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

FIRST SECTION

DECISION

Application no. 68562/14
Henryk STOKŁOSA
against Poland

The European Court of Human Rights (First Section), sitting on 14 September 2021 as a Chamber composed of:

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Renata Degener, *Section Registrar*,

Having regard to the above application lodged on 6 October 2014,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Henryk Stokłosa, is a Polish national who was born in 1949 and lives in Kaczory. He was represented before the Court by Mr A. Zwierzyński, a lawyer practising in Warsaw.

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 member of the Senate (the upper house of the Polish parliament) for many years. He is also a well-known businessman.

4. On 22 December 2010 a prosecutor filed a bill of indictment against the applicant with the Chodzież District Court. The applicant was charged

with false imprisonment of three employees of his company in order to force them to pay their debts. The applicant's case was heard by Judge D.J.

5. After the case had been brought, on three occasions the District Court could not open the trial because the applicant was unable to participate in it for reasons certified by a doctor. In those circumstances, the judge decided to obtain expert evidence on the applicant's health. The expert report was submitted some time before a hearing scheduled for 12 December 2011. It explained which illnesses had been identified in previous medical certificates submitted by the applicant. According to the report, the applicant was generally in good health and fit to participate in the trial.

6. The applicant and his lawyers were present at the hearing on 12 December 2011. The trial court examined the applicant. However, his lawyers objected to the fact that the court intended to start hearing witnesses. After a break in the hearing the applicant's lawyers did not return to the courtroom. The applicant did not consent to the hearing of witnesses in the absence of his lawyers and the trial court adjourned the hearing.

7. The next hearing was scheduled for 29 December 2011. A prosecutor, witnesses who had been summoned and members of the public were present. The applicant did not appear. His lawyer presented to the court a medical certificate issued on 28 December 2011 indicating that he was unable to participate in the trial and requested an adjournment. The medical certificate stated that the applicant was suffering from an illness coded A09. The prosecutor objected to the request for an adjournment.

8. Judge D.J. ordered a suspension. He decided to verify the code of the illness mentioned in the certificate on a pharmaceutical Internet portal. The judge also established that illness A09 was different from those that had been identified in the recent expert report.

9. The trial judge decided to adjourn the hearing. In his oral reasons for that decision, he explained that illness A09 was different from those that had been previously certified. He also disclosed that it was "diarrhoea with suspected infection of the upper respiratory tract and suspicion that it was infectious". This fact was entered in the record of the trial at the request of one of the applicant's lawyers.

10. Journalists from a local television channel were present at the hearing. They did not have permission to record the proceedings, yet they recorded the above statement of the trial judge and broadcast it. A link to the recording was subsequently posted on the Internet.

11. In February 2012 the applicant brought a civil action against Judge D.J. for infringement of his personal rights under Article 24 § 1 of the Civil Code. He alleged that the judge had unlawfully disclosed his illness at the hearing and had thus breached his personal rights, namely his rights to privacy and dignity. The applicant sought an order requiring the judge to make an apology.

12. Following the lodging of the civil action, Judge D.J. withdrew from hearing the applicant's case.

13. On 29 November 2012 the Poznań Regional Court dismissed the applicant's claim. It found that a judge could not be sued for a breach of personal rights occasioned in the exercise of his or her judicial duties. The court had regard to judicial independence and noted that allowing such actions would distract judges from carrying out their judicial functions. An individual whose personal rights had been breached by a judge could sue the State under the general rules of State liability in tort under Article 417 § 1 of the Civil Code in respect of damage caused by an unlawful action or omission in the exercise of public power. In addition, a judge could be held liable in disciplinary proceedings. Lastly, even assuming that a judge could be sued in such a case, the Regional Court held that the applicant's claim was unfounded since the judge's action, while constituting an interference with his right to privacy, had not been unlawful. The Regional Court found that the trial judge's decision to verify the medical certificate and to disclose the applicant's illness had been lawful and necessary in the case.

14. The applicant lodged an appeal. On 11 April 2013 the Poznań Court of Appeal amended the first-instance judgment. It allowed the claim and ordered the judge to make a written apology to the applicant.

