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

FOURTH SECTION

DECISION

Application no. 23352/09
Adam STOBIK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 19 November 2013 as a Committee composed of:

Ledi Bianku, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 February 2009,

Having regard to the declaration submitted by the respondent Government on 11 July 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Adam Stobik, is a Polish national, who was born in 1964 and lives in Kryry. 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

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

1. The first set of proceedings

On 11 January 2006 the Bielsko-Biała District Court, composed of Judge D.L., convicted the applicant of insult of the assessor judge T.J.

The applicant appealed on 22 March 2006. In his appeal he stated as follows:

> "On 11 January 2006 Dorota L. expelled out of herself the judgment which had been commissioned [and it is] based on false premises and [on] deliberate criminal activity. Dorota L. is a criminal hiding behind a pathological immunity and a judge's robe which serves the same purpose as a gangster's balaclava. Dorota L. committed the offences specified in Article 231 and others [of the Criminal Code], I will explain these acts and demand the quashing of the judgment which was given ... on criminal motives".

The applicant argued in his appeal that the judge had often interrupted his testimony. He did not know what he had been charged with because the court had not served the bill of indictment. When he asked for an adjournment of the trial and the service of the bill of indictment the judge refused and ordered that he undergo a psychiatric observation.

In an attachment to his appeal the applicant stated:

> "J. and L. is not a court, it is not the administration of justice[,] from the moment of breaking the law [she] is a criminal and they deserve no respect. You deserve no respect because you are the accomplices of the gangsters. ... the majority of judges and all probation officers should be hanged, this should be a reform. If you were paid, you would decide cases with a swastika on your hands".

On 22 November 2006 the Bielsko-Biała Regional Court quashed the first-instance judgment and remitted the case. It held that there was no evidence in the case file that the bill of indictment had been served on the applicant and consequently the rights of the defence had been restricted. It appears that after the remittal the Bielsko-Biała District Court discontinued the proceedings against the applicant.

The Regional Court forwarded the applicant's appeal to the Bielsko-Biała Regional Prosecutor's Office with a view to determining whether the offence of insulting a public official, specified in Article 226 § 1 of the Criminal Code ("CC"), had been committed.

On 7 March 2007 the Cieszyn District Prosecutor opened an investigation.

On 21 May 2007 the applicant was charged with insulting a public official (Article 226 § 1 of the CC). He pleaded not guilty. The applicant stated that he had drafted his appeal motivated by the feeling of injustice done to him by Judge D.L. He considered that the judge had committed an offence by her failure to serve the bill of indictment and by abusing her powers. At the hearing he had asked to be served the bill of indictment but the judge, according to him, had said that "he would not be deciding here". Furthermore, following his requests to respect the rights of the defence the judge had ordered him to undergo a psychiatric observation. The applicant underlined that during the trial he had not offended the judge. The Regional Court had accepted his arguments and had ruled in his favour.

Judge D.L. did not know the content of the appeal lodged by the applicant. She learnt about it when she was interviewed by the prosecutor on 24 April 2007. She considered the applicant's statements insulting and defamatory.

On an unspecified date in 2007 the prosecution filed a bill of indictment with the Cieszyn District Court. The applicant was charged with insulting Judge D.L. in connection with his statement that she "had been a criminal hiding behind a pathological immunity and behind a judge's robe which served the same purpose as a gangster's balaclava".

The Cieszyn District Court held five hearings.

At the hearing the applicant stated that after the remittal of his case the Bielsko-Biała District Court had discontinued the proceedings against him. He admitted that he had drafted his appeal in the heat of the moment. The applicant further stated that when writing about "the offences" committed by Judge D.L. he had had in mind the abuse related to the refusal to serve the bill of indictment.

The trial court changed the legal classification of the offence from insult of a public official (Article 226 § 1 of the CC) to defamation (Article 212 § 1 of the CC) and informed the applicant accordingly. It requested the prosecutor to declare whether he intended to pursue the prosecution of the offence of defamation which was, as a rule, privately-prosecutable. The prosecutor declared in the affirmative.

On 10 June 2008 the court, composed of the assessor S.K., convicted the applicant of defamation (Article 212 § 1 of the CC). It held that in his appeal the applicant had stated that Judge D.L. had committed an offence and that she had been a criminal, and that such allegations could denigrate her in the eyes of the public and undermine the public confidence necessary for the discharge of her duties as a judge. The trial court sentenced the applicant to two months' restriction of liberty (20 hours of community service per month). It also ordered him to make a written apology to the judge.

