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

FOURTH SECTION

CASE OF KULIŚ v. POLAND

(Application no. 15601/02)

JUDGMENT

STRASBOURG

18 March 2008

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

In the case of Kuliś v. Poland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Stanislav Pavlovschi,
Ljiljana Mijović,
Ján Šikuta,
Päivi Hirvelä, *judges,*
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 15601/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Mirosław Kuliś ("the applicant"), on 8 April 2002.

2. The applicant was represented by Mrs A. Wyrozumska, Professor of law in the University of Łódź. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged a breach of his right to freedom of expression guaranteed by Article 10 of the Convention.

4. On 4 April 2006 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Łódź, Poland.

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

A. The background

7. On 10 June 1992 Mr Andrzej Kern, at that time the Deputy Speaker of the Sejm, notified the Regional Prosecutor that a certain Mr Gąsior and Mrs Izabela Malisiewicz-Gąsior had kidnapped his 17-year-old daughter, M.K. However, Mr Gąsior and Mrs Malisiewicz-Gąsior submitted that the allegation was false as M.K. had in fact run away from home and had only been accompanied by their son Maciej who had been her boyfriend for a long time. M.K. had previously run away from home on several occasions because of conflicts with her parents.

On the same day the Łódź Regional Prosecutor initiated an investigation into the allegations of kidnapping against Mr Gąsior and Mrs Malisiewicz-Gąsior. On 10 and 11 June 1992 the prosecutor issued a warrant authorising the search of their flat and the tapping of their telephone. They were arrested and remanded in custody. In August 1992 the case was taken over by the Poznań Regional Prosecutor who discontinued the criminal proceedings against them, finding that the allegations of kidnapping had been groundless. Disciplinary proceedings were brought against both prosecutors who had instituted the criminal proceedings.

8. On 29 June 1992 Mr A. Kern had made a statement on public television in which he said that his daughter had been kidnapped and asked for assistance in finding his child.

9. The case concerning the alleged kidnapping of M.K. received wide coverage in the media.

B. The article in the newspaper

10. The applicant owns a publishing house named "Westa-Druk" which publishes the weekly magazine "Angora".

11. On 16 August 1992 the applicant published in "Angora" an interview with Mr Michał Plisecki, a lawyer who at the material time represented Mr Gąsior and Mrs Izabela Malisiewicz-Gąsior in the criminal proceedings concerning the alleged kidnapping. The article was entitled: "If it had been quiet" and was in the form of questions put by a journalist and answers given by Mr M.P. The article, in so far as relevant, read as follows:

> **"'A[ngora]':-I have brought you fresh news from Łódź: the arrest warrant against [Maciej Gąsior] has been quashed, the children however have not come back home.**
>
> M.P. [Michał Plisecki]:- I do not want to – publicly – go into the details concerning the issuing and quashing of the arrest warrant. Allow me not to comment on it because I would have been forced to use very blunt language. I would refer to another issue: if it is true that [M.K.'s] parents - after an unsuccessful attempt to place her in a psychiatric clinic –left her alone, under the care of her grandmother somewhere in the countryside, then should I – as a parent – be shocked by such behaviour? There is no

other conclusion from the above fact: they simply do not love her. It is not that they do not understand her, because this is proved by their behaviour as a whole, but that the wish to separate [M.K.] from the world is in the interests of those people. Mr Kern's statement that he suspected that his daughter had been spying on him while she was dating Maciej and in particular the statement by the mother of [M.K.] that her daughter had been serving as a mattress for Maciej – this is terrifying! That was probably the reason why the Member of Parliament Mr Kołodziejczyk, who represents the interests of all citizens, decided to apply to the family court to solve the tragic problem of [M.K.] and the Kern family. If I may give my private opinion, I also believe that one should think over how to arrange [M.K.'s] future life.

(...)

'A':- So, if it was not for journalists, it would have been different? Maybe quieter?