15. The Court of Appeal disagreed with the lower court that the State's liability in tort excluded the individual liability of a judge for harm caused in the exercise of his or her judicial duties. In general, there were no statutory provisions excluding the personal liability of a judge in this context.

16. The Court of Appeal found that the trial judge had acted within his powers when verifying a medical certificate submitted by the applicant. It noted that the information revealed by the judge had only partly been true as he had erroneously referred to an "infection of the upper respiratory tract". In fact, the illness coded A09 concerned "diarrhoea and gastroenteritis of infectious origin". However, the matter of dispute in the case was whether a judge could disclose in the course of the trial a specific type of illness which prevented the applicant from appearing in court.

17. The Court of Appeal agreed that the principle of a public hearing had warranted an explanation to the parties by the trial court as to the reasons for its decision to adjourn the trial. However, it had not been necessary to reveal the specific type of illness. The Court of Appeal noted that it would have been sufficient for the trial judge to state that the medical certificate referred to a different illness from those that had been identified in previous medical certificates and that this reason alone was sufficient to adjourn the trial. The Court of Appeal noted that the disclosure of the applicant's illness had not been prompted by the parties' requests, but had been made on the court's own initiative. It found that the conduct of the trial had not justified

revealing the code of the illness stated in the certificate or even indicating the code as such.

18. The Court of Appeal held that the disclosure of the applicant's illness had infringed his personal rights, namely his right to the protection of his private life and dignity. It noted that the unnecessary disclosure of information concerning his private life had constituted a manifest transgression of the limits to the exercise of judicial powers. The Court of Appeal found that this infringement had been unlawful, even having regard to the need for a narrow interpretation of unlawfulness in respect of the acts of a judge.

19. The judge lodged a cassation appeal. On 4 April 2014 the Supreme Court overturned the Court of Appeal's judgment and dismissed the applicant's appeal against the first-instance judgment.

20. As to whether a judge could be held liable for infringement of the personal rights of a party to proceedings in the exercise of judicial duties, the Supreme Court agreed with the Court of Appeal that there were no statutory provisions excluding such liability. Nor could any kind of liability be ruled out on the basis of the principle of judicial independence. Under Article 24 of the Civil Code any natural person who had infringed the personal rights of another person could be sued for such an infringement. The liability of a State official for infringement of personal rights in the exercise of public powers was not excluded by the parallel State liability in tort under Article 417 of the Civil Code. Neither could such exclusion derive from any special constitutional position of judges or from the rules on the disciplinary liability of judges for disciplinary offences, including for obvious and gross violations of the law.

21. However, the liability of a judge under Article 24 of the Civil Code was conditional on the unlawfulness of an act or omission which breached the personal rights of a party to proceedings in the exercise of that judge's judicial duties. The Supreme Court made some general observations on the interpretation of "unlawfulness" in this context.

22. The Supreme Court noted that the acts of a judge in the course of proceedings, adjudication or in providing reasons for rulings in specific cases could lead to an infringement of the personal rights of a party to the proceedings. This could arise in the course of civil proceedings where a judge had to examine the facts pertaining to the private, or even intimate, life of parties, their physical and mental health, and the behaviour of a party with regard to other persons, and subsequently to assess those circumstances and the party's behaviour in applying the law and providing reasons for a decision. Similarly, this could occur in criminal proceedings where a court determined the circumstances of the commission of an offence, examined the mental condition of a party and carried out its assessment in attributing liability for an offence to a defendant. The Supreme Court noted that as court hearings were public, with certain statutorily defined exceptions,

every person taking part in the hearing could learn of the facts discussed in open court, and a party to the proceedings who had not requested a hearing in private had to bear this in mind.

23. The Supreme Court observed that the interpretation of unlawfulness had to take into account the specificity of the administration of justice and of the acts undertaken by a judge in the exercise of his or her judicial duties. The limits of permissible interference by a judge with the personal rights of parties to proceedings were mainly delineated by the provisions of the relevant procedures, the type of claim submitted in civil proceedings, the nature of the charge in criminal proceedings and the concrete procedural situations arising in the course of the proceedings. Any unlawfulness of the actions of a judge in this context had to result from a manifest error in the application of procedural provisions or constitute acts which obviously transgressed those procedural provisions.

