***Kuliś and Różycki v. Poland* (ECtHR) | Columbia Global Freedom of Expression**

**Case Analysis #3**

***Meta-Data*:**

* **Case Number**: No. 27209/03
* **Corresponding Law Reference**: ECtHR, Kuliś and Różycki v. Poland, App. No. 27209/03 (2010)
* **Date of decision**: January 06, 2010
* **Featured case**: N/A
* **Region**: Europe and Central Asia
* **Country**: Poland
* **Type of expression**: Press/ Newspapers
* **Judicial Body**: European Court of Human Rights (ECtHR)
* **Type of law**: International/Regional Human Rights Law
* **Main Themes**: Commercial Speech, Defamation/Reputation
* **Outcome**: ECtHR, Article 10 violation
* **Status**: Closed
* **Tags**: Cartoons, Advertising, Satire

***Analysis:***

* **Summary and Outcome**:

The European Court of Human Rights (ECtHR – Fourth Section) unanimously held that the applicants’ rights under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated. The claim before the ECtHR had arisen out of the decisions of the Polish domestic courts to justify interference with the applicants’ freedom of expression as press as necessary in a democratic society to protect the reputation or rights of a company. The form of expression in contention was a cartoon published by the applicants in the children’s supplement of the magazine ‘Angora’ which accompanied an article criticizing an advertising campaign of Star Foods Company. The ECtHR, in its decision, distinguished its reasoning from that of the domestic courts by holding that the cartoon was a satirical response to the inappropriate advertising campaign of the Company, which was aimed at contributing to a debate of public interest on the campaign as opposed to at denigrating the Company’s products. The ECtHR also observed that the press was entitled to a degree of exaggeration and provocation if it facilitated better performance of their duty to impart information. It held that due to the reasons offered by the domestic courts not being sufficient or relevant enough, and due to the interests of a democratic society in the freedom of the press, the interference with the applicants’ right to expression was disproportionate to the legitimate aim pursued and was not necessary for the protection of the reputation or rights of others.

* **Facts**:

The applicants are two Polish nationals – Mr. Mirosław Kuliś and Mr. Piotr Różycki. Mr. Mirosław Kuliś, the first applicant, was the owner of a publishing house known as “Westa Druk” which publishes a weekly magazine ‘Angora’, containing a supplement for children ‘Angorka’. Mr. Piotr Różycki, the second applicant, was the editor-in-chief of the magazine. On May 16, 1999, ‘Angorka’ published an article which was critical of an advertising campaign launched by Star Foods Company for its potato-crisps. The advertising campaign being criticized had referred to a popular children’s cartoon character, Reksio, as a ‘murderer’. The article was accompanied by a [cartoon](https://eurolawyer.at/wp-content/uploads/pdf/EGMR-27209-03.pdf) which was featured in the first page of the edition of the ‘Angorka’ in question. In the cartoon, a boy was holding a packet of the crisps with the name of the company, and saying to Reksio, “*Don’t worry! I would be a murderer too if I ate this muck!*” The headline atop the cartoon read “*Polish children shocked by crisps advertisement, ‘Reksio is a murderer’*”. The article itself was published on the second page, and was accompanied by another small cartoon in which two cats were holding a packet of crisps. One of the cats was depicted as holding up a piece of paper drawn from the packet with the slogan ‘Reksio murderer’, and saying to the other “*surely, he is sometimes unpleasant, but a murderer?!*”

On November 2, 1999, Star Foods Company lodged a civil claim for protection of personal rights against the applicants. The Company approached the Court, seeking a written apology from the applicants in the ‘Angora’ and ‘Angorka’ for having published cartoons discrediting products manufactured by Star Foods Company, despite there being no justification for the same. The Company also sought reimbursement of legal costs, as well as the payment of the amount of 10,000 PLN to a charity. The Łόdź Regional Court ruled in favour of the Company on May 28, 2001, and ordered the applicants to publish the apology as sought, pay 11,500 PLN as reimbursement of legal costs, and pay 10,000 PLN to a charity. The Regional Court held that given the pejorative language used by the applicants and the nature of the cartoons published, the applicants had overstepped the threshold of permissible criticism, particularly in respect of a children’s magazine. The Regional Court dismissed the argument of the applicants that the cartoons were critical only of the advertisement campaign launched by Star Foods Company, and not of their products. The applicants’ publication was held to have breached the Company’s personal rights.

