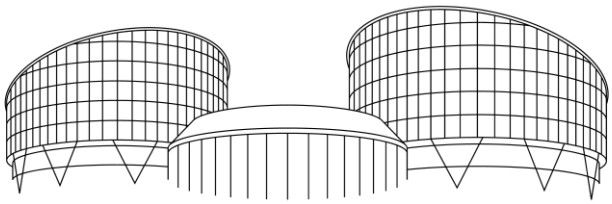

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF WOJTAS-KALETA v. POLAND

(Application no. 20436/02)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Wojtas-Kaleta v. Poland**,**

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 20436/02) 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, Ms Helena Wojtas-Kaleta ("the applicant"), on 6 October 2001.

2. 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 her right to freedom of expression guaranteed by Article 10 of the Convention as a result of a reprimand imposed on her by her employer, a public television company.

4. On 17 September 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. Third-party comments were received from the Helsinki Foundation for Human Rights, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1943 and lives in Wrocław.

7. The applicant was a journalist employed by *Telewizja Polska Spółka Akcjna* (TVP), the Polish public television company. On 1 April 1999 *Gazeta Wyborcza*, a national newspaper, published an article reporting that two classical music programmes had been taken off the air. The article cited well-known composers, critics and journalists who had expressed their concerns about the lack of support for classical music and about the fact that the quality of public television programmes was being negatively affected as a result of fierce competition from private broadcasters. The article also quoted an opinion which had been expressed by the applicant in an interview in her capacity as the President of the Polish Public Television Journalists' Union (*Syndykat Dziennikarzy Polskich Telewizji Polskiej).*

The relevant part of the article read as follows:

> "... Ms Kaletowa, the President of the Polish Public Television Journalists' Union said: 'We have received the decision very badly, especially as the new programme proposals are not concrete. Director K. stated that the changes were not aimed at getting rid of classical music but, on the contrary, at creating new possibilities for it. I take this statement at face value, although no steps have been taken so far which could confirm these good intentions'."

8. The applicant also signed an open letter addressed by 34 representatives of cultural and artistic circles in Wrocław to the board of TVP. The letter stated that classical music was a common value and a pillar of national identity and that the lack of a stable and coherent policy with respect to the broadcasting of classical music constituted a threat to culture and to the amateur music movement. By way of example, the authors mentioned two music programmes which had been discontinued and replaced by "pseudo-musical kitsch".

The open letter read, *inter alia*:

> "Everybody involved in music is deeply concerned by the marginalisation of culture and music in our country and, in particular, in our region.
>
> Music is the heritage of the nation. It is also the universal language of art, spoken by citizens throughout the world. Music constitutes one of the pillars of our national identity and we must preserve and disseminate both the work of previous centuries and of modern times. Chopin, Szymanowski, Górecki, Lutosławski, Kilar or Penderecki are composers of whom we are proud.
>
> ... All these achievements are seriously jeopardised. There is a lack of money and no stable and coherent policy of protection and no systematic co-operation with the media. As regards regional television, despite the principles governing the public TV's mission, concerts, magazines, cultural and music programmes, such as 'MAK', 'TUBA', 'Meeting Classical Music' are disappearing and air time is being polluted by violence and pseudo-musical kitsch.
>
> The NSZZ Solidarność Trade Union and the representatives of cultural and artistic circles ... protest against these measures."

9. On 15 April 1999 the applicant was reprimanded in writing by her employer for failing to observe the company's general regulation no. 14 § 2, which required her to protect her employer's good name (see paragraph 18 below). The applicant argued in her appeal of 20 April 1999 to the Regional Director of TVP that when commenting on the employer's decision she had been acting in her capacity as the president of a trade union.

The employer stated in reply that the comments in question did not refer to matters which could fall within the trade union's scrutiny. In addition, the open letter which the applicant had signed contained untrue and tendentiously presented information that was harmful to the company's good name.

The reprimand was to be kept in her records for a period of up to one year, depending on the applicant's behaviour.

10. The applicant unsuccessfully objected to the reprimand. She argued that as a member of the trade union she had a right to criticise measures impairing the rights of employees.

11. On 13 May 1999 the applicant lodged a claim against TVP with the Wrocław District Court, requesting that the reprimand be withdrawn. She alleged that the reprimand had been an act of revenge by her employer for her trade-union activity and disagreed with the assessment made of her behaviour.

