

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

FIRST SECTION

CASE OF ROMANOWSKI v. POLAND

(Application no. 55297/16)

JUDGMENT

STRASBOURG

12 January 2023

This judgment is final but it may be subject to editorial revision.



In the case of Romanowski v. Poland,

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

Lətif Hüseynov*, President*,
Lorraine Schembri Orland,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 55297/16) 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") on 15 September 2016 by a Polish national, Mr Marcin Romanowski, born in 1976 and living in Warsaw ("the applicant") who was represented by Mr M. Zaborowski, a lawyer practising in Warsaw;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 29 November 2022,

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

SUBJECT MATTER OF THE CASE

1. This protection of reputation case concerns the domestic adjudication of a civil action regarding defamatory and untrue statements about the alleged misuse of publicly funded equipment by the applicant, a ministry employee.

2. The applicant, who had worked as one of several assistants and advisors to an outgoing Minister of Justice, brought a civil action for personal rights' infringement against the incoming Minister in relation to the latter's statements that the office laptops used by the outgoing Minister and by the applicant had been destroyed, and that the destruction had not been accidental and could possibly constitute a criminal offence. The impugned statements were made at a press conference during which the Minister did not mention the applicant by his name but referred to him as the former Minister's assistant, and in a press release published on the Ministry of Justice's website a day before the conference, in which the applicant's name was mentioned.

3. The applicant was also referred to by his name in the media coverage that was sourced in the press release and the press conference. The said media coverage was mainly focused on the outgoing Minister, and, collaterally, also on the applicant.

4. Following these events, the applicant, who is an academic, allegedly received queries from his close circle, and criticism from his students.

5. The applicant filed a civil action against the Minister in question for personal rights' infringement.

6. On 18 March 2013 the Warsaw Regional Court (*Sąd Okręgowy*) and, on 24 January 2014 the Warsaw Court of Appeal (*Sąd Apelacyjny*), ruled in the applicant's favour.

7. The courts observed that the defendant had lacked any basis to attribute the destruction of the laptop to the applicant, as at the time of the press conference, he had only had information about the extent, but not the cause, of the laptop's damage. Reports that were obtained at the later stage concluded that, unlike the former Minister's computer, the applicant's laptop had suffered small damage that could have been caused through regular use rather than an intentional act. The state of the applicant's laptop could have been easily visually assessed and had not required any specialised knowledge. The courts therefore concluded that the defendant should not have concluded that the computer in question had been destroyed on purpose and should not have shared such false information in public. Instead, the defendant should have limited himself to publicly commenting on the damage caused to the computer used by the former Minister that was significant, unusual, and visibly mechanical.

8. The courts also found that although the defendant himself had not mentioned the applicant's name, the information that he had publicly shared had allowed for the applicant's identification by those who had read the Ministry's press release or media coverage. Moreover, the defendant had not discouraged his staff who had been engaging with journalists from revealing the applicant's name. The defendant should have known that the applicant had been identified by name on the Ministry's website. Overall, as a trained lawyer and Minister of Justice, the defendant was bound by higher standards of conduct.

9. On 23 July 2015 the Supreme Court quashed the judgment of the appellate court and remitted the case with the following observations. The applicant should be considered a public person. The remarks made by the defendant were of public interest and, although proven untrue, were part of a political process related to the change of the management of the Ministry of Justice and, therefore, were protected under Article 10 of the Convention.

10. On 6 October 2015 the Warsaw Court of Appeal dismissed the applicant's action, considering itself bound by the Supreme Court's interpretation of the applicable law. It ordered the applicant to pay the costs of the proceedings and court fees, in total 9,834 Polish zlotys.

11. The applicant decided not to bring another cassation appeal as, in his view it would have no prospect of success.

12. Before the Court the applicant complained, invoking Articles 8 and 10 of the Convention, of the breach of his right to respect for his private life and reputation.

THE COURT'S ASSESSMENT

13. As the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), the Court considers that the applicant's complaint falls to be examined under Article 8 of the Convention.

14. The Government's objection that the applicant had failed to exhaust domestic remedies cannot be accepted. The applicant had availed himself of all remedies when his case was examined the first time around. In the light of the Supreme Court's judgment, lodging a cassation appeal against the appellate court's judgment of 6 October 2015, would have had no prospect of success.

15. The Government's objection that the applicant had failed to comply with the six-month rule cannot be accepted either. Contrary to what the Government argued, the time-limit in question ran, not from the date of an oral delivery of the operative part of the final ruling, but from the service of the judgment with full reasoning, as it was only then that the applicant obtained sufficient knowledge of the judgment (see, *mutatis mutandis*, *Hürmüz Koç and Kıymet Tosun v. Turkey* (dec.), no. 23852/04, 13 November 2008). Following a formal request from the applicant's lawyer, the appellate court produced the reasoning of the impugned judgment and served it on the applicant on 16 March 2016. Obtaining the reasoned judgment was necessary, as it enabled the applicant to make an informed decision about any prospects of pursuing a cassation appeal and to draw up his application to the Court.

16. The Court therefore rejects the Government's preliminary objections. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

17. The general principles concerning the conflict between someone's right to reputation and the exercise by a third party of the right to freedom of expression have been summarised in *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 82-95, 7 February 2012), *Węgrzynowski and Smolczewski v. Poland* (no. 33846/07, § 53-57, 16 July 2013) and *Polanco Torres and Movilla Polanco v. Spain* (no. 34147/06, § 40-43, 21 September 2010).

18. The Court notes that the defamatory statements about the applicant were collateral to what appears to have been an attempt to contribute to a political debate related to the change of the administration of the Ministry of Justice and the use of public resources. In the Court's view, however, the applicant was not a public figure. At the relevant time, he had been one of several assistants and advisors working at the Minister's cabinet. The applicant submitted that he had been a low-profile civil servant and that his name had for the first time been mentioned in public in relation to the laptop scandal. In the Court's view, the domestic court did not give sufficient

consideration to the applicant's arguments that he had not been a public figure and inaccurately conflated his situation with that of the former Minister.

19. The Court also stresses that the impugned statements, even though they were not scandalous, shocking or calumnious, were untrue and intended to cause harm to the applicant's reputation.

20. The Court acknowledges that an effective legal system for the protection of the rights falling within the notion of "private life" was indeed available to the applicant in the present case, and that he made full use of it. The Court considers, however, that the final judgment given in the impugned proceedings lacked relevant and sufficient reasons, and failed to strike a fair balance between the applicant's rights guaranteed by Article 8 on the one hand and the defendant's rights under Article 10 of the Convention on the other hand. A limitation on freedom of expression in order to safeguard the applicant's reputation in the circumstances of the present case would not have been disproportionate under Article 10 of the Convention (contrast, *mutatis mutandis*, *Węgrzynowski and Smolczewski*, cited above, § 68, and *Karakó v. Hungary*, no. 39311/05, § 28, 28 April 2009).

21. There has accordingly been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 8,122 euros (EUR) in respect of non-pecuniary damage and EUR 9,410 in respect of costs and expenses incurred before the domestic courts and before the Court. The latter amount comprises 8,717 Polish zlotys (PLN) for the costs charged in the final judgment, PLN 1,117 for the court fee and stamp duty, and PLN 30,750 for the costs of legal representation before the Court.

23. The Government considered that all amounts claimed were excessive. Moreover, the Government submitted that the claim in respect of the costs of legal representation before the Court was unreasonable as to the quantum.

24. The Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

25. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,290 for costs and expenses in the domestic proceedings and EUR 4,000 for the proceedings before the Court, which it considers reasonable as to the quantum, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,290 (six thousand two hundred and ninety euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President