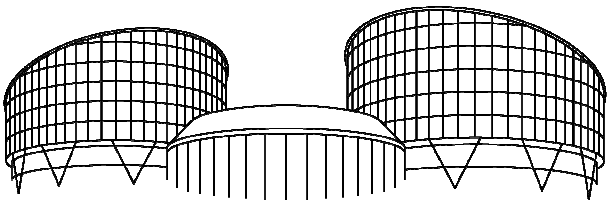

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JUCHA AND ŻAK v. POLAND

(Application no. 19127/06)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

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

In the case of Jucha and Żak v. Poland,

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

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 19127/06) 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, Ms Dorota Jucha ("the first applicant") and Mr Tomasz Żak ("the second applicant"), on 21 April 2006.

2. The applicants were represented by Mr B. Filar, a lawyer practising in Tarnów. The Polish Government ("the Government") were represented by their Agent, first Mr J. Wołąsiewicz and, subsequently, Ms J. Chrzanowska, both of the Ministry of Foreign Affairs.

3. The applicants alleged that their conviction for defamation had been in breach of their right to freedom of expression.

4. On 13 July 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1975 and lives in Tarnów. The second applicant was born in 1955 and lives in Lisia Góra. The first applicant is a journalist working for TEMI, a local weekly newspaper published in Tarnów. The second applicant is the editor-in-chief of that weekly.

6. TEMI published a series of six articles entitled "Marek C. in episodes" which were written by the first applicant. Marek C. [M.C.] was a local councillor and vice-chairman of the Tarnów Municipal Council. In the issue of 28 January 2004 the weekly published the first article about M.C. It began as follows:

> "M.C. is certainly a colourful character. This Tarnów councillor, serving his third mandate on the municipal council, tried to become the President of Poland and a member of the Senate. Currently, he is involved in many court cases and is again becoming the subject of scandals.
>
> Everyone remembers well that at the beginning of winter Councillor C. was involved in the eviction of two pregnant women from a flat located at ... Street in Tarnów. Everyone also remembers the explanation of C. who described one of the evicted women as running a shebeen and suggested that she together with her daughter were women of easy virtue. ...
>
> People don't want to speak about C. And if they do, they speak about him as if he were dead – either well or nothing. Otherwise they risk to be taken to court and charged with defamation or breach of his personal rights. The list of persons who have met him in a courtroom is long and new names appear on it all the time. ..."

In the subsequent part of the article the first applicant described M.C.'s career as a local politician. Basing herself on information received under conditions of anonymity from M.C.'s former collaborators and fellow councillors, she portrayed him as an overbearing, self-centred and ruthless person. She further stated that M.C. had been involved in many, mostly unsuccessful, political ventures and after every lost election he created a new political grouping.

7. In the issue of 4 February 2004, the weekly published the second article in the series. It read as follows:

> "For years the activity of M.C. has been based on balancing on the edge of the law, and even on breaking it. C. is most frequently accused of denigrating people and undermining their authority and of disseminating untruthful information about them. This includes information which suggests corruption links between people whom C. dislikes for reasons exclusively known to him. And that is how the articles and paragraphs of the Criminal Code which are being breached by councillor C. – without much notice on his part – proliferate.
>
> **Colleagues on the [municipal] council**
>
> People still don't want to speak about C. Are they afraid? Of what? Z.J., formerly for many years chairman of the Tarnów Municipal Council, refused to speak. Similarly, J.R., former mayor, did not want to say anything. (...)
>
> However, A.K., the current chairman of the Municipal Board spoke:
>
> "M.C. is a very touchy person, often he does not weigh his words. Even if a mild opinion is expressed about him, he still considers himself to be offended. At the same time he uses words which in the language of people with at least a minimum of good manners are considered inappropriate. I said already once to Mr C. that his character was not oriented on construction, but on destruction. (...)"

Mayor M.B. does not want to comment on councillor C.'s behaviour. He says that not because he is afraid, but because he thinks that there is nothing to comment on:

"Cooperation with this councillor is entirely out of the question. From his part there is only constant criticism, attack, and most frequently without any order, repetition of the same arguments. Mr C. criticises everything and all the time. ...

Desk for the councillor

M.C. has ambitions and plans. He wants to become the President of Poland, or mayor of Tarnów, or a member of parliament. And if there are no elections, then he applies for the job of director of the Żabno Cultural Centre. There also without success. Everywhere and on every occasion he promises something. Up to now it would be difficult to find in his CV any positive achievements or just partial fulfilment of his various promises, including the electoral ones.