M.P. If it had been quieter, then from my point of view, and after Mr Kern's having publicised the case in a certain context, I do not exclude the possibility that my client [Mrs Malisiewicz-Gąsior] would still have been in the detention centre. I do not exclude the possibility that Mr Gąsior would have been arrested too. The fact that my clients are free is due to the pressure of public opinion.

(...)

'A':- You have said: 'M.K. ran away from home'. But it has been said that it was an abduction or kidnapping.

M.P. The prosecutor and his deputy know that [M.K.] ran away from home. It has been proved by witnesses (...) [M.K.] had asked Maciej to accompany her and that is what happened. This is not a crime!

'A':- The Helsinki Committee [for Human Rights], the Ombudsman, the President...

M.P. ... let me add: the Political Group *Porozumienie Centrum*. Recently the Group made an appeal for assistance for Mr Kern - turning to the Ministers of Justice and of Internal Affairs – in the private matter of Mr Kern. I believe that since Mr Kern has abused power and has caused such unlawfulness and it has been supported by this Political Group, it means that *Porozumienie Centrum* supports these kinds of methods involving aggressive behaviour.

'A': -You have said: Mr Kern has abused power. Is it a question or a statement?

M.P.:-He has obviously abused power because as the Speaker of the Sejm he had access to the media and gave false information; the fact that he is a liar I can prove – if necessary – in court. I authorise you to print this text. If Mr Kern says that he is not a liar, I will prove the contrary in court!

'A':-What do you think about the fact that the Member of Parliament Mr Kołodziejczyk applied to the Łódź District Court?

M.P.:- It is for the court to decide, in every family case, with which parent the child should stay. In such cases both the parents and the child often undergo psychological and psychiatric examination – obviously upon a decision of a court. This is a typical case; the court is to decide on the family matter of Mr and Mrs Kern. Therefore, both the parents and [M.K.] should undergo the relevant examination. This is usual, routine procedure. That, in turn, proves how diligently Mr Kołodziejczyk approached this case. [M.K.] had turned to him for help, placed trust in him. In consequence he contacted, as I know, many people, me included, but I could not dispel his doubts. I then turned (sic!) [he turned] to specialists – psychologists. He was told by them that before they could make any decision they should talk with both the child and the parents. Then, very tactfully, he asked the Speaker [of the Sejm] Mr Chrzanowski to pass these suggestions to Mr Kern. Only after Mr Kern had refused, did Mr Kołodziejczyk do what any honest and respectable person would have done: he informed a court that in the Kern family bad things were happening. It is a lie that Mr Kołodziejczyk ordered the examination by specialists. He cannot order it! He only asked for appropriate action to be undertaken. (...)”

12. Subsequently, and in connection with the above interview, disciplinary proceedings were initiated against Mr Michał Plisecki by the local Bar Council. On 24 June 1995 the High Disciplinary Court (*Wyższy Sąd Dyscyplinarny*) found that Mr Michał Plisecki had breached the rules of professional conduct and reprimanded him. The court reiterated that the lawyers between themselves (Mr Plisecki, Mr Kern and his wife were all members of the Bar) should follow the rules of politeness and friendliness. The court found that Mr Plisecki had breached those rules and had failed to express his critics in a restraint manner.

C. The civil claim against the applicant

13. On 8 August 1995 Mr Kern, his wife and his daughter M.K., (“the plaintiffs”) lodged against the applicant’s publishing house “Westa-Druk” a civil claim for protection of their personal rights. They maintained that the press had played a major role in the case involving their family as they “presented the facts and judgments tendentiously, causing *de facto* damage to the plaintiffs.” The plaintiffs further sought an award of PLN 28,000 in compensation and an order requiring the defendant to publish the following apologies:

“We apologise to the Deputy Speaker of the Sejm, Mr A. Kern, his wife Mrs Zofia Pstrągowska-Kern and his daughter [M.K.] for grossly violating their personal rights by having published the article ‘If it had been quiet’, in *Angora* (...), in particular, by uncritically quoting the totally irresponsible statements of Mr Michał Plisecki in which he:

- said of A. Kern that he ‘had obviously abused power’ and ‘caused unlawfulness’ in connection with the investigation conducted by the Łódź Regional Prosecutor into the alleged kidnapping of his daughter,

- said that Mr Kern had been providing the media with untrue information and called him a liar,

- imputed to Mr and Mrs Kern the wish to place their daughter in a psychiatric clinic, called their parenting skills into question and stated without any reason that the parents and [MK] should 'undergo psychiatric and psychological examination.'