The applicants’ appeal to the Łόdź Court of Appeal was dismissed on March 21, 2002. The Court reasoned that the criticism contained within “*I would be a murderer too if I ate this muck*” was directed at the taste and quality of the product and not to the advertisement campaign of the Company. It thus, aimed to discredit the products of the Company, and without any justified grounds for doing so. The decision of the Appellate Court also noted that while the applicants had relied on the interests of the children as a justification for their publication, their own slogan had terrified children. The applicants were directed to reimburse the Company for the costs of the appellate proceedings to the amount of 2,500 PLN. On December 12, 2002, the cassation appeal lodged by the applicants was refused by the Supreme Court. Subsequently, the applicants filed an application with the European Court of Human Rights (ECtHR), claiming a violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

* **Decision Overview**:

On October 06, 2009, the ECtHR (Fourth Section) held unanimously that the applicants’ rights under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated.

The contention of the applicants before the ECtHR was that the restriction of the freedom of the press in a democratic society required particularly strong reasons for interference, and that in the present matter, the interference could not be justified as necessary as there was no pressing social need. The applicants stressed, that in such cases, the national margin of appreciation was limited, and that the domestic courts had failed to achieve a balance between the freedom of the press and the reputation of the Company. The applicants urged that the cartoons published by them had to be examined in the context of the highly inappropriate phrases/slogans employed by the Company’s campaign directed at children. Viewed in this context, the applicants argued, it would become apparent that what was at stake was not merely the commercial interests of the Company but a matter of general public debate and public interest which the applicants were justified in joining much like the other newspapers which had raised issues with the inappropriateness of the campaign. The applicants further argued that the cartoon was within the limits of permissible criticism because even though it had employed exaggerated form and provocative language, it was a satirical commentary solely on the advertisement campaign of the Company and not on the quality of its products.

The Government, in turn, contended that the interference with the applicants’ right to freedom of expression was justified as it was pursuant of the legitimate aim of protecting the reputation or rights of others, was prescribed by law, and was necessary in a democratic society given the pressing need to protect the rights of the Company. The Government argued that the applicants had exceeded the limits of permissible criticism and had breached the Company’s personal rights by publishing a cartoon which discredited the products of the Company. The Government argued that the cartoon contained an obvious message to children, ““*that they should keep away from the products referred to in such critical and derogatory language*”” [Para. 26]. The Government thus asserted that the interference complained of by the applicants had been proportionate, necessary, and justified in a democratic society.

*The Court’s assessment of whether the interference with the applicant’s right to freedom of expression could be justified as necessary in a democratic society in order to protect reputation or rights of others*

The ECtHR held that given the insufficiency of the reasons offered by the domestic courts, as well as the dimension of the “*interest of a democratic society in ensuring and maintaining the freedom of the press on subjects of public interest*” [Para. 40], the interference with the applicants’ right to expression was disproportionate to the legitimate aim pursued, and not necessary for the protection of the reputation or rights of others in a democratic society. Accordingly, a violation of the applicants’ rights pursuant to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was pronounced.

The ECtHR noted that domestic courts had construed the word “muck” in the cartoon published by the applicants as being aimed at discrediting the product of the Company without grounds for justification. However, the ECtHR reasoned that the domestic courts had paid insufficient attention to the applicants’ argument that their satirical cartoon had been a response to an advertising campaign targeting children launched by the Company, which formed part of the public debate on the inappropriateness of the campaign. The Court, relying on [*Standard Verlags GmbH v. Austria* [2007] 13071/03](https://hudoc.echr.coe.int/eng#{"fulltext":["Standard%20Verlags%20GmbH%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-77829"]}), noted that the “*applicants’ publication therefore concerned a sphere in which restrictions on freedom of expression are to be strictly construed. Accordingly, the Court must exercise caution when the measures taken by the national authorities are such as to dissuade the press from taking part in the discussion of matters of public interest*” [Para. 37]. The ECtHR also observed that the aim of the applicants’ publication was to raise awareness about the inappropriate slogans used by the Company in their campaign and to make a strong statement about the “*unacceptability of such tactics to generate sales*” [Para. 38], and not to discredit the quality of the crisps. Further, the Court relied on [*Mamère v. France* [2007] 12697/03](https://hudoc.echr.coe.int/eng#{"fulltext":["Mamère%20v.%20France"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-77843"]}) and [*Dąbrowski v. Poland* [2007] 18235/02](https://hudoc.echr.coe.int/eng#{"fulltext":["Dąbrowski%20v.%20Poland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-78562"]}) to hold that the domestic courts had failed to take into consideration the duty of the press to “*impart information and ideas on matters of public interest*” [Para. 39], and that in doing so they could have “*possible recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements*” [Para. 39]. The Court reasoned that the style and language employed by the applicants, while being exaggerated, were a direct response to the type of slogans being used by the Company, and that upon contextualization, they did not exceed the limits of permissible criticism for a free press.

