

October 2009

Kuliś and Różycki v. Poland - 27209/03

Judgment 6.10.2009 [Section IV]

Article 10

Article 10-1

Freedom of expression

Civil award against publishers of satirical article on food manufacturer's advertising methods: *violation*

Facts – The first applicant owned a publishing house which published a weekly magazine and a supplement for children. The second applicant was the magazine's editor-in-chief. The children's supplement published an article criticising an advertising campaign by a potato-crisp manufacturer which had involved calling a popular children's cartoon character (Reksio) "a murderer". The first page of the supplement featured a cartoon showing a boy holding a packet, with the name of the manufacturer on it, saying to Reksio: "Don't worry! I would be a murderer too if I ate this muck!" Above the cartoon was a large heading reading "Polish children shocked by crisps advertisement, 'Reksio is a murderer'". The article itself appeared on the second page. The crisp manufacturer brought civil proceedings for protection of its personal rights against both applicants and obtained an apology, costs and an order requiring the applicants to make a payment to charity. In making that order the regional court found that the applicants' article had discredited the manufacturer's products by using strongly pejorative words conveying disgust and repulsion. The applicants' appeals were dismissed.

Law – Article 10: The only point at issue was whether the interference had been necessary in a democratic society to protect the reputation or rights of others. The domestic courts had found that the use of the word "muck" in the cartoon was aimed at discrediting, without justification, the manufacturer's product. However, in the Court's view, the domestic courts had not given sufficient attention to the argument that the satirical cartoon was a riposte to what the applicants viewed as an unacceptable advertising campaign targeted at young children, one that used slogans that referred not only to the cartoon character, but also to sexual and cultural behaviour, in a scarcely appropriate manner. This clearly raised issues of public interest. Moreover, the applicants' primary aim had not been to denigrate the quality of the crisps but to raise awareness of the type of slogans used by the manufacturer and the unacceptability of such tactics to generate sales. Lastly, in performing its duty to impart information and ideas on matters of public interest, the press was entitled to have recourse to a degree of exaggeration or even provocation. While the wording employed by the applicants had been exaggerated, this had only been in reaction to an advertising campaign which had displayed a lack of sensitivity and understanding for the age and vulnerability of children. The style of the applicants' expression had thus been motivated by the type of slogans to which they were reacting and, in the context, had not overstepped the boundaries permissible to a free press. In sum, the reasons adduced by the domestic courts could not be regarded as relevant and

sufficient to justify the interference, which was disproportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 41: Awards to the first applicant of EUR 7,200 in respect of pecuniary damage and EUR 3,000 in respect of non-pecuniary damage.

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