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

FIRST SECTION

DECISION

Application no. 27806/17
Barbara WAIS
against Poland

The European Court of Human Rights (First Section), sitting on 5 September 2024 as a Committee composed of:

Alena Poláčková*, President*,
Krzysztof Wojtyczek,
Gilberto Felici*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 27806/17) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 March 2017 by a Polish national, Ms Barbara Wais ("the applicant"), who was born in 1959 and lives in Kraków;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs;

the Government's observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the disciplinary punishment of the applicant for publishing information and comments about the respondent in the court proceedings in which the applicant had acted as legal counsel for the plaintiff.

2. The applicant is a legal counsel (*radca prawny*). She is also a member of a local association of social initiatives. In the years 2013-2014 she represented several employees of a local kindergarten in various sets of court proceedings instituted either against their employer or against them by their employer. These proceedings were public and, seemingly, led to rulings in favour of the applicant's clients.

3. After the last set of the proceedings in question had ended with a final and binding judgment, while the applicant continued being a legal representative of several kindergarten's employees, she anonymously published an article, on the website of her association, in which she accused the kindergarten of malpractice and the person, who continued to be its director, of incompetence.

4. In the article, the applicant made a general reference to the court proceedings involving the kindergarten as a plaintiff. She also stated that she was very familiar with the situation described, because she had been a legal representative of the defendant (the kindergarten's former director) and of a party in another set of related proceedings. The applicant mentioned various events that had occurred during the court proceedings, such as appeals for payment, the scope of the financial damage claimed by the kindergarten, or the court fees imposed on the kindergarten. She referred to the internal planning of employee's work shifts. She wrote that the domestic court had not had any doubts as to the ill-founded nature of the kindergarten's action against the former director, or as to the lack of the fault, negligence, or unlawfulness on the part of the former director. She cited extracts from the relevant judgment. She argued that: the legal claim submitted by the kindergarten had been marked by various formal and substantive shortcomings "on which [she] had commented in [her] reply to the civil claim"; that the plaintiff had "generated" and presented dozens of pieces of evidence and documents – all approved by a named person; and that some of those documents contained erroneous information. The applicant referred to the testimony of a witness. She also claimed that the plaintiff had, for many months, been unable to designate the victim of the alleged harm. Lastly, the applicant wrote that it was known to her that, as repercussions for the judgment, several teachers had been deprived of their housing allowances, and she warned that that case would come before a court.

5. The applicant explained that the information contained in the publication came from the publicly held court proceedings that were no longer on-going and from other public sources (e.g. the city council's and the kindergarten's websites). She also submitted that her publication had taken place during a local electoral campaign, as a reaction to emerging accusations against the kindergarten's director.

6. In January 2015 the kindergarten's director complained to the Rzeszów Regional Association of Legal Counsels (*Okręgowa Izby Radców Prawnych)* that she felt wronged by the applicant's article. On this basis, the disciplinary officer (*rzecznik dyscyplinarny*) carried out an inquiry that led to an application to have the applicant punished by a disciplinary court.

7. On 10 August 2015 the Rzeszów Disciplinary Court of the Association of Legal Counsels (*Okręgowy Sąd Dyscyplinarny Okręgowej Izby Radców Prawnych*) found that the applicant had committed a disciplinary offence by (i) publishing negative comments regarding the kindergarten's director while

(ii) relying on information that she had obtained in her capacity as a legal representative of parties in court proceedings. The applicant's conduct was considered in breach of Section 64, in conjunction with, *inter alia*, Section 3.3 of the Act of 6 July 1982 on legal counsels (*Prawo o radcach prawnych,* "the 1982 Act") and Articles 27.3, 30 and 31 of the Code of Legal Counsel's Ethics (*Kodeks Etyki Radcy Prawnego*, "Code of Ethics" in its version of 6 November 2010) (see paragraphs 13-18 below). The disciplinary court reasoned that, in writing on the internet about the subject matter of her clients' court proceedings, the applicant had failed to separate her professional and civic obligations. Her role, as a legal counsel, excluded acting as a journalist and was restricted to arguing her case before a court. The applicant was sanctioned with admonishment (*upomnienie*) and charged 900 Polish zlotys (PLN, approximately 225 euros (EUR)) for the costs of the proceedings.

8. The applicant appealed arguing that the first-instance decision was in breach of her freedom of expression. She also argued that her right to a fair hearing was violated in that some members of the bench had been absent during deliberations – two judges (including the presiding judge) left the court room to discuss the case with the disciplinary officer.