Sometimes C. attempted to get other "inferior" positions, compared to a chair in the presidential palace. For example, the mayor's plenipotentiary for the establishment of a university in Tarnów. It was being said that an agreement on the taking of this position by C. would be one possible way of calming the political excesses of the councillor. He did not get the position. Unofficially it was being said that similar arguments [were raised] when C. attempted to get another job, namely that of deputy head of the municipal police in Tarnów. This also failed. ... And could it be that his venomous aversion to the media, and in particular to the largest weekly in the region, is the result of its refusing his offer to become the editor in chief of the paper, or is that just a coincidence?

Councillor – offender?

Recently C. again lost a court case; this time against a journalist of the local Radio Maks, M.K. The case concerned allegations made by councillor C. against the Tarnów radio journalist. It is interesting that despite having found C. guilty and additionally ordering him to pay PLN 500 to a children's home, the court conditionally discontinued the proceedings for a probationary period of one year, not sentencing him. A sentence for Marek C. would have meant the loss of his position as a councillor.

That was obviously not the first proved case of C.'s breaking the law. It is just worth recalling that in 2001 the State Electoral College rejected his financial report from the presidential campaign. As a consequence of the breach of the electoral law, the Warsaw Regional Court ordered the forfeiture of some donations paid to C.'s electoral committee.

The apex of the offending activities (*apogeum przestępczych poczynań*) of Marek C. was the recent disclosure of confidential information from court proceedings instituted against C. by Radio Maks. It turns out that the hearing was conducted in private.

"Dissemination of any information from such a hearing without authorisation is an offence under Article 241 § 2 of the Criminal Code. This offence entails mandatory prosecution and is subject to a penalty of imprisonment not exceeding two years, a fine or a restriction of liberty" B.O., spokesperson for the Tarnów prosecution service, told TEMI.

The information that a hearing is conducted in private is announced at the beginning of the hearing by a judge who is also required to inform the persons present at the hearing of the penalties to which they would be liable for dissemination of information obtained that way. We are in the possession of a document made publicly available by C. in breach of the law; he also does so on the internet site of his

grouping, which has the surprising name – in the context – of "Honesty". Our requests for a discussion about all court cases in which M.C. is involved were rejected by the main party concerned."

8. The article was accompanied by excerpts from a statement of the Tarnów Municipal Council of 11 September 2002 which was signed by 34 councillors. It read as follows:

"It is in the public good of the inhabitants of the city of Tarnów that they learn about the arrogance and dishonesty of the local councillor, Mr M.C. A person who does not respect the dignity of a fellow human being is not worthy of holding such a prestigious position as councillor.

The Tarnów Municipal Council strongly disapproves of the behaviour of councillor M.C. who constantly offends other councillors, lowers their dignity and thus grossly violates moral norms and the obligations of a councillor."

9. On an unspecified date in 2004 councillor M.C. lodged with the Tarnów District Court a private bill of indictment against the applicants, charging them with defamation under Article 212 §§ 1 and 2 of the Criminal Code. He referred to TEMI's issue of 28 January 2004 in which the first part of the article "Marek C. in episodes" with the statement "we will find out next week whether he may be referred to as an offender" was published. He also referred to the issue of 4 February 2004 in which the second part of the article was published and included the statements "recently C. again lost a court case; this time against a journalist of the local Radio Maks, M.K (...) that was obviously not the first proved case of C.'s breaking the law. It is just worth recalling that in 2001 the State Electoral College rejected his financial report from the presidential campaign. (...) The apex of the offending activities of Marek C. was the recent disclosure of confidential information from court proceedings instituted by Radio Maks against C." M.C. alleged that the applicants had insinuated that he was an offender. These statements had lowered him in the eyes of the public and undermined the public confidence necessary for the discharge of his duties as a councillor and vice-chairman of the Tarnów Municipal Council.

10. In the proceedings before the trial court the first applicant stated that as a journalist she was entitled to write a critical article about M.C. and that the charge against her was groundless since she had put a question mark on the statement concerning the offending activities of the councillor. She and the second applicant had had information from the radio journalist M.K. about the criminal proceedings against M.C. which had been conditionally discontinued. The first applicant further stated that the article was reliable since the spokesperson for the prosecution service had stated that disclosure by a private prosecutor of information originating from a hearing held in private constituted an offence.

