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

FOURTH SECTION

DECISION

Application no. 52517/13
Eryk SCHUMAN
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 June 2014 as a Committee composed of:
George Nicolaou, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*
Having regard to the above application lodged on 6 August 2013,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Eryk Schuman, is a Polish national, who was born in 1985 and lives in Chorzów.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.
3. The applicant was a chief editor of the local Internet portal "dlachorzowa.pl" in the city of Chorzów.
4. KS was a local politician in Chorzów. At the material time he was a member of the Chorzów Municipal Council.
5. On 12 July 2011 the "dlachorzowa.pl" published the applicant's article entitled "Will KS lose the Chorzow councilor's mandate?" In the above article the applicant described KS' activity - that he ran his own business as a head of sport's club and used the Municipality's property in his private activity and earned 275,000 Polish zlotys (PLN - 68,750 euros (EUR)).

6. On 7 February 2012 KS brought a civil action against the applicant for the protection of his personal rights. Among other things, he sought an order requiring the applicant to publish an official rectification and apology in the local newspaper and compensation for a charity organisation.

7. On 6 August 2012 the Katowice Regional Court gave judgment finding that KS had not back every earned PLN 275,000 but PLN 275 (EUR 68.75). The court found that the applicant used the former amount to describe a dimension of committed offences by KS which turned out to be untrue. Therefore the statements made by the applicant in his article had infringed the plaintiff's personal rights (by tarnishing KS' good name and reputation). The court granted the claim, obliged the applicant not to publish articles containing false information that might infringe KS' rights, obliged the applicant to publish the apologies and to pay PLN 5,000 (EUR 1,125) for a certain charity association.

8. On 20 September 2012 the applicant appealed against that judgment.

9. On 8 February 2013 the Katowice Court of Appeal quashed the first-instance court's judgment as regards the first obligation, reduced the amount of compensation to PLN 1,000 (EUR 250) and dismissed the remainder of the applicant's appeal. The appellate court found that the applicant's article could not be considered as a mistake as regards the indicated amount of KS' income.

10. On 15 March 2013 the applicant's lawyer informed him about lack of grounds to lodge a cassation appeal.

B. Relevant domestic law and practice

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

> "The personal rights of an individual, such as 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 under civil law regardless of the protection laid down in other legal provisions."

12. Article 24 of the Civil Code provides for ways of redressing infringements of personal rights. Under that provision, a person faced with the threat 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 demand satisfaction from him or her. If an infringement of a personal right causes financial loss, the person concerned may seek damages.

13. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

> "The court may grant a suitable sum as pecuniary compensation for non-pecuniary damage (krzywda) suffered by anyone whose personal rights have been infringed. Alternatively, without prejudice to the right to seek any other relief that may be necessary to remove the consequences of the infringement, the person concerned may ask the court to award a suitable sum for the benefit of a specific social interest. ..."

COMPLAINTS

14. The applicant complained under Article 10 of the Convention that his right to freedom of expression had been infringed by virtue of the impugned domestic judgments.

15. He argued that his mistake was meaningless and the fact that he was obliged to publish the apologies and pay compensation breached his right to freedom of expression. He pointed out that he was a student, did not have any income and was engaged in a non-profit activity for the benefit of the society. In his submission, the domestic courts gave a little importance to the freedom of expression.

16. He further considered that the judgment in question was not necessary in a democratic society. He claimed that his article could not constitute a real threat to the public image of any local politician.

17. He further complained under Article 6 § 1 of the Convention about the outcome of the proceedings in question.

THE LAW

A. Alleged violation of Article 10 of the Convention

18. The Court finds that the domestic judgment given in the course of the civil proceedings against the applicant amounted to an interference with his right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. In principle, an interference with the applicant's rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether it was prescribed by law, whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was necessary in a democratic society in order to achieve those aims.

19. The interference referred to above was "prescribed by law"; it was based on the relevant provisions of the Civil Code providing for the protection of personal rights.

20. Moreover, it was not disputed by the applicant that the interference pursued a legitimate aim, namely the protection of the reputation or rights of others. The Court accepts that the interference with the applicant's freedom of expression pursued a legitimate aim, namely the protection of the reputation or rights of an individual Municipal Council member.

21. What is in dispute is whether the interference was necessary in a democratic society (mutatis mutandis: *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006).

22. As regards the test of "necessity in the democratic society", the relevant general principles are set out in paragraphs 54-58 of the Court's judgment in the case *Łopuch v. Poland*, no. 43587/09, 24 July 2012. The Court would, however, reiterate that in exercising its supervisory jurisdiction, it must look at the impugned interference in the light of the case as a whole, including the content of the article written by the applicant and the context in which it was made. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I with further references).

23. Furthermore, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see *Lingens v. Austria*, cited above, § 42; *Incal v. Turkey*, judgment of 9 June 1998, Reports 1998-IV, p. 1567, § 54; and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI).

24. Turning to the facts of the present case, the Court notes that the judgments against the applicant concerned the statement in his article which was found to be false by the domestic courts at two instances. The applicant claims however, that the mistake concerned only the numbers, that it was an obvious mistake and did not influence the whole article. On the other hand, the domestic courts stated that the above false information had been crucial in the article and resulted in the conclusion that KS had committed an offence. Therefore, this accusation that KS deliberately committed an offence was a serious allegation of fact, which remained false.

25. It must be noted that the domestic courts recognized that the present case involved a conflict between the right to freedom of expression and the protection of the reputation of the rights of others.

26. Lastly, in assessing the proportionality of the interference, the nature and severity of the sanctions imposed are also factors to be taken into

account (see, inter alia, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI; and *Lewandowska-Malec v. Poland*, no. 39660/07, § 69, 18 September 2012). Having come to the conclusion that the applicant infringed KS's personal rights, the remedies used by the courts (ordering only an apology and compensation for the NGO in the amount of PLN 1,000) have to be regarded as adequate in this situation.

27. In the light of the foregoing, the Court considers that the reasons advanced by the domestic courts in support of their decisions were relevant and sufficient and that the interference was not disproportionate to the legitimate aim pursued, namely, the prevention of disorder. Therefore, the interference with the applicant's freedom of expression was necessary in a democratic society.

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

B. Other alleged violations of the Convention

29. The applicant also complained under Article 6 § 1 of the Convention about the unfavourable outcome of the proceedings against him, in particular the allegedly erroneous assessment of evidence.

30. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in 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 insofar as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

31. It follows that this complaint 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, unanimously,

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	George Nicolaou President