We express our regret over the harm done to the injured party".

D. The first-instance judgment

14. On 15 May 1998 the Łódź Regional Court (*Sąd Wojewódzki*) gave judgment for the plaintiffs. The court ordered the applicant to publish apologies as sought in the statement of claim and awarded the plaintiffs compensation in part, i.e. PLN 8,500. The court stated, *inter alia*:

"...One should agree with [the applicant] that, being the publisher, he had the right to inform the readers about important circumstances concerning [A. Kern] who at the material time held one of the highest positions in the State. Therefore, publishing such information was not illegal despite the fact that it affected the plaintiffs' personal rights that are protected by law. The article, however, includes not only information but also statements that damaged their reputation; i.e. their good name. The statement that Mr and Mrs Kern had made an unsuccessful attempt to place their daughter in a psychiatric clinic, that they do not understand and love her and that her separation from the world is in her interest, disparaged their parenting skills, and questioned their moral values.

The information that the family should have been examined by psychologists and psychiatrists had also harmed them in the eyes of others.

It concerns in particular the parents of Ms [M.K.] who at that time held important positions and the state of their mental health should not have been an object of public discussion. Finally, calling Mr Kern a liar and stating that he had abused power, obviously harmed his good name and exposed him to the loss of trust of his voters and of the leaders of the party of which he was a member. Therefore, the [applicant's] actions were ... illegal because they breached the good name and reputation of the plaintiffs.

The court did not agree with the [applicant's] opinion that [since] he was not the author of the quoted statements, he was not obliged to check the truthfulness of the information included in the interview with Michał Plisecki..."

15. On 27 July 1998 the applicant lodged an appeal with the Łódź Court of Appeal. He alleged, *inter alia*, that the court had infringed his freedom of expression in breach of Article 10 of the Convention, as it had overstepped the margin afforded to it and violated the principle of proportionality between the legitimate aim pursued and the measures applied. The interference with his right was particularly striking as the case concerned a politician who should have been more tolerant of criticism. The applicant further argued that Mr Kern himself had made public information concerning his private life by

giving statements concerning the alleged kidnapping of his daughter in the television and the press.

16. Mr Michał Plisecki, who joined the proceedings as an intervener (*interwenient uboczny*), also lodged an appeal.

E. The appellate proceedings

17. On 26 January 1999 the Łódź Court of Appeal found that the applicant had sullied the good name of the plaintiffs. It amended the judgment in so far as the text of the apology to be published was concerned and increased the sum to be paid by the applicant to all plaintiffs by way of costs and expenses to PLN 3,316. It upheld the remainder of the judgment. The applicant was to publish the following apology:

> “We apologise to Mr Kern, his wife Mrs Zofia Pstrągowska-Kern and daughter [M.K]. for breaching their personal rights by the publication entitled «if it had been quiet» in particular by citing the statements made by the lawyer M.P. in which he referred to the plaintiffs’ parenting skills and gave his opinion as to their family life, and called the first plaintiff a liar.”

18. The appellate court stated:

> “...The Regional Court based its judgment on the following findings:
>
> In 1992 a strong conflict erupted between [M.K.] and her parents on the ground of her contacts with Maciej. [M.K.] regarded Izabela Malisiewicz-Gąsior as a person friendly to her and a moral authority. That influenced the loosening of her relationship with her parents. Finally, in June 1992 [M.K.] left with Maciej. She did not inform her parents of her whereabouts and did not contact them.
>
> The plaintiff, Mr Kern, in a television address made an appeal for help in finding his daughter; he also informed the Łódź District Prosecutor that a crime has been committed under Article 188 of the Criminal Code.
>
> The District Prosecutor instituted proceedings on charges of kidnapping and false imprisonment of M.K. In the course of these proceedings Mrs Malisiewicz –Gąsior was arrested and the apartment and house of Gąsior’s family was searched. The defence counsel of Mrs Malisiewicz-Gąsior was Mr M.P.”