11. The editor-in-chief (the second applicant) corroborated at the trial the statements of the first applicant. He stated that the impugned article was not the first material about MC. indicating that his behaviour had been

bordering on an offence. M.C. had been a defendant in many court cases and had participated in the eviction of two pregnant women. The second applicant emphasised that the impugned article had not contained the term "offender" but "offending activity".

12. On 24 June 2005 the Tarnów District Court gave judgment. It convicted the applicants of defamation committed through the mass media under Article 212 § 2 of the Criminal Code. It held that on account of the publication in the issue of 4 February 2004 of the article "Marek C. in episodes (2)" the applicants had alleged that M.C. had broken the law and that his actions had been of an offending nature. The applicants were each sentenced to a fine of PLN 500 (aprox. EUR 125).

13. The District Court found as follows:

> "Having regard to the established facts it is reasonable to assume that the acts of the accused Dorota Jucha and Tomasz Żak matched the features of the offence of defamation in its aggravated form specified in Article 212 § 2 of the Criminal Code.
>
> In the light of the wording of Article 212 it is generally prohibited to speak badly about another person without a legitimate interest, and the allegation levelled is an imputation when it concerns the behaviour of the defamed person or his characteristics and amounts to imputing to such a person the commission of an offence or failure to fulfil his duties.
>
> The entire significance of the article entitled *"Marek C. in episodes (2)"* published on 4 February 2004, which may be summarised by reference to its subtitle *"Councillor – offender?"* came down to quoting a sequence of events which were to present the private prosecutor as an offender (*przestępca*). Speaking of somebody as an offender has a clearly pejorative meaning for public opinion; it may even be said to be "utterly disgraceful". The fact that the allegation was not categorical, and that in the present case the subtitle *Councillor – offender* was followed by a question mark, is not relevant so far as concerns the features of the offence of defamation (as submitted in particular by Dorota Jucha). (...)
>
> The information disseminated by the accused Dorota Jucha and Tomasz Żak was objectively capable of lowering the private prosecutor in the eyes of public opinion and undermining public confidence in his capacity for a given position, occupation or type of activity.
>
> Although an imputation does not have to be based on a concrete fact and may take the form of a generalised assessment of another person, the article *"Marek C. in episodes (2)"* included information which was intended to give the impression that the private prosecutor's activity could be considered offending. The statements included in the article were either untrue (which is relevant to the question whether the accused can rely on the defence of justified criticism) or even if completely true they were distorted in such a way that we may not speak of fair reporting, and thus the "rightness" of the accused's behaviour.
>
> Assessing the particular fragments of the publication it should first be stated that the State Electoral College's rejection of a financial report from the presidential campaign in which M.C. had actively participated was meant to be evidence of the [private] prosecutor's offending activity (*przestępcza działalność*). The following words were put under the subtitle Councillor – offender: "that was obviously not the first proved case of *C.'s* breaking the law. It is just worth recalling that in 2001 the State Electoral

College rejected *his* financial report from the presidential campaign. The Warsaw Regional Court ordered the forfeiture of some donations paid to C.'s electoral committee. The apex of the offending activities of Marek C. (*apogeum przestępczych poczynań Marka C.*)...". In this context the implication of the article is that M.C. committed the offence of breaking the provisions of the electoral law. This allegation is not true.

In the light of the quoted judgment [of the Supreme Court] M.C. is not an offender because he was not convicted under the said law [Law of 27 September 1990 on Elections of the President of the Republic of Poland], it was not "his" financial report but the report of his electoral committee that had been rejected, which is a sanction of an administrative and not of a penal nature, and the forfeiture of some donations has nothing to do with forfeiture as a penal measure under the Criminal Code and is a civil-law consequence of the breach of the electoral law. Thus, to say that those activities have the features of an offence departs from the truth.

