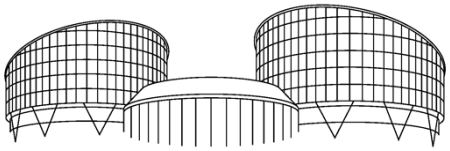

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF WOJCZUK v. POLAND

(Application no. 52969/13)

JUDGMENT

STRASBOURG

9 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wojczuk v. Poland,

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

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application 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, Mr Ireneusz Wojczuk ("the applicant"), on 7 August 2013;

the decision to give notice to the Polish Government ("the Government") of the complaint under Article 10 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 November 2021,

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

INTRODUCTION

1. The case concerns the applicant's criminal conviction, as a result of which a fine was imposed on him for denouncing, by means of anonymous letters sent to competent State authorities, matters relating to financial and employment shortcomings on the part of his employer, the director of a State museum.

THE FACTS

2. The applicant was born in 1967 and lives in Warsaw. He was granted legal aid and was represented by Ms A. Bzdyń, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Ms J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background

5. Between 1997 and 2008, the applicant, who is an art historian, was employed by the Museum of Hunting and Equestrianism (*Muzeum Łowiectwa i Jeździectwa*) ("the museum"). In the last four years of his employment, he worked as the manager of the nature and hunting department.

B. The applicant's alleged actions in respect of the museum

6. On 28 November 2007 and on 10 March 2008 letters, signed: "Staff of the Museum of Hunting and Equestrianism", were sent to the Tax Office (*Izba Skarbowa*), Supreme Audit Office (*Najwyższa Izba Kontroli*), Regional Prosecutor (*Prokuratura Okręgowa*), and the President's Office (*Kancelaria Prezydenta*).

7. The applicant denied being the author of the above-mentioned letters.

8. The letters contained allegations about the mismanagement of public funds, labour law infringements, flaws in the organisation of the workplace and accounting, the hiring of staff through the back door (*po znajomości*) and irregularities in awarding financial bonuses. It was also stated in the letters that the museum's director, P.Ś., was incompetent, lacked adequate knowledge and organisational skills, and that he had entered into unprofitable tender contracts, had used the museum's funds for private purposes, had resorted to bullying, and had acted in his own private interest.

9. As established by the domestic courts in the proceedings described below, the letters contained the following statements.

> "[D]uring renovation works, exhibits sustain damage – they are constantly moved [and] stored in unsuitable places, but Ś. [P.Ś.'s full last name] is not interested in this – he is interested in how to steal more money" (*w czasie remontów niszczą się eksponaty, ciagle przenoszone, przechowywane w miejscach do tego nie przystosowaych, ale to Ś. nie interesuje, on jest zainteresowany, aby jak najwięcej ukraść pieniędzy*).
>
> "[He] clearly cannot organise work at the museum. He resorts to bullying and improvised decision-making (*rażąco nie umie organizować pracy w muzeum. Stosuje mobbing i ręczne sterowanie*)."
>
> "[He] uses words [which are] commonly considered offensive ..., [and] is driven only by his own self-interest and gain. He does not have any capacity to make decisions, does not know how to make a decision, [and] messes up the organisation of work at the museum (*Używa słów powszechnie uznanych za obraźliwe ... kieruje się jedynie własnym dobrem i korzyścią. Nie ma żadnych predyspozycji do podejmowania decyzji, nie umie podjąć decyzji, dezorganizuje pracę w muzeum.)*"
>
> "Ś. [P.Ś.'s full last name] organises, using public funds, exhibitions for private individuals (*Ś... robi za publiczne pieniądze wystawy osobom prywatnym*)."

10. The letters also contained the following statement below about P.Ś.

> "[P.Ś] has a persecution complex. He follows and eavesdrops on employees. He uses telephones [and] the Internet to monitor employees, and now cameras are to be installed ... Ś. taps employees' telephones. (*Ma manię prześladowczą. Śledzi i podsłuchuje pracowników. Do monitoringu pracowników wykorzystuje telefony, internet, i obecnie mają być montowane kamery ... Ś. podsłuchuje telefony pracowników*)."

11. P.Ś. had not been a party to the impugned criminal proceedings (described below). Moreover, he had also never instituted any civil action against the applicant.

C. The museum's audits

12. In 2008 a series of management and tax audits were carried out by various public institutions at the museum.

13. The domestic courts established that at least one audit – that undertaken by the Supreme Audit Office – had been carried out of its own initiative. They further established that the audit undertaken by the Ministry of Culture had been carried out in relation to the applicant's letters.

14. The contents of the post-audit reports are unknown to the Court.

The applicant submitted that the Supreme Audit Office had confirmed that the storage and the public display of the museum's artefacts had been marked by irregularities. The domestic court established (during the criminal proceedings described below) that the said audits had not revealed any shortcomings in the running of the museum. The preliminary criminal inquiry that had been opened following the audits, had ultimately been discontinued.

15. The domestic court also established that the audits had temporarily disturbed the work of the museum. Moreover, in 2008 the museum had received 50% less funding from public sources than in the previous years. The applicant contested that finding in his appeal to the domestic court (see paragraph 27 below).

D. Criminal proceedings against the applicant

16. On 25 September 2008 the museum filed a private bill of indictment against the applicant, accusing him of disseminating, between 21 December 2007 and 16 July 2008, untrue information about the activities of the museum's management.

17. The case was registered with the Warsaw District Court, which held ten hearings.

18. On 26 July 2012 the Warsaw District Court convicted the applicant of libel of the museum and its management on account of the applicant's sending four anonymous letters – on 28 November 2007, to the Tax Office, the Supreme Audit Office, and the Regional Prosecutor and, on 10 March 2008, to the President of Poland's Office – that contained defamatory

statements, and by doing so, putting the museum at risk of losing the public trust necessary for its social, cultural and educational activities.