The trial court found that the crucial aspect of the case was the determination of the applicant's intention, namely whether his statements had been dictated by the need to protect his interests in the proceedings or whether they had been aimed at denigrating Judge D.L. Having analysed the circumstances of the case and the context of his statements, the court found that the applicant's intention had been to defame the judge. It attached particular weight to the statement "if you were paid you would decide cases with a swastika on your hands" which it considered particularly denigrating and unjustified by the applicant's subjective feeling of injustice.

The court found that the act at issue did not meet the statutory elements of the offence of insult of a public official as defined by the Constitutional Court in its judgment of 11 October 2006 (case no. P 3/06). However, there was no doubt that the applicant had committed the offence of defamation

(Article 212 § 1 of the CC). In the court's view, the applicant's assertions that Judge D.L. had been a criminal and that she had committed offences, had been defamatory and had been intended to disparage her and to deprive her of the public confidence necessary for the discharge of her duties as a judge. The aggravating factor for the court was the fact that the applicant had compared Judge D.L. with gangsters wearing balaclavas. The court did not accept the applicant's defence that the use of the term "criminal" had been related to the fact that Judge D.L. had not served the bill of indictment on him and had ordered him to undergo a psychiatric observation.

Next, the trial court examined whether statements included in complaints or appeals could amount to defamation. It relied on the Supreme Court's judgment of 15 September 1970 (no. V KRN 31/70) in which that court had stated that an allegation raised in the course of judicial proceedings could not amount to defamation on condition that the impugned statement had been aimed at protecting the statement-maker's own interests in the case and provided that the allegation had been raised in a correct form and had not been solely aimed at denigrating the person against whom it had been levelled. In the circumstances of the applicant's case, the trial court found that it had been unnecessary to make the impugned allegations against the judge in his appeal. These allegations, in the court's view, had not been justified by the protection of the applicant's interests in the proceedings, but had been solely aimed at denigrating the judge.

The applicant appealed. On 8 January 2009 the Bielsko-Biała Regional Court dismissed his appeal.

2. The second set of proceedings

On 6 January 2006 the President of the Pszczyna District Court filed a criminal complaint against the applicant in connection with a number of allegedly offensive statements included in his appeals.

The prosecutor opened an investigation. He subsequently charged the applicant with five counts of insult of a public official under Article 226 § 1 of the Criminal Code. The charges were related to insults made against the prosecutors, judges and assessors which the applicant had included in his various appeals or criminal complaints. They concerned, *inter alia*, the following statements: "I will not discuss with such a nil, it is beneath my dignity", "why K. and O. were not questioned, holy cows, they are untouchable, because they are protected by the fucking-prosecutor gang of bastards", "we were convicted by a bunch of gangsters from the prosecution service and the courts... 90% of the Silesian prosecutors are simply corrupt cattle" and "sons of bitches in robes".

The bill of indictment was filed with the Tychy District Court on an unspecified date in 2006.

During the trial the District Court changed the classification of the impugned offences to ordinary insult under Article 216 § 1 of the Criminal

Code in view of the judgment of the Constitutional Court of 11 October 2006 (case no. P 3/06). The prosecutor declared that she intended to pursue the prosecution of the reclassified offences which were normally privately-prosecutable.

On 28 May 2008 the Tychy District Court, composed of the assessor M.W., convicted the applicant of insult and sentenced him to four months' restriction of liberty (20 hours of community service per months). It further ordered him to reimburse part of the costs of the proceedings.

The applicant appealed. On 20 October 2008 the Katowice Regional Court upheld the first-instance judgment.

3. The third set of proceedings

On 19 May 2008 the Pszczyna District Court convicted the applicant of insult. On 9 July 2008 the applicant requested the court to grant him leave to appeal out of time. He submitted that he had been absent at the hearing on 19 May 2008 because he had had to take care of his ill mother.

On 25 July 2008 the Pszczyna District Court refused his request. It found that the applicant had not proved that he could not comply with the standard time-limit for reasons beyond his control.

The applicant appealed. On 17 September 2008 the Katowice Regional Court dismissed his appeal.

