

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

FOURTH SECTION

DECISION

Application no. 42442/08
Tadeusz MURA
against Poland

The European Court of Human Rights (Former Fourth Section), sitting on 9 May 2016 as a Chamber composed of:

András Sajó, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 18 August 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tadeusz Mura, is a Polish national, who was born in 1957 and lives in Rybnik. He was represented before the Court by Ms A. Krasuska-Terrillon, a lawyer practising in Katowice.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. The applicant and his wife run a company which produces and sells construction materials. On 14 March 2005 the applicant's wife was arrested and remanded in custody on charges of fraud and association with an organised crime group. The applicant and their children protested against the detention by organising demonstrations outside the prosecutor's office and the prison, contacting the press and writing letters to the authorities. Following the arrest of his wife, the applicant's family and financial situation deteriorated; their adolescent son underwent psychiatric treatment after a suicide attempt. The applicant's wife was released on bail on 13 June 2005. In 2009 she was indicted and, according to information received by the Court in 2013 the criminal proceedings against her are still pending.

5. During his wife's detention, the applicant wrote voluminous letters to her on a daily basis. In them he related the events of recent days in detail and urged his wife to be brave and withstand her situation. The letters contained assurances of his love for her and his trust in God, to whom he had been praying every day. The letters were also full of profanities and abuse directed against the authorities and, most particularly, against the prosecutor, R.P., whom he considered responsible for his wife's incarceration. Some included passages addressed directly to R.P. or showed that the applicant had been aware that the letters would be read by the prosecutor. In his letters the applicant admitted that he felt angry and full of hatred towards the prosecutor. On few occasions he apologised to his wife for it. It also appears that in her letters to him his wife complained about such behaviour.

6. The applicant often took the letters, addressed to his wife at the Lubliniec Prison, directly to the Registry of the Katowice Appellate Prosecutor in order to speed up their delivery. He must have known that all the letters addressed to his wife were censored by the prosecutor's office. On at least one occasion he apologised for the fact that a passage of his letter to his wife had not been addressed to her.

7. For instance, in the applicant's letter to his wife of 30 April 2005 he alleged that the prosecutor made copies of their letters in order to masturbate when aroused by the private passages that they contained. He also stated: "I guess his father must have had syphilis to have made such a product (forgive me)". Another passage from the letter read:

> "I love you and I miss you. And with every minute my hatred towards this son of a bitch is growing. I curse him every day, I made myself a doll [resembling him] and I put nails in it every day ... I see the harm being caused to our children and I curse him every day and I hope with all my strength that my cursing will have an effect."

In his letter of 12 May 2005 the applicant referred to R.P. as a prat (*dupek*), an idiot (*debil*) and a bandit. He stated:

> "Our victory will be great. This prat knows that his time is over. The idiot thought that he could lock up innocent people and secure his promotion on this account. But this prat is simply stupid."

In a letter of 20 May 2005 the applicant spoke of their son's health problems, which had led to his hospitalisation in Kraków. He then stated:

> "I know you were brave during the [identification parade at the police station] and according to the witnesses that fool (*palant*) P. was stoned. There was no contact with him. He was clearly stoned. Even the police officers confirmed it. I think that prat is almost finished. I have talked about this case with journalists from the Polish Television and they are going to go after him (the son of a bitch) ... I hope he ends up in prison ... and his friends from the mafia (key witnesses) will be wiping his arse. And if human justice fails to reach him, he cannot escape God's."

8. On an unspecified date the Katowice Regional Prosecutor indicted the applicant under Article 226 of the Criminal Code, accusing him of insult of a public official, the Appellate Prosecutor Mr R.P. The latter participated in the proceedings and asked the court to proceed with the case also if the court considered that the offence was subject to private prosecution.

9. On 15 June 2007 the Katowice District Court convicted the applicant of insult (*zniewaga*) in breach of Article 216, rather than Article 226, of the Criminal Code, considering that the offence had not been committed during or in connection with the carrying out of professional duties by a public official. The applicant was fined 500 Polish zlotys (PLN), calculated as 50 daily rates, each equivalent to PLN 10. He was further ordered to pay the State Treasury PLN 900 for the costs of the proceedings. The court considered that, between April and May 2005, in his numerous letters to his wife, the applicant had used vulgar and insulting language about Mr R.P. In particular, the applicant had stated that the prosecutor had an IQ of below ten, had ridiculed the Polish judicial system and had a mental disorder. He also called him Satan, bastard, bandit, and stupid. The court noted that some of the insults were so vulgar that they should not be quoted in the reasoning of the judgment. The applicant had also stated that the prosecutor had cooperated with the mafia, had accepted money from criminals and had been protecting them. In one of the letters he alleged that the prosecutor had been under the influence of drugs at work.