19. The Court of Appeal found that the statement that Mr Kern had abused power was within the justifiable bounds of criticism since public opinion was particularly sensitive to all aspects of abuse of power, and the opinion about Mr Kern was given by a professional i.e. a lawyer; therefore, it did not require verification by the publisher. The allegation of abuse of power was also justified given the extraordinary actions undertaken by Mr Kern in a private matter. Following the case-law of the European Court relating to Article 10 of the Convention, a politician should show more tolerance when exposed to criticism than private persons. Then the court stated as follows:

"It is a different matter, however, with regard to the allegation that Mr Kern was a liar. It is obvious that this description does not have the character of a legal opinion. What is more, the context of the statement does not clarify in relation to what case the plaintiff was alleged to have lied. It was thus a generality suggesting regular untruthfulness on the part of the plaintiff. The explanations for this statement provided by Mr Michał Plisecki later in the course of trial cannot be of particular importance since the published text, and in the form in which it reached the readers, did not include them. This description should then be considered as an ordinary and unjustified epithet [*epitet*]. In this case the publisher cannot be discharged of the responsibility for besmirching the plaintiff's good name either on the ground that the author of the statement was a lawyer, because he had not spoken as a professional, or because of the fact that publication was in the form of an interview as, unlike radio or television interviews, it was not a live broadcast and the publisher had the means, by acting with due diligence, to prevent the breach of the plaintiff's personal rights by this statement. Moreover, it cannot be inferred from the fact that the plaintiff held a public function, so that he agreed there should be a wider limit of permissible criticism of him, or from the fact that he himself made a public appeal for help in finding his daughter, that he had agreed to publication of all free opinions and comments on this subject, including those breaching his personal rights. Given the above described character of the statement, it should be regarded as an evaluation (*ocenna*) that cannot be verified as true or false and in any case cannot [be seen] as a negative assessment of the plaintiff's actions within the meaning of Article 41 of the Press Law. In this case the publisher is not protected by Article 10 of the Convention as paragraph 2 of this Article limits the right of freedom of expression when protecting, *inter alia*, the reputation of others.

For these reasons the Court of Appeal considered the appeals of the [applicant] and the intervener manifestly ill-founded.

Both appeals are equally unjustified in what they say about the judgment referring to a breach of the first plaintiff's personal rights by statements about his family life.

Neither the fact that the first plaintiff had himself introduced the events of his private life into the public sphere by making the address for help in finding his daughter (even if one can consider such an appeal as agreement to publication of information from a private sphere within the meaning of Article 14(6) of the Press Law) nor the fact that as a person holding a public function he was a subject of particular interest to the press authorised the publisher to breach his personal rights by putting into question his mental health and parenting skills.

One cannot infer that the plaintiff waived his right to legal protection by the fact that he had subjected himself to public comments on his family matters. It should be underlined that information concerning family life, and even unfavourable comment, does not have to breach personal rights. In this publication the limits of fair criticism and cultural expression had been overstepped. As with the allegation that the first plaintiff was a liar, the publisher is not protected by the fact that he had been quoting the statements of a lawyer who was obliged to exercise strict control over what he said, because matters concerning the family life of the first plaintiff did not have the nature of a legal opinion and the interview itself was not broadcast "live".

Moreover, commenting in this manner on the plaintiff's family life was not covered by a socially justified interest and did not concern the political activity of the plaintiff.

In addition it should be said that entering into issues concerning the family sphere, in particular the relationship between parents [and children], if only because of the impossibility to verify the assessments made in this respect, is always unlawful, even if the information given is true (see judgment of the Supreme Court, 11/03/1986).”