In speaking of the apex of the offending activities of Marek C. the accused were imputing to him an offence under Article 241 of the Criminal Code [unauthorised disclosure] having no grounds to do so, since at that time no proceedings which could give rise to a reasonable suspicion [that M.C. had] committed [that] offence were pending. Although it was objectively true that the private prosecutor had written a letter to the president of Radio Maks in which he referred to the circumstances regarding the pending criminal proceedings conducted in private, the statement that that act was an offence constituted an imputation within the meaning of Article 212 of the Criminal Code. (...) It is a court which decides whether the law was broken, and whether an offence was committed. The accused when formulating [their] categorical statement invoked in its support a declaration by B.O., spokesperson for the Tarnów prosecution service, who set out the legal characteristics of the offence specified in Article 241. The information conveyed [by the accused] with reference to the [private] prosecutor's behaviour which was said to constitute "the apex of the offending activities", while relying on the unquestionable authority of the prosecution service, distorted the conditional and merely informative nature of the spokesperson's declaration, [thus] giving the impression that the [private] prosecutor had committed that offence.

As regards the statement contained in the article "recently C. again lost a court case", which referred to the judgment in which the District Court conditionally discontinued proceedings against Marek C. in respect of one of the charges, it should be noted that the offence [of defamation] may either take the form of making untrue allegations or distorting true circumstances. Although there is no doubt that at a certain stage of the proceedings such a judgment was indeed given (it was not yet final then), the form in which that information was presented immediately after the subtitle "*Councillor – offender?*" distorts the nature of the conditional discontinuation of the proceedings. A judgment conditionally discontinuing the proceedings is not a conviction. Even accepting the truthfulness of this allegation, the actions of the accused Dorota Jucha and Tomasz Żak could have corresponded to the features of adefence specified in Article 213 § 2 of the Criminal Code only in so far as the making of that allegation could have been justified from the point of view of the right to criticism. The criteria which should be met by such criticism were indicated in the Supreme Court's judgment of 28 September 2000 (...). [The criticism] should be socially justified and desirable, be made in the public interest and be fair and accurate. However, fairness and accuracy were missing from the information presented by the accused in their article, although as journalists they were under the duty referred to in section 12 § 1(1) of the Press Act to act with particular diligence. This is shown by the

> lack of objectivity in the information presented, partiality, inaccuracy, the creation of a particular psychological atmosphere surrounding the publication or at least the incomplete presentation of the circumstances of the case resulting from failure to state that the impugned judgment was not final, [and] that the conditional discontinuation concerned one of the charges, while in respect of other [charges] the private prosecutor was acquitted."

14. The applicants appealed, arguing that they had acted in the public interest when publishing the article about the local councillor. They emphasised that the term "offending activities" had been used in the broader sense of "breaking the law" and not in the legal meaning of the word "offending". They were aware of the provocative nature of the statement "Councillor – offender" but had weakened it by placing a question mark after it. They had exercised their journalistic freedom, which allowed them to have recourse to some degree of exaggeration. Further, they submitted that the District Court had admitted some of the evidence but failed to take other evidence into account, namely articles from the German press concerning M.C.'s travelling abroad with his daughter without the mother's consent and the District Court's judgment in case no. II K 807/03 convicting the applicant of defamation in respect of the Tarnów cable television and its journalists.

15. On 7 October 2005 the Tarnów Regional Court upheld the first-instance judgment. The applicants were ordered to reimburse the costs of the appeal proceedings in the amount of PLN 50.

16. The Regional Court considered in turn the allegations made about the private prosecutor by the accused. As regards the court case brought by a local radio journalist against M.C., the Regional Court noted that by a judgment of the Tarnów District Court of 15 January 2004 M.C. had been found guilty of defamation and that the court had conditionally discontinued the proceedings. However, the applicants had failed to state that the judgment was not final. On appeal M.C. had been acquitted of defamation.

17. As regards the rejection of the financial report, the Regional Court observed that the decision of the Warsaw Regional Court on forfeiture of some electoral donations had not established the personal responsibility of M.C. in this respect or that an issue of his criminal responsibility had arisen.

18. Subsequently, the Regional Court assessed the statement about "the apex of the offending activities of Marek C." which had been made in the context of unauthorised disclosure of information from the defamation proceedings brought by a journalist of Radio Maks against M.C. The information at issue was a statement made by the chairman of Radio Maks (K.Ł.) during a hearing held in private. The Regional Court found that the statement of the chairman concerned only M.C.'s involvement with that radio and as such had been of marginal importance. However, the applicants had presented it as the apex of M.C.'s offending activities.

19. The Regional Court found, in so far as relevant:

"That offending activity amounts then to one not final judgment finding the private prosecutor guilty in respect of one charge in case no. II K 374/03, the rejection of C.'s financial report from the presidential campaign and, in effect, the fact that C. had quoted a certain statement made by witness K.Ł. at the hearing in case no. II K 374/03.