24. The Supreme Court noted that in each case a judge had to ensure that proceedings were conducted smoothly, having regard to the interests of all parties. In different procedural situations a judge – sometimes within a short period of time – had to interpret procedural provisions and consider their application. The taking of procedural decisions posed a risk of error. A party would have at its disposal the procedural means capable of correcting defects in those decisions, including a request for the withdrawal of a judge. Accordingly, in the course of the proceedings, not every act of a judge which interfered with the personal rights of a party and which was considered by that party to be a breach of procedural provisions would be unlawful within the meaning of Article 24 of the Civil Code. The Supreme Court noted that the acceptance of the principle of a judge's liability in this context could not, having regard to the objectives of the administration of justice, result in burdening the judge with a fear of taking decisions in the course of the proceedings. In this connection, the possibility of the disciplinary or civil liability of a judge being engaged could lead to undermining the judge's independence. The Supreme Court underlined that an assessment of unlawfulness of the judge's acts had to be carried out in each case with regard to the particular circumstances in which personal rights of a party had been infringed and with due consideration of the above-mentioned interpretation of unlawfulness. It further noted that the filing of claims for the protection of personal rights could not serve the interests of disloyal parties to the proceedings or interfere with the proper conduct of the pending proceedings.

25. The Supreme Court examined the specific circumstances of the applicant's case. It noted that the Court of Appeal had found that the disclosure of the applicant's illness in the course of the trial had infringed his right to the protection of his private life and his dignity. The judge had not questioned this finding. The Supreme Court observed that the applicant

had himself relied on his illness as a reason for a further request to adjourn the trial.

The Court of Appeal had not impugned the judge's decision to verify whether an illness indicated in the medical certificate of 28 December 2011 corresponded to illnesses that had previously been invoked as reasons for adjournment, and which the experts had considered as not constituting obstacles to the applicant's participation in the trial, but had solely criticised the fact of revealing a specific type of illness. The Supreme Court agreed with the judge that a verification of the medical certificate had required its disclosure by reading it out at a hearing in accordance with Article 393 § 1 of the Code of Criminal Procedure ("the CCP") and, in consequence, a disclosure of the illness coded A09. Such a disclosure required neither a motion from the parties nor their consent.

26. The Supreme Court found that in the applicant's specific case, where a hearing had been frequently adjourned on account of his illness and where only the expert report had determined that the applicant could have participated in the trial, the disclosure of information about the applicant's illness to those present at the hearing could not be characterised as a manifest breach of the provisions of criminal procedure.

27. The applicant, assisted by professional representatives, had invoked the fact of his illness as attested by the medical certificate. In those circumstances, he must have known that his medical certificate would be subject to verification and that he could have asked for the relevant part of the proceedings to be conducted *in camera*. The disclosure of the applicant's illness had served to indicate to the parties that his request for adjournment had been based on a serious reason and, as a result, had been aimed at protecting him from any suspicion of having intended to protract the proceedings and to abuse his procedural rights. This course of action had fallen within the framework of disclosing the content of an official document and of providing reasons for the decision to adjourn the trial (Article 94 § 1 (5) in conjunction with § 2 and Article 100 § 1 of the CCP). The Supreme Court found that the trial judge's decision had remained within the limits of the provisions of the CCP regarding the conduct of the trial and had taken account of the protection of interests of other parties to the proceedings. The decision had also been aimed at ensuring that the trial would run smoothly and effectively. That assessment could not have been altered by an erroneous, and partly inaccurate, indication by the trial judge of the applicant's type of illness, since a formulation which for an average person was obviously meaningless could not amount to an unlawful infringement of personal rights.

B. Relevant legal framework

1. Domestic law

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

> "The personal rights of an individual, such as, in particular, health, liberty, honour, 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."

