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

FIRST SECTION

DECISION

Application no. 34872/16
Piotr WIERZBICKI and Bożena WIERZBICKA
against Poland

The European Court of Human Rights (First Section), sitting on 28 June 2022 as a Committee composed of:

Erik Wennerström, *President,*
Krzysztof Wojtyczek,
Ioannis Ktistakis, *judges,*
and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 34872/16) 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 9 June 2016 by two Polish nationals, Mr Piotr Wierzbicki and Ms Bożena Wierzbicka, born in 1960 and 1965 respectively and living in Kobyłka ("the applicants") who were represented by Ms K.A. Morawiec, a lawyer practising in Warsaw;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent Mr J. Sobczak, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns court proceedings in respect of compensation for defamation and the dissemination of information about private individuals' mental-health status on a programme aired by a State-run television broadcaster.

A. Background

2. It appears that in 2004 the first applicant was the subject of criminal tax proceedings concerning his real-estate business.

3. Between 2007 and 2012 the applicants were respondents in civil proceedings concerning a real-estate transaction from which they had withdrawn after signing a pre-sale agreement. The applicants' line of defence in that case was that both of them suffered from mental conditions which had made it impossible for them to fully understand the consequences of the pre-sale agreement, thus rendering the agreement void. During the proceedings, the applicants were subjected to psychiatric evaluations, which concluded that they had been suffering from a series of specific chronic mental conditions. The reasoned judgments given in the proceedings (*inter alia*, on 23 July 2007 and an unspecified date prior to 2 June 2009) contained extensive and detailed observations regarding the applicants' mental-health status. The proceedings in question ended with a court finding that the impugned pre-sale agreement was void, on account of the applicants' mental state.

4. The applicants did not ask for anonymity in those proceedings. The relevant judgments mentioned their full names.

5. On 2 June 2009 the State-owned Polish Television (TVP) broadcast a programme which criticised the applicants in the context of the above-mentioned real-estate transaction.

6. On the television programme in question, the applicants were called "cheats". The person who was the other party to the applicants' pre-sale agreement stated that the first applicant had committed criminal offences, such as that his development company had been unregistered and he had committed fraud in respect of his other business partners. Information indicating that each applicant suffered from unspecified psychiatric ailments was also made public on the programme. The programme revealed the first names and the first letter of the applicants' surname, and included short sequences showing extracts of the applicants' sale advertisements, featuring their telephone number, as well as the house which had been the subject of the sale and its neighbourhood. While the programme in question was being aired, live comments from viewers appeared at the bottom of the screen. In these comments the applicants were called cheats and thieves. The conclusion drawn in the programme was that the applicants, who were greedy and dishonest, had used their supposed mental illness as a means of cheating in their sales transactions.

7. Since its first broadcast, the footage has been available on TVP's official website.

B. Civil proceedings for infringement of personal rights

8. On 29 September 2009 the applicants brought a civil claim against TVP for infringement of personal rights, seeking an award of 200,000 Polish zlotys (PLN – approximately 50,000 euros (EUR)) in respect of non-pecuniary damage, an apology and the withdrawal of the programme from TVP's website. The applicants argued that the programme in question had infringed their dignity, reputation and privacy – the latter by revealing intimate aspects of their private life, including information about their mental health.

9. On 10 July 2013 the Warsaw Regional Court (*Sąd Okręgowy*) partly allowed the claim. It ordered TVP to publicly apologise to the applicants, to pay them PLN 50,000 (approximately EUR 12,500) and to remove the programme from its website.

10. On 29 July 2014, on an appeal by TVP, the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and dismissed the applicants' claim. The appellate court also charged the applicants PLN 1,980 (approximately EUR 500) in respect of court fees.

11. On 10 December 2015 the Supreme Court dismissed a cassation appeal lodged by the applicants.

12. The applicants complained, invoking Articles 8 and 13 of the Convention, that the State had failed in its positive obligation to ensure the protection of their right to respect for their private life and reputation. In particular, they challenged the judgment of the domestic court in their defamation case and complained that the civil action for compensation was ineffective because, under the applicable law as interpreted by the appellate court, a personal rights' infringement could not be committed unless the full identity and the image of the alleged victim had been disclosed, even if other elements of the publication had allowed, as in the applicants' case, to identify the person concerned.

THE COURT'S ASSESSMENT

13. The general principles on the right to respect for private life in the context of the right to protection of reputation are set out in *A. v. Norway* (no. 28070/06, §§ 63-65, 9 April 2009) and *H.Ł. v. Poland* ((dec.), nos. 14781/07, 39824/09, 41361/09, 42875/09, §§ 53 and 54, 15 September 2015).

14. Moreover, where the balancing exercise has been undertaken by the domestic courts in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Fürst-Pfeifer v. Austria*, nos. 33677/10 and 52340/10, § 40, 17 May 2016, and *Marta Jelševar and Others v. Slovenia*, no. 47318/07, § 32, 11 March 2014). The scope of the Court's supervisory role in balancing the two competing interests is set out in more detail in *Von*

Hannover v. Germany (no. 2) ([GC], nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012) and *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 85-88, 7 February 2012).

15. The Court notes at the outset that the domestic courts – at two levels of jurisdiction which examined the applicants' claim for defamation – reached divergent conclusions as to the facts of the case, particularly as to whether the applicants could easily be identified based on the contents of the impugned television programme. The first-instance court found that the applicants could be recognised by their family, friends and neighbours. The appellate court, on the other hand, held that what had enabled the applicants to be recognised by their close circle was not the programme's content as such, but rather the pre-existing knowledge about the applicants' business activity and the court dispute in question. The appellate court stressed that the applicants had not been identifiable by a wider public, because the television programme had not shown their images, indicated their surname or featured any other elements sufficient to make a direct connection between the persons described on the programme and the applicants.

16. The Court accepts that the applicants' identities could not have been made out by a general audience based on the television footage or the applicants' first names and the initial of their surname. On the other hand, the above-mentioned elements made it possible for people who already knew the applicants or those who lived in their local community to identify them and to associate them with the information provided in the programme to the effect that they were real-estate "cheats" and had mental-health issues (see paragraph 8 above; see also, *mutatis mutandis*, *Peck v. the United Kingdom*, no. 44647/98, § 62 *in fine*, ECHR 2003-I; *A. v. Norway*, cited above, § 70; and *SIC - Sociedade Independente de Comunicação v. Portugal*, no. 29856/13, § 67, 27 July 2021; compare *Putistin v. Ukraine*, no. 16882/03, § 38, 21 November 2013).

17. The Court acknowledges that the impugned programme might have a certain impact on the applicant's private life. It finds, however, that the decision to absolve the television broadcaster from liability struck a fair balance between the public interest involved and the applicants' interests and that the standards applied were in conformity with the principles embodied in Article 8 (see, *mutatis mutandis*, *Eerikäinen and Others v. Finland*, no. 3514/02, § 67, 10 February 2009).

18. While reporting and commenting on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public, the public nature of court proceedings does not relieve the media of their duty to show due care in communicating information received during those proceedings (see, *mutatis mutandis*, *Eerikäinen and Others*, cited above, § 63). Special diligence and good judgment on the part of journalists are also called for in the context of releasing and commenting on highly intimate and sensitive

medical data, for example concerning a private individual's mental health (see, regarding leaks of medical data, *I. v. Finland*, no. 20511/03, § 40, 17 July 2008; *P. and S. v. Poland*, no. 57375/08, § 128, 30 October 2012; *L.H. v. Latvia*, no. 52019/07, § 56, 29 April 2014; *Y.Y. v. Russia*, no. 40