12. By a judgment of 9 January 2001 the Wrocław District Court dismissed her claim. The court agreed with the employer's arguments that the issue of changes in television programming was not a matter on which the trade union could comment and that the applicant had failed to observe the obligation of loyalty imposed on her as an employee. The court found that the applicant was guilty of having behaved in an unlawful manner and that this was a necessary and sufficient prerequisite for the disciplinary measure imposed on her.

13. The applicant appealed, pleading a violation of the applicable provisions of the Trade Unions Act, read in conjunction with Article 54 of the Polish Constitution guaranteeing freedom of expression. She submitted, *inter alia:*

> "The lower court has breached [*inter alia*] Article 54 of the Constitution in that it accepted that the applicant, as the President of the Polish Public Television Journalists' Trade Union, was not entitled to make comments to the press and to sign the open letter concerning the situation in its regional branch, despite the fact that she was acting in the employees' interest, in compliance with her legal obligations and without harming the employer's good name. [The letter] had a close connection with the programming changes which were to the detriment of the musical culture in Lower Silesia, but, first and foremost, also infringed the material and moral interests of the employees who could lose their jobs and broadcasting time."

14. On 10 April 2001 the Wroclaw Regional Court upheld the contested judgment. It stated that the applicant's comments had not been aimed at the protection of employees' rights in connection with her function in the trade

union but had taken the form of an assessment of the changes in programming policy. It concluded that the applicant had acted to the detriment of the employer and had thus breached her obligation of loyalty. Consequently, the employer had been entitled to impose the reprimand on her.

II. RELEVANT DOMESTIC LAW

15. Article 54 of the Constitution provides:

> "1. The freedom to express opinions, and to acquire and disseminate information shall be ensured to everyone.
>
> 2. Preventive censorship of means of social communication and licensing of the press shall be prohibited."

16. The rights and obligations of employees are governed by the Labour Code. Pursuant to Article 108 of the Code, a reprimand may be imposed on an employee for a failure to observe regulations concerning the organisation of work, work safety and hygiene regulations, fire-protection regulations or regulations governing working hours. Under Article 111, the nature of the breach concerned, the degree of the employee's guilt and previous work record shall be taken into consideration.

17. Section 21(1) of the Broadcasting Act of 29 December 1992 (*ustawa o radiofonii i telewizji*) reads:

> "Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diversified programme services and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well balanced, independent and innovative, and marked by high quality and integrity of broadcasting".

Section 21(3) of the Act provides:

> "Programme services of public radio and television should:
>
> (1) be guided by a sense of responsibility for the content of the message and by the need to protect the good reputation of public radio and television;
>
> (2) provide reliable information about the vast diversity of events and processes occurring in Poland and abroad;
>
> (3) encourage an unconstrained development of citizens' views and the formation of public opinion;
>
> (4) enable citizens and their organisations to take part in public life by expressing diversified views and approaches as well as by exercising their right to social supervision and criticism;

(5) assist the development of culture, science and education, with special emphasis on Polish intellectual and artistic achievements;

(6) respect the Christian system of values, being guided by the universal principles of ethics;

(7) strengthen family ties;

(7a) promote healthy life-styles;

(8) contribute to combating social pathologies."

18. Under Regulation no. 14 of the TVP Employees Regulations the employee has a duty to uphold the company's good name.

19. Section 10(1) of the Press Act (*Prawo prasowe*) provides:

"The journalist's task is to serve the nation and the State. When carrying out this task a journalist should act in compliance with ethical standards and principles of social co-existence, within the limits set by law."

20. Under section 10(2) of the Act a journalist who is also an employee is obliged to follow the broadcasting policy chosen by his or her employer, as set out in a statute or a regulation.

III. RELEVANT NON-CONVENTION MATERIAL

21. Recommendation CM/Rec(2007)3 of the Council of Europe Committee of Ministers to member states on the remit of public service media in the information society, adopted on 31 January 2007, provides, inter alia:

"Member states have the competence to define and assign a public service remit to one or more specific media organisations, in the public and/or private sector, maintaining the key elements underpinning the traditional public service remit, while adjusting it to new circumstances. This remit should be performed with the use of state-of-the-art technology appropriate for the purpose. These elements have been referred to on several occasions in Council of Europe documents, which have defined public service broadcasting as, amongst other things:

a) a reference point for all members of the public, offering universal access;

b) a factor for social cohesion and integration of all individuals, groups and communities;

c) a source of impartial and independent information and comment, and of innovatory and varied content which complies with high ethical and quality standards;

d) a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals;

e) an active contributor to audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage. (...)"

22. As a reference point for all members of the public, public service media "should offer news, information, educational, cultural, sports and entertainment programmes and content aimed at the various categories of the public and which, taken as a whole, constitute an added public value compared to those of other broadcasters and content providers".

