S.D. The parties had also discussed the need for the pharmaceutical company to make a quick decision about the transfer of money to an indicated bank account to which the finance director had firmly objected and thus M.S.D. pulled out of the joint project.

27. The Regional Court found that part of the article contested by W.D. had corresponded to the version of events presented to the journalists by the directors of M.S.D. In view of the consistency of the directors' account and the lack of coherent explanation as to the course of the meetings by W.D. and B.O. the journalists could consider the former as a reliable source. Moreover, the court expressed a view that the mere fact of W.D.'s participation in the business meeting between two companies, during which he had introduced himself as a Ministry official, had placed him in an ambiguous and awkward situation and lent credibility to the account of the directors of M.S.D. In these circumstances the Regional Court held that the impugned article had been based on reliable and verified information. The accounts of the representatives of the M.S.D. and of W.D. had been accurately reported. It was further no doubt that the article had dealt with issues of public interest, namely corruption.

28. The court held that the article had infringed the personal rights of W.D. However, it found that the applicants' conduct had not been unlawful within the meaning of Article 24 of the Civil Code read in conjunction with the relevant provisions of the 1984 Press Act because the journalists had shown sufficient diligence in gathering and publishing the information and acted in accordance with the professional ethics. It noted that the

information that the applicants had had at their disposal before the publication of the article had been sufficiently reliable to justify the allegation made in the article. Lastly, the court noted that the journalist had not been required to prove the truthfulness of their allegations in order to demonstrate the lack of unlawfulness in their actions.

29. W.D. appealed against the judgment and dropped his pecuniary claims. He argued that the journalists had largely based their conclusions on the version of events presented to them by A.F., and that the latter had deliberately sought to disparage him with a view to having the drug manufactured by M.S.D. Inc. placed on the list of refunded drugs. He further argued that A.F. had not in fact participated in the meeting at which the alleged offer of a bribe had been made, and thus his version of events could not be regarded as reliable. He further contended that while preparing the article the journalists had failed to question Ł.Z., who had served during the meeting as an interpreter of his conversations with H.M.N. He stressed that he spoke no English and H.M.N. did not speak or understand Polish, making any direct conversation between them impossible.

30. By a judgment of 11 October 2006 the Warsaw Court of Appeal allowed the appeal.

31. The Court of Appeal concurred with the lower court that W.D.'s personal rights had been infringed. It noted that the allegation levelled against the claimant that a high-ranking public official had demanded a bribe for securing a placement of the drug on the list of refunded drugs amounted to a criminal offence. The allegation that a person had committed or attempted to commit an offence amounted to a flagrant violation of one's reputation.

32. The Court of Appeal, leaving aside the question of the truthfulness of the allegation raised, concentrated its analysis on whether the journalists had respected the special diligence required of them under the Press Act in order to rebut the presumption of unlawfulness of the infringement of W.D.'s personal rights. It referred to the case-law of the Supreme Court (the Supreme Court's judgments of 14 May 2003, case no. I CKN 463/01, and of 18 February 2005, case no. I CKN 463/01) which held that in order to rebut the said presumption of unlawfulness it was sufficient to establish that a journalist had acted with requisite diligence, and that it was not necessary to prove the truthfulness of the allegations raised. Contrary to the lower court, the Court of Appeal found that the journalists had failed to observe special diligence in the preparation of their article.

33. It noted, first and foremost, that while preparing their article the applicants had failed to question Ł.Z., while the latter's version of events had been crucial, given that W.D. and H.M.N. had relied on his interpretation to understand each other. The Court held that the journalists' failure to acquaint themselves with Ł.Z.'s version of events – given that

there had been only four participants at the meeting – amounted to a cardinal error and clearly demonstrated that they had failed to observe due diligence. The court further noted that the version of events presented by A.F., the company’s chief executive, to the journalists had been essentially based on summary information concerning the meetings, given to him by H.M.N. and Ł.Z., and thus might have been inaccurate due to possible translation mistakes. The journalists had not attempted to confirm whether the latter’s version of events had corresponded to the version of Ł.Z., but on the other hand they had spoken to persons (certain members of parliament) who had not had much in common with the issues raised in the article.