In the Regional Court's view the [alleged] offending activity of the private prosecutor in this case was not really presented. Counsel has referred in his appeal to articles from the German press, which indeed depict the [private] prosecutor in an exceptionally negative light. However, it should be noted that this case was not at all mentioned in any of the articles published at that time about the private prosecutor.

Counsel subsequently evoked the final judgment of the Tarnów District Court in case no. II K 807/03 where the private prosecutor, appearing as a defendant, was eventually found guilty of having committed an offence under Article 212 §§ 1 and 2 of the Criminal Code. However, it should be remembered that this judgment was given only in May 2004, and became final on 19 November 2004. Thus, at most the defendants were entitled to mention in their article the fact that another set of criminal proceedings against the private prosecutor was pending, but that is not what they did. However, constructing on that basis a thesis that the defendant [M.C.] carries out offending activities would clearly be at least premature. (...)

The assertion of the defendants that first the statement "offending activities" is much milder than the statement "offence" because it implies a certain supposition, and that moreover that term is supposed to have not only a legal but also a common meaning (as it concerns lawbreaking not necessarily established in a judgment of the criminal court) is a false thesis. Such a statement explicitly indicates that the [private] prosecutor committed offences, and that he had been found guilty of them by a final court decision or even final court decisions, if in effect the accused used the phrase "the apex of the offending activities". However at that time ... the private prosecutor had not been found guilty of any offence (obviously by a final judgment). The statement that the [private] prosecutor again lost in court against M.K. already indicates that earlier (even leaving aside the fact that the judgment was not final) he had lost some criminal cases. The subtitle "Councillor – offender?" used by the accused in the articles should be recalled in this respect. The question mark, which was supposed to diminish the significance of that statement ... in the context of subsequent information concerning the [private] prosecutor, was in fact merely a technique of social engineering suggesting that the accused was only putting the question whether C. was an offender without prejudging the above. However, statements which they used in the subsequent part of the article had the *de facto* effect that they instantly provided answers in this respect. Moreover for the offence of defamation a categorical form [of statement] about some dishonourable fact is not necessary. ...

There is no doubt that the accused in the present case did not display accuracy in gathering material concerning the private prosecutor (at least in respect of the impugned article). The information could have been verified as true or false. By employing the term "offending activities" the accused resorted to abuse and untruth. Journalistic freedom includes the possibility of resorting to exaggeration, or even provocation. The right to free expression is one of the basic human rights. It is guaranteed by the European Convention on Human Rights (Article 10) and the Constitution of the Republic of Poland (Article 54). The freedom of the press is a main aspect of that right. It is one element of an effective democracy

(public scrutiny). However, the right to criticism and free expression may not be transformed into imputations against anyone, including a politician. ...

The limits of criticism as regards politicians and their actions are definitely wider than in respect of other persons. However criticism is not unlimited. It is one thing to consider inappropriate public or private behaviour of the [private] prosecutor, but in the case where *de facto* a conclusion is formed that the [private] prosecutor is in reality a person having problems with the law, an offender with a significant record of criminal cases (the court returns once more to the expression "the apex of the offending activities"), we cannot speak of acceptable criticism assessing that term in the context of freedom of expression. ... The right to criticism as regards persons holding public functions cannot be exercised in such a manner as to infringe the good name or reputation of the criticised person (judgment of the Supreme Court of 28 March 2003, IV CKN 1901/00)...".

20. The Regional Court's judgment was served on the applicants' lawyer on 2 November 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of the Criminal Code

21. Article 212 provides in so far as relevant:

"§ 1. Anyone who imputes to another person, group of persons, institution, legal person or organisation without legal personality, such behaviour or characteristics as may lower this person, group or entity in public opinion or undermine public confidence in their capacity necessary for a given position, occupation or type of activity, shall be liable to a fine, a restriction of liberty or imprisonment not exceeding one year.

§ 2. If the perpetrator commits the act described in paragraph 1 through the mass media he shall be liable to a fine, a restriction of liberty or imprisonment not exceeding two years."

Article 213 provides as follows:

"§ 1. The offence specified in Article 212 § 1 is not committed, if the allegation not made in public is true.

