



UvA-DARE (Digital Academic Repository)

Polish mayor's private prosecution of local journalist for insult violated Article 10: Ziemiński v. Poland (No. 2)

Ó Fathaigh, R.

Publication date

2016

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Ó Fathaigh, R. (2016). Polish mayor's private prosecution of local journalist for insult violated Article 10: Ziemiński v. Poland (No. 2). Web publication or website, Strasbourg Observers. <https://strasbourgobservers.com/2016/08/12/polish-mayors-private-prosecution-of-local-journalist>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Strasbourg Observers

Polish mayor's private prosecution of local journalist for insult violated Article 10: *Ziemiński v. Poland* (No. 2)

🕒 [August 12, 2016](#) August 12, 2016 👤 [Ronan Ó Fathaigh](#) 📁 [Freedom of Expression, *Ziemiński v. Poland* \(No. 2\)](#)

By [Ronan Ó Fathaigh](#)

The European Court's Fourth Section has held in *Ziemiński v. Poland* (No. 2) (<http://hudoc.echr.coe.int/eng?i=001-164453>) that a newspaper editor's conviction for describing local government officials as "dim-witted" and a "numbskull" violated the editor's Article 10 right to freedom of expression. The judgment may prove decisive for future prosecutions of journalists under article 216(2) of Poland's criminal code, which makes it a specific offence to "insult" a person "through the mass media," and carries a possible one-year prison sentence. Tragically, however, the editor, Maciej Ziemiński, passed away two years ago (<http://www.dzienniklodzki.pl/wiadomosci/radomsko/a/zostal-nieslusznie-skazany-za-obrazem-wladzy-niestety-nie-dozyly-tego-rozstrzygnięcia,10402025/>) aged 70, and did not live to see the Court's finding that his conviction violated the European Convention.

The case arose in 2004 when Ziemiński was still editor of *Komu i Czemu*, a local newspaper in the central Poland town of Radomsko. In August 2004, the newspaper published an article headlined "Elegantly wrapped dung," criticising the local government's proposal for quail farming in Radomsko to solve local unemployment. The article did not name any local government officials, but described the "author" of the proposal as a "numbskull" and "dim-witted," and stated that "I will continue calling the actions of dim-witted officials and their dull bosses pretentious and populist, and no numbskull will convince me that I am wrong."

Six months after the article's publication, the local mayor, and two local government officials, launched a private prosecution against the editor for criminal defamation "through the mass media," under article 212(2) of Poland's criminal code. They claimed that the words "numbskull" ("*palant*"), "dull boss" ("*nierozgarnięty szef*"), "dim-witted" ("*przygłupawy*"), and "poser" ("*pozer*") had defamed them as local government officials. One year later, in February 2006, a district court found that while the officials had not been named in the article, "they had been easily identifiable on account of the publicity generated by the quail farming project." However, the court ruled that the words were not defamatory under article 212(2), but instead held that the words were insulting, within the meaning of article 216(2), which criminalises insult "through the mass media." The court found the words "harmful" to the officials' "perception of their dignity," noting the "common understanding" of the words was "offensive and disrespectful." The court convicted the editor, and fined him 2,500 euro,

which was upheld on appeal.

Ziemiński made an application to the European Court, claiming the conviction violated his right to freedom of expression under the European Convention. First, the Court noted that Ziemiński's article was a "satirical article criticising the quail farming project endorsed by the local officials as a remedy to the problem of local unemployment." Because the article concerned "the exercise of the local officials' functions," there was "no doubt" it concerned a matter of public interest. Therefore, any restriction on such expression must be "strictly construed." Second, the Court noted the article's targets, an elected politician, and two civil servants. The Court held that the "limits of acceptable criticism are wider with regard to politicians," and similarly, but not in every respect, "civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism."

The Court then turned to the "classification of the statements at issue." The Court noted that the Polish courts "did not take a clear position in this respect," when they held Ziemiński had "exceeded the limits of fair criticism" and "resorted to expressions which were disrespectful and offensive," and "harmful to the claimants' perception of their dignity." In this regard, the Court held that the Polish courts "did not take sufficient account" of certain features required by Article 10 jurisprudence: (a) the "satirical nature of the text and the irony underlying it should be taken into account when analysing the applicant's article," (b) the "use of sarcasm and irony is perfectly compatible with the exercise of a journalist's freedom of expression" under Article 10, and (c) individuals taking part in a debate of public interest may use "a degree of exaggeration," "even provocation" or "immoderation."

