

Journalist wrongly convicted for publishing an interview with a politician without his consent

In today's Chamber judgment in the case [Wizerkaniuk v. Poland](#) (application no. 18990/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 10 (freedom of expression and information) of the European Convention on Human Rights.

The case concerned the conviction of a journalist for publishing an interview with a member of parliament without his authorisation.

Principal facts

The applicant, Jerzy Wizerkaniuk, is a Polish national who was born in 1952 and lives in Kościan (Poland). He was the editor-in-chief and a co-owner of a local newspaper, *Gazeta Kościańska*.

In February 2003, two journalists working for that newspaper interviewed a member of parliament. The interview, which took place in the parliamentarian's office, was tape-recorded and lasted for about two hours. Having seen the text of the interview before it was printed in the newspaper, the parliamentarian refused to authorise its publication.

About two months after the interview had taken place, the newspaper published parts of it, word for word as recorded on the tape. The text specified that the parliamentarian had refused to authorise the publication.

A few days later, following a complaint by the parliamentarian to the prosecutor, criminal proceedings were opened against Mr Wizerkaniuk on charges of publishing an interview without the authorisation of the person interviewed. The relevant law, the 1984 Press Act, provided for a criminal sanction if interviews were published without the interviewed person's consent. Mr Wizerkaniuk was found guilty as charged and sentenced to a fine, the courts having concluded that his actions had breached the parliamentarian's personal rights.

Mr Wizerkaniuk unsuccessfully challenged the constitutionality of the Press Act before the Polish Constitutional Court, despite the Prosecutor General, the Speaker of the Parliament and the Ombudsman all having submitted opinions to the fact that the law was incompatible with the Constitution. The Constitutional Court did not consider civil law remedies, available after an infringement of personal rights was found, sufficient to provide effective redress in that respect. In addition, it held that, if journalists chose to summarise the statements of an interviewed individual, they were not obliged to seek authorisation to publish them nor to inform the person who made them prior to publication. The court concluded that the legal requirement for

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

authorisation before publication was a guarantee for readers that the statements purportedly made during interviews were authentic.

One Constitutional Court judge expressed a dissenting opinion to the effect that the authorisation requirement was in fact censorship which made it impossible for the reader to know what an interviewee had originally said. It was thus possible to dissuade journalists from asking uncomfortable questions for fear that the publication might be stopped. The imposition of a criminal sanction for publishing unauthorised interviews was therefore excessive and had a chilling effect on public debate, the dissenting judge concluded.

Complaints, procedure and composition of the Court

Relying on Article 10, Mr Wizerkaniuk complained about his criminal conviction.

The application was lodged with the European Court of Human Rights on 14 May 2005.

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

Nicolas **Bratza** (the United Kingdom), *President*,
Lech **Garlicki** (Poland),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), *Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Admissibility

The Court noted that it had accepted in its earlier case law that a complaint before the Polish Constitutional Court was an effective remedy for the purposes of the Convention. However, the Court observed that Mr Wizerkaniuk had lodged his application before the Constitutional Court only after he had brought his application before the Court. Consequently, the application was admissible before the Court.

Freedom of expression (Article 10)

The Polish courts had applied the relevant law, the 1984 Press Act, and as a result had convicted Mr Wizerkaniuk for publishing an interview without the prior consent of the interviewed individual. The Court emphasised that an obligation to verify that quotations were accurate was journalists' professional duty. However, it warned that the existence of a threat of criminal sanctions for journalists because of their work would inevitably have a chilling effect on the exercise of journalistic freedom of expression, which in turn would have a detrimental effect on society as a whole.

The Court then recalled that politicians, because of the role they assumed in society, had knowingly opened themselves to public scrutiny and therefore had to display a greater degree of tolerance to criticism than private individuals. Mr Wizerkaniuk had interviewed the parliamentarian about his political and business activities, a matter of general public interest which Mr Wizerkaniuk had been entitled to publicise and about which the local community had been entitled to be informed.

The Polish courts had imposed a criminal sanction on Mr Wizerkaniuk as an automatic punishment for publishing an interview without authorisation. The politician had not been obliged to give any reasons for refusing to authorise the publication of his interview. In addition, the criminal sanction had been entirely unrelated to the content of the article as the publication had not distorted in any way the words of the politician during the interview. The courts had not been required by domestic law to consider the fact that the interviewed person was a politician. The law had allowed interviewees to prevent journalists from publishing any interview they regarded as embarrassing or unflattering, regardless of how truthful or accurate it was. Consequently, the law could have resulted in dissuading journalists from putting probing questions for fear that their interlocutors might later block the publication of the entire interview by refusing to grant an authorisation.

The Court had accepted in its earlier case law that damages, awarded after an article had been published, to people whose private life rights had suffered as a result of publications, were an adequate remedy for such violations.

The Press Act had been published almost three decades ago, before the collapse of the communist system in Poland and at a time when all media had been subjected to preventive censorship. The Court found that the way the law had been applied in respect of Mr Wizerkaniuk, had not been compatible with freedom of expression in a democratic society.

Finally, the Court acknowledged the unanimous agreement of the other legal authorities in the country which had considered that the Press Act had been incompatible with the Constitution. It also found paradoxical the fact that the more accurately journalists presented a piece of information, by providing citations during interviews, the higher the risk they ran of being criminally prosecuted if no authorisation was obtained.

The Court concluded that the criminal sanctions imposed on Mr Wizerkaniuk had been in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Poland was to pay Mr Wizerkaniuk 256 euros (EUR) in respect of pecuniary damage, EUR 4,000 in respect of non pecuniary damage and EUR 4,100 for costs and expenses.

Separate opinions

Judges Bratza and Hirvelä expressed a joint concurring opinion, and Judges Garlicki and Vučinić expressed a separate joint concurring opinion, the texts of which are attached to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.