19. The court imposed on the applicant a fine (*grzywna*) in the amount of 2,500 Polish zlotys (PLN – approximately 625 euros (EUR)). The applicant was also ordered to bear various costs of the proceedings in the total amount of PLN 1,596 (approximately EUR 400).

20. The Warsaw District Court considered it established that the envelopes that had contained the impugned letters bore handwriting which, without any doubt, was that of the applicant.

21. The Warsaw District Court based its findings of fact, as described above, on the testimony of five witnesses, including the museum's director; two reports issued by a court-appointed expert in the forensic examination of documents; a copy of the Warsaw District Prosecutor's decision declining to open a criminal investigation; the post-audit report of the Supreme Audit Office; a copy of the Warsaw District Court's judgment of 3 November 2009 delivered in the applicant's related case no. IV W 325/09; a psychiatric report; letters from the President's Office, the Tax Office, and Minister of Culture and Science (original typed letters which had been sent to the above-mentioned relevant institutions, together with hand-addressed envelopes); various reports concerning the museum; and the post-audit report of the Ministry of Culture, and various other pieces of evidence.

22. Before the Warsaw District Court the applicant stated that he had not written or sent the impugned letters. He also argued that the case had been mounted against him in revenge for his unbiased work as a court-appointed expert in a certain high-profile case concerning another museum. The applicant stated that P.Ś. had attempted to pressure him into drafting a report which would be favourable to the director of that museum, who was P.Ś.'s friend. When the applicant refused, attempts were made to have him discredited: the applicant was accused of stealing an exhibit and of libelling the museum and, ultimately, his employment contract was terminated with three months' notice. The applicant recalled instances when, in his opinion, P.Ś. had placed himself in a situation in which he had faced a conflict of interests or had disregarded the applicant's warning that exhibits had been inappropriately handled. On the other hand, he said that he had not had access to the financial documents of the museum and he did not know of incidents involving mismanagement, irregularities in accounting, bullying or inappropriate activity on the part of other employees.

23. The court, which heard P.Ś. and other witnesses in respect of the above allegations made by the applicant, found that the museum's director had not been biased against the applicant.

24. Furthermore, the Warsaw District Court found that the impugned libel did not concern P.Ś., as a private person, but rather the museum, as an institution, and its management. For the court, denunciations of a wrongful conduct should rely on facts and not only on bare value judgments of the

person making such denunciations. Defamation could take the form of the accusation of a specific factual conduct or of the voicing of a general opinion about the actions or the features of an injured party.

25. On the facts, the Warsaw District Court found that the applicant's statements contained untrue allegations which had shed a bad light on the museum and its director. Irrespective of whether the applicant's statements had resulted in the audits or had had any other negative consequences for the museum, they had clearly put the museum at risk of losing its good reputation. The applicant had not acted in good faith – that is to say, in defence of the museum's interests. He had acted with direct intent to damage the reputation of the museum and its management by making allegations which had not been objectively confirmed. Having worked long years at the museum, the applicant had been perfectly aware of the untrue nature of his statements.

26. As for the fine, the Warsaw District Court observed that it was proportionate, on the one hand, to the harm caused by the applicant's actions and, on the other hand, to the applicant's income. To that end, the court established that the applicant made PLN 3,000 per month and had no dependent persons.

27. The applicant appealed, arguing that the first-instance court had erred in finding him to be the author of the letters in question and that, by convicting him, it had "violated his human rights". On 25 January 2013 the Warsaw Regional Court (*Sąd Okręgowy*) upheld that judgment. The judgment was served on the applicant's lawyer on 20 April 2013.

28. On an unspecified date, the Prosecutor General declined to grant the applicant's request and to lodge a cassation appeal as in his view there were no grounds for it.

E. Civil proceedings against the applicant

29. According to the applicant, in 2015 the museum had also brought a civil claim against him, seeking compensation for defamation.

30. The applicant further submitted that a civil court, which was bound by the findings of the criminal court in the proceedings against him, partly allowed that claim and ordered the applicant to pay approximately PLN 9,000 (EUR 2,250) in compensation and court fees.

RELEVANT LEGAL FRAMEWORK

31. Article 212 of the 1997 Criminal Code provides as follows:

> "1. Anyone who imputes to another person, a group of persons, an institution, a legal person or an organisation without legal personality such behaviour or characteristics as may lower the standing of such a person, group or entity in the public's opinion or undermine public confidence in their necessary capacity [to

undertake] a certain position, occupation or type of activity shall be liable to a fine, restriction on their liberty or imprisonment [for a term] not exceeding one year.

2. If the perpetrator commits the act described in paragraph 1 through the means of mass communication, he shall be liable to a fine, restriction of liberty or imprisonment [for a term] not exceeding two years.

3. When imposing sentence for an offence specified in paragraphs 1 or 2, a court may award a supplementary payment to the injured person or the Polish Red Cross or for another social purpose designated by the injured person (*nawiązka*).

4. The prosecution of an offence specified in paragraphs 1 or 2 may occur upon a private charge [being brought]."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant complained under Article 10 of the Convention that his criminal conviction constituted a disproportionate and unjustified sanction because criticising the professional activities of someone such as the museum's director, who was a public figure, had to be tolerated in a democratic society. Article 10 of the Convention 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. ...