***Direction:***

* **Outcome**: Expands Expression
* **Information**:

The decision of the ECtHR expands expressions by finding that the style of expression employed by the applicants, despite being exaggerated, did not exceed the boundaries permissible to a free press. The Court reasoned that this was due to the motivation for the expression being located in the endeavour to respond to an inappropriate advertising campaign targeting children launched by Star Foods Company to raise awareness and to contribute to the public debate on it. The decision showcases that accurate detection of humorous/satirical intent within the contested expression is possible when due attention is paid to context as well as to the intertexts that the expression is conversing or parodying with (*Godioli*). Consequently, detection orients the answer offered by the Court on the aims of the impugned expression as well as on whether it constitutes a ‘defamatory statement of fact’ or a ‘value judgement’ (*Godioli on [Para. 38] of the decision*). The decision also showcases that when the Court embraces the imbrication of artistic freedom with satire on political or commercial entities, and views it as capable of producing a social commentary, it allows the expression to contribute to a debate of interest to the public (*Polymenopoulou*, [Castells v. Spain [1992] 11798/85](https://hudoc.echr.coe.int/eng#{"fulltext":["Castells%20v.%20Spain"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57772"]})) on which there is scant scope for restrictions (*[Sürek v. Turkey (no. 1)](https://hudoc.echr.coe.int/eng%22%20%5Cl%20%22%7B%5C%22fulltext%5C%22%3A%5B%5C%22S%C3%BCrek%20v.%20Turkey%20%28no.%201%29%20%5BGC%5D%5C%22%5D%2C%5C%22documentcollectionid2%5C%22%3A%5B%5C%22GRANDCHAMBER%5C%22%2C%5C%22CHAMBER%5C%22%5D%2C%5C%22itemid%5C%22%3A%5B%5C%22001-58279%5C%22%5D%7D)* [[1999] 26682/95](https://hudoc.echr.coe.int/eng%22%20%5Cl%20%22%7B%5C%22fulltext%5C%22%3A%5B%5C%22S%C3%BCrek%20v.%20Turkey%20%28no.%201%29%20%5BGC%5D%5C%22%5D%2C%5C%22documentcollectionid2%5C%22%3A%5B%5C%22GRANDCHAMBER%5C%22%2C%5C%22CHAMBER%5C%22%5D%2C%5C%22itemid%5C%22%3A%5B%5C%22001-58279%5C%22%5D%7D)). The decision, if viewed within the pattern of attacks levelled by political or commercial interests at satirical/parodying/humorous expressions, also expands expression by offering hope that the Court can duly consider the seriousness of intent contained within.

***Perspective***:

* **Outcome**: National Perspective (Pursuant to the note on the Style Guide, Pg. 23)
* **Related International and/or regional laws**:

[ECHR, art. 10](https://www.echr.coe.int/Documents/Convention_ENG.pdf);

[ECtHR, Castells v. Spain, App. No. 11798/85 (1992)](https://hudoc.echr.coe.int/eng#{"fulltext":["Castells%20v.%20Spain"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57772"]});

[ECtHR, Dąbrowski v. Poland, App. No. 18235/02 (2007)](https://hudoc.echr.coe.int/eng#{"fulltext":["Dąbrowski%20v.%20Poland"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-78562"]});

[ECtHR, Feldek v. Slovakia, App. No. 29032/95 (2001)](https://hudoc.echr.coe.int/eng#{"fulltext":["Feldek%20v.%20Slovakia"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59588"]});

[ECtHR, Jerusalem v. Austria, App. No. 26958/95 (2001)](https://hudoc.echr.coe.int/eng#{"fulltext":["Jerusalem%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-59220"]});

[ECtHR, Lingens v. Austria, App. No. 9815/82 (1986)](https://hudoc.echr.coe.int/fre#{"fulltext":["Lingens%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57523"]});