20. The applicant and the intervener each lodged cassation appeals with the Supreme Court (*Sąd Najwyższy*).

21. On 11 October 2001 the Supreme Court dismissed the cassation appeals and ordered the applicant to pay Mr Kern PLN 3,800 for costs and expenses. It agreed with the assessment of the lower courts that in the present case the interference with the freedom of press was justified by the need to protect the reputation of the plaintiffs. The Supreme Court also dismissed the applicant’s arguments that his intention was to report on a case that had shocked the majority of public opinion. The court was of the opinion that publishing an article in which the lawyer of the other party subjectively analysed very delicate family matters and offered categorical judgments on their causes, was not the right way to protect a justified public interest.

22. It appears that subsequently the judgment was enforced in so far as the payment of compensation was concerned. As regards the publishing of the apologies, the enforcement proceedings are pending.

II. RELEVANT DOMESTIC LAW

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

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

24. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. According to that provision, a person facing the danger of an infringement may demand that the prospective perpetrator abandon the wrongful activity, unless it is not unlawful. Where an infringement has taken place, the person affected may, *inter alia*, request that the wrongdoer make a relevant statement in an appropriate form, or demand satisfaction from him/her. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

25. Article 14 (6) of the Press Act of 26 January 1984 provides as follows:

“Information and data concerning the private sphere of life of an interested person shall not be published, unless they are connected directly with the public activity of that person.”

Article 38 (1) states:

> “Civil responsibility for infringement of the law caused by the publication of press material is accepted by the author, editor or other person who had the material published; this does not exclude the responsibility of the publisher. In respect of financial liability the said persons take joint responsibility.”

Article 40 of the Press Act provides:

> “In the event of an intended infringement of the personal rights of an individual by the publication of the press materials, and in particular in the event of an infringement of Article 14 (6), a court may grant the injured person compensation for damage suffered.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant complained of a breach of 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

27. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 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 applicant submitted that the interference with his right to freedom of expression was not necessary in a democratic society as it was not justified by a pressing social need. He emphasised that the present case should be interpreted with particular regard to the fact that the applicant was punished for assisting in the dissemination of statements made by another person in an interview. He relied on the *Jersild v. Denmark* judgment (23 September 1994, Series A no. 298) and submitted that the Government had not pointed to any "particularly strong reasons" which could justify punishing the publisher.

29. The applicant argued that the interview must be put in the context of the events that had taken place in 1992. The article was one of the series of publications in which the applicant's newspaper had covered a widely mediatised story of the alleged kidnapping of Mr Kern's daughter. The interview concerned matters of public interest, and contained mostly value judgments concerning a politician, which had been made by a lawyer representing one of the parties in the conflict. Neither the domestic courts nor the Government were able to indicate precisely which statement should have been verified by the publisher. Moreover, the applicant referred to the facts established in the case of *Malisiewicz-Gąsior v. Poland* (no. 43797/98, 6 April 2006) to give a full picture of the media involvement in the case of the alleged kidnapping of M.K. and to show that the article in question was aimed at exposing the conduct of a politician occupying a very high position.

30. The applicant did not consider the outcome of the disciplinary proceedings instituted against the lawyer relevant, as they had taken place three years after the interview with him had been published by the applicant. Moreover, the applicant specified that the disciplinary courts of the Bar Association had found a breach of the rules of professional conduct and had not, as submitted by the Government, found him guilty of defamation.

31. The applicant concluded that the authorities had overstepped the margin of appreciation afforded to them. Moreover, the national courts' findings had been based on an assessment of the relevant facts which could not be considered reasonable and justified and failed to interpret the matter in the light of the principles set forth in Article 10 of the Convention. Thus, punishing the applicant for having published the interview in question was a disproportionate interference with his right to freedom of expression and constituted a violation of the Convention.