The court considered that the applicant's statements contained no opinion or actual criticism of the prosecutor. The applicant's intention was merely to debase the victim and insult him. His statements had not been provoked by any actions of the prosecutor.

The court concluded that although the letters had never been published, it had been the applicant's intention for the insults to reach Mr R.P. The applicant knew that all the letters addressed to his wife were subject to censorship, and thus would be read by Mr R.P. He took the letters directly

to the prosecutor's office and requested that they be censored as a priority. Moreover, in several letters the applicant addressed his insults directly to Mr R.P., stating for example "P., you bandit". He would also apologise to his wife that parts of his letters were not in fact addressed to her.

10. The applicant and the prosecutor each lodged an appeal against the judgment.

11. On 19 February 2008 the Katowice Regional Court dismissed both appeals. The court upheld the findings and conclusions of the first-instance court. The appellate court examined the case from the standpoint of Article 10 of the Convention and considered that the applicant had overstepped the limits of permissible criticism.

12. The applicant submitted that he had not been able to pay the fine owing to his difficult financial situation and that it had been commuted to imprisonment. The fine was in the end paid by the applicant's daughter.

B. Relevant domestic law and practice

13. Article 216 of the Criminal Code, in so far as relevant, provides as follows:

> "1. Anyone who insults another person in his or her presence, or publicly in his or her absence, or with the intention that the insult will reach such a person, is liable to a fine or the restriction of liberty.
>
> 5. Prosecution is subject to the private procedure."

14. Article 226 § 1 of the Criminal Code, prohibiting insult of a public official, reads as follows:

> "Anyone who insults a public official, or a person assisting him or her, in the performance of his or her official duties or in connection with such duties is liable to a fine, the restriction of liberty or imprisonment of up to one year."

COMPLAINT

15. The applicant complained under Articles 8 and 10 of the Convention about a violation of his right to freedom of expression. He argued that he had not known that his letters would be read by the prosecutor, Mr R.P. in person and that the latter would take offence at their content.

16. He further complained under Article 6 § 1 of the Convention about the outcome of the proceedings in question, in particular the allegedly erroneous assessment of evidence by the courts.

THE LAW

A. Complaint under Article 10 of the Convention

17. The Court firstly notes that although the applicant relied on two Articles of the Convention this part of the application should be examined solely under Article 10 of the Convention.

18. Although the Government did not raise the issue, the Court considers it appropriate to first examine whether the complaint under Article 10 is admissible in the light of Article 35 § 3 (b) of the Convention. This provision added a new admissibility criterion to Article 35 § 3 of the Convention with the entry into force of Protocol No. 14 on 1 June 2010. It reads as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as de-fined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

19. In accordance with Article 20 of the Protocol, the new provision applies from the date of its entry into force to all applications pending before the Court, except those declared admissible. The Court may raise the new admissibility criterion of its own motion (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 30, 1 June 2010).

20. The purpose of the new admissibility criterion is to enable more rapid disposal of unmeritorious cases and thus to allow the Court to concentrate on its central mission of providing legal protection of human rights at the European level (see the Explanatory Report to Protocol No. 14, CETS No. 194, §§ 39 and 77-79). The High Contracting Parties clearly wished the Court to devote more time to cases which warrant consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes (ibid., § 77).

21. The main element contained in the new admissibility criterion is the question of whether the applicant has suffered a "significant disadvantage". Inspired by the general principle of *de minimis non curat praetor*, this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (*Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011). The assessment of this minimum level is relative and depends on all the circumstances of the case (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts)).

The severity of a violation should be assessed by taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010; *Finger v. Bulgaria*, no. 37346/05, § 70, 10 May 2011; and *Eon v. France*, no. 26118/10, § 34, 14 March 2013). However, the applicant's subjective perception cannot alone suffice to conclude that he/she suffered a significant disadvantage. The subjective perception must be justified on objective grounds (*Ladygin*, cited above). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (*Korolev*, cited above).

22. The Court notes that the Convention does not limit the application of the new admissibility criterion to any particular right protected under the Convention. At the same time, the Court is mindful of the utmost importance of freedom of expression as one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment (see, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). This approach has been consistently endorsed in the Court's jurisprudence (see, as recent examples, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 78, 7 February 2012; *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, ECHR 2012 (extracts)...); and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013 (extracts)). Therefore, in cases concerning freedom of expression the application of the new admissibility criterion should take due account of the importance of this freedom and be subject to particular scrutiny of the Court. This scrutiny should encompass, among others, such elements as contribution to a debate of general interest and whether a case involves the press or other news media.

