



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

FOURTH SECTION

Application no. 30162/10
Grzegorz Michal BRAUN
against Poland
lodged on 29 May 2010

STATEMENT OF FACTS

The applicant, Mr Grzegorz Michal Braun, is a Polish national, who was born in 1967 and lives in Wrocław. He is represented before the Court by Mr S. Hambura, a lawyer practising in Berlin.

A. The circumstances of the case

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

The applicant is a journalist and film director, a specialist on modern history of Poland.

On 20 April 2007 the applicant participated in a debate on the regional radio, Polskie Radio Wrocław. During the debate he stated as follows:

“...among the informers of the [communist-era] secret political police there is Professor J. M.– this information confirms a theory that among those who speak the most against lustration are people who have good reasons to be doing so.”

On the same day the applicant called Mr J. M. “informer” (*konfident*) on the public television. The matter was widely commented in the media.

On 17 May 2007 a special commission of the Warsaw University on examination of the problem of invigilation of academics examined the case of Professor J. M. It considered that the documents collected by the Institute for the National Remembrance (IPN) confirm only the fact of the registration of Mr J. M. as a collaborator. However, there was no evidence that he had actually provided any information to secret services.

On an unspecified date in 2007 Professor J. M. brought a civil action for protection of his personal rights against the applicant.

On 3 July 2008 the Warsaw Regional Court allowed the action. It ordered the applicant to publish apology for having breached the claimant's good name and to pay 20,000 Polish zlotys (PLN) to a charity. The applicant was further ordered to pay the claimant PLN 5,800 as reimbursement of costs to the proceeding. The court considered that the applicant had clearly used several expressions which indicated that the claimant had been a secret collaborator with the communist-era secret services. The main question to be considered was whether such statements should be considered true.

The court established that between 1975 and 1984 Mr J. M. had been on five occasions summoned by agents of the secret services for interviews in connection with his applications for passports and returns from stays abroad. This was not contested by the claimant who himself made this information public. In 1978 Mr J. M. was formally registered as a secret collaborator (TW). Other notes which could be found in the IPN's archives indicate that until 1989 existed a two-volume file on the claimant; however, they could no longer be found in the Wrocław branch of the IPN. The trial court heard many witnesses: the applicant and the claimant, historians, specialists on lustration, former agents of secret services assigned to recruiting collaborators at the Warsaw University, and employees of the IPN. Some of them testified that many files on secret collaborators had been destroyed when the regime fell in 1989. They did not know of any case of fictitious registration of somebody as a secret collaborator or of a situation that the services had kept a file on somebody for many years although he or she had not been actually collaborating. One witness, a historian, testified that the internal files of the secret services had been truthful; the regime would only falsify documents for external purposes. The same witness considered that on the basis of the information available to him he would have also stated that Mr J. M. had been an intentional and secret collaborator with the communist-era secret services. Two other witnesses, former agents of the secret services, were unable to remember whether they had recruited Mr J. M. as a secret collaborator.

The applicant submitted that once he had discovered that Mr J. M. was on the list of secret collaborators with secret services it had been his obligation to inform public opinion about it. His intention was not to offend the claimant. He acted in general interest taking part in a public debate on matters very important for the society. Moreover, his assertion was provoked by public statements made by the claimant. The applicant also argued that he had not alleged that the claimant had been harmful to other people or that he had taken remuneration for information provided. The information provided by him - that Professor J. M. had been a collaborator - was therefore truthful and given in the public interest.

Nevertheless, the court noted that presently there were no documents confirming the claimant's consent for collaboration or that he had been actively reporting to the secret services. The court referred to the term of collaboration contained on the 1997 Lustration Act and reiterated that the collaboration had to be intentional and secret and consisting of passing on information. It concluded that the sole registration by secret services should not be sufficient to consider that someone had been a secret collaborator.

The applicant lodged an appeal against the judgment. He argued that the registration of Professor J. M. as a secret collaborator by the services, in the light of generally known facts, allowed him to conclude that he had been the collaborator. Mr J. M. had been registered as TW for eleven years, the file had been destroyed, and the secret services were not known for falsifying the internal files. According to the historians, in 1989, the services destroyed files of only important collaborators. The applicant underlined that he had acted in the general interest as the claimant had been a public figure who had recently criticised the process of lustration.

On 29 October 2008 the Wrocław Court of Appeal dismissed the appeal. It further ordered the applicant to pay the claimant PLN 2,000 as reimbursement of the costs of the appellate proceedings. The court accepted all findings of the first-instance court regarding the facts of the case. It considered that when personal rights had been breached by a statement of facts, the illegality of such action could be excluded only if the statement contained truthful information. Acting in the general interest did not exclude responsibility for making untrue statements. In the present case there was no evidence, from the documents or statements of witnesses, proving that Professor J. M. had indeed been actively collaborating with the secret services. Therefore, in the light of material collected in the case, the court concluded that the applicant had not proved the veracity of his statements. Furthermore, the court considered that the applicant had not fulfilled his duty to act with particular diligence and caution in making serious allegations on the basis of unconfirmed circumstantial evidence.

The applicant further lodged a cassation appeal against the judgment.

On 10 September 2009 the Supreme Court upheld the judgment and specified that the applicant was to publish apology in one national daily and on the Radio Wrocław. The applicant was ordered to reimburse further PLN 2,000 to the claimant for the costs of the cassation proceedings. The judgment was notified to the applicant's lawyer on 30 November 2009. The text of the apology to be published by the applicant was as follows:

“I apologise to Professor J. M. for having made on 20 April 2007 an untrue assertion that he had been an informer of the [communist-era] political police”.

B. Relevant domestic law

Article 23 of the Civil Code contains a non-exhaustive list of the rights known as “personal rights” (*dobry osobiste*). This provision states:

“The personal rights of an individual, such as, in particular, health, liberty, reputation (*cześć*), freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements shall be protected by the civil law regardless of the protection laid down in other legal provisions.”

Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. According to that provision, a person facing the danger of an infringement may demand that the prospective perpetrator refrain from the wrongful activity, unless it is not unlawful. Where an infringement has taken place, the person affected may, *inter alia*, request that the wrongdoer make a relevant statement in an appropriate

form, or claim just satisfaction from him/her. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

COMPLAINT

The applicant complains under Article 10 of the Convention about a breach of his right to freedom of expression. The applicant submits that his statement was truthful and concerned facts and his assessment that Mr J. M. had been registered as a collaborator with secret services. He did not comment on the scale of such cooperation and his intention had not been to debase or offend Professor M. The information provided by him had been made in the context of a heated public debate on importance of lustration and the subject had been of general interest. In consequence, the sanction imposed on him had clearly been disproportional and amounted to a breach of Article 10 of the Convention.

QUESTION TO THE PARTIES

Has there been a violation of the applicant's right to freedom of expression, contrary to Article 10 of the Convention?