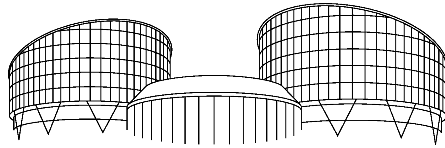

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF STANKIEWICZ AND OTHERS v. POLAND (No. 2)

(Application no. 48053/11)

JUDGMENT

STRASBOURG

3 November 2015

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 (no. 2),

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Krzysztof Wojtyczek,
Faris Vehabović,
Yonko Grozev, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 13 October 2015,

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

PROCEDURE

1. The case originated in an application (no. 48053/11) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Mr Andrzej Stankiewicz and Mr Grzegorz Gauden, and the publishing company Presspublica sp. z o.o. ("the applicants"), on 20 July 2011.

2. The applicants were represented by Mr J. Kondracki, a lawyer practising in Warsaw. From 30 May 2015 the lawyer has only represented the second applicant. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicants alleged that their right to freedom of expression had been breached, in violation of Article 10 of the Convention.

4. On 7 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first two applicants were born in 1974 and 1953 respectively. The first applicant is a journalist working for the daily newspaper *Rzeczpospolita* and the second applicant was, at the material time, its editor-in-chief. The third applicant is Gremi Media sp. z o.o. (at the material

time Presspublica sp. z o.o.), the publisher of *Rzeczpospolita.* It is a limited liability company represented by the chairman of its board of directors, Mr P. Bien, and its vice chairman, Mr R. Dobrzyński. Its registered office is in Warsaw.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Articles in Rzeczpospolita

7. In October 2004 the Polish government submitted a draft amendment to the Tax Act (*Ordynacja Podatkowa*) to the Sejm[1]. During the drafting process various bodies and individuals, including the National Council of Legal Advisers *(Krajowa Rada Radców Prawnych*), were invited to submit their comments. Their opinion was prepared by Ms D.S., a former senior civil servant, who was a well-known expert on tax law and a member of its legislative committee. She further acted as an expert and adviser at meetings before the parliamentary finance subcommittee where amendments to the Tax Act were being examined. One of the amendments proposed by the Council to section 181, and defended by Ms D.S. at the meetings, consisted of limiting what could be used as evidence in tax proceedings to material collected in criminal proceedings, but only once they had been concluded. The law as it stood did not contain such a limitation and allowed, for instance, material collected in a pending criminal investigation to be used as evidence. Her proposal was accepted by the subcommittee and later by the Sejm and, together with other amendments to the Tax Act, entered into force on 1 September 2005.

8. On 14 and 15 September 2005 the first applicant wrote three articles describing the possible consequences of the amendment to section 181 of the Tax Act, the legislative process leading to its adoption and the role that Ms D.S. had apparently played. One of the articles contained comments made by Ms D.S. and featured her photograph.

9. The first applicant and another journalist analysed the recordings of all the parliamentary finance subcommittee meetings during which amendments to the Tax Act were discussed. Two articles which appeared in *Rzeczpospolita* on 14 September 2005 contained transcripts of the subcommittee's meeting of 17 February 2005 at which the section 181 amendment was discussed. The journalists interviewed Mr J.K., a Member of Parliament who chaired the subcommittee, Mr M.W., an appellate prosecutor and Ms D.S. Their statements were quoted in the articles, as was a statement made by an unidentified member of the government during the subcommittee meeting.

1. The Polish Parliament consists of the Sejm and the Senat

10. The first article, "Mafia pays no taxes" (*Mafia nie zapłaci podatków*), appeared as a cover story on 14 September 2005. The subheading and an excerpt from the article read as follows:

> "[Subheading] Two words introduced to the new Tax Act have paralysed the prosecution of the petrol mafia, *Rzeczpospolita* has discovered. Our investigation reveals who changed the law and when it was changed. However, even we do not know why the government did not take any action.
>
> ...
>
> [text] Some days ago, the newest version of the Tax Act, enacted by the Sejm in June, entered into force. Problems then started. Because of one provision in the law, cooperation between the tax and prosecution authorities has been totally blocked... Such cooperation has so far led to successful prosecutions in many high-profile cases, such as those concerning the battle against the petrol mafia."

11. The article also explained that the amendment to section 181 of the Tax Act limited what could be used as evidence in tax proceedings to only material collected in criminal proceedings which had already been concluded. This was a real setback for the tax authorities, who could no longer rely on evidence the prosecution had been collecting in proceedings which were pending. According to the author of the article, such an amendment could prolong the tax authorities' effective investigation into tax evasion for many years, until the criminal courts arrived at their final decision in a case.