34. The Court of Appeal observed that the reliability of A.F. was open to doubt. In this regard, it noted that the chief executive had clearly not wished that the journalists speak to Ł.Z. and that he had contacted the press only a few months after the impugned events had occurred. Furthermore, the list of refunded drugs for 2003 was only published in January of that year, while Ł.Z. had met the claimant in December 2002, on the instructions of A.F., to discuss the placement of the company’s drug on the list. The court noted that it could be concluded from that that if the company’s drug had been included on the Ministry’s list, then A.F. would not have disseminated the information which was the subject of the article.

35. The Court of Appeal also held that the first-instance court had erroneously assessed the testimonies of certain witnesses and concluded that the information that the applicants had had at their disposal before publication was insufficient for making the allegations of corruption against W.D. It was confirmed that B.O. had met with the representatives of M.S.D. to discuss the project of the network of osteoporosis clinics. This project was at the early stage but it was agreed that the financial contribution of M.S.D. would be in the region of 1-1.5 million USD. The parties did not agree on the form of this contribution. M.S.D. envisaged it in the form of supplying equipment and premises but did not accept the proposal of the Polish company to make a transfer of the above amount to an account of some unspecified company. According to the Court of Appeal it was only A.F. who had linked the demand to make the above payment with the issue of the list of refunded drugs. Witness H.M.N. stated that “there had been no connection between the project concerning osteoporosis clinics and the placement of the drug on the list”, while Ł.Z. denied that there had been any correlation between the two issues. Ł.Z. asserted that neither the claimant nor anyone else had proposed to have the drug placed on the list in exchange for a bribe. Accordingly, the court found that the witnesses’ testimonies did not confirm the truthfulness of the allegations made by the journalists.

36. In conclusion, the Court of Appeal held that the applicants’ conduct had been unlawful within the meaning of Article 24 of the Civil Code read in conjunction with the relevant provisions of the 1984 Press Act and

infringed the claimant's reputation and trust that was necessary in the exercise of his public duties.

37. The applicants were ordered to publish an apology in their newspaper, which the Court of Appeal worded as follows:

> "M.S. and A.S. [the first and second applicants], the authors of the article "Drugs for millions of dollars", published in the newspaper "Rzeczpospolita" of 12 May 2003, as well as the publisher of this newspaper, Presspublica sp. z o.o., hereby declare that by including in the article the statement to the effect that W.D. had offered to place a drug on the Minister of Health's list of refunded drugs in return for a multi-million bribe, they infringed W.D.'s personal rights by exposing him to a loss of good reputation and trust necessary to pursue his public and professional activity and for that they present their apology."

38. The applicants were also ordered to pay PLN 4,400 (1,100 euros (EUR)) in court fees and to reimburse the costs of PLN 6,230 (EUR 1,550) to W.D.

39. The applicants lodged a cassation appeal against the judgment. They argued, *inter alia*, that their conduct had not been unlawful, as they had observed due diligence in gathering the material for their article and the information obtained from the persons that they had questioned before publication had been sufficiently reliable. Further, they submitted that it was their right and duty as journalists to publish an article about the issue of corruption and that they had acted in the public interest.

40. By a judgment of 13 April 2007, the Supreme Court dismissed the cassation appeal, holding that the applicants' conduct had in fact been unlawful. In doing so, the Supreme Court based its findings largely on the conclusions reached by the Warsaw Court of Appeal. It concurred with that court that the evidence in the case, in particular the testimonies of the witnesses, had not made it possible to establish that in the course of the negotiations concerning investment in osteoporosis clinics the claimant or anyone else had demanded a bribe with a view to securing the placement of the drug manufactured by the company on the list of refunded drugs. The Supreme Court's judgment was served on the applicants on 20 June 2007.

B. Criminal proceedings against W.D.

41. Following the publication of the article, on 22 May 2003 the Warsaw Appellate Prosecutor Office (Department for the Organised Crime) opened an investigation in the case concerning a bribe-taking by a government official.

42. On 17 March 2004 the Warsaw Appellate Prosecutor charged W.D. with bribery in that W.D., as a public official, had demanded not less than 1.200.000 PLN from the pharmaceutical company in order to finance a network of osteoporosis clinics. The prosecutor alleged that W.D. jointly

with the representative of the Mokotów Osteoporosis Centre had negotiated the project with the M.S.D. He had also participated in the registration in July 2002 of the limited liability company "Woman +50" which was subsequently intended to manage the network of clinics.