9. On 14 March 2016 the High Disciplinary Court of the Association of Legal Counsels upheld the lower court's decision. The court ordered the applicant to pay the costs of the proceedings in the amount of PLN 1,000 (approximately EUR 250). The appellate court essentially held that the short absence of the two judges during a technical phase of the trial did not constitute a breach of the principle that all judges had to be present during the entire trial. Moreover, the applicant's arguments in respect of her freedom of expression were beyond the point because the disciplinary tribunal was only concerned with her disciplinary responsibility which was a separate legal regime. The second-instance court reiterated that publishing the internet article describing the case against the kindergarten had gone beyond the freedom of expression of a legal counsel. The court also observed that the applicant's argument that the first-instance disciplinary court had failed to obtain sufficient evidence or to correctly assess the evidence, was not valid, because the facts of the case had exhaustively and unequivocally been established.

10. On 1 September 2016 the applicant's cassation appeal was dismissed by the Supreme Court as manifestly ill-founded. That decision was without reasoning.

11. The applicant complained that she could not enjoy her freedom of expression in the context of her professional activities, which was in breach of Article 10 of the Convention.

12. She also complained under Article 6 of the Convention about the unfairness of the impugned disciplinary proceedings. In particular, the applicant complained that some judges had discussed her case outside the

courtroom or had been absent during "deliberations", and that the Supreme Court dismissed her cassation appeal without reasoning.

RELEVANT DOMESTIC LAW AND PRACTICE

13. The exercise of freedom of expression and the disciplinary liability of legal counsels were regulated, at the material time, by the 1982 Act (still in force) and by the Code of Ethics, in its version of 6 November 2010 (in force from 28 December 2010 to 31 December 2014).

14. Pursuant to Section 64 of the 1982 Act and Article 3 and 6 of the Code of Ethics, legal counsels are subject to disciplinary liability for conduct contrary to the law, principles of ethics or the dignity of the profession, or for breaching their professional duties.

15. According to Section 3.3 of the 1982 Act, everything legal counsels have learned while providing legal assistance or conducting a case is subject to the obligation of professional secrecy (see also, Code of Ethics, Articles 9 and 12 to 18). Professional secrecy includes not only the prohibition of disclosing information, but also a ban on using it in [counsel's] own interest or in the interest of another person (see Article 12.3 of the Code of Ethics). This obligation cannot be limited in time or waived (paragraphs 3.4 and 3.5 of the 1982 Act and Article 15 of the Code of Ethics).

16. Moreover, pursuant to Section 3, paragraph 2 of the 1982 Act, legal counsels must carry out their professional duties with diligence resulting from the Code of Ethics. Article 27.3 of the Code of Ethics states that legal counsels shall not be influenced by the negative attitude of their clients towards their adversaries. They shall also ensure that their conduct does not undermine the dignity of the court, office or of authority before which they act, or the dignity of persons participating in the proceedings (Article 30). Legal counsels shall not publicly reveal their personal attitude towards, *inter alia*, clients or persons concerned with the counsels' activities (Article 31).

17. Statutory disciplinary sanctions range from an admonishment (*upomnienie*), through a reprimand (*nagana*) and a fine, to disbarment (Section 65 of the 1982 Act).

18. Lasty, pursuant to Section 11 of the 1982 Act, legal counsels performing their professional activities shall exercise freedom of expression within the limits set by law and the material need. Any abuse of this freedom, constituting an insult or defamation, for example, of a party, shall be prosecuted by disciplinary means. The Supreme Court has interpreted this provision in cases where legal counsels have made statements about their clients' adversaries in documents used in on-going court proceedings (see Supreme Court's judgments of 27 September 2012, no. SDI 24/12 and of 17 May 2017, no. SDI 12/17). In this context, the Supreme Court held that the freedom of expression of a legal counsel could not be equated with the constitutional freedom of expression guaranteed to everyone as personal

freedom, because a legal counsel, drawing up a letter on behalf of the client, did not exercise his own personal freedom, but performed professional activities (ibid).

THE COURT'S ASSESSMENT

19. The Government raised a preliminary objection, arguing that the application was inadmissible for non-compliance with the six-month's rule, given that the application form had been received by the Court on 7 March 2017. However, the Court does not find it necessary to examine the Government's objection, the present case being in any event inadmissible for the following reasons.