§ 2. Whoever makes or publicises a true allegation in defence of a justifiable public interest shall be deemed not to have committed the offence specified in Article 212 § 1 or 2; if the allegation regards private or family life evidence of truth shall only be admitted when it serves to prevent a danger to someone's life or to protect the morals of a minor."

B. The Constitutional Court's judgment of 30 October 2006, case no. P 10/06

22. On 30 October 2006 the Constitutional Court, ruling on a legal question referred to it by the Gdańsk District Court, declared Article 212

§§ 1 and 2 of the Polish Criminal Code compatible with Articles 14 and 54 § 1 read in conjunction with Article 31 § 3 of the Constitution.

The court found that in some circumstances the protection of rights and freedoms like dignity, good name and privacy may prevail over the protection of freedom of expression. The court further found that there was no basis to assume that the protection of freedom of expression merely by means of the civil law (provisions on personal rights) would be as equally efficient as its protection through the criminal law. Protection of freedom of expression by means of the criminal law did not of itself infringe the relevant provisions of the Constitution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicants complained that the court judgments in their case had violated their right to freedom of expression. They submitted that they had diligently collected material for their article and had published only information which they had believed to be true. The applicants relied on Article 10 of the Convention, which reads as follows:

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

A. Admissibility

24. 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, in particular on the grounds of non-exhaustion in respect of a constitutional complaint on which point the parties expressed similar views. The application must therefore be declared admissible.

B. Merits

1. The applicants' submissions

25. The applicants argued that the judgments given by the domestic courts had violated Article 10 of the Convention. They were accused of defamation for having published critical articles about a local councillor in which they had exposed his reprehensible behaviour. Despite the fact that all of the information presented by the first applicant in her articles was true, the applicants were sentenced for having used the term "offending activities" which did not have a precise meaning in the Polish language. Furthermore, the legal meaning of the word "offender" was different from its meaning in the ordinary language.

26. Journalists had to be protected when publishing information on matters of public interest provided they acted in good faith and based themselves on reliable information. The first applicant had collected material for her articles in a diligent manner and had only used information which she believed to be true.

27. The applicants maintained that public criticism was an important element of a successful democracy. In a democratic system control of those in power was exercised not only by a political opposition but also by public opinion shaped by the press. It was not only the right, but also the obligation of the press to exercise such public control. The judgments of the domestic courts had violated Article 10 since journalists who had fulfilled their duties were found guilty of defamation.

2. The Government's submissions

28. The Government argued that the interference with the applicants' right to freedom of expression had been compatible with the terms of Article 10. The interference was prescribed by law, being based on Article 212 of the Criminal Code, and pursued a legitimate aim, namely the protection of the reputation or rights of others. It was also "necessary in a democratic society". Furthermore, the reasons advanced by the domestic courts were relevant and sufficient to justify the interference.

29. They underlined that the series of articles published by the applicants had contained both value judgments and statements of fact, and that the truth of the latter statements could have been verified. Their veracity was questioned by the councillor M.C. who succeeded in proving that the allegations had been untrue. This transpired from the Tarnów District Court's judgment of 24 June 2005. In addition, the councillor did not question the entirety of the applicants' articles but only particular factual statements.

30. The Government submitted that the national legislator had decided to prevent the dissemination of untrue information by means of the criminal

law. In view of the margin of appreciation accorded to the State, a criminal measure as a response to defamation could not, as such, be considered disproportionate to the aim pursued. Furthermore, the sanctions imposed on the applicants (a fine in the amount of 500 PLN for each applicant) had been rather symbolic. The mere fact of imposing criminal sanctions on the applicants could not be seen as a violation of their freedom of expression.

31. Referring to the Court's case-law, the Government further argued that journalists could not claim under Article 10 that they were exempt from the duty to obey the provisions of the domestic law. The judgment against the applicants had not been delivered in order to deter them from contributing to public discussion on issues affecting the life of the community, but to make them obey the rules of reliable debate and the ethics of journalism.

32. The Constitutional Court in its judgments in cases nos. P 10/06 (30 October 2006) and SK 43/05 (12 May 2008) underlined the importance of freedom of expression in a democratic society, while stressing that the dignity of an individual had also to be protected by the authorities. In the case of conflict between freedom of expression and the right to private life, the latter could prevail over the former. The Constitutional Court further held that protection of one's reputation and good name, which were inextricably linked with the dignity of a person, by means of the criminal law did not of itself infringe the relevant provisions of the Constitution. Civil sanctions could be sufficient if they made it possible to re-establish the previous state of affairs. However, the consequences of the infringement of one's good name could not be reversed and subsequent apologies could not eradicate the fact of the infringement. The Government lastly noted that the criminal proceedings in the applicants' case had at their origin a bill of indictment lodged by a private individual, the victim, and not by a public prosecutor.