Secondly, W.D. was charged with procurement fraud. The prosecutor alleged that W.D., as a deputy Chairman of the Board of the Mazowiecki Health Insurance Fund and the chief executive of the company "Woman +50", had submitted false documents to the Mazowiecki Health Insurance Fund in order to secure contracts for the company. The prosecutor imposed preventive measures on W.D., namely a ban on leaving the country and ordered him to put up bail of PLN 200,000.

43. On 17 January 2007 the Warsaw Appellate Prosecutor discontinued the proceedings against W.D. in respect of the charge of bribery for lack of sufficient evidence that he had committed the impugned offence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant constitutional provisions

44. Article 14 of the Constitution provides as follows:

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

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

> "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights."

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

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

B. The Civil Code

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

> "The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and

improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions.”

Article 24 § 1 of the Civil Code provides:

> “A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest.”

C. The Press Act

46. In accordance with section 12 § 1 (1) of the Press Act a journalist is under the duty to act with particular diligence in gathering and using the information, and, in particular, to verify the truthfulness of obtained information.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

47. The applicants complained that the judgments given in their case had interfered with their right to freedom of expression and that the interference could not be regarded as necessary in a democratic society. They relied on Article 10 of the Convention which reads as follows:

> “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

48. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

49. The applicants averred that their article concerned a matter of public interest. They were informed by a very reliable source, namely the chief executive of the Polish branch of one of the world largest pharmaceutical companies that the company had received a proposal to arrange the placement of its drug on the list of refunded drugs in exchange for a bribe. A.F. had asserted that the proposal had been made by W.D., the Head of the Private Office of the Minister of Health. The applicants emphasised that W.D., a Government official had decided to conduct official talks with the representatives of an international pharmaceutical company not in his office but in town. During the meeting W.D. had introduced himself as a Ministry official and handed his business card.

50. Before writing their article, the applicants had spoken with A.F., the chief executive and H.M.N., the finance director of the company who had participated in the meetings. They had also obtained a written statement from the Minister of Health. In their view, the information at their disposal before the publication of the article had been sufficiently reliable to reach the conclusion presented in it.

51. The applicants asserted that the discontinuation of the investigation against W.D. for lack of evidence to support the charge was not a decisive factor and did not point to the lack of diligence on their part. Their article was published on 12 May 2003 and on 17 March 2004 the Warsaw Appellate Prosecutor charged W.D. with bribery and procurement fraud. The prosecutor imposed preventive measures on W.D., namely a ban on leaving the country and ordered him to put up a bail. The criminal proceedings against W.D. lasted nearly three years and the charges were serious enough to justify the imposition of preventive measures. The discontinuation of the investigation against a politician which took place after the publication did not demonstrate that the journalist who had levelled certain allegations had published false information for which s/he should be sanctioned. The obligation incumbent on journalist could not be interpreted as a simple obligation to publish only "true" information. It should be borne in mind that journalists had only limited resources at their disposal. The press fulfilled an essential role in a democratic society and had a duty to impart information on all matters of public interest.

52. The applicants disagreed with the argument that their failure to seek information from Ł.Z. had amounted to lack of due diligence on their part. They underlined that their source of information was the chief executive of

a pharmaceutical company and that his information had been confirmed by H.M.N., a participant to the meeting. They had further obtained statements from W.D. and B.O. and spoken to some members of parliament. They did not speak to Ł.Z. because they had suspicion that he had acted for both parties (the pharmaceutical company and W.D.) and thus could not be treated as a reliable source. Moreover, he was not an active participant in the meetings. Ł.Z. was an employee of the company who presented summary information concerning the meetings to the chief executive and it was clear to the applicants that A.F. was the most competent person to provide them with information.

53. The applicants also submitted that the impugned statements in the article, which they accurately reported, had been made by the chief executive and not by the journalists themselves. The applicants had not made any corruption allegations against W.D. but only referred the statement of the chief executive. In this respect they relied on the judgment *Thoma v Luxembourg*. In the applicants' view, the interference complained of was not necessary in democratic society and the authorities did not give relevant and sufficient reasons to justify it.