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

1. Submissions by the parties

(a) The Government

33. The Government raised the following preliminary objections.

34. They argued that the application was incompatible with Article 10 of the Convention because, firstly, the applicant denied being the author of the impugned statements and secondly, the statements were false and had been aimed at damaging the reputation of the museum. In the Government's view, the applicant had wanted to deflect Article 10 from its real purpose by using freedom of expression for private ends – namely, libelling and defaming persons with whom he had been in personal conflict. The applicant had therefore abused the protection afforded to freedom of expression contrary to Article 17 of the Convention. The application was

thus incompatible *ratione materiae* within the meaning of Article 35 § 3 (a) of the Convention.

35. Relying on the same two arguments as those detailed above, the Government also argued that the application should be declared inadmissible for abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention. They stressed that by signing the letters as the staff of the museum, the applicant had tried to mislead the domestic courts and had put third parties at risk by falsely implying that they had been responsible for the impugned content.

(b) The applicant

36. The applicant submitted that, despite denying being the author of the letters in question, he enjoyed the protection of Article 10 of the Convention because a domestic court had convicted him of libel, having considered him to be the author. Article 10 was therefore applicable in the present case.

37. Moreover, the application should not be declared inadmissible for abuse of the right of individual application. The mere fact that the applicant disagreed with certain versions of facts of the case, as presented by the domestic court or by the Government, did not mean that he had tried to mislead the Court.

2. The Court's assessment

(a) As to the objection alleging incompatibility with Article 10 on the basis of the fact that the applicant denies having voiced the expressions for which he was convicted

38. The Court has already held, in some specific situations, that the applicants who deny imparting any ideas or information within the meaning of Article 10 of the Convention, may nevertheless enjoy the protection of that provision.

39. To that end, in the case of *Müdür Duman v. Turkey* – in which the applicant was convicted of a serious offence of praising and condoning an act punishable by law on the basis of material found in the office of his political party – the Court observed that not accepting that the applicant's criminal conviction constituted an interference, on the grounds that he had denied any involvement in the actions at issue, would be tantamount to requiring the applicant to acknowledge the acts of which he had stood accused and would lock him in a vicious circle that would deprive him of the protection of the Convention (see *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015). In addition, requiring that the applicant acknowledges the acts for which he stood accused would run counter to the right not to incriminate oneself, which is part of international fair trial standards, although not expressly mentioned in Article 6 of the Convention (ibid.).

40. In the similar vein, in the case of *Stojanović v. Croatia*, in which the applicant – while not denying having given an interview – argued that he had never used the particular words giving rise to his civil defamation case, the Court observed that in attributing the impugned statements to the applicant and ordering him to pay damages in respect of those statements, the domestic courts had indirectly stifled the exercise of his freedom of expression. The Court held that Article 10 of the Convention was applicable because, if the applicant's argument proved to be correct, the damages he had been ordered to pay would have been likely to discourage him from making criticisms of that kind in future (see *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013).

41. The Court observes that, in the present case, the applicant's criminal conviction for defamation was indisputably directed at activities falling within the scope of freedom of expression, as noted above, and that the applicant was sanctioned for engaging in such activities, despite his denial of the authorship of the letters in question. The Court considers that in such circumstances, the applicant's conviction must, similarly to the above-mentioned cases of *Müdür Duman* and *Stojanović*, be regarded as constituting an interference with his exercise of his right to freedom of expression.

(b) As to the objection that the applicant had abused the protection of freedom of expression contrary to Article 17 of the Convention

42. The Court will now examine the Government's objection that the views expressed by the applicant ran counter to the text and spirit of the Convention and that he therefore could not, under Article 17 of the Convention, rely on Article 10 as regards his impugned statements.

43. The Court has found that any "remark directed against the Convention's underlying values" is removed from the protection of Article 10 by Article 17 (see *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 33, ECHR 2015 (extracts)). Article 17 is only applicable on an exceptional basis and in extreme cases and should, in cases concerning Article 10 of the Convention, only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, ECHR 2015 (extracts)). The decisive point when assessing whether statements are removed from the protection of Article 10 by Article 17, is whether those statements are directed against the Convention's underlying values, for example by stirring up hatred or violence, or whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it (*Pastörs v. Germany*, no. 55225/14, § 37, 3 October 2019).

44. In the case at hand the applicant was convicted of making allegations about the mismanagement of public funds, labour law infringements, and various flaws in the organisation of a public museum (of which the applicant was an employee) and its director. Although the manner in which the applicant acted may be considered objectionable in light of the Court's case-law as referred to above, the content of the impugned remarks does not justify the application of Article 17 of the Convention.

45. In view of the above, the Court finds that the applicant cannot be deprived of the protection of Article 10 of the Convention by Article 17 of the Convention.

(c) As to the objection that the applicant had abused of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention

46. It remains for the Court to examine the Government's objection that the applicant had abused the right of individual application because, by denying being the author of the letters and by making false statements about the museum, he had tried to mislead the domestic courts and this Court.

47. The Court reiterates that an application may be rejected as abusive if, among other reasons, it was knowingly based on untrue facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014 with further references, and *Pytel v. Poland*, no. 9257/11, § 19, 30 August 2016 with further references). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross*, cited above, § 28; *Bestry v. Poland* (dec.), no. 57675/10, 3 November 2015; and *Hüttner v. Germany* (dec.), no. 23130/04, 19 June 2006). In principle, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered as an abuse of the right of application (see *Chim and Przywieczerski v. Poland*, no. 36661/07, § 189, 12 April 2018, and *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009). The applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross,* cited above, § 28, with further references).

48. In the present case the applicant, while making his Article 10 complaint, denied that he was the author of written statements for which he had been convicted by the domestic court. That, in fact, was his line of defence before the criminal court.