23. Its paragraph 14 further provides:

"Public service media should play an important role in promoting broader democratic debate and participation, with the assistance, among other things, of new interactive technologies, offering the public greater involvement in the democratic process. Public service media should fulfil a vital role in educating active and responsible citizens, providing not only quality content but also a forum for public debate, open to diverse ideas and convictions in society, and a platform for disseminating democratic values."

24. Paragraph 20 reads:

"Public service media should stimulate creativity and reflect the diversity of cultural activities, through their cultural programmes, in fields such as music, arts and theatre, and they should, where appropriate, support cultural events and performances."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that her right to freedom of expression as provided for in Article 10 of the Convention had been breached. This provision 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

26. The Government acknowledged that the applicant had exhausted relevant domestic remedies.

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. The parties' submissions

a. The applicant

28. The applicant submitted that her right to freedom of expression had been breached. As a journalist, she had had a right and an obligation to comment on matters of public interest. That obligation applied with all the more force to issues concerning her workplace, given that she had been employed by the public television broadcaster. Her objective before the domestic courts had not been limited to having the reprimand annulled. She had also wished to obtain protection of the journalists' right to comment on matters of public interest and considered that the programming line of the public television broadcaster should indubitably be qualified as such.

29. The applicant emphasised that she appreciated that the exercise of freedom of expression was not unlimited. However, she argued that the relevant restrictions should not have been applied to her case which involved defence of the public interest, namely journalistic freedom, effective social communication and the public's right of access to information.

30. She further submitted that the Polish legislation, in particular section 1 of the Press Act, guaranteed freedom of expression to journalists, including the right to express various forms of criticism. Journalists were the guarantors of the public's right of access to information. In practice, the citizens' right to freedom of information was made effective through journalists being able to enjoy their rights in the exercise of their profession. In the applicant's case, the courts had curtailed her freedom of expression, as they had regarded her merely as an employee and had referred only to her obligations as an employee, while disregarding her professional obligations as a journalist.

b. The Government

31. The Government submitted that the applicant, as an employee, had been bound to comply with the regulations applicable at her workplace, and in particular with regulation no. 14, which made it one of her essential duties to preserve the company's good name. In the case examined by the domestic authorities, the applicant's interests had had to be balanced against the interests of her employer. The fact that the applicant was a journalist and her employer a public broadcaster should be irrelevant to the Court's assessment.

32. The applicant's comments questioning the direction of changes in television programmes had presented her employer in a bad light. They had been reported in a national high-circulation newspaper and had reached a wide range of readers. It was not without significance that she had made her comments to a medium that competed with her employer. Furthermore, the open letter she had subsequently signed contained even harsher criticism of the public television broadcaster because it suggested that it had departed from the public mission it was required to fulfil.

33. The Government submitted that on 21 March 1999 the applicant had been formally authorised by the Executive Board of the Polish Journalists' Union to "act on behalf of the Union in an open forum and in dealings with the competent authorities and bodies in order to present facts and circumstances [that had caused] contentious situations to arise in the Wrocław Regional Public Television, in particular [in respect] of changes in the programming which allegedly had [had] an adverse impact on the ... musical culture." However, the comments made by the applicant had concerned issues which had no impact on the rights and obligations of the employees of the public television broadcaster. They could not therefore be construed as having been made in defence of their labour rights and in her capacity as a trade-union activist. The concern for the best interests of the employer was incumbent on all employees, including trade-union activists.

34. The Government submitted that the applicant had regarded her statements as being made in her capacity as a trade-union activist. However, in the event that the Court were to accept that for the assessment of the case the fact that she had been a journalist was also relevant, they argued as follows. They acknowledged that the applicant's concern about the lack of classical music in television programmes could also be regarded as a matter of general concern as music was a part of national identity and heritage and the applicant's comments concerned the broadcasting policy of a public broadcasting company.

However, they emphasised that the applicant was first and foremost an employee. She had therefore been obliged to respect the broadcasting policy chosen by her employer, as stated in the statute or regulations.

35. Moreover, before going public, she should have used internal channels within the company and tried to raise the issues which she had later addressed in her public statements.

2. The third party's submissions

36. The intervener submitted that the right to freedom of speech in the workplace could legitimately be restricted, regard being had to the employer's interests. An employee had a special duty towards its employer and therefore the exercise of his or her freedom of expression could be restricted. Such restriction was in general in compliance with the Convention, unless it infringed upon the principle of proportionality.

