

Press release issued by the Registrar

**CHAMBER JUDGMENT
KULIŚ v. POLAND**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Kuliś v. Poland* (application no. 15601/02).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 2,200 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 4,760 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Mirosław Kuliś, is a Polish national who was born in 1956 and lives in Łódź (Poland). He owns “*Westa-Druk*” which publishes the weekly magazine “*Angora*”.

The case concerned the proceedings against the applicant for the publication of an interview with the lawyer of Izabela Malisiewicz-Gąsior and her husband² who were accused of kidnapping the daughter of Andrzej Kern, the then Deputy Speaker of the Sejm (Poland’s Lower House of Parliament).

On 10 June 1992 Mr Kern lodged a complaint against Ms Malisiewicz-Gąsior with the Łódź Regional Public Prosecutor’s office alleging that she had kidnapped his 17-year-old daughter, M.K. According to Ms Malisiewicz-Gąsior, however, M.K. had run away from home accompanied only by her long-term boyfriend, Ms Malisiewicz-Gąsior’s son. Subsequently, a search was authorised of the Gąsior’s flat and their telephone was tapped. Ms Malisiewicz-Gąsior and her husband were also arrested and remanded in custody. The criminal proceedings against them were ultimately discontinued in August 1992. Disciplinary proceedings were brought against the prosecutors involved in the case.

On 29 June 1992 Mr Kern made an appeal on television for assistance in finding his daughter who had been kidnapped. The allegations of kidnapping received extensive media coverage in Poland.

On 16 August 1992 “*Angora*” published an interview with Michał Plisecki, the lawyer who represented Ms Malisiewicz-Gąsior and her husband in the criminal proceedings against them. In that interview, Mr Plisecki said that Mr Kern was a liar and “had obviously abused his power” in the investigation of his daughter’s alleged kidnapping. He also stated that Mr Kern and his wife had tried, unsuccessfully, to place their daughter in a psychiatric clinic and called into question their parenting skills.

On 8 August 1995 Mr Kern, his wife and daughter brought civil proceedings against “*Westa-Druk*” for protection of their personal rights. On 15 May 1998 Łódź Regional Court found that the article had damaged Mr Kern and his family’s reputation and ordered the applicant to publish an apology and pay compensation. Łódź Court of Appeal subsequently upheld that judgment. It found that the allegation that Mr Kern was a liar suggested that he lied in general and was a judgment which could not be verified. It further found that the article did not serve any justifiable public interest and that commenting on a person’s family life should always be considered unlawful, even if the information those comments contained was true. The applicant appealed to the Supreme Court, unsuccessfully.

Mr Kern has apparently been paid compensation but the enforcement proceedings with regard to the publication of an apology are still pending.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 8 April 2002.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Lech **Garlicki** (Polish),
Giovanni **Bonello** (Maltese),
Stanislav **Pavlovski** (Moldovan),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Ján **Šikuta** (Slovak),
Päivi **Hirvelä** (Finnish), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment³

Complaint

Relying on Article 10, the applicant complained that the decision in the civil proceedings against him had infringed his right to freedom of expression.

Decision of the Court

Article 10

Both parties agreed that the domestic courts’ decisions had amounted to an “interference” with the exercise of the applicant’s right to freedom of expression. That interference had been prescribed by law, namely Articles 23 and 24 of the Civil Code, and was intended to pursue the legitimate aim of protecting the reputation or rights of others.

The Court reiterated that, as a politician and public figure, Mr Kern inevitably and knowingly exposed himself to public scrutiny and therefore had to display a higher degree of tolerance to criticism. Mr Kern himself had even made the alleged kidnapping of his daughter of public interest by involving the prosecution authorities, the media, politicians and important State institutions in the affair. In those circumstances, issues relating to Mr Kern’s family life had

been closely linked to his standing as a politician and contributed to a public debate. The Court therefore could not agree with the domestic courts' conclusions that the applicant's publication had not served any justifiable public interest and that commenting on a person's family life should always be considered unlawful.

Admittedly, the applicant had used provocative and inelegant language and lacked sensitivity towards the politician. Nevertheless, the Court considered that the statements in question, generally supported by an objective explanation, had not been a gratuitous personal attack on Mr Kern and had not been intended to offend or humiliate. It could not therefore be said that the statements had been excessive or that they had gone beyond what was tolerable in a public debate. Indeed, the role of the press as public watchdog allowed journalists in the context of a public debate to have recourse to a certain degree of exaggeration, provocation or harshness.

Furthermore, some of the statements for which the applicant had been found to have infringed Mr Kern and his family's personal rights had been value judgments, the truth of which was not susceptible of proof. The domestic courts had even acknowledged that, as they considered that calling Mr Kern a liar had been a "judgment" which could not be verified. A value judgment might, of course, be considered excessive where there was no factual basis to support it. However, the Court considered that the applicant's statement, taken in its context, had a sufficient factual basis and could not therefore agree with the domestic courts' assessment that it had been excessive.

Finally, the Court pointed out that political invective often spilled over into the personal sphere: such were the hazards of politics and the nature of free debate, which were the guarantees of a democratic society.

Consequently, the Court considered that the Polish courts had failed to strike a fair balance between protecting the personal rights of a public figure and the applicant's right to freedom of expression on a matter of public interest. There had therefore been a violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).