12. The second article, which had the headline "Mafia to pay no taxes" (*Mafia podatków nie zapłaci*) appeared on page 5 of the same edition of *Rzeczpospolita* of 14 September 2005. It featured a photograph of Ms D.S. The wording of the article, in so far as relevant, read as follows:

> "[subheading]The amendment to the Tax Act which made it harder to prosecute the petrol mafia was introduced during a subcommittee meeting – *Rzeczpospolita* has established.
>
> ...
>
> [text] As we have established, the above-mentioned amendment to section 181 [of the Tax Act] was proposed by Ms D.S. of the National Council of Legal Advisers during a subcommittee meeting on 17 February. Strictly speaking, it was outside her remit as she is not a member of parliament. However, she was an adviser to the subcommittee and warmly encouraged MPs to introduce the amendment, even though no such change had been proposed. Ms D.S., a former senior civil servant at the Ministry of Finance, and today counsel at a prestigious law firm, received support from the subcommittee chairman and even a government representative...
>
> Ms D.S., in an interview for *Rzeczpospolita*, argues that her intention was to protect the interests of the taxpayer....
>
> [Question:] 'You have changed the legal system, but you are not a member of parliament or the government. Was it your idea?'
>
> [Answer:] 'I believed that the wording of the legal provision in question was incorrect. It had to be changed.'"

13. On 15 September 2005 *Rzeczpospolita* published the third article, which had the headline “Dubious law to be changed” (*Zmienią podejrzane prawo*). In so far as relevant, it stated as follows:

> “[Subheading] This cannot be. The Deputy Minister of Finance is outraged after *Rzeczpospolita* disclosed the story behind the change in the law which has helped the petrol mafia.
>
> ...
>
> [Text] The Deputy Minister [S.S. ...] is surprised by [how] the unfortunate amendment was introduced. ‘It is unacceptable’, he says. ‘I have the Tax Department’s backing that this amendment should be corrected immediately.”

14. The article included quotes from interviews with two Deputy Ministers and one official, all from the Ministry of Finance. It also contained a paragraph describing the recent developments in several ongoing investigations against the petrol mafia.

B. Court proceedings

15. On 12 October 2005 Ms D.S. lodged a claim for the protection of her personal rights against all three applicants, seeking compensation in the amount of 200,000 Polish zlotys (PLN), the equivalent of approximately 50,000 euros (EUR).

16. On 17 August 2007 the Warsaw Regional Court dismissed her claim. It established that both the journalist who had written the articles and the editor-in-chief had been diligent in collecting information for all three of them. The articles in question reflected the evidence submitted by the defendants both in form and in content. The amendment to section 181 of the Tax Act had indeed been proposed by Ms D.S., as she had been invited to represent the National Council of Legal Advisers during the finance subcommittee’s deliberations on the draft law. Had she not voiced her opinion regarding the need to amend section 181, the amendment would most probably not have been introduced. The court stressed that since the claimant had voluntarily entered the public domain, she should respect the rights of others, in particular journalists, to criticise her actions. The first applicant, while preparing material for the articles, had had access to draft laws, legal opinion on those drafts, the finance committee’s minutes, recordings of the subcommittee’s deliberations and interviews with prosecutors, from which he took quotations. The court thus concluded that information provided by the defendants had been truthful and collected diligently.

The court considered that the incident described by the defendants had been a very important matter of public interest, as it had shown how easy it could be to influence a change in the law. The controversies surrounding the

amendment to the Tax Act had led to section 181 being restored to its previous form in February 2006.

The aim of the articles had been to draw the public's attention to the amendment to section 181 of the Tax Act. The court also considered that the applicants had had a right to publish a photograph of Ms D.S., as she had been a public figure. The photograph could have easily been taken while she had been carrying out her duties for the subcommittee in the present case.

17. The claimant, Ms D.S., lodged an appeal against this judgment.

18. On 21 May 2008 the Warsaw Court of Appeal allowed the appeal and action and amended the judgment in question. The court ordered the applicants to publish an apology and pay PLN 20,000 to charity, disagreeing with the Regional Court's assessment of the case. It considered that by using headlines, subheadings and several statements, the applicants conveyed the suggestion that Ms D.S. had been responsible for the negative consequences the amendment had had on the law. These statements included: "astonishing amendment", "cooperation between the tax authorities and prosecutors totally blocked", "she ... encouraged MPs to introduce the amendment, even though no such change had been proposed", "[Ms D.S. has] changed the legal system", "was it your idea?", "the amendment was proposed in an astonishing manner by a guest of the subcommittee". The court considered that the information contained in the articles had not been truthful, and that the journalists had not been diligent. It also considered that by publishing her picture, the applicants had breached the claimant's right to protect her image.