49. In the light of its considerations in the case of *Müdür Duman* (cited above, see paragraph 39 above), the Court finds that the fact that the domestic court ultimately found, on the basis of evidence, that the applicant was in fact the author of the statements in question does not preclude the

applicant from reiterating his original position before this Court. In any event, for reasons which the Court has already stated in paragraph 41 above, the core issue in the present case is not whether the domestic court had erred in finding the applicant responsible for the impugned statements but, rather, whether, assuming that he was the author, the imposition of a criminal sanction on him for the offence of defamation was justified under paragraph 2 of Article 10 of the Convention.

50. The Court concludes from the above that there is no basis for finding that the applicant submitted untrue information concerning the very core of the case with the intention of misleading the Court and thereby abused his right of individual petition.

51. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

52. The applicant argued that the interference in his case had been unlawful in that Article 212 of the Criminal Code, which had been the basis of his conviction for libel, had reversed the burden of proof, placing it on the defendant. It thus required the applicant to prove that the person who had written the impugned letters had done so legitimately because his or her accusations were true. The applicant, not being the author of the statements in question, had had no knowledge about their alleged false character.

53. Moreover, the applicant submitted that his application ought to be examined within the context of a whistle-blower's freedom to impart information. The interference in his case had thus been unjustified and disproportionate within the meaning of paragraph 2 of Article 10 of the Convention. To that end the applicant made the following observations.

54. The author of the letters in question had not acted out of any personal motivation or gain but in the public interest – namely, in order to ensure the lawful and rational management of public funds, a respectful work environment and the preservation of the national heritage. In the case of the museum, those interests had, in the author's view, been threatened by corruption, work harassment, the embezzlement of public funds and the mishandling of exhibits.

55. The author of the letters had denounced the shortcomings that, as to his or her best knowledge, had taken place at the museum. In the absence of legislation concerning whistle-blowers at the material time, the person in question had not had any alternative channels of bringing his or her suspicions to the attention of the authorities concerned. In the applicant's

opinion, it would have been pointless to bring the issue to the attention of the museum's director as the allegations had been made against that very person.

56. Furthermore, the applicant claimed that the author of the letters had had reasonable grounds for fearing that the evidence would have been concealed or destroyed if he or she had first reported the issue to the museum's management. In the present case, therefore, it had clearly been impracticable for the person making the impugned statements to inform his or her superiors of the suspicions. Still, the author had chosen not to inform the public but had rather reported the alleged wrongdoings to the appropriate bodies that had had authority to examine the case.

57. The applicant also submitted that it would have been unreasonable to expect that citizens, who otherwise were under a statutory duty to denounce wrongful acts to prosecutors under Article 304 of the Code of Criminal Procedure, should only report situations which they were absolutely sure of and for which they had evidence. After all, it was up to the police or other public authorities to investigate the matters brought to their attention. One should therefore not be prosecuted for denouncing a wrongful act in good faith. Such approach would have a chilling effect on the colleagues of such a whistle-blower.

58. The applicant also argued that, in any event, in the light of the results of the audit that had been carried out at the museum, the statements made in the impugned letters might well have been considered true.

59. The applicant furthermore submitted that the domestic court had committed an error of fact as the applicant had not been the author of the letters. The domestic courts had also failed to examine the applicant's case from the perspective of the protection of a whistle-blower. They had also disregarded several important elements of the case, namely: the fact that (i) the impugned statements had been made in sealed anonymous letters, the content of which had never been made public; and (ii) the statements concerned a public institution and its director, thus, a public official who did not enjoy the same degree of protection of his private life or of his reputation as would a private person.

60. On that latter point, the applicant submitted that the museum, as a legal person and a public entity, could not rely on the considerations of the right to respect for private life guaranteed by Article 8 of the Convention. That right was, after all, inherently attributable to victims who were private and physical persons. It followed that, in the applicant's opinion, the present application was not about the balancing of two rights that were equally protected by the Convention.

61. Lastly, the applicant argued that the sanction that had been imposed on him had been completely disproportionate, bearing in mind the fact that he had also been dismissed from work and ordered to compensate the museum in civil proceedings (see paragraphs 22, 29 and 30 above). The

applicant also stressed that his conviction had deprived him of the possibility to work in his chosen profession elsewhere.

(b) The Government

62. The Government argued that the interference in question had been justified under paragraph 2 of Article 10 of the Convention.

63. In particular, the applicant's statements had been anonymous and untrue, and, as such, they could therefore not have gained the protection guaranteed to a whistle-blower. Moreover, the applicant had not wished to protect any common good; rather, he had acted with the sole aim of hurting his employer's reputation. The allegations that he had made had attained the requisite level of seriousness and could well have infringed on P.Ś.' Article 8 rights.

64. The national authorities had therefore struck a fair balance between two equally important Convention rights: that of the applicant's freedom of expression, as guaranteed by Article 10 of the Convention; and that of protecting the reputation of the museum and its director, as recognised by Article 8 of the Convention. The domestic courts, in adjudicating the applicant's case, had thoroughly analysed the above-mentioned conflict of interests, against the facts of the case. Those facts had been established on the basis of reliable and exhaustive evidence.

65. The sanction imposed on the applicant at the conclusion of the impugned criminal proceedings had been proportionate to the nature and the severity of his prohibited conduct and its consequences. On the other hand, in determining the level of the fine, the domestic courts had well taken into consideration the applicant's financial situation.