23. In the present case the domestic courts convicted the applicant of insult and sentenced him to pay a fine of PLN 500 (120 euros (EUR)). He was also ordered to pay to the State Treasury PLN 900 (EUR 220) for the costs of the proceedings (see paragraph 9 above). The domestic courts found that it had been the applicant's intention that his insults reach the prosecutor R.P.

24. The seriousness of an alleged violation should be assessed by taking into account the applicant's subjective perceptions and what is objectively at stake in a particular case. The applicant's subjective perception is relevant; the Court is ready to accept that individual perceptions encompass not only the monetary aspect of a violation, but also the general interest of the applicant in pursuing the case (see, *Havelka v. Czech Republic* (dec.), no. 7332/10, 20 September 2011). However, subjective perception does not suffice for the Court to conclude that the applicant suffered a significant disadvantage. It must also have regard to objective grounds.

25. With regard to the first element, the Court accepts that the applicant's conviction of the offence was clearly of subjective importance to him. However, it must also assess any other, mainly objective consequences of the conviction for the applicant in order to determine the significance of its impact for the purposes of Article 35 § 3 (b) of the Convention.

26. In this connection the Court observes that there is no indication that the applicant's conviction in any way affected his professional or private life (compare and contrast, *Luchaninova v. Ukraine,* no. 16347/02, § 49, 9 June 2011 where the applicant's conviction for a petty theft was relied on as a basis for her dismissal from work). The financial implications of the proceedings were not shown to represent a particular hardship for the applicant, given the modest amount at stake (EUR 340 in aggregate).

27. On account of these elements, the Court cannot discern objective grounds to hold that the applicant suffered important adverse consequences as a result of his conviction (see *Rinck v. France* (dec.), no. 18774/09, 19 October 2010 and *Sylka v Poland* (dec), § 34, no. 19219/07, 26 June 2014).

28. The Court would also note that the subject matter of the complaint does not give rise to an important matter of principle (compare and contrast, *Berladir and Others v. Russia*, no. 34202/06, § 34, 10 July 2012 which concerned the operation of the "notification-and-endorsement procedure" for public gatherings). In particular it cannot be argued that the applicant participated in a public debate or was motivated by concerns of general interest. The applicant was prosecuted for insulting a public official. Such an offence is a common feature of many legal systems in the Council of Europe Member States. The case is to be distinguished from *Eon* judgment (quoted above, §§ 34-35) where, in rejecting the Government's objection on the grounds of lack of significant disadvantage, the Court took into account the national debate whether the offence of insulting the head of State should remain a criminal offence and a wider issue of its compatibility with the Convention. In the instant case, the District Court refused to examine the charge against the applicant under Article 226 § 1 of the Criminal Code finding that the offence had not been committed in the course of the discharge of his duties as the public prosecutor (see paragraphs 9 and 14 above). The applicant was thus convicted of a regular insult of a private person as the courts established that it had been his intention for the insults to reach Mr R.P. (see paragraph 9 above). Therefore, on its face the present case goes no further than an unfortunate confrontation between two individuals with no wider implications or public interest undertones which might raise real concerns under Article 10 of the Convention (see *Sylka*, cited above, § 35).

29. In view of the foregoing, the Court concludes that in the circumstances of the case the applicant has not suffered a significant disadvantage as a result of the alleged violation of the Convention.

30. The second element contained in Article 35 § 3 (b) obliges the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention, for instance whether there is a need to clarify the States' obligation under the Convention or to induce the respondent State to resolve a structural deficiency. Considering the present case in this way the Court does not discern any compelling reason to warrant its examination on the merits. Thus, the Court finds that respect for human rights does not require an examination of this case.

31. Lastly, Article 35 § 3 (b) does not allow the rejection of an application under the new admissibility criterion if the case has not been duly considered by a domestic tribunal. The purpose of that rule, described by the drafters as a "second safeguard clause" (see the Explanatory report, § 82), is to ensure that every case receives a judicial examination, either at the national or at the European level, so as to avoid a denial of justice (see *Korolev*, cited above; and *Finger v. Bulgaria*, no. 37346/05, § 73, 10 May 2011). The Court notes that the case against the applicant was examined on the merits by the Katowice District Court and the Katowice Regional Court and that the applicant was able to submit his arguments in adversarial proceedings. Consequently, the third element for rejection of an application under the above admissibility criterion has been satisfied.

32. It follows that the applicant's complaint under Article 10 must be declared inadmissible in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

B. Other complaints made by the applicant

33. Lastly, the applicant complained that the facts of the case gave rise to a violation of Article 6 of the Convention. In particular, he alleged that his right to fair trial had been breached, in particular on account of the assessment of evidence.

34. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way evidence should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

35. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

36. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2016.

Marialena Tsirli
Registrar

András Sajó
President