19. On 5 June 2009 the Supreme Court quashed the judgment and remitted the case to the appellate court. It considered that procedural provisions had been breached; in particular, the judge rapporteur should have withdrawn from the case given doubts as to his impartiality. Moreover, the Supreme Court criticised the vague wording of the apology the defendants had been ordered to publish, and the lack of clarity as to which statements had breached the defendant's personal rights.

20. On 22 October 2009 the Warsaw Court of Appeal allowed the action and ordered the applicants to publish an apology and pay PLN 20,000 to charity. The court considered that the defendants should publish the following apology on the cover of *Rzeczpospolita*:

> "[All three applicants] apologise to Ms D.S. for [damaging] her good name by publishing articles without factual basis in *Rzeczpospolita* on 14 September 2005 ('Mafia pays no taxes' and 'Mafia to pay no taxes') and on 15 September 2005 ('Dubious law to be changed'), which have ruined her good name and professional reputation."

21. The court considered that the claimant had proved, to a sufficient degree, that the articles in question had breached her personal rights, as they insinuated that she had been responsible for adopting an amendment which had negative consequences. Its arguments were similar to those outlined in

its judgment of 21 May 2008. It considered the statement "[Ms D.S. has] changed the legal system" untrue because as an adviser to the subcommittee, it would have been outside her remit. The use of headlines, subheadings and certain statements conveyed the suggestion that the amendment had been introduced in the "interests of the [petrol] mafia". Those statements included: "astonishing amendment", "cooperation between the tax authorities and prosecutors totally blocked", "she ... encouraged MPs to introduce the amendment, even though no such change had been proposed", "[Ms D.S. has] changed the legal system", "was it your idea?", "the amendment was proposed in an astonishing manner by a guest of the subcommittee". Moreover, by featuring a photograph of Ms D.S. in one of the articles, the applicants had "strengthened the message that [she] was the person responsible for having introduced an amendment convenient for the mafia, which [had] paralysed cooperation between the prosecution service and the tax services".

The court considered that the defendants had used the claimant's photograph unlawfully, as the fact she was a public figure had not absolved them from asking her permission. It further stated:

> "The Court of Appeal has no grounds to consider that the defendants rebutted the presumption under Article 24 of the Civil Code that their actions were unlawful.
>
> The fact that the journalists relied on the comments of other individuals, even if they had indicated their sources, in this case the prosecutors, does not make such practice lawful. Such types of expression do not absolve a journalist from exercising particular diligence and care in collecting and using material.
>
> ...
>
> The defendants did not show that their actions were lawful; the suggestion they made, namely that the claimant had 'changed the law' had been untrue, their duty to act with particular diligence and care had not been fulfilled, and their direction of criticism against the claimant had not been in the public interest or compatible with the principle of coexistence with others.
>
> It had been unnecessary to ruin the claimant's good name and reputation in order to express an opinion about an amendment to section 181. It is known how laws are passed and the claimant, acting lawfully and openly, did not change the law in force and could have only had a minor impact on the legislative process, in which the final decision did not depend on her. The suggestion that she changed the law is untrue, and making out that she had been responsible for changes in the law undermines journalistic integrity.
>
> The defendants did not provide any evidence to suggest that the claimant had acted in the interests of the [petrol] mafia. Other suggestions, namely that the amendment had caused the fight against the mafia and cooperation between the tax and prosecution authorities to become paralysed, were also untrue.
>
> The authors of the articles did not seek the opinion of specialists in tax law, nor did they try to explain the reasons behind the amendment. Their reporting was one-sided and formed far-fetched conclusions, creating an atmosphere of sensationalism and scandal ..."

22. On 20 January 2011 the Supreme Court amended the judgment as regards the wording of the apology. It held that the applicants should publish the following text:

> "[All three applicants] apologise to Ms D.S. for ruining her good name through the composition and use of headlines and subheadings in the daily newspaper *Rzeczpospolita* on 14 September 2005 ('Mafia pays no taxes' and 'Mafia to pay no taxes') and 15 September 2005 ('Dubious law to be changed'), suggesting that, as an adviser to the Sejm's finance subcommittee, she had been guided by reasons unworthy of merit and had infringed the principles of honesty."