29. Article 24 § 1 of the Civil Code provides:

> "A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

2. The Council of Europe

(a) The Consultative Council of European Judges ("the CCJE")

30. In its Opinion no. 3(2002) on ethics and liability of judges, adopted on 19 November 2002, the CCJE made the following observations, in so far as relevant:

> "b. Civil liability
>
> 55. Similar considerations to those identified in paragraph 53 apply to the imposition on judges personally of civil liability for the consequences of their wrong decisions or for other failings (e.g. excessive delay). As a general principle, judges personally should enjoy absolute freedom from liability in respect of claims made directly against them relating to their exercise in good faith of their functions. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal; other judicial failings which cannot be rectified in this way (including e.g. excessive delay) should, at most, lead to a claim by the dissatisfied litigant against the State. That the state may, in some circumstances, be liable under the European Convention of Human Rights, to compensate a litigant, is a different matter, with which this opinion is not directly concerned.
>
> 56. There are however European countries, in which judges may incur civil liability for grossly wrong decisions or other gross failings (footnote omitted), particularly at the instance of the state, after the dissatisfied litigant has established a right to compensation against the state. ...
>
> 57. The European Charter on the statute for judges contemplates the possibility of recourse proceedings of this nature in paragraph 5.2 of its text - with the safeguard that prior agreement should obtained from an independent authority with substantial judicial representation, such as that commended in paragraph 43 of the CCJE's opinion no. 1 (2001). The commentary to the Charter emphasises in its paragraph 5.2

the need to restrict judges' civil liability to (a) reimbursing the state for (b) "gross and inexcusable negligence" by way of (c) legal proceedings (d) requiring the prior agreement of such an independent authority. The CCJE endorses all these points, and goes further. The application of concepts such as gross or inexcusable negligence is often difficult. If there was any potential for a recourse action by the state, the judge would be bound to have to become closely concerned at the stage when a claim was made against the state. The CCJE's conclusion is that it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default. ...

76. As regards civil liability, the CCJE considers that, bearing in mind the principle of independence:

i) the remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals (whether with or without permission of the court);

ii) any remedy for other failings in the administration of justice (including for example excessive delay) lies only against the state;

iii) it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default."

(b) The Committee of Ministers

31. The relevant extracts from the appendix to Recommendation CM/Rec (2010)12 of the Council of Europe's Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted on 17 November 2010, provide:

"*Chapter VII – Duties and responsibilities*

...

Liability and disciplinary proceedings

66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence."

COMPLAINTS

32. The applicant complained under Article 8 of the Convention about the unnecessary disclosure of his illness at a public hearing. He submitted that it would have been sufficient for Judge D.J. to adjourn the hearing on account of his medical certificate of 28 December 2011 without providing any details relating to his illness.

33. The applicant also alleged a breach of Article 13 in connection with the outcome of the civil proceedings against Judge D.J.

THE LAW

A. Complaint under Article 8

34. The applicant complained that the disclosure of his illness at a public hearing had been unwarranted and in breach of Article 8 of the Convention. This provision reads, in so far as relevant:

> "1. Everyone has the right to respect for his private ... life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

35. The Court finds that the measure complained of constituted interference with the applicant's right to respect for his private life as guaranteed by Article 8 § 1 of the Convention. It must examine whether the interference fulfilled the conditions of paragraph 2 of Article 8.

36. With regard to the question whether the interference was "in accordance with the law", the Court refers to the Supreme Court's findings on this point. The Supreme Court concluded that the legal basis for the interference lay in the relevant provisions of the CCP (see paragraphs 25 and 27 above). The Court finds nothing to suggest that the measure did not comply with domestic law or that the effects of the relevant law were not sufficiently foreseeable for the purposes of the quality requirement which is implied by the expression "in accordance with the law".

37. The Court notes that the measure complained of was taken in the interests of the other parties to the proceedings and having regard to the need to ensure the smooth conduct of the trial. It finds therefore that the impugned measure pursued the aims of the "prevention of disorder" and the "protection of the rights and freedoms of others".

38. In order to ascertain whether the impugned measure was "necessary in a democratic society", the Court will consider, in the light of the case as a whole and having regard to the margin of appreciation enjoyed by the State in such matters, whether the reasons adduced to justify it were relevant and sufficient and whether the measure was proportionate to the legitimate aim pursued (see *L.L. v. France*, no. 7508/02, § 43, ECHR 2006-XI; and *Frâncu v. Romania*, no. 69356/13, §§ 65-67, 13 October 2020).