32. The Government admitted that the penalty imposed on the applicant had amounted to an "interference" with his right to freedom of expression. However, they submitted that the interference was "prescribed by law" and pursued a legitimate aim as it was intended to protect the reputation and rights of others.

33. Furthermore, the Government pointed out that the freedom of the press was not absolute and that the domestic authorities had not overstepped their margin of appreciation in balancing two competing interests. They submitted that the domestic courts had found that the statements published in the newspaper owned by the applicant had been defamatory and debased the victim in the eyes of the public. The article in question concerned not only the politician but also his daughter and wife, so that it did not constitute an exclusively political debate in which the role of the press as a "public watchdog" was particularly important.

34. The Government also submitted that the applicant should have verified the information which he had published to make sure that it did not include statements that were defamatory or lacked accuracy or reliability. Publishing an article that included uncertain facts and value judgments showed disregard for the due diligence required from the press. The Government also maintained that in the disciplinary proceedings Mr Michał Plisecki had been found to have defamed Mr Kern and of having made groundless accusations against him.

35. The Government concluded that the interference complained of had been proportionate to the legitimate aim pursued and thus necessary in a democratic society to protect the reputation of others. They submitted that there had been no violation of Article 10 of the Convention.

2. *The Court's assessment*

(a) General principles

36. The Court reiterates that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among many other authorities, *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 57, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

37. There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a politician as such than as regards 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 *Lingens v. Austria*, judgment of 8 July

1986, Series A no. 103, p. 26, § 42; *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54; and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI). No doubt Article 10 § 2 enables the reputation of others – that is to say, of all individuals – to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues (see *Lingens v. Austria*, cited above, § 42).

38. The pre-eminent role of the press in a State governed by the rule of law must not be forgotten. Although it must not overstep various bounds set, *inter alia*, for the prevention of disorder and the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders (see *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, § 43). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38).

News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of "public watchdog" (see, for instance, The Observer *and* The Guardian *v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, pp. 29-30, para. 59). The 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 and should not be envisaged unless there are particularly strong reasons for doing so (see *Jersild v. Denmark*, cited above, § 35).

39. One factor of particular importance is the distinction between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive where there is no factual basis to support it (see *Turhan v. Turkey*, no. 48176/99, § 24, 19 May 2005; and *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

40. Although freedom of expression may be subject to exceptions they "must be narrowly interpreted" and "the necessity for any restrictions must be convincingly established" (see the above-mentioned Observer *and* Guardian judgment, p. 30, § 59).

Admittedly, it is in the first place for the national authorities to assess whether there is a "pressing social need" for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In cases concerning the press, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see *Worm v. Austria*, judgment of 29 August 1997, *Reports* 1997-V, p. 1551, § 47, and *Feldek v. Slovakia*, no. 29032/95, § 78, ECHR 2001-VIII).

41. 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 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the "interference" complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52, and *Jerusalem v. Austria*, cited above, § 33).

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

42. The Court observes that it is undisputed that the domestic courts' decisions complained of by the applicant amounted to an "interference" with the exercise of his right to freedom of expression. The Court also finds, and the parties agreed on this point, 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". Thus the only point at issue is whether the interference was "necessary in a democratic society" to achieve such aims.

43. The Court reiterates that in exercising its supervisory jurisdiction it must look at the interference with the applicant's right to freedom of expression in the light of the case as a whole, including the statements concerned, the context in which they were made and also the particular circumstances of those involved (see *Feldek v. Slovakia,* cited above, § 77).

44. It considers of primary importance for the instant case the fact that the events described in the article in question concerned a case which at the material time received extensive media coverage in Poland, namely the alleged kidnapping of the 17-year-old daughter of Mr Kern, an important politician and the Deputy Speaker of the Sejm. The mediatisation of this case was triggered by Mr Kern himself, who had made an appeal on the television for help in finding his daughter. Mr Kern also instituted criminal proceedings

against Mr Gąsior and Mrs Malisiewicz-Gąsior, the parents of his daughter's boyfriend, in the course of which they were arrested and remanded in custody, their house searched and phone calls tapped. Ultimately, after the proceedings had been transferred to another district, the charges of kidnapping were found groundless, the proceedings discontinued and disciplinary proceedings brought against the prosecutors who had instituted the case.