2. The Government's submissions

54. The Government maintained that the interference with the applicants' right to freedom of expression was in accordance with Article 10 of the Convention. It was prescribed by law (Articles 23 and 24 of the Civil Code) and pursued the legitimate aim of protection of the reputation or the rights of others.

55. With regard to the necessity for the interference, the Government submitted that the allegations made by the applicants against W.D. were factual statements. They referred, *inter alia*, to the following passages from the article: "*the pharmaceutical company claims that the Head of the Private Office of the Minister of Health demanded a large bribe*" and "*W.D., the Head of the Private Office of M.Ł., demanded a multi-million dollar bribe, offering assistance in placing drugs on the list of refunded drugs – claims the foreign pharmaceutical company*". The assessment of the above statements should be conducted in terms of their truthfulness. With regard to the factual statements, the requirement for the journalists to prove that the allegation was substantially true was not contrary to the Convention. The Government recalled that the Warsaw Court of Appeal and the Supreme Court found that the testimonies of witnesses Ł.Z., B.O. and H.M.N. had not confirmed that the allegations made by the applicants had been true.

56. The Government submitted that the allegation made by the applicants had been of a very serious nature as it concerned the corruption offer made by a prominent State official. Such an act constituted a crime under Article 228 § 1 of the CC punishable by up to eight years'

imprisonment. However, the applicants did not act with due diligence and failed to comply with the ordinary journalistic obligation to verify this factual allegation.

57. First of all, the applicants did not collect sufficiently accurate and reliable information and did not consult with all the relevant sources which were available to them. Mainly, they had failed to question Ł.Z. who had been one of only four participants to the meetings at which the alleged corruption proposals had been made. Ł.Z. had been serving as an interpreter between W.D. and B.O who spoke only Polish and H.M.N. who spoke English. They also failed to observe due diligence in their assessment of A.F.'s statements despite the fact that he had not participated in the meetings and relied on the information provided by Ł.Z. and H.M.N. The applicants did not question the fact that A.F. had not wanted them to speak to Ł.Z.

58. Secondly, with regard to the applicant's assertion that at the time of publication it was impossible for them to verify the truthfulness of the allegations, the Government stressed that the domestic courts had examined this issue and found that the information at the applicants' disposal had been insufficient to make the allegation of corruption. The Supreme Court stated that it was obvious that the applicants had not had the same resources as the authorities; however they had been obliged to act with requisite diligence in order to rebut the unlawfulness of their allegations. It further noted that "when the circumstances indicated a higher probability of inaccuracy in the submissions of persons who were the source of information for the journalist, a particularly meticulous verification of the truthfulness of the allegations was necessary".

59. The Government further maintained that the domestic courts had given relevant and sufficient reasons for their decisions. The sanctions imposed on the applicants were proportionate as they had been held liable only under the civil law. The applicants were ordered to publish an apology and to pay the costs of the claimant and the court fees. They did not have to pay compensation. In the Government's view, the domestic courts struck a fair balance between the restriction of the applicants' freedom of expression and the protection of W.D.'s reputation.

3. The Court's assessment

60. It was common ground between the parties that the domestic courts' decisions complained of by the applicants amounted to "interference" with the exercise of their right to freedom of expression. The Court also finds that the interference complained of was prescribed by law, namely Articles 23 and 24 of the Civil Code, and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely "the protection of the reputation or rights of others".

61. It remains to be established whether the interference was "necessary in a democratic society". This determination must be based on the following general principles emerging from the Court's case-law (see, among other authorities, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 88-91, ECHR 2004-XI, with further references):

(a) The test of "necessity in a democratic society" requires the Court to determine whether the interference corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

(b) The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the statements held against the applicant and the context in which he or she has made them.

(c) In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10.

(d) The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention.

62. However, Article 10 of the Convention does not guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern and relating to politicians or public officials. Under the terms of its second paragraph, the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. These "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on

issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, among other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III; *Kasabova v. Bulgaria*, no. 22385/03, § 63, 19 April 2011).