33. In the Government's view, the applicants had overstepped the limits of criticism acceptable in a public debate since they had disseminated – as established by the domestic courts – untrue factual assertions about the councillor. Accordingly, the intervention of the domestic courts was necessary in order to react appropriately to defamatory accusations devoid of any foundation or formulated in bad faith. In conclusion, the interference at issue could be considered necessary in a democratic society for the protection of the reputation or rights of others.

3. The Court's assessment

34. It was common ground between the parties that the applicants' conviction and punishment constituted an interference by a public authority with their right to freedom of expression.

35. Such interference will be in breach of Article 10 if it fails to satisfy the criteria set out in its second paragraph. The Court must therefore

determine whether it was "prescribed by law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society" to achieve that aim or aims.

36. The Court finds, and this has not been disputed, that the interference was "prescribed by law", namely by Articles 212 and 213 of the Criminal Code. It further pursued the legitimate aim of protecting "the reputation or rights of others".

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

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

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

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

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

38. The applicants published a series of critical articles about the local councillor M.C. The domestic courts found the applicants guilty of defamation committed through the mass media on account of the second

article in the series ("Marek C. in episodes (2)"). They held that the applicants had imputed to M.C. that he had broken the law and that his activities had been of an offending nature. Such imputations, in the courts' view, had denigrated him in the eyes of the public and undermined the public confidence necessary for the discharge of his duties as a councillor and vice-chairman of the municipal council.

39. The Court notes that the manner in which a local official carries out his official duties and issues touching on his personal integrity is a matter of general interest to the community (see, among others, *Sokołowski v. Poland*, no. 75955/01, § 45, 29 March 2005; *Kwiecień v. Poland*, no. 51744/99, § 51, 9 January 2007). In their articles the applicants described the political career of M.C., the manner in which he had been perceived by his fellow councillors and further referred to a number of legal proceedings in which M.C. had been involved. For the Court, there is no doubt that those were matters of public interest and that reporting on them formed an integral part of the task of the media in a democratic society.

40. It should be further observed that M.C. was an elected local official who "inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance" (see, *Lingens*, cited above, § 42; *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports* ofJudgments *and Decisions* 1997-IV; *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII; *Kwiecień*, cited above, § 47).

41. The applicants in the present case were journalists. The Court has repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular the protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 79, 7 February 2012). Particularly strong reasons must be provided for any measure affecting this role of the press and limiting access to information which the public has the right to receive (see, *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 58, Series A no. 204).

42. The domestic courts' position in the case was that the applicants intended to portray M.C. as an offender by referring to three particular events in which he has been involved. They placed particular emphasis on the subtitle "Councillor – offender?" and the term "the apex of the offending activities" used in the article. On the basis of their analysis, the domestic courts concluded that the applicants' assertions were either untrue or

distorted to the point that they exceeded the limits of permissible criticism (see paragraph 13 above). They held in the operative part of the judgment that the applicants had alleged that M.C. had broken the law and that his activities had been of an offending nature.

43. In their article the applicants referred, amongst other things, to the following facts. Firstly, they stated that M.C. had lost a court case with a local radio journalist. In that case the local councillor was found guilty of defamation but the proceedings against him were conditionally discontinued (1). The domestic courts reproached the applicants for having failed to mention that the decision at issue had not been final and that they had somehow blurred the discontinuation of the proceedings with the conviction. Secondly, the applicants referred to the rejection of M.C.'s financial report concerning his presidential campaign and the subsequent forfeiture of some of the donations made to his committee (2). In this respect, the domestic courts held that it was untrue that M.C. had personally breached the provisions of the electoral law because the irregularities established had formally concerned his electoral committee. Thirdly, the applicants reported that M.C. had disclosed confidential information from a hearing held in private and had thus broken the law (3). Here, the domestic courts observed that the applicants had not been entitled to report on the matter since no proceedings had been instituted against M.C. in this respect.