2. The Court's assessment

(a) General principles

66. The general principles regarding an assessment of whether an interference with the exercise of the right to freedom of expression was "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention are well-settled in the Court's case-law. They were restated in *Pentikäinen v. Finland* ([GC], no.11882/10, § 87, ECHR 2015), *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) and summarised in *Perinçek* (cited above, § 196).

67. In addition, it is to be reiterated that the Court must ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations have been made, a right which, as an aspect of private life, is protected by Article 8 of the Convention.

68. The relevant criteria that the Court relies on to balance the right to freedom of expression against the right to respect for private life were recapitulated in *Perinçek*, cited above, § 198).

69. In particular, the Court reiterates that reputation is protected by Article 8 of the Convention as part of the right to respect for private life (see *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 104-107, ECHR 2012; *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 87-88, 7 February 2012; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts); and *Perinçek*, cited above, § 198). In order to fulfil its positive obligation to safeguard one person's rights under Article 8, the State may have to restrict to some extent the rights secured under Article 10 for another person. When examining the necessity of that restriction in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression as protected by Article 10 and, on the other, the right to respect for private life as enshrined in Article 8 (see *Bédat*, cited above, § 74).

70. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court has held that the outcome of the application in question should not, in principle, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the statements in question, or under Article 10 by the statements' author. These rights deserve equal respect. Accordingly, the margin of appreciation should in principle be the same in both situations (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 163, 27 June 2017). Moreover, in such cases the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover*, cited above, § 107).

71. When it comes to the protection of the reputation of others, the Court has made a distinction between defamation of natural and legal persons. The Court has nevertheless left open the question of whether the "private life" aspect of Article 8 protects the reputation of a company (see *Firma EDV für Sie, EfS Elektronische Datenverarbeitung Dienstleistungs GmbH v. Germany* (dec.), no. 32783/08, § 23, 2 September 2014). On the other hand, within the context of Article 10 the Court has considered that the protection of a university's authority was a mere institutional interest, which did not necessarily have the same strength as "the protection of the reputation or rights of others" within the meaning of Article 10 § 2 of the Convention (see *Kharlamov v. Russia*, no. 27447/07, § 29, 8 October 2015). On another occasion, the Court has acknowledged that a company has a

right to defend itself against defamatory allegations, and that a general interest exists in protecting companies' commercial viability and the wider economic good by limiting the damage caused by allegations which risked harming a company's reputation (see *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). In spite of that, the Court still sees a difference between the commercial reputational interests of a company and the reputation of an individual concerning his or her social status. Whereas the latter might have repercussions *vis-à-vis* a person's dignity, for the Court, interests in respect of commercial reputation are devoid of that moral dimension (*ibid.*).

72. As the Court has affirmed with regards to the need to perform a balancing exercise between the right to reputation of a public institution with executive powers and freedom of expression, limits of permissible criticism are wider with regard to a public authority than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of a body vested with executive powers must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion (see, *mutatis mutandis*, *Şener v. Turkey*, no. 26680/95, § 40, 18 July 2000; *Lombardo and Others v. Malta*, no. 7333/06, § 54, 24 April 2007; and *Margulev v. Russia*, no. 15449/09, § 53, 8 October 2019).

73. The Court has also distinguished between assertions of facts and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. At the same time, where allegations are made about the conduct of a third party, it may sometimes be difficult to distinguish between assertions of fact and value judgments (see, *mutatis mutandis*, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

74. In case of assertion of facts, relying on the presumption of falsity and thus asking the author to demonstrate the truth of his or her assertions, as required under the applicable criminal provisions, does not necessarily contravene the Convention (see, *mutatis mutandis*, *Kasabova v. Bulgaria*, no. 22385/03, §§ 58-60, 19 April 2011; *Rumyana Ivanova v. Bulgaria*, no. 36207/03, §§ 39 and 68, 14 February 2008; *Makarenko v. Russia*, no. 5962/03, § 156, 22 December 2009; and *Rukaj v. Greece* (dec.), no. 179/08, 21 January 2010). However, an applicant clearly involved in a public debate on an important issue is required to meet a no more demanding standard than that of due diligence, as in such circumstances an obligation to prove the factual statements may deprive him or her of the protection afforded by Article 10 (see, *mutatis mutandis*, *Monica Macovei v. Romania*, no. 53028/14, § 75, 28 July 2020, with further references). At the same time, where an utterance amounts to a value judgment, the proportionality of the interference may depend on whether or not there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it. The more serious such an allegation is, the more solid the factual basis has to be

(see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 42, Reports of Judgments and Decisions 1997-I, and *Lewandowska-Malec v. Poland*, no. 39660/07, §§ 63 and 65, 18 September 2012).

(b) Application of these principles to the case

(i) Whether there was an interference

75. As the Court has already stated above, the applicant's criminal conviction for libel constituted an interference with his exercise of his right to freedom of expression (see paragraph 41 above).

(ii) Whether the interference was justified

76. The impugned interference was "prescribed by law", as required by Article 10 of the Convention – namely by Article 212 of the Criminal Code (see *Dorota Kania v. Poland (no. 2)*, no. 44436/13, § 70, 4 October 2016). The applicant's submission concerning the reversed burden of proof under that provision will be addressed by the Court further below, as it is a matter pertaining to the test of "necessity in a democratic society" (see *Kasabova*, cited above, §§ 58-62).

77. The Court furthermore accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others – namely, the good name of the museum, as well as its director and other members of the management – within the meaning of Article 10 § 2 of the Convention (see, *Dorota Kania (no. 2)*, cited above, § 70). It notes that the interference further pursued the aim of ensuring the proper functioning of public institutions.

78. Thus, the only point at issue is whether the interference was "necessary in a democratic society" in order to achieve that aim.