The Supreme Court considered that the Court of Appeal's guidelines for the apology were expressed too broadly, particularly as the latter acknowledged that the articles in question had a factual basis. In the present case, certain suggestions were made through the choice of headlines and subheadings, which led to the claimant's personal rights being breached. Lastly, the Supreme Court considered that the fact that the defendants had taken quotations from public servants could exclude their liability, but only in so far as the wording of the comments quoted was concerned and not the "composition of the articles which led to negative suggestions [being made], creating an untrue picture of the person in question".

II. RELEVANT DOMESTIC LAW

23. Article 23 of the Civil Code contains a non-exhaustive list of so-called "personal rights" (*dobra osobiste*) and 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."

24. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. According to that provision, a person at risk of infringement by a third party may seek an injunction, unless the activity is not unlawful. In the event of infringement, the person concerned may, *inter alia*, require the party who caused the infringement to take the necessary steps to eliminate the consequences of the infringement, for example by making a relevant statement in an appropriate form, or ask the court to award an appropriate sum for the benefit of a specific public interest. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicants complained of a breach of their right to freedom of expression, relying 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."

26. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Arguments of the parties

28. The applicants emphasised the crucial role of the press in a democratic society, which should be allowed a degree of exaggeration or even provocation in carrying out their rightful role as a "public watchdog". They argued that, as noticed by the Supreme Court, all information provided in the articles in question had been true. The applicants referred to the Court's case-law, stipulating that when journalists wrote about politicians and matters of public interest, the main issue to be assessed would be whether they had acted with due diligence.

29. The applicants submitted that it did not suggest anywhere in the articles published in *Rzeczpospolita* that there had been a link between Ms D.S. and the mafia. The statements contested by the claimant and the Court of Appeal had not come from the journalists, but had been quotations from interviews with prosecutors and senior public figures. They relied on the Court's case-law, arguing that punishment of a journalist for assisting in

the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest. The applicants concluded that the interference with their right to freedom of expression had not been necessary, and that the reasons given by the domestic courts had not been relevant and sufficient.

30. The Government considered that the application was manifestly ill-founded. They submitted that the domestic courts had correctly protected the claimant from untrue allegations suggesting links between her and the mafia. The interference was thus “prescribed by law” and “necessary in a democratic society”.

31. The Government concluded that it had been necessary in the instant case to protect Ms D.S. from untrue and defamatory allegations made by the applicants. The applicants had been found liable in civil proceedings and ordered to publish an apology and make a payment to a charity. The amount, PLN 20,000, was a lenient punishment for the publisher of a national daily newspaper.

2. *The Court’s assessment*

(a) General principles

32. The test of whether an interference is “necessary in a democratic society” requires the Court to determine whether the interference complained of corresponded to a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

33. One factor of particular importance for the Court’s determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain boundaries, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). In cases such as the present one the national margin of appreciation is circumscribed by

the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern (see *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II).

34. The Court also reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest, particularly by the press (see *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV).

35. 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 were made, a right which, as an aspect of private life, is protected by Article 8 of the Convention. In two fairly recent cases, the Court defined its own role in balancing these two conflicting interests. It went on to identify a number of relevant criteria where the right to freedom of expression is being balanced against the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012 and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 109-113, ECHR 2012). The three criteria particularly pertinent in the present case, which the Court will revert to below, are:

(i) contribution to a debate of general interest;

(ii) how well-known is the person concerned and what is the subject of the report; and

(iii) method of obtaining the information and its veracity.

36. In sum, the Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their discretionary powers (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

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

37. The Court notes that it is undisputed that the civil proceedings against the applicants amounted to an "interference" with the exercise of their right to freedom of expression. The parties agreed that the interference complained of was prescribed by law, namely Articles 23 and 24 of the Civil Code, and was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely to protect "the reputation or rights of others". The only point at issue is therefore whether the interference was "necessary in a democratic society" to achieve that aim.

38. The matter invoked in all three articles was clearly of public interest as it concerned an amendment to the Tax Act. The articles criticised the amendment, which limited what could be used as evidence in tax proceedings as well as the legislative process which allowed such an

amendment to be passed without foreseeing the consequences. The claimant, Ms D.S., who was involved in the legislative process, was named by the applicants as the person who proposed the criticised amendment.

39. Turning to the details of the statements in question, the Court notes that the article on the first page of *Rzeczpospolita* of 14 September 2004 does not contain the claimant's name and explains the new amendment to the Tax Act and its consequences. In the second article on the fifth page, the claimant is quoted in so far as she explains her intentions behind the proposal to the finance subcommittee to introduce the amendment and her belief that it was an improvement. Her intervention at the subcommittee meeting was also quoted in so far as she proposed the amendment in question and the subcommittee chairman accepted that proposal and invited the government representative to comment. The third article of 15 September 2004 also concentrated on the possible consequences of the new law and criticised the ease with which an amendment proposed by an external expert gained the support of the subcommittee chairman and later became law.