63. In previous cases, when the Court has been called upon to decide whether to exempt newspapers from their ordinary obligation to verify factual statements that are defamatory of private individuals, it has taken into account various factors, particularly the nature and degree of the defamation and the extent to which the newspaper could have reasonably regarded its sources as reliable with regard to the allegations (*Bladet Tromsø and Stensaas*, cited above, § 66). These factors, in turn, require consideration of other elements such as the authority of the source (*Bladet Tromsø and Stensaas*, cited above), whether the newspaper had conducted a reasonable amount of research before publication (*Prager and Oberschlick v. Austria*, 26 April 1995, § 37, Series A no. 313), whether the newspaper presented the story in a reasonably balanced manner (*Bergens Tidende and Others v. Norway*, no. 26132/95, § 57, ECHR 2000-IV) and whether the newspaper gave the persons defamed the opportunity to defend themselves (*Bergens Tidende and Others*, cited above, § 58). Hence, the nature of such an exemption from the ordinary requirement of verification of defamatory statements of fact is such that, in order to apply it in a manner consistent with the case-law of this Court, the domestic courts have to take into account the particular circumstances of the case under consideration. If the national courts apply an overly rigorous approach to the assessment of journalists' professional conduct, the latter could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings not only on the individual cases before them but also on the media in general (see *Kasabova*, cited above, § 55 and *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 48, 2 October 2012).

64. An additional factor of particular importance in the present case is the vital role of "public watchdog" which the press performs in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities-information and ideas on political issues and on other matters of general interest (ibid., § 93, with further references). The Court must apply the most careful scrutiny when the sanctions imposed by a national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see, among other authorities, *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 88, ECHR 2007-III).

65. The matters discussed in the applicants' article concerned issues of public interest, namely allegations of improper conduct of W.D., a high-ranking official of the Ministry of Health. The article described W.D.'s involvement in the negotiations with the representatives of a pharmaceutical company where he had allegedly requested a financial advantage. The wider context of the article dealt with the issue of irregularities in the process related to placement of drugs on the list of refunded drugs.

66. At the material time W.D. held the position of the Head of the Private Office of the Minister of Health. Appointment to and dismissal from this position depended entirely on the discretion of the Minister. It further appears from the article that W.D. was a member of the regional branch of the Alliance of the Democratic Left and a close associate of the Minister of Health M.Ł. The limits of acceptable criticism are wider with regard to a person holding a public office than with regard to a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see, among other authorities, *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 80, ECHR 2004-XI; *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII).

67. In the present case the Court of Appeal found that the applicants had infringed the personal rights of W.D. by having alleged that he had offered to a pharmaceutical company to place its drug on the list of refunded drugs in return for a significant bribe. The Supreme Court confirmed the Court of Appeal's judgment.

68. The domestic courts' analysis focused on the issue of special diligence required of journalist in order to rebut the presumption of unlawfulness of the infringement of personal rights. They referred to the case-law of the Supreme Court which held that in order to rebut the above presumption of unlawfulness it was sufficient to establish that a journalist had acted with requisite diligence and that s/he was not required to demonstrate the truthfulness of the allegations raised (see paragraph 32 above). In the instant case, the first-instance court (the Regional Court) found that the applicants had shown sufficient diligence in the preparation of their article, while the two higher courts reached the opposite conclusion.

69. The Court recalls that in situations where on the one hand a statement of fact is made and insufficient evidence is adduced to prove it, and on the other the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount (see *Flux v. Moldova (no. 7)*, no. 25367/05, § 41, 24 November 2009; *Kasabova*, cited above, § 63 *in fine*; *Ziembiński v. Poland*, no. 46712/06, § 53, 24 July 2012; and *Yordanova and Toshev*, cited above, § 55).

70. The Court of Appeal considered that the applicants had not acted professionally because their allegations against W.D. had not been sufficiently researched. It reproached the applicants essentially for their failure to speak to Ł.Z. who had been one of the four participants at the meetings and the one who had served as an interpreter. It emphasised that the journalists relied on the story of A.F. (the chief executive) while his knowledge had been based on account of the meetings given by Ł.Z. and H.M.N. and that the journalists should have confronted the story put to them by A.F. with the version of Ł.Z. The Court of Appeal found that A.F.'s story was not credible because he had apparently not wished that the journalist speak to Ł.Z. However, it appears that the journalists themselves did not consider Ł.Z. as trustworthy source suspecting him of double loyalty and because he was not an active participant at the meetings. They relied on the story of the chief executive corroborated by H.M.N.