A. The complaint under Article 10 of the Convention

20. The general principles concerning freedom of expression have been summarized in *Sosinowska v. Poland*, no. 10247/09, §§ 67-70, 18 October 2011. Moreover, principles regarding professional practice of lawyers and Article 10 are set out in, *inter alia*, *Nikula v. Finland* (no. 31611/96, §§ 44-46, ECHR 2002-II; see also *Steur v. the Netherlands*, no. 39657/98, §§ 27-46, ECHR 2003-XI).

21. In the present case, the disciplinary decision finding the applicant at fault and admonishing her for unethical conduct constituted an interference with her rights guaranteed by Article 10 of the Convention.

22. In light of the legal framework described above (see paragraphs 13-18), the Court finds that the interference was prescribed by law and pursued a legitimate aim, namely to maintain public trust for the profession of legal counsels and, in this way, to contribute to the proper administration of justice (see, *mutatis mutandis*, *Morice v. France* [GC], no. 29369/10, §§ 128-31 and 143, ECHR 2015; *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 75, 25 June 2020; and contrast *Raichinov v. Bulgaria*, no. 47579/99, § 45, 20 April 2006).

23. As to whether the interference was proportionate to the legitimate aim pursued and the grounds given by the disciplinary courts were relevant and sufficient, the Court observes the following.

24. The applicant was disciplinarily punished for (i) publishing negative comments regarding the kindergarten's director while (ii) relying on information that she had obtained in her capacity as a legal representative of parties in court proceedings (see paragraph 7 above). The domestic authorities gave due consideration to, but ultimately rejected, the applicant's argument that she had only revealed what was public knowledge. That conclusion followed the assessment of the content of the applicant's article (see paragraph 4 above). The disciplinary decisions of both instances were based on the premise that the applicant had a heightened level of

responsibility for her statements, given that she belonged to a legal profession (see paragraphs 7, 9 and 15 above). Because of that, the applicant should have separated her professional and civic obligations, and restrained herself to arguing her case before a court.

25. In the light of the above, the Court therefore takes the view that the grounds relied on by the disciplinary courts in the present case were both relevant and sufficient. The Court also attaches importance to the fact that the applicant received the mildest form of punishment under the law (see paragraphs 7 and 17 above).

26. It follows that the interference complained of was proportionate to the legitimate aim pursued and, accordingly, was "necessary in a democratic society".

27. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 4 (a) and 4 of the Convention.

B. The complaints under Article 6 of the Convention

28. As regards the applicant's allegation regarding the absence of the judges during, what she referred to as, "deliberations" on her case (see paragraphs 8 and 12 above), the Court notes that the appellate court duly examined this grievance and concluded that the short absence had, in fact, occurred during a technical phase of the trial, and, as such, it did not constitute a breach of the principle that all judges had to be present during the entire trial (see paragraph 9 above).

29. In so far as the applicant maintains that the Supreme Court's decision was not reasoned, the Court recalls the general principles on access to superior courts set out in the judgment of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 80-84, 5 April 2018), as well as its well-established case-law in respect of Poland, pursuant to which, in the context of application for leave to appeal, very limited reasoning could satisfy the requirements of Article 6 of the Convention (see, *Wnuk v. Poland* (dec.), no. 38308/05, 1 September 2009, and *Dryzek v. Poland* (dec.), no.12285/09, § 52, 20 March 2012) and, in the context of the preliminary procedure for the examination and admission of cassation appeals, an appellate court is not required to give more detailed reasoning when it simply applies a specific legal provision to dismiss a cassation appeal as having no prospects of success, without further explanation (see, *Bachowski v. Poland* (dec.), no. 32463/06, 2 November 2010; see also *Salé v. France*, no. 39765/04, § 17, 21 March 2006; *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II; and *Gorou v. Greece* (no. 2) [GC], no. 12686/03, § 41, 20 March 2009).

30. The Court notes that the applicant's case was examined on its merits by two instances both having full jurisdiction as to the facts and law (see paragraphs 7 and 9 above). The Court further observes that the Supreme Court ascertained that the cassation appeal was manifestly ill-founded (see

paragraph 10 above). The Court thus finds that it cannot be maintained that the very essence of the applicant's right to a fair hearing was impaired on the ground of the refusal to reason its decision not to entertain her cassation appeal (see *Szwed-Wójtowicz v. Poland* (dec.), no. 48369/09, § 66, 21 April 2015; and, *mutatis mutandis*, *Piotrowski v. Poland* (dec.), no. 56553/15, §§ 41 and 42, 12 February 2019).

31. In the light of these considerations and in the light of all the material in the case file, the Court considers that the decision-making process had adequate and sufficient safeguards to ensure that the applicant's right to a fair hearing had been respected. This part of the application is therefore also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 4 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President