37. It argued that the scope of free speech in the workplace was broader for a trade-union activist than for an ordinary employee. That was necessitated by the special function of trade unions, namely the protection of the employees' interests and rights.

38. It further argued that limits of freedom of speech at the workplace could be broader where a public employer was concerned. Such institutions should be subject to careful public scrutiny due to their public function or to the fact that they managed public property. Since TVP was a public broadcaster, it could not be treated as a typical private employer, although in strictly technical terms it was a joint stock company. Guarantees of the employee's freedom of speech should be stronger in such public institutions.

39. TVP's mission was defined by the Public Radio and Television Act (see paragraph 17 above). Certain parts of its broadcasting time had to be assigned to news and current-affairs programmes, to education, art and culture and to family, child and youth-related programmes. The public broadcaster was obliged to support culture, science and education as well as to engage in the debate on matters of public concern. The main goal of these provisions was to prevent the commercialisation of programming and policy dictated first and foremost by commercial considerations. It was common knowledge in Poland that TVP had become increasingly commercialised. That had undermined its public-service rationale. It had often been the case that it had defined its policies primarily by reference to business efficiency rather than to its mission. Although gradual commercialisation of the programmes of public broadcasters could be said to be unavoidable, the laws on public television and radio, taken together with the fact that public broadcasters derived benefits from mandatory licence fees paid by all users, required keeping standards compatible with their public mission. Hence, actions taken by employees in order to enforce compliance with that mission should be afforded particularly strong legal protection.

40. The intervener further emphasised that the employee's duty of loyalty did not entail an absolute prohibition of criticism of the employer. It aimed essentially at protecting information relevant to its business

efficiency. A private employer generally could discipline an employee as it saw fit within limits imposed by law and by the prohibition of discrimination. However, the circumstances under which public employers could discipline employees for the exercise of their right to freedom of expression were more restrictive.

3. The principles established by the Court's case-law

41. The fundamental principles in this sphere are well established in the Court's case-law and have been summed up as follows (see, among other authorities, *Jersild v. Denmark*, cited above, p. 23, § 31; *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI,; *Sokołowski v. Poland*, no. 75955/01, § 41, 29 March 2005; and *Guja v. Moldova* [GC], no. 14277/04, § 69, ECHR 2008-...):

> "(i) Freedom of expression 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 of Article 10, 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 pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10**.**
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered 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 and 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 and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, 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 relied on an acceptable assessment of the relevant facts..."

42. The Court further reiterates that Article 10 applies also to the workplace and that civil servants also enjoy the right to freedom of expression (see, *Vogt, Vogt v Germany*, 26 September 1995, § 53, Series A no. 323; *Wille v. Liechtenstein* [GC], no. 28396/95, § 41, ECHR 1999-VII; *Ahmed and Others v the United Kingdom*, 2 September 1998, § 56, *Reports*

1998-VI; *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000; and *Guja v. Moldova*, cited above, § 52).

43. The Court observes that the present case bears a certain resemblance to the case of *Fuentes Bobo v. Spain*, referred to above, in which it found a violation of Article 10 in respect of a journalist who had publicly criticised the programming changes of a public television broadcaster. Likewise, in the present case, the applicant, a journalist, criticised publicly the conduct of her employer which was also a public, State-owned broadcasting company. It therefore raises a problem of how the limits of loyalty of journalists working for such companies should be delineated and, in consequence, what restrictions can be imposed on them in public debate. In this context, the Court is mindful that employees owe to their employer a duty of loyalty, reserve and discretion (see *Vogt v. Germany*, cited above, § 53; *Ahmed and Others v. the United Kingdom*, cited above, § 55; and *De Diego Nafría v. Spain*, no. 46833/99, §37, 14 March 2002).

4. Application of those principles to the facts of the case

44. The Court notes that it was common ground between the parties that the imposition of the reprimand constituted an interference with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. Furthermore, there was no dispute that the interference was prescribed by law and pursued a legitimate aim, namely the "protection of the reputation or rights of others" within the meaning of Article 10 § 2. The dispute in the case relates therefore solely to the question whether the interference was "necessary in a democratic society."

45. Given that the applicant exercised her freedom of expression and that that freedom applies also in the workplace (see paragraph 43 above), the Court considers that it is not necessary to draw a distinction between the applicant's role as an employee of a public television company, a trade-union activist and a journalist and to make a separate analysis of the scope of that freedom which she could legitimately enjoy in each of these roles. However, the Court is of the view that the applicant's combined professional and trade-union roles must be taken into consideration for the purposes of examining whether the interference complained of was necessary in a democratic society.