39. The Court reiterates that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Consequently, domestic law must afford appropriate safeguards to prevent any communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the

Convention (see *Z v. Finland*, 25 February 1997, § 95, *Reports of Judgments and Decisions* 1997-I).

40. The Court observes that the measure complained of was taken in the context of the applicant's repeated requests for adjournment of the proceedings on medical grounds. On three occasions Judge D.J. could not open the trial since each time the applicant presented a medical certificate attesting that he was unable to participate in it on grounds of ill-health. This situation prompted the judge's decision to seek an expert report on the applicant's health. The report stated that the applicant was generally in good health and could participate in the proceedings. The judge opened the trial and examined the applicant on 12 December 2011. Subsequently, the applicant failed to appear at a hearing scheduled for 29 December 2011. His lawyers produced a new medical certificate in order to justify his absence and requested an adjournment (see paragraphs 5-7 above).

41. The Court notes that the Supreme Court accepted the principle that a judge could be held liable for an infringement of the personal rights of a party to proceedings when committed in the exercise of judicial duties. At the same time, the Supreme Court stipulated that such liability would only arise in cases of manifest error in the application by the judge of procedural provisions (see paragraphs 20-23 above).

42. In dismissing the applicant's claim, the Supreme Court had regard to the fact that he had frequently requested adjournments on grounds of ill-health and that therefore it had been legitimate for the trial judge to verify the reliability of his most recent medical certificate. Furthermore, the Supreme Court established that under domestic law the verification of the applicant's medical certificate had justified the disclosure of his illness at a hearing, and accordingly the element of manifest error in the application of procedural provisions was absent (see paragraph 26 above).

43. The Court also notes that it was the applicant who had invoked the fact of his illness as a ground for adjournment after the expert report had established that he would be able to participate in the trial. In those circumstances, the applicant, being legally represented, could have expected that his medical certificate of 28 December 2011 would be subjected to scrutiny and could thus have asked for the relevant part of the proceedings to be conducted *in camera* (see paragraph 27 above; compare and contrast, *Frâncu*, cited above, §§ 68-71, in which the applicant specifically asked for the proceedings concerning his detention to be held *in camera*, relying on the risk of disclosure of his medical information).

44. The Court attaches certain weight to the fact that the disclosure in issue was a one-off occurrence that was not recorded in any decision or judgment regarding the applicant, but only in the record of the hearing (compare and contrast *L.L. v. France*, cited above, where a confidential medical document concerning the applicant was reproduced in a judgment; and *C.C. v. Spain*, no. 1425/06, 6 October 2009, where the applicant's

identity and his HIV-positive status was divulged in a judgment). In addition, the disclosure concerned a minor and transient ailment.

45. The Court notes that the applicant's claim was subjected to a thorough examination by domestic courts at three levels of jurisdiction, and was ultimately dismissed by the Supreme Court. That court weighed up the conflicting interests at stake. The interests of the other parties to the proceedings and the need to ensure the smooth conduct of the trial were shown to be of greater importance and thus to outweigh the applicant's interest in protecting the confidentiality of his medical data in the particular circumstances of his case. In the Court's view, the reasons adduced by the Supreme Court were relevant and sufficient and the measure in issue was proportionate to the legitimate aims pursued.

46. In conclusion, the Court finds that it has been established that the disclosure of the applicant's illness was justified in the context of his repeated requests for adjournment of his trial on medical grounds and that the interference was limited to what was necessary in the circumstances of the case.

47. Accordingly, the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 13

48. The applicant further alleged that the unfavourable outcome of the civil proceedings against Judge D.J. had amounted to a breach of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

49. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

50. However, the Court has found above that the applicant's complaint under Article 8 concerning the alleged breach of his right to respect for his private life was manifestly ill-founded (see paragraph 45 above). Consequently, the applicant did not have an "arguable claim" for the purposes of Article 13 of the Convention.

51. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

Renata Degener
Registrar

Ksenija Turković
President