71. The Court of Appeal focused its assessment of journalistic diligence on one element without paying regard to other aspects of the journalists' professionalism and the overall context in which the business meetings with the participation of W.D. took place. It is true that A.F. broke the story to the journalists. However, they undertook to verify the story meticulously. Firstly, they considered his account credible because A.F. pledged to repeat it in the court if necessary and because it was consistent with the account of H.M.N., one of the representatives of the company at the meetings. Secondly, they contacted the Minister of Health and spoke to two other major protagonists of the story, namely B.O. and W.D. The journalists' impression of the credibility of the story was reinforced by inconsistent accounts given by W.D. (see paragraph 11 above). Thirdly, the journalists spoke to A.N., the Deputy Minister of Health in charge of the drugs policy at the relevant time who had given a very critical opinion of W.D.'s involvement in the meetings. The statements of the Deputy Minister supported the applicants' thesis that W.D. acted improperly in mixing his official position with business ventures. Fourthly, the Court of Appeal entirely omitted to note the fact of W.D.'s presence at the private meetings between two companies where he had taken part in the negotiations having introduced himself as a high-ranking Government official. The Court agrees with the Regional Court that this fact, bordering on a conflict of interest, lends credibility to A.F.'s account.

72. The extent to which the applicants could have reasonably regarded the impugned information provided by the representatives of pharmaceutical company as reliable must be determined in the light of the situation at the time of the preparation of the article, rather than with the benefit of hindsight (see *Bladet Tromsø and Stensaas*, cited above, §§ 66 *in fine* and 72; and *Kasabova*, cited above, § 67). In this respect it should be noted that the domestic courts refrained from assessing the diligence of the two

journalists from the perspective of the information available at the time of preparation of the article.

73. Furthermore, it should be noted that the allegations raised in the article resulted in the opening of the criminal investigation into the matter and the charges of bribery being laid against W.D. Although the investigation was eventually discontinued for lack of sufficient evidence, the mere length of it (more than three and a half years of proceedings) and the significant amount of evidence examined by the prosecutor would indicate that the allegations could not have been ignored (see paragraphs 42-43 above).

74. The Court further notes that the Court of Appeal found, relying essentially on one sentence from the testimony of H.M.N., that there had been no correlation between the project concerning the network of osteoporosis clinics and the placement of the drug on the list (see paragraph 35 above). At the same time it was undisputed that the parties to the meetings discussed the financial involvement of M.S.D. in the project in the region of 1-1.5 USD million and that the project collapsed when the M.S.D. refused to transfer this amount to an unspecified bank account. In addition, three out of four participants (Ł.Z., W.D. and H.M.N.) testified that they discussed the issue of placement of the M.S.D.'s drug on the list of refunded drugs.

75. Having regard to the above elements and the overall content of the impugned publication, the Court considers that the applicants complied with the tenets of responsible journalism. The research done by the applicants before the publication of their allegations was in good faith and complied with the ordinary journalistic obligation to verify the facts from reliable sources (compare and contrast, *Rumyana Ivanova v. Bulgaria*, no. 36207/03, §§ 64-65, 14 February 2008; *Kania and Kittel v. Poland*, no. 35105/04, §§ 45-46, 21 June 2011). The Court is of the view that the allegations against W.D. were underpinned by a sufficient factual basis. It should also be noted that the content and the tone of the article was on the whole fairly balanced. The applicants, having approached a number of sources, gave as objective picture as possible of W.D. and offered him to present his version of the relevant events and to comment on the allegations raised. W.D.'s version of events was presented in the article.