B. Relevant domestic law

1. Assessors (junior judges)

The relevant domestic law and practice regarding the status of assessors, including the landmark judgment of the Polish Constitutional Court of 24 October 2007 (case no. SK 7/06), are set out in the Court's judgment in the case of *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 16-25, 30 November 2010.

2. The Law on the National School for the Judiciary and the Prosecution Service

On 23 January 2009 Parliament enacted the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*), which entered into force on 4 March 2009. The law establishes a comprehensive and centralised institution responsible for training judges and prosecutors.

In response to the Constitutional Court's judgment of 24 October 2007 the Law on the National School for the Judiciary and the Prosecution Service abolished the institution of assessors as provided for by the Law of 27 July 2001 on the Organisation of Courts (section 60 (12)).

Furthermore, it specifically provided that as from 5 May 2009 assessors ceased to be authorised to exercise judicial powers (section 68 (1)).

COMPLAINTS

1. In respect of the first and second sets of the proceedings, the applicant complained under Article 6 of the Convention that his cases had been decided by assessors who had not been independent.

2. In respect of the first set of the proceedings, the applicant complained under Articles 7, 10 and 14 of the Convention about his conviction for defamation. He claimed that he had presented true facts in his appeal and that his appeal had been successful. He submitted that he had drafted his appeal with the feeling of injustice and had succeeded in proving that he had been wronged by Judge D.L.

3. In respect of the second set of the proceedings, the applicant complained under Articles 7, 10 and 14 of the Convention about his conviction for insult. He further alleged that the judgment had been given in the absence of a criminal complaint from the victims of the insult and that the victims had not been heard. The applicant further alleged that he had not intended that the persons concerned should learn of the alleged insults.

4. In respect of the second set of the proceedings, the applicant complained under Article 6 of the Convention that the rights of the defence had been unduly restricted because his legal-aid counsel had begun representing him only at the second hearing.

5. In respect of the third set of the proceedings, the applicant complained that he had been unlawfully convicted and that he could not be present at all hearings on account of his mother's serious illness. His mother subsequently died, but the court, nonetheless, refused to grant him leave to appeal out of time.

6. The applicant further alleged a breach of Article 13 of the Convention, claiming that all his appeals had been unsuccessful.

THE LAW

A. Lack of independence of the assessors

The applicant complained that the Cieszyn District Court's judgment of 10 June 2008 and the Tychy District Court's judgment of 28 May 2008 had been given by the assessors who had lacked independence. He relied on Article 6 § 1 of the Convention which provides, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

By letter dated 11 July 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The terms of the declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration - their acknowledgement of the fact that the first-instance courts which dealt with the applicant's case, sitting as an assessor, was not an independent tribunal, as required by Article 6 § 1 of the Convention.
>
> In these circumstances, and having regard to the Court's judgment of 30 November 2010 in the case of *Henryk Urban and Ryszard Urban v. Poland* ... in which it stated that the fact of acknowledging the violation of the applicants' right to have their case heard by an independent tribunal, as guaranteed by Article 6 § 1 of the Convention, constitutes in itself sufficient just satisfaction for non-pecuniary damage and that the State's legal actions (*i.e.* adoption of the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*) on 23 January 2009) to remedy the shortcomings underlying the institution of assessors by abolishing it and introducing new, comprehensive and centralised system for training judges effectively remedied the lack of independence of assessors within the Polish judiciary system, the Government submit that their unconditional acknowledgment of the fact that the applicant's right under Article 6 § 1 of the Convention was restricted should be found by the European Court a sufficient redress for any damage suffered by the applicant as a result of his case being decided by an assessor before the first-instance court. ...
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention."

By a letter of 1 August 2013, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application or part thereof out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 *in fine* includes the proviso:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

It also recalls that in certain circumstances, it may strike out an application or part thereof under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant

wishes the examination of the case to be continued (see *Martyna v. Poland* (dec.), no. 72040/01, 15 January 2008; *Gołubowski and 6 other applications v. Poland* (dec.), nos. 21506/08, 22650/08, 34732/08, 41594/08, 55405/08, 38781/09 and 49198/09, 5 July 2011). To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75-77, ECHR 2003-VI).