[ECtHR, Mamère v. France, App. No. 12697/03 (2007)](https://hudoc.echr.coe.int/eng#{"fulltext":["Mamère%20v.%20France"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-77843"]});

[ECtHR, Nilsen and Johnsen v. Norway, App. No. 23118/93 (1999)](https://hudoc.echr.coe.int/eng#{"fulltext":["Nilsen%20and%20Johnsen%20v.%20Norway"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58364"]});

[ECtHR, Oberschlick v. Austria, App. No. 11662/85 (1991)](https://hudoc.echr.coe.int/eng#{"fulltext":["Oberschlick%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57716"]});

[ECtHR, Prager and Oberschlick v. Austria, App. No. 15974/90 (1995)](https://hudoc.echr.coe.int/eng#{"fulltext":["Prager%20and%20Oberschlick%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-57926"]});

[ECtHR, Standard Verlags GmbH v. Austria, App. No. 13071/03 (2007)](https://hudoc.echr.coe.int/eng#{"fulltext":["Standard%20Verlags%20GmbH%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-77829"]});

[ECtHR, Steel and Morris v. the United Kingdom, App. No. 68416/01 (2005)](https://hudoc.echr.coe.int/eng#{"languageisocode":["ENG"],"appno":["68416/01"],"documentcollectionid2":["CHAMBER"],"itemid":["001-68224"]});

[ECtHR, Sürek v. Turkey (no. 1) [GC], App. No. 26682/95 (1999)](https://hudoc.echr.coe.int/eng#{"fulltext":["Sürek%20v.%20Turkey%20(no.%201)%20[GC]"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58279"]});

[ECtHR, Turhan v. Turkey, App. No. 48176/99 (2005)](https://hudoc.echr.coe.int/eng#{"fulltext":["Turhan%20v.%20Turkey"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-69091"]});

[ECtHR, Vogt v. Germany, App. No. 17851/91 (1995)](https://hudoc.echr.coe.int/fre#{"display":["0"],"languageisocode":["ENG"],"appno":["17851/91"],"documentcollectionid2":["GRANDCHAMBER"],"itemid":["001-58012"]});

[ECtHR, Worm v. Austria, App. No. 22714/93 (1997)](https://hudoc.echr.coe.int/eng#{"fulltext":["Worm%20v.%20Austria"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58087"]}).

* **National law or jurisprudence**:

Pol., Civil Code art. 23 (Protection of personal rights) ([Unofficial translation](https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf));

Pol., Civil Code art. 24 (Means of protection) ([Unofficial translation](https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf)).

* **Other national law or jurisprudence**: N/A

***Significance***:

* **Binding or persuasive precedent within jurisdiction**; **Decision establishes influential or persuasive precedent outside jurisdiction**; **Explanation**:

Standard I: The decision establishes a binding or persuasive precedent within its jurisdiction.

Information: Judgments of the European Court of Human Rights are binding upon parties to the decision.

Standard II: Decision (including concurring or dissenting opinions) establishes influential or persuasive precedent outside its jurisdiction.

Information: The decisions of the European Court of Human Rights have precedential value on the interpretation of the right to freedom of expression for other States Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

* **Related Cases**: Self-generated
* **Date updated**: Saturday, October 31, 2020

***Docs***:

* **Official Case Documents**:

Judgment (ECtHR) (in English) [Attached]

Press Release issued by the Registrar of the ECtHR dated 06.10.2009 (in English) [Attached]

Information Note on the Court’s Case-Law No. 123 (in English) [Attached]

* **Amicus briefs and other legal authorities**:

Case Guide of the ECtHR on Article 10 (Freedom of Expression) (in English) [Attached]

* **Reports, Analysis, and News Articles**:

[Does One Swallow Make a Spring? Artistic and Literary Freedom at the European Court of Human Rights – Eleni Polymenopoulou](https://academic.oup.com/hrlr/article/16/3/511/2452827) [Attached]

[Cartoon Controversies at the European Court of Human Rights: Towards Forensic Humor Studies – Alberto Godioli](https://olh.openlibhums.org/articles/10.16995/olh.571/) [Attached]

[Satire and the Freedom of Expression – ECHR Blog of Oct. 20, 2009](http://echrblog.blogspot.com/2009/10/satire-and-freedom-of-expression.html)