45. The magazine "Angora", owned by the applicant, published reports on the story in a series of articles. One of these, published on 16 August 1992, was an interview with Mr Michał Plisecki, the lawyer representing Mr Gąsior and Mrs Malisiewicz-Gąsior. In reaction to this publication, Mr Kern instituted civil proceedings against the applicant in which the domestic courts found him to have infringed the plaintiffs' personal rights, i.e. good name, and ordered him to pay damages of approximately EUR 2,200 plus the plaintiffs' legal costs and to publish an apology.

In this connection the Court observes that the impugned proceedings concerned a civil claim. It reiterates that the dominant position which those in power occupy makes it necessary for them to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the alleged criticisms of their adversaries (see, *mutatis mutandis*, *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 23-24, § 46; *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV; and *Raichinov v. Bulgaria*, no. 47579/99, § 51, 20 April 2006).

46. Turning to the statements themselves, the Court agrees with the Appeal and the Supreme Courts' assessment that the allegation that Mr Kern had abused power was justified, and within the acceptable bounds of criticism, since public opinion was particularly sensitive to all aspects of abuse of power (see paragraph 19 above).

47. The Court reiterates that the limits of critical comment are wider if a public figure is involved, as he inevitably and knowingly exposes himself to public scrutiny and must therefore display a particularly high degree of tolerance. In the context of a public debate the role of the press as a public watchdog allows journalists to have recourse to a certain degree of exaggeration, provocation or harshness. It is true that, whilst an individual taking part in a public debate on a matter of general concern – like the applicant in the present case – is required not to overstep certain limits as regards – in particular – respect for the reputation and rights of others, he or she is allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Mamère v. France*, no. 12697/03, § 25, ECHR 2006-...).

48. The Court is therefore less willing to accept the reasons for which the applicant was found to have infringed Mr Kern's personal rights by his other statements. The exceptional context of the case is of crucial importance as the conflict in Mr Kern's family lay at the heart of the case. While in general

issues concerning relations between parents and their children belong to the sphere of private and family life, the manner in which that politician handled his family circumstances made the case of public interest. Moreover, Mr Kern himself mediatised the case with the result that the debate surrounding the alleged kidnapping of M.K., and the involvement of the prosecution in it, occupied the attention of the media, politicians, and important State institutions. In those circumstances, issues relating to Mr Kern's family life were closely linked to his standing as a politician and contributed to a public debate.

49. The Court therefore cannot agree with the domestic courts' conclusions that the applicant's publication did not serve any justifiable public interest, did not concern the public activity of Mr Kern and that entering into the sphere of family life, in those circumstances, should always be considered unlawful, even if the information was true (see paragraph 19 above).

50. Admittedly, the applicant used provocative and inelegant language and lacked sensitivity towards the politician. Even in a political context it is legitimate to ensure that debate abides by a minimum degree of moderation and propriety, especially as the reputation of a politician must benefit from the protection afforded by the Convention (see *Lindon, Otczakovsky-Laurnes and July v. France*, [GC], nos. 21279/02 and 36448/02, § 57).

Nevertheless, the Court considers that the statements in question did not constitute a gratuitous personal attack on Mr Kern because the author tried to support his statements with an objective explanation. It also cannot be said that the purpose of the statements was to offend or to humiliate the criticised person. Taken as a whole, it can hardly be said that the statements for which the applicant was ordered to pay damages by the civil courts, even those relating to Mr Kern's family life, were excessive or that they went beyond what is tolerable in a public debate.