The Court recalls that it has already dealt with the institution of Polish assessors from the standpoint of Article 6 of the Convention. In *Henryk Urban and Ryszard Urban v. Poland* (no. 23614/08, 30 November 2010), its leading judgment on the issue**,** the Court examined in detail the question of the independence of a "tribunal" composed of an assessor in terms of conformity with the requirements of Article 6 § 1 and found, *inter alia*, as follows:

> "48. The Constitutional Court considered the status of assessors in its leading judgment of 24 October 2007. It held that section 135 § 1 of the 2001 Act, providing that the Minister of Justice could confer the exercise of judicial powers on assessors, fell short of constitutional requirements because assessors did not enjoy the necessary guarantees of independence, notably *vis-à-vis* the Minister. The Court notes that in its analysis of the question of the independence of assessors the Constitutional Court referred to the Strasbourg case-law and observed that Article 45 of the Constitution was modelled on Article 6 § 1 of the Convention ...
>
> 51. ... The Court notes that the Constitutional Court's findings were made in the context of an abstract review of the constitutionality of statutory provisions but, mindful of the principle of subsidiarity, considers that they may be applied to the facts of the present case, having regard to the similarity between the constitutional and the Convention requirements in so far as judicial independence is concerned and the reliance of the Constitutional Court on the relevant jurisprudence of the Court. (...) The important consideration for this Court is that the Constitutional Court found that the manner in which Poland had legislated for the status of assessors was deficient since it lacked the guarantees of independence required under Article 45 § 1 of the Constitution, guarantees which are substantively identical to those under Article 6 § 1 of the Convention.
>
> 52. The Court underlines that the Constitutional Court set aside the regulatory framework governing the institution of assessors as laid down in the 2001 Act. It further stresses that the Constitutional Court did not exclude the possibility that assessors or similar officers could exercise judicial powers provided they had the requisite guarantees of independence ... The Constitutional Court, referring to international standards, pointed to the variety of possible solutions for allowing adjudication by persons other than judges. In this connection, the Court notes that its task in the present case is not to rule *in abstracto* on the compatibility with the Convention of the institution of assessors or other similar officers which exist in certain Member States of the Council of Europe, but to examine the manner in which Poland regulated the status of assessors.
>
> 53. Having regard to the foregoing, the Court considers that the assessor B.R.-G. lacked the independence required by Article 6 § 1 of the Convention, the reason being that she could have been removed by the Minister of Justice at any time during her term of office and that there were no adequate guarantees protecting her against the

> arbitrary exercise of that power by the Minister ... It is not necessary to consider other aspects of the status of assessors since their removability by the executive is sufficient to vitiate the independence of the Lesko District Court which was composed of the assessor B.R.-G."

The first element of the Court's test in the *Henryk Urban and Ryszard Urban* judgment concentrated on the institutional deficiency as regards the position of assessors *vis-à-vis* the Minister of Justice – Prosecutor General. However, in its analysis the Court also had regard to the second element of the test, namely whether the circumstances of a particular case could give rise to legitimate grounds for believing that the Minister of Justice – Prosecutor General had taken an interest in the proceedings (see *Henryk Urban and Ryszard Urban*, cited above, § 56).

As regards the issue of just satisfaction, the Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicants (see *Henryk Urban and Ryszard Urban*, cited above, § 62). Moreover, having regard to the reasons underlying its finding of a violation and to the principle of legal certainty the Court found no grounds which would require it to direct the reopening of the case (see *Henryk Urban and Ryszard Urban*, cited above, § 56, 63-66). This is the Court's general approach in assessors' cases to the issue of just satisfaction unless the existence of specific circumstances is shown in a particular case.

Furthermore, in the same judgment the Court stated:

> "67. ... It is noteworthy that the constitutional and Convention deficiency regarding the status of assessors was remedied by the domestic authorities – which decided to abolish the office of assessor altogether – within the time-frame allotted by the Constitutional Court .... Having regard to the above, it may be noted that the authorities of the respondent State took the requisite remedial measures in order to address and remedy the deficiency underlying the present case."

As regards costs and expenses, the Court found that there was no justification for awarding legal costs under Article 41 (*Henryk Urban and Ryszard Urban*, cited above, § 70).