76. In assessing the necessity of the interference, it is also important to examine the way in which the domestic courts dealt with the case, and in particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention. In the instant case, the domestic courts did not take into account the status of W.D. and the wider limits of permissible criticism applicable to politicians or public officials. Similarly, they omitted to consider the fact that the allegations of corruption had emanated from the pharmaceutical company and had been reported as such by the applicants. Furthermore, the Court of Appeal and the Supreme

Court appear to have been unconcerned by the fact that one of the top officials in the Ministry of Health took part in the negotiations between two private companies on their joint business venture in which the public authorities had no involvement. Nor did they appreciate that the subject-matter of the publication concerned issues of public interest or the role of the press as a "public watchdog". In consequence, the judicial authorities did not carry out a careful balancing exercise between the right to impart information and protection of the reputation or rights of others (compare and contrast, *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006; *Kwiecień v. Poland*, no. 51744/99, § 52, 9 January 2007; *Błaja News sp. Z o. o. v. Poland*, no. 59545/10, § 64, 26 November 2013).

77. It follows that the reasons relied on by the respondent State to justify the interference with the applicants' right to freedom of expression, although relevant, are not sufficient to show that that interference was "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

79. The applicants complained under Article 6 § 1 of the Convention that the Warsaw Court of Appeal had lacked impartiality, as one of the judges of this court was W.D.'s brother-in-law and W.D.'s mother-in-law had previously served as the President of this court. The applicants also indicated that W.D.'s father-in-law was a former judge of the Supreme Court.

80. The Court notes, however, that the applicants did not raise this complaint in the course of the proceedings before the Court of Appeal or later on in their cassation appeal to the Supreme Court. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

82. The first applicant, Mr Andrzej Stankiewicz and the second applicant, Ms Małgorzata Solecka each claimed EUR 5,000 in respect of

non-pecuniary damage. They submitted that the national courts' decisions in their case had resulted in adverse publicity, loss of professional reliability and reputation as well as emotional strain.

83. The Government argued that the applicants had been held liable only under the civil law for infringement of W.D.'s personal rights. They maintained that the claims were exorbitant and unsubstantiated.

84. The Court accepts that the first and second applicants suffered non-pecuniary damage – such as distress and frustration – which is not sufficiently compensated by the finding of a violation of the Convention. Having regard to the nature of the breach and making its assessment on an equitable basis, the Court awards the first and the second applicants each EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

85. The third applicant, Presspublica sp. z o. o. sought, under the head of costs and expenses, reimbursement of the court fees in the amount of EUR 1,100 and of the legal costs of W.D. in the amount of EUR 1,550 which the applicants were jointly ordered to pay by the Court of Appeal. It submitted that all costs related to the proceedings were borne by the Presspublica sp. z o. o.

86. The Government commented that the applicants did not make a claim in respect of pecuniary damage.

87. The Court, however, notes that the third applicant is in principle entitled to recover any sums that it has paid in fees and costs to W.D., by reason of their direct link with the Court of Appeal's judgment which the Court found to be in breach of its right to freedom of expression (see *Lingens v. Austria*, 8 July 1986, § 50, Series A no. 103; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 50, ECHR 2003-XI; and *Yordanova and Toshev*, cited above, § 78). The claim made by the third applicant clearly falls under the heading of pecuniary damage resulting from a breach of the Convention, not costs and expenses. Having regard to the above, the Court awards the third applicant EUR 2,650 in respect of pecuniary damage.

B. Costs and expenses

88. The costs and expenses related to the domestic proceedings and the proceedings before the Court were borne exclusively by the third applicant, Presspublica sp. z o. o. The third applicant claimed a total of EUR 8,387.50 for legal fees incurred before the domestic courts and those incurred before the Court, producing relevant invoices.

89. The Government submitted that only the costs actually incurred in the preparation and defense of the applicants' case before the Court and not before the domestic courts can be taken into consideration.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, an applicant is entitled to an award in respect of the costs and expenses incurred by him/her at domestic level to prevent the breach found by the Court or to obtain redress therefor (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium* (Article 50), 18 October 1982, § 17, Series A no. 54). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the third applicant EUR 6,000 plus any tax that may be chargeable to it, in respect of its legal costs in both domestic and Strasbourg proceedings.

C. Default interest

91. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the interference with the applicants' right to freedom of expression admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,650 (two thousand six hundred and fifty euros) to the third applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) to the first and the second applicants each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 6,000 (six thousand euros) to the third applicant, plus any tax that may be chargeable, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President