40. In assessing the necessity of the interference, it is important to examine the way the relevant domestic authorities dealt with the case, and particularly whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see paragraph 36 above). The first-instance court dismissed the action and found that the articles in question had had a factual basis, had been well-researched and had not breached the personal rights of the claimant, who was a public figure (see paragraph 16 above). However, on two occasions the Warsaw Court of Appeal disagreed with this approach and concluded that the articles contained untrue statements, and that the journalists had failed to display due diligence (see paragraphs 18 and 21 above).

In its final judgment of 20 January 2011, the Supreme Court expressed the view that although the articles had had a factual basis, the layout of the article and choice of headlines and subheadings had brought about an infringement of D.S.'s personal rights.

41. The Court shares the Supreme Court's criticism of the expressions contained in the headlines. Indeed, the headlines ("Mafia pays no taxes", "Mafia to pay no taxes" and "Dubious law to be changed") could convey the suggestion of collusion between organised crime groups and Ms D.S. Moreover, they implied that the amendments would hinder prosecution of the petrol mafia.

42. In the Court's view, such headlines were counterbalanced by the way in which the facts were reported by the journalists. The subheadings referred to established facts. The information contained in the text of the contested articles had a factual basis – this had been noticed by the domestic courts, particularly the Supreme Court. The articles described in great detail the course of the subcommittee meeting of 17 February 2005 and how

Ms D.S., an external expert, proposed the amendment to section 181 of the Tax Act. It is also important that the depicted events and quotations were derived from the transcripts of the parliamentary subcommittee meetings. The Court also notices that the applicants quoted interviews with public figures, prosecutors and MPs. The opinion that the amendment to section 181 of the Tax Act would benefit the petrol mafia was given by a prosecutor. Moreover, the journalists spoke to the claimant in person and quoted excerpts from the interview she gave them. In conclusion and examining the articles as a whole, the Court finds that the journalists displayed due diligence in collecting the material and presenting the facts.

43. The Court notes that section 181 of the Tax Act was changed back to its previous version soon afterwards.

44. The Court further reiterates that Ms D.S. was a former senior civil servant and later represented the National Council of Legal Advisers in preparing opinions on draft laws and participating in the legislative process. She was thus a public figure, and the statements in question were not a personal attack on her or her private life. The Court reiterates that the limits of critical comment are wider if a public figure or a person who has voluntarily entered the public domain is involved, as he or she inevitably and knowingly exposes him or herself to public scrutiny and must therefore display a particularly high degree of tolerance (see *Axel Springer AG,* cited above, § 91). In this connection, the Court considers that the Polish courts did not take into account Ms D.S.'s status and the wider limits of permissible criticism applicable to public officials.

45. The Court of Appeal and the Supreme Court appear to have been unconcerned by the fact that the matter disclosed by the applicants was very serious and clearly of great public interest. Furthermore, the role of the press as a "public watchdog" was not given any consideration. Consequently, the judicial authorities did not carry out a sufficiently careful balancing exercise between the right to impart information and the 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; and *Błaja News sp. z o.o. v. Poland*, no. 59545/10, § 64, 26 November 2013).

46. The above considerations are sufficient to enable the Court to conclude that the reasons relied on by the respondent State to justify the interference with the applicants' right to freedom of expression cannot be considered relevant and sufficient under the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The third applicant, Gremi Media sp. z o.o., claimed EUR 5,000 in respect of pecuniary damage, equivalent to the PLN 20,000 it had paid to charity in execution of the domestic judgment. The applicant company attached proof of the relevant bank transfer.

As regards non-pecuniary damage, the first two applicants each claimed EUR 5,000.

49. The Government considered the claims excessive and unsubstantiated.

50. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage, as the third applicant referred to the amount it was ordered to pay by the domestic courts (see *Busuioc v. Moldova*, no. 61513/00, § 101, 21 December 2004, and *Kuliś and Różycki v. Poland*, no. 27209/03, § 44, 6 October 2009). The Court therefore awards it the sum claimed in full, that is, EUR 5,000.

51. The Court accepts that the first two applicants also suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards them each EUR 5,000.

B. Costs and expenses

52. The applicants, who were represented by a lawyer, did not make any claim for costs and expenses incurred before the domestic courts or the Court.

C. Default interest

53. 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 application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicants, 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 5,000 (five thousand euros) to the third applicant, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros) each to the first and second applicant plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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.

Done in English, and notified in writing on 3 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President