(iii) "Necessary in a democratic society"

79. In assessing the necessity of the interference, it is important to examine the way in which the relevant domestic authorities dealt with the case, and in particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention.

(α) As to the denial of authorship

80. The Court notes at the outset that the applicant denied being the author of the written statements which were attributed to him by the domestic authorities and which are at the core of the present application (see paragraphs 7 and 33 above).

81. In the light of the material at hand, the Court cannot, however, consider that the domestic court has made a flagrant error of judgment on that point. The question of whether the applicant was the author of the

letters in question was duly addressed by the trial courts of two levels of jurisdiction; moreover ample evidence, comprising (i) two reports by an expert in the forensic examination of documents and (ii) the testimony of several witnesses – was adduced (see paragraphs 20-22 above).

82. The Court will thus proceed on the fair assumption that the applicant was indeed the author of the impugned statements signed: "Staff of the Museum of Hunting and Equestrianism" (see paragraph 6 above).

(β) As to the relevance of the Court's case-law in respect of the protection of whistle-blowers

83. The Court should next consider whether the applicant's reporting could be qualified, as argued by him, as whistle-blowing, within the meaning of its case-law. In this connection, the Court observes at the outset that the statements in question (see paragraphs 8-10 above) may be described as allegations about the embezzlement of public funds, corruption, labour law infringements, shortcomings in the organisation of the workplace, and the mishandling of exhibits. With the caveat that the full text of the impugned letters has not been communicated to the Court by the parties or reproduced by the domestic courts in wording of the relevant judgments, it appears that the allegations described above were of a general nature. Likewise, it is unknown whether the letters contained any specific request for an investigation into or verification of the allegations.

84. In the Court's view, the general character of the impugned statements and the fact that they were strongly charged with the applicant's value judgment, undermines, any seriousness of the irregularities that were being denounced in relation to the management and work conditions in the museum, the use of public funds and the preservation of national heritage (contrast, *mutatis mutandis, Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 92, 27 June 2017; *Fressoz and Roire v. France* [GC], no. 29183/95, § 50, ECHR 1999‑I; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 72, ECHR 2011; and *Boldea v. Romania*, no. 19997/02, § 57, 15 February 2007).

85. The applicant, who was a civil servant, did not have any privileged or exclusive access to, or direct knowledge, of the information contained in the letters (see, by contrast, *Aurelian Oprea v. Romania*, no. 12138/08, § 59, 19 January 2016). In fact, before the domestic court, the applicant specifically stated that he had not had access to the financial documents of the museum and he did not know of incidents involving mismanagement, irregularities in accounting, bullying or inappropriate activity on the part of other employees (see paragraph 22 *in fine*, above).

86. Thus, with regard to the circumstances of the case, it does not seem that the applicant had secrecy or discretion duties with respect of his service and therefore his case cannot be equated to any case of public disclosure of in-house information in the public interest. Unlike as in the cases of

whistle-blowing, the applicant was not in the position of being the only person, or part of a small category of persons, aware of what was happening at work and thus best placed to act in the public interest by alerting the employer or the public at large (*a contrario*, *Guja v. Moldova*, no. 14277/04, §§ 70-72, 12 February 2008).

87. It is also unclear whether the applicant has suffered any repercussions at his workplace as a consequence of the reporting of the alleged wrongdoing attributed to him. As it would appear, the applicant's employment contract was terminated in circumstances which are not directly linked to the libel incident in question (see paragraph 22 above; and contrast, *Guja*, cited above, § 21).

88. In view of these above-mentioned factors, the Court does not find that the letters in question can be deemed to constitute whistle-blowing, as defined by the Court's case-law (see *Bucur and Toma v. Romania,* no. 40238/02, § 93, 8 January 2013).

(γ) As to the third parties affected

89. The Court observes that the allegations in question were, in part, personally directed at P.Ś., the museum's director. The letters were not phrased in any insulting or obscene language (see paragraphs 9 and 10 above; see, by contrast, *Skałka v. Poland*, no. 43425/98, § 36, 27 May 2003), but, in the Court's view, they clearly affected the director, other members of the management, as well as the institution which they ran.

90. On the basis of the contextual examination of the extracts of the disputed letters (see paragraphs 5, 7 and 22 above), the Court finds that the thrust of the impugned statements was, in equal measure, to (i) accuse P.Ś., in his capacity of the museum's director, of conduct that appeared irregular or unlawful to the letters' author, and to (ii) notify the competent State authorities thereof (see also, for the general principle governing the Court's evaluation of statements, *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, §§ 25-26, 22 February 2007).

91. In this latter context, the Court has indeed dealt with cases involving defamation that had a bearing on an individual's professional activities (a doctor in *Kanellopoulou v. Greece*, no. 28504/05, 11 October 2007; the director of a State-subsidised company in *Tănăsoaica v. Romania*, no. 3490/03, 19 June 2012; and judges in *Belpietro v. Italy*, no. 43612/10, 24 September 2013).

92. The present case, however, differs from the above-mentioned cases in that no legal action had been taken against the applicant by P.Ś. in a private capacity (see paragraphs 16, 24 and 29, above). On the other hand, the balancing of the Article 10 and Article 8 rights that was carried out by the domestic courts, was between, on the one hand, the applicant (as the author of the statements) and, on the other hand, the museum (as a public

entity), P.Ś. and other members of its management (see paragraphs 24 and 25 above).