The Court held, "without taking a stand on each specific remark," that there was "no doubt" that the remarks "used in the particular context of the article," remained "within the limits of admissible exaggeration." The Court stated that the Polish courts had "failed to consider" the remarks "in the context of the article as a whole," and reiterated the Article 10 principle that any interference with the "right to use" satire "should be examined with particular care," as "satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate." The Court concluded, by five votes to two, that Ziemiński's conviction therefore violated Article 10.

Judge Krzysztof Wojtyczek and Judge Egidijus Kūris dissented, but admitted that two of the words, "poser" and "dull," could "fall within the limits of freedom of speech protected by Article 10." But the other words, "dim-witted" and "numbskull," according to the dissent, would make "a Pole" feel "scorched, affronted, piqued." The dissent argued that domestic courts "have authority to rule" that certain words are "not justified even in the context of the most critical political message and irrespective of the genre in which the message is clothed." The European Court's role, according to the dissent, "is but to respect the judicious judgment of the domestic courts," which are better able "to judge what is insulting to a *native speaker*."

Comment

Ziemiński arguably continues the European Court's long history of finding the prosecution of journalists for insulting public officials to violate free expression. It is nearly two decades since the Court delivered its seminal *Oberschlick v. Austria (No. 2)* (<http://hudoc.echr.coe.int/eng?i=001-58044>) opinion, finding an Austrian journalist's conviction for describing an elected official as an "idiot" ("*trottel*"), violated Article 10. Unfortunately, insult prosecutions still continue today, but the Court has remained steadfast in protecting offensive political expression under Article 10; such as the Court's 2012 opinion in *Tuşalp v. Turkey* (<http://hudoc.echr.coe.int/eng?i=001-109189>), finding a violation of Article 10 following proceedings against a journalist for suggesting Turkey's then prime minister, Recep Tayyip Erdoğan, had a "psychopathic aggressive illness." Or the Court's 2013 opinion in *Eon v. France* (<http://hudoc.echr.coe.int/eng?i=001-117742>), finding a similar violation over

the prosecution of a 61-year-old local activist, for insulting France's then president, Nicolas Sarkozy, with the words "you sad prick."

Notably, a major aspect of the *Ziemiński* opinion is satirical expression, and whether a person's satirical intent may be taken into account. In this regard, the Court went so far as to hold that, as a matter of principle, there is a "right" to use satire, with its inherent features of "exaggeration and distortion of reality," which "naturally aims to provoke and agitate." Given Turkey's recent request (<https://www.theguardian.com/world/2016/apr/15/angela-merkel-agrees-prosecution-comedian-erdogan-poem>) to have a German comedian prosecuted for alleged insult, the *Ziemiński* opinion may prove particularly influential in the coming months, and contribute to the much-needed decriminalisation of insult in many Council of Europe member states.

Finally, concerning the dissent, which held that the Court should be "extremely cautious" to interfere with insult convictions, with the Court's role limited to "respect the judicious judgment of the domestic courts," because they "are, and always will be, *peerlessly better equipped* than this Court to judge what is insulting *to a native speaker*." Notably, the dissent offers no authority for these propositions, and indeed, in the entire 10-page dissenting opinion, only four cases are cited, none of which concern insult convictions: *Fürst-Pfeifer v. Austria* (<http://hudoc.echr.coe.int/eng?i=001-162864>) (civil defamation), *Bédat v. Switzerland* (<http://hudoc.echr.coe.int/eng?i=001-161898>) (conviction for publishing secret information); *Axel Springer AG v. Germany* (<http://hudoc.echr.coe.int/eng?i=001-109034>) (injunction against reporting a person's arrest); and *Pentikäinen v. Finland* (<http://hudoc.echr.coe.int/eng?i=001-158279>) (arrest for disobeying a police order). The two dissenting judges, having joined the European Court in 2012 and 2013 respectively, seem to disregard, and fail to even engage, with the nearly 20 years of Article 10 jurisprudence on insult. Unsurprisingly, none of their judicial colleagues joined their opinion.

[Blog at WordPress.com.](https://wordpress.com/?ref=footer_blog) (https://wordpress.com/?ref=footer_blog)