In the present case the Court cannot discern any circumstances which could give rise to an assumption that the Minister of Justice – Prosecutor General may have been taking an interest in the proceedings against the applicant and therefore the issue in the present case is limited to the institutional deficiency regarding the status of assessors. In the circumstances of the present case the Court accepts that the Government are not required to offer any compensation to the applicant in light of the *Henryk Urban and Ryszard Urban v. Poland* judgment.

The Court has carefully examined the terms of the Government's declaration. It observes that their declaration contains a clear acknowledgment of a breach of Article 6 § 1 of the Convention and refers to the adoption of the Law on the National School for the Judiciary and the

Prosecution Service which abolished the institution of assessors (see relevant domestic law above). Having regard to the nature of the admissions contained in the Government's declaration as well as to the absence of any factors which could distinguish the present case from the Court's approach in the case of *Henryk Urban and Ryszard Urban v. Poland*, the Court considers that it is no longer justified to continue the examination of the application in so far as it concerns the complaint related to the lack of independence of the assessor (see, *inter alia*, *Taranowicz and 7 other applications v. Poland* (dec.), no. 45223/08, 6 September 2011; *Duda v. Poland* (dec.), no. 25543/09, 14 February 2012).

In light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the complaint at issue (Article 37 § 1 *in fine*).

Accordingly, it is appropriate to strike the application out of the list in so far as it concerns the complaint related to the lack of independence of the assessors.

B. Complaints related to the conviction for defamation and insult

The applicant complained under Articles 7, 10 and 14 of the Convention about his conviction for defamation and insult. He alleged that the judgment convicting him of insult had been given in the absence of a criminal complaint from the victims and that the victims had not been heard.

The Court considers that these complaints should be examined under Article 10 of the Convention alone.

It notes that the applicant's convictions constituted an interference with his right to freedom of expression. This interference was "prescribed by law", respectively by Article 212 and 216 of the Criminal Code. It further pursued the legitimate aim of "maintaining the authority and impartiality of the judiciary".

With regard to the necessity of the interference at issue, the Court recalls that the courts – the guarantors of justice, whose role is fundamental in a State based on the rule of law – must enjoy public confidence. They must accordingly be protected from destructive attacks that are unfounded, especially in view of the fact that judges are subject to a duty of discretion that precludes them from replying to criticism (see, *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I). The courts, as with all other public institutions, are not immune from criticism and scrutiny. A clear distinction must, however, be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Article 10 § 2 of the Convention (see, *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003).

In respect of the conviction for defamation, the Court finds that the applicant's statements were offensive and cannot be justified by the failure of Judge D.L. to respect the applicant's rights in the course of the trial. It is to be noted that the domestic courts had regard to the case-law of the Supreme Court that in defamation cases a distinction should be made between statements aimed at defending one's interests in the proceedings and those aimed solely at denigrating a person. The Court considers that the applicant's resort to the insulting allegations against Judge D.L. was unnecessary to vindicate his rights in the proceedings. In addition, the penalty imposed on the applicant was a lenient one, namely 40 hours of community service and an order to make a written apology (compare and contrast, *Skałka v. Poland*, cited above, § 39).

In respect of the conviction for insult, the Court finds that the applicant's allegations amounted to a simple, gratuitous attack on judges and prosecutors. The applicant's conviction and the penalty imposed (80 hours of community service) were, in the Court's view, a proportionate response to his actions. With regard to the complaint of lack of criminal complaint from the victims of insult, the Court notes that the prosecutor decided to pursue the prosecution of the offence of insult and that he was entitled to do so under the domestic law.

Having regard to the above, the Court is satisfied that the applicant's conviction for defamation and insult were proportionate to the aim of maintaining the authority of the judiciary and thus necessary under Article 10 § 2 of the Convention.

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.

C. Remaining complaints

In respect of the second set of the proceedings, the applicant complained under Article 6 of the Convention that the rights of the defence had been unduly restricted because his legal-aid counsel had begun representing him only at the second hearing. In respect of the third set of the proceedings, the applicant complained that he had been unlawfully convicted and that the court had refused to grant him leave to appeal out of time on compassionate grounds. The applicant lastly complained under Article 13 of the Convention that all his appeals had been unsuccessful.

However, 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.

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 unanimously

Takes note of the terms of the respondent Government's declaration;

Decides to strike the application out of its list of cases in so far as it relates to the complaint concerning the lack of independence of the assessors in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı	Ledi Bianku
Deputy Registrar	President