44. The Court is unable to follow the domestic courts' analysis of the impugned passages, which appears to be unduly restrictive and formalistic. With regard to the proceedings against M.C. brought by a local radio journalist, even if it would have been more appropriate to mention that it was only a first-instance ruling, the applicants nevertheless accurately reported that M.C. had been found guilty of defamation. As regards the assertion concerning the financial irregularities during the presidential campaign, the Court notes that M.C. had not been held personally liable. However, it is reasonable to consider that he bore at least political responsibility for the irregularities established in the financing of his campaign. With regard to the alleged disclosure of confidential information, the Court observes that the domestic courts' analysis was very restrictive; it had been established in the proceedings against the applicants that such information, namely a witness statement had been disclosed by M.C. (see paragraph 18 above). The degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, in particular when expressing his opinion in the form of a value judgment (see, *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 46, ECHR 2002-I; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 43, ECHR 2003-XI; and *Kasabova v. Bulgaria*, no. 22385/03, § 62, 19 April 2011).

45. Having regard to the above and taking account of the general context of the series of articles, the Court finds that even if the allegation that M.C. had been involved in "offending activities" may be seen as excessive, there was certainly sufficient information available in them to warrant an opinion that the councillor "had broken the law". That latter assertion may be considered to have been fair comment on a matter of public interest which was underpinned by a sufficient factual basis. It appears that it was the applicants' primary intention to expose M.C.'s reprehensible behaviour in public life and not to label him as an offender. Indeed, in the opening line of their article of 4 February 2004 they stated that "the activity of M.C. has been based on balancing on the edge of the law, and even on breaking it" (see paragraph 7 above). The applicants repeated the same argument in their appeal against the trial court's judgment.

46. The exercise of the freedom of expression carries with it "duties and responsibilities" which also apply to the press. Consequently, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, among other authorities, *Bladet Tromsø and Stensaas*, cited above, § 65; *Kasabova*, cited above, § 63). The Court considers that in the present case the applicants complied with those obligations. When preparing their articles, they approached a significant number of M.C.'s former collaborators and fellow local politicians to have as objective a picture of him as possible. They requested M.C. to comment on the court cases in which he had been involved; however, their requests were refused.

47. Furthermore, the content and the tone of the articles were on the whole fairly balanced. The domestic courts limited their assessment to certain passages from the articles and somehow disregarded the general critical opinion about M.C.'s activities as a local politician which was supported by information from various sources. Having regard to the overall context of the series of articles published by the applicants, the Court considers that they do not appear to have been a gratuitous personal attack on M.C. It emerges from the articles, which were not in that part contested by M.C., that he was a divisive and antagonistic figure in local politics as evidenced by a number of statements quoted in the two articles. In this connection, the Court notes also the very negative assessment of M.C. expressed in a statement of the municipal council signed by thirty-four councillors (see paragraph 8 above). Since M.C. was a controversial figure in local politics, he should have been prepared to display a greater degree of tolerance when exposed to scathing remarks about his performance or policies (see, *mutatis mutandis*, *Lombardo and Others v. Malta*, no. 7333/06, § 54, 24 April 2007; *Kubaszewski v. Poland*, no. 571/04, § 43, 2 February 2010). Lastly, the Court has accepted on many occasions that

a degree of exaggeration and immoderation is allowed for those who take part in a public debate on issues of general interest (see, *Mamère*, cited above, § 25; *Dąbrowski v. Poland*, no. 18235/02, § 35, 19 December 2006).

48. In conclusion, the Court considers that the reasons adduced by the domestic courts were not "relevant and sufficient" to justify the interference in issue and the standards applied by them were not fully compatible with those embodied in Article 10. Having regard to the vital role of the press in a democratic society, the interference was disproportionate to the legitimate aim pursued and not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicants claimed 10,000 Polish zlotys (EUR 2,380) in respect of non-pecuniary damage related to the violation of their right to freedom of expression.

52. The Government submitted that a finding of a violation would constitute sufficient just satisfaction should the Court establish that there had been a violation of Article 10 in the case.

53. The Court accepts that the applicants suffered non-pecuniary damage – such as distress and frustration resulting from the conviction – which is not sufficiently compensated by the finding of a violation of the Convention and awards the amount claimed in full.

B. Costs and expenses

54. The applicants did not submit a claim for costs and expenses.

C. Default interest

55. 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 jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,380 (two thousand three hundred and eighty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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 amount 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 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	David Thór Björgvinsson
Deputy Registrar	President