



## A journalist's conviction for criticising a communist-era architect had infringed his freedom of expression

In today's Chamber judgment in the case of [Smolorz v. Poland](#) (application no. 17446/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned a journalist who published a highly critical article on the subject of communist-era architecture in the city of Katowice, Poland. He received a civil penalty for having damaged the good reputation of one of the architects named in the article.

The Court held, in particular, that Mr Smolorz and his opponent were public figures who had been engaged in a public debate concerning an issue that could be described as "historical". The Court found that the Polish courts had demonstrated rigidity and had given insufficient consideration to the context and nature of the disputed article. It also reiterated that the registers of sarcasm and irony were perfectly compatible with journalistic freedom of expression.

### Principal facts

The applicant, Michal Smolorz, is a Polish national who was born in 1955 and lives in Katowice (Poland). He is a journalist who writes a regular weekly column in the Silesian regional edition of the daily newspaper *Gazeta Wyborcza*.

On 28 May 2004, he wrote an article headlined "*Architect and master of self-satisfaction*" on the subject of certain buildings designed by Jurand Jarecki and other architects during the communist period in Katowice, Poland. The article was a response to remarks made by Mr Jarecki in an interview published the previous week in the same newspaper, under the headline "*The joy of demolishing*".

Highly critical of the architectural style in question, Mr Smolorz criticised buildings that were supposed to be symbols of modernity when built, but which even then, he argued, gave pleasure only to their architects and "the apparatchiks of the communist party". Emphasising the deleterious effects of time on these buildings, he criticised their "ugliness" and their "Bolshevik-ridden aesthetics". The applicant also regretted the destruction of the Silesian heritage and referred to the demolition of the modernist architecture and other valuable old buildings which had been replaced by unsightly edifices.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

In July 2004, Mr Jarecki, who had been named in the disputed article, brought an action against Mr Smolorz for protection of his good name.

In his defence, Mr Smolorz argued, among other things, that as a public figure his opponent ought to show tolerance and accept criticism of his work, which was public in nature. He stressed that his opinion had been part of a discussion engaged in since 2002 by the readers of *Gazeta Wyborcza* and internet users on the effects of urban planning on Katowice's appearance; he alleged that the city's residents had a very negative opinion of the city's appearance.

By a judgment of 15 July 2005, the Katowice Regional Court ordered Mr Smolorz to publish an apology to Mr Jarecki in his newspaper and to pay his court costs.

The court found, in particular, that the article, written in a mocking and ironic tone, had damaged Mr Jarecki's honour and good reputation as an architect. It held that the article poked fun at the architect's overall contribution to the urban appearance of Katowice, although his influence had been both recognised and appreciated. The court found that Mr Smolorz had exceeded the limit of legitimate criticism and that the impression given by his article allowed it to conclude that he had injured his opponent's honour.

This judgment was upheld on 22 March 2006 by the Court of Appeal, which emphasised that only fair and honest criticism, in conformity with the rules governing coexistence with others, deserved protection. The Supreme Court refused to examine the applicant's appeal on points of law.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the Convention, the applicant alleged that there had been a breach of his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 16 April 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

David Thór **Björgvinsson** (Iceland), *President*,  
Lech **Garlicki** (Poland),  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Ledi **Bianku** (Albania),  
Zdravka **Kalaydjieva** (Bulgaria),  
Nebojša **Vučinić** (Montenegro),

and also Lawrence **Early**, *Section Registrar*.

## Decision of the Court

### Article 10

It was not contested that there had been interference with Mr Smolorz's right to freedom of expression, that this interference was prescribed by law and that it pursued the legitimate aim of protecting the reputation of others. The Court examined whether this interference was proportionate to its aim and necessary in a democratic society.

The Court noted, firstly, that the article had been published in the context of a debate and exchange between readers of the newspaper and internet users concerning the urban appearance of Katowice, and was thus a matter of public interest, an area where restrictions on freedom must be construed strictly. In addition, since the publication was part of a debate between Mr Smolorz and his opponent and concerned buildings designed by Mr Jarecki as a municipal architect, the two protagonists were public figures, for whom the limits of permissible criticism were wider than in relation to private citizens. The Court also considered that the discussion in which they were involved focussed on issues which could today be described as "historical".

With regard to the nature of the remarks made, the Court considered that the courts had demonstrated rigidity and had given insufficient consideration to the context and nature of the article. The issue under discussion was by its nature abstract and very subjective, and was not easily susceptible to tangible and objective assessment. The Court considered that obliging Mr Smolorz to demonstrate the truth of his statements amounted to imposing an unreasonable, if not impossible task.

As to the tone of the article, the Court reiterated that a degree of exaggeration, or even provocation, was permitted to the press, which had a duty to comment on matters of public interest. The use of sarcasm and irony were perfectly compatible with the exercise of a journalist's freedom of expression. The Court also noted that the language used was neither vulgar nor intentionally excessive and that Mr Smolorz had not attacked his opponent's personal qualities, but rather certain elements of his professional expertise. The styles and means of expression corresponded to the nature of the issues raised in the article.

Finally, the Court noted that although the penalty imposed on Mr Smolorz was a minor one, the important point was that he had been required to apologise publicly for his comments.

Accordingly, the Court held that there had been a violation of Article 10 of the Convention.

### Just satisfaction (Article 41)

The court held that Poland was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 310 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.