93. Having regard to its case-law (see paragraph 72 above), the Court concludes that, given the circumstances of the case, the values conflicting with the applicant's freedom of speech that the domestic court was called to balance were not of equal weight. The protection of the museum's good name (being an institutional interest, as opposed to a private concern), should not have been considered as having the same degree of importance as the protection of P.Ś. and other members of the museum's management which falls under the category of "the protection of the reputation or rights of others" within the meaning of Article 10 § 2 of the Convention. Moreover, the limits of acceptable criticism of that institution's management were wider than they would have been in relation to criticism of a private individual.

(δ) As to the audience targeted by the impugned statements

94. The Court accepts the applicant's argument that, in view of the fact that the allegations had concerned the museum's director, it would have been impracticable to report the issue to that person (see paragraph 57 above). The Court also observes that the information in question was not revealed to the public but reported in private letters to those bodies that had authority to verify and, if necessary, to remedy the situation complained of (see paragraphs 5 and 59 above; see also, *mutatis mutandis*, above-cited cases of *Guja*, §§ 73 and 81; and *Medžlis Islamske Zajednice Brčko and Others*, §§ 90, 91 and 95).

95. In such cases the Court has considered that "the requirements of such protection have to be weighed not in relation to the interests of the freedom of the press or of open discussion of matters of public concern but rather against the applicant's right to report irregularities in the conduct of State officials to a body competent to deal with such complaints" (see, *mutatis mutandis*, *Zakharov v. Russia*, no. 14881/03, § 23, 5 October 2006; *Kazakov v. Russia*, no. 1758/02, § 28, 18 December 2008; *Siryk v. Ukraine*, no. 6428/07, § 42, 31 March 2011; and *Marinova and Others v. Bulgaria*, nos. 33502/07 and 2 others, § 89, 12 July 2016). The Court's case-law confirms that it is one of the precepts of the rule of law that citizens should be able to notify competent State officials about the conduct of public servants which to them appears irregular or unlawful (see, *mutatis mutandis*, *Zakharov*, cited above, § 26; *Kazakov*, cited above, § 28; and *Siryk*, cited above, § 42).

96. At the same time the Court notes that even a letter distributed within a small community, such as a public institution, can inevitably harm the reputation and professional image of the person concerned (see *Peruzzi v. Italy*, no. 39294/09, § 63, 30 June 2015). It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every

word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions. Civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks. It may therefore prove necessary to protect them from offensive and abusive verbal attacks in the course of their duties (see *Peruzzi*, cited above, § 52; see also *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I, and *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II). By the same token, civil servants should also be protected against abusive denunciations.

(ε) As to the consequences of the statements

97. The Court does not lose from sight the fact that calumnious denunciations to the competent authorities may result in investigating measures and may have very serious detrimental effects for the persons concerned, causing unnecessary stress and anxiety. Moreover, calumnious denunciations mean that the competent investigating or audit authorities can use more limited resources for the purposes of investigating or auditing other irregularities in the functioning of public authorities.

98. The Court has no doubt that the impugned statements caused damage to the good name of the museum and called into question the management capacities of its director (see paragraphs 9, 24 and 25 above). It also caused damage to the museum as such. The Court also notes that the preliminary criminal inquiry, which was at some point initiated and ultimately discontinued (see paragraph 14 *in fine*, above) had certainly an impact upon the museum's director in that it had caused him anxiety and stress.

99. As to the consequences of the above-mentioned accusations being passed on to the authorities, the Court notes that in 2008 a series of management and tax audits of the museum were carried out by various public institutions (see paragraphs 12 and 13 above). On the basis of the material at hand, the Court notes that at least some of these audits had in fact been triggered by the impugned letters. Moreover, as stated by the Government and not effectively rebutted by the applicant, as a consequence of the actions attributed to the applicant, the museum had received less funding (see paragraph 15 above).

(στ) As to the nature of the statements

100. Another important factor relevant for the balancing exercise in the present case, is the nature of the utterances. In the instant case, the domestic courts did not expressly determine to which category the statements attributed to the applicant belonged. They did consider, however, that they were untrue, that they had not been objectively confirmed, and that they had been, in fact, disseminated in full knowledge of their falsehood, with intent to harm the museum and its director (see paragraphs 25 *in fine* and 26

above). A similar argument was put forward by the Government (see paragraph 64 above).

101. The Court notes that the author did not refer throughout the text of the impugned letters to specific dates, persons or incidents (see, *mutatis mutandis*, *Kwiecień v. Poland*, no. 51744/99, § 54, 9 January 2007). He described in a general way the managerial shortcomings and the larger context in which they had allegedly occurred (see paragraphs 8-10 above). In particular, the applicant accused P.Ś. of theft, bullying the staff and using public funds for organising exhibitions in the interest of private persons. At the same time, part of the statements was strongly charged with the author's subjective feelings and emotions. It appears therefore that the impugned utterances are a mix of assertions of facts and value judgments (compare *Kaperzyński v. Poland*, no. 43206/07, § 64, 3 April 2012; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 66, ECHR 1999-III; *Gąsior v. Poland*, no. 34472/07, § 42, 21 February 2012; *Dybek v. Poland* (dec.) no. 62279/16, § 27, 25 September 2018; and *Zybertowicz v. Poland*, no. 59138/10, § 46, 17 January 2017).

102. The Court observes that the author of the impugned statements was a private individual and not a journalist, media or non-governmental organisation with a public watchdog function (contrast *Bladet Tromsø and Stensaas*, cited above, § 66, and *Medžlis Islamske Zajednice Brčko and Others*, cited above, § 109). As such, the author was not bound by the Article 10 "duties and responsibilities" – for example, the obligation to provide accurate and reliable information or to verify factual statements if such statements were being made – to the same extent as would have been required by the ethics of journalism (see *Bladet Tromsø and Stensaas*, cited above, §§ 65-66, and *Błaja News Sp. z o. o. v. Poland*, no. 59545/10, § 51, 26 November 2013). At the same time, instead of contacting the authorities overtly under his own name, the applicant decided to send anonymous poison-pen letters.

103. The applicant explains that the intention behind sending the letter was to help fighting corruption and other offences. The Court notes in this context that the applicant's allegations not only proved false, but the applicant failed to adduce a sufficient factual basis to support his assertions of facts and value judgments.

(ζ) As to the nature and severity of the penalty

104. Lastly, the Court reiterates that the nature and severity of the penalty imposed are also factors to be taken into consideration when assessing the proportionality of the interference (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV, and *Malisiewicz-Gąsior v. Poland*, no. 43797/98, § 68, 6 April 2006). While the use of criminal-law sanctions in defamation cases is not in itself disproportionate, the nature and severity of the penalties imposed are factors to be taken into account, because they

must not be such as to dissuade the press or others who engage in public debate from taking part in a discussion of matters of legitimate public concern (see *Lewandowska-Malec*, cited above § 69, with further references).

105. In the instant case the applicant was criminally convicted; a fine was imposed on him in an amount equivalent to EUR 625. He was also ordered to pay various costs amounting to EUR 400 (see paragraph 19 above). The Court observes that the criminal conviction must obviously have had negative consequences for the applicant's career – especially given the fact that he was a civil servant seeking re-employment (see, *mutatis mutandis*, *Heinisch v. Germany*, no. 28274/08, § 91, 21 July 2011). Nevertheless, the Court finds that the cumulative effect of in the circumstances of the present case, the criminal conviction or the aggregate amount of the financial penalties could not be considered as having had a chilling effect on the exercise by the applicant of his freedom of expression (in contrast with *Lewandowska-Malec*, cited above, § 70). Consequently, the sanction imposed on the applicant does not appear disproportionate.

(c) The Court's overall conclusion

106. In the light of the above considerations, the Court finds that in the case at hand, the domestic courts adduced sufficient and relevant reasons to justify the interference with the applicant's freedom of expression.

107. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Liv Tigerstedt Deputy Registrar	Ksenija Turković President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Felici and Ktistakis is annexed to this judgment.

K.T.U.
L.T.

DISSENTING OPINION OF JUDGES FELICI AND KTISTAKIS

We regret that we are unable to agree with the majority of the Court that the applicant's criminal conviction, which resulted in the imposition of a fine, was compatible with Article 10 of the Convention, for the reasons stated below.

1. The applicant denounced, by means of private letters (see paragraph 6 of the judgment) sent exclusively to competent State authorities (the Tax Office, the Supreme Audit Office, the Regional Prosecutor and the President's Office), matters relating to financial and employment shortcomings on the part of his employer, a State museum, and the director of that museum. Thus, the objective conditions of the criminal offence of defamation are not fulfilled, in that the impugned statements could not, if only because of their private character, "lower the standing ... in the public's opinion or undermine public confidence ..." (Article 212 § 1 of the 1997 Polish Criminal Code; see § 31 of the judgment). It follows that the restriction on the applicant's freedom of expression was not provided for in the national criminal law.

2. Further, the restriction did not serve a legitimate aim. First, the aim of "ensuring the proper functioning of public institutions" (see paragraph 77 of the judgment) is not, as such, one of the legitimate aims exhaustively listed in Article 10 § 2 of the Convention (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 140, ECHR 2012 (extracts)). Furthermore, the aim of preserving the "good name of the Museum of Hunting and Equestrianism" (see paragraphs 77 and 93 of the judgment) cannot be considered as part of "the protection of the reputation or rights of others", when issues of financial and employment transparency within the public-law legal entity in question were raised exclusively and privately before the competent State authorities. The present case differs from the Court's relevant case-law about universities, where the issues of concern concerned exclusively academic professional standards and were raised in public (see *Kharlamov v. Russia*, no. 27447/07, § 29, 8 October 2015; *Sorguç v. Turkey*, no. 17089/03, § 35, 23 June 2009; and *Kula v. Turkey*, no. 20233/06, § 38, 19 June 2018). Finally, the aim of "protection of [the] rights of others – namely, the good name of the director of the museum and of the other members of the management" (see paragraphs 77 and 93 of the judgment) is not fulfilled in the present case, because the director and the other members of the management board were not a party to the impugned criminal proceedings and they never brought any civil action against the applicant (see paragraph 11).

3. Finally, with regard to the proportionality of the restriction on the applicant's freedom of expression, the Court's case-law attaches considerable importance to the audience targeted by the impugned

statements (see, for example, *Grigoriades v. Greece*, 25 November 1997, § 47, *Reports of Judgments and Decisions* 1997-VII; *Kazakov v. Russia*, no. 1758/02, § 29, 18 December 2008; and *Sofranschi v. Moldova*, no. 34690/05, § 33, 21 December 2010). As mentioned at the beginning of our opinion, the applicant addressed his complaints by way of private correspondence only to the competent State officials and did not make them known to the general public. We consider that this element is crucial in assessing the proportionality of the interference. In our view, citizens should be able to notify, at least privately, competent State officials about the conduct of civil servants which to them appears irregular or unlawful, because this is one of the precepts of the rule of law (see *Zakharov v. Russia*, no. 14881/03, § 26, 5 October 2006; *Bezymyannyy v. Russia*, no. 10941/03, §§ 40-41, 8 April 2010; and *Lešník v. Slovakia*, no. 35640/97, § 60, ECHR 2003-IV)). In consequence, we conclude that the restriction on the applicant's freedom of expression was not necessary in a democratic society.