51. Moreover, the Court is of the view that some of the statements for which the applicant was found to have infringed the plaintiffs' personal rights were value judgments on a matter of public interest. The domestic courts apparently acknowledged that, as they considered that calling Mr Kern a liar was an "evaluation" that could not be verifiable as true or false. The Court reiterates that even a value judgment may be excessive where there is no factual basis to support it. In the instant case, however, it considers that the applicant's statement, taken in its context, had a sufficient factual basis. Thus it cannot subscribe to the domestic courts' assessment that the statement was excessive and should not enjoy the protection of Article 10 of the Convention. A similar position has been taken by the Court in another case involving a public figure who had been called a liar (see *Almeida Azevedo v. Portugal*, no. 43924/02, § 30, 23 January 2007).

52. The Court points out in that connection that, in this field, political invective often spills over into the personal sphere; such are the hazards of

politics and the free debate of ideas, which are the guarantees of a democratic society (see *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 34, ECHR 2000-X).

53. Finally, the Court notes that the applicant was found to have infringed the plaintiffs' personal rights by publishing, in an interview, the statements made by another person. The Court reiterates its case-law that requires the existence of particularly strong reasons for restricting the freedom of the press in such circumstances (see *Jerslid v. Denmark*, cited above, § 35). In the instant case it is not satisfied that such a standard was applied by the domestic authorities.

54. Consequently, the Court considers that the domestic courts failed to strike a fair balance between the competing interests involved, namely the protection of the personal rights of a public figure and the applicant's right to freedom of expression on a matter of public interest.

55. Regard being had to the above considerations, and the failure of the domestic courts to apply standards compatible with the principles embodied in Article 10 of the Convention, the Court concludes that that Article has been violated. The relatively small amount which the applicant was ordered to pay to the plaintiffs cannot affect that conclusion (see *Hrico v. Slovakia*, no. 49418/99, § 49, 20 July 2004).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 20,100 Polish zlotys (PLN), equivalent to 5,230 euros (EUR) at the date on which the claims were submitted, in respect of pecuniary damage. This sum consisted of PLN 8,500, equivalent to EUR 2,200, paid by the applicant to the plaintiffs as damages according to the domestic courts' decisions and PLN 11,600 as interest from 21 September 1995 until the payment by the Government.

As regards non-pecuniary damage, the applicant claimed EUR 10,000 as compensation for damage caused to his good name as a reliable publisher given the publicly made allegations that he lacked professionalism and diligence.

58. The Government submitted that the final judgment in the case had been delivered on 11 October 2001 and the State could not be held

responsible for paying interest during a subsequent period of examination of the case by the Court. With regard to non-pecuniary damage, the Government argued that the sum claimed by the applicant was excessive. They invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

59. 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 applicant refers to the amount which he was ordered to pay by the domestic courts (see *Busuioc v. Moldova*, no. 61513/00, § 101, 21 December 2004). The Court awards him the sum of EUR 2,200.

60. The Court accepts that the applicant has also suffered non-pecuniary damage – such as distress and frustration resulting from the proceedings against him, and the adverse judgments – which is not sufficiently compensated by the finding of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

61. The applicant also claimed PLN 7,140, equivalent to EUR 1,900, for the costs and expenses incurred before the domestic courts, which included PLN 3,340 for the costs in the first and second instance and PLN 3,800 for the costs of the proceedings before the Supreme Court. Moreover, the applicant claimed PLN 11,000, equivalent to EUR 2,860, in respect of the costs incurred before the Court.

62. The Government submitted that the claims were excessive and that the applicant had failed to document the costs incurred in the domestic proceedings.

63. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant submitted relevant invoices showing the costs of representation before the Court. With regard to the costs of the domestic proceedings, the Court notes that the applicant claimed reimbursement of the costs he had been ordered to pay by the domestic court and that their amount had been clearly fixed in the relevant judgments. Regard being had to the information in its possession and the above criteria, the Court considers that the sums sought should be awarded in full. The Court thus grants the applicant EUR 4,760 covering costs under all heads.

C. Default interest

64. The Court considers it appropriate that the default interest 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,200 (two thousand two hundred euros) in respect of pecuniary damage, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 4,760 (four thousand seven hundred and sixty euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President