46. Moreover, the Court, having regard to the role played by journalists in society and to their responsibilities to contribute to and encourage public debate, considers that the obligation of discretion and constraint cannot be said to apply with equal force to journalists, given that it is in the nature of their functions to impart information and ideas. The Court notes that the issues involved in the present case can be said to have been of public interest and concern. It reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see, among other authorities, *Sürek v. Turkey (no. 1)* [GC],

no. 26682/95, § 61, ECHR 1999-IV) and considers that the programming policy of public media is a matter of such interest.

47. Where a State decides to create a public broadcasting system, the domestic law and practice must guarantee that the system provides a pluralistic audiovisual service. It is a well-known fact that after the collapse of the Communist regime the mass media in Poland in the 1990s underwent massive and rapid changes, brought about essentially by the disappearance of the State's monopoly on broadcasting. However, the legislature decided to maintain public television. As a result, it started to operate in the context of commercial competition with many new and private broadcasters which provoked a vigorous and ongoing public debate on its role in society and the obligations which its special status should entail. At the same time, under the applicable legislation the public television company was charged with a special mission including, among other things, assisting the development of culture, with special emphasis on Polish intellectual and artistic achievements (see paragraph 17 above).

In the present case, the applicant argued, both in the interview which she gave for the purposes of the article published in *Gazeta Wyborcza* and in the subsequent open letter which she had co-signed, that the changes in the programme service of the public television company did not sit well with the role which public television should play in society. She referred to widely shared concerns that the quality of its music programmes was being negatively affected as a result of fierce competition with private broadcasters. In this connection, the Court notes the applicant's argument that, as a journalist, she had a right and an obligation to comment on matters of public interest. In the Court's view, in the particular context of the applicant's case, her obligations of loyalty and constraint must be weighed against the public character of the broadcasting company she worked for.

48. In that connection, the Court notes that the employer based the reprimand it issued to the applicant on a very wide interpretation of the employees' obligation to protect its good name. It acted on the assumption that the mere fact that the applicant had participated in a public debate concerning its programming policy and had criticised it was sufficient to establish that she had been acting to her employer's detriment, in breach of her obligations.

49. The courts, when examining the applicant's request for that reprimand to be set aside, endorsed the employer's conclusions. However, the Court observes that they took no note of the applicant's argument that she had been acting in the public interest. They limited their analysis to a finding that her comments amounted to acting to the employer's detriment. As a result, they did not examine whether and how the subject matter of the applicant's comments and the context in which they had been made could have affected the permissible scope of her freedom of expression. Such an approach would have been compatible with the Convention standards (see,

among many other authorities, *Sokołowski v. Poland*, no. 75955/01, judgment of 29 March 2005, § 47).

50. Another factor relevant to the balancing exercise which the Court is required to carry out is the authenticity of the information disclosed to the public. It is open to the competent State authorities to adopt measures intended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236, and *Guja v. Moldova*, cited above, § 75). However, in the present case it was not asserted by the employer or later established by the courts that the applicant's comments had been devoid of any factual basis (compare and contrast *De Diego Nafría v. Spain*, no. 46833/99, 14 March 2002, § 40, where the Court found no violation of Article 10 of the Convention relying, *inter alia*, on the fact that the applicant's allegations lacked any factual basis). Moreover, not only the applicant's statements relied on a sufficient factual basis, but also, in part, amounted to value judgments, the truth of which is not susceptible of proof (see, for instance, *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II; *Sokołowski v. Poland*, cited above, § 48).

51. It is also relevant to note that it has never been alleged that the applicant's comments could reasonably be seen as a gratuitous personal attack on another, or that an intention to offend could be ascribed to her them. The Court notes that the tone of the impugned statements was measured and that she did not make any personal accusations against named members of the management (compare and contrast, *De Diego Nafría v. Spain*, cited above, §§ 35-36). Furthermore, it is also relevant that the applicant's good faith was never challenged either by the employer or by the domestic authorities involved in the proceedings (see *Guja v. Moldova*, cited above, §§ 92–94, *mutatis mutandis*).

52. Being mindful of the importance of the right to freedom of expression on matters of general interest, of the applicant's professional obligations and responsibilities as a journalist and of the duties and responsibilities of employees towards their employers, and having weighed up the other different interests involved in the present case, the Court comes to the conclusion that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

53. Accordingly, there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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."

55. The applicant did not submit a claim for damages or for the reimbursement of legal costs. She submitted that she only aimed at obtaining the Court's judgment on grounds of principle. Accordingly, the Court considers that there is no call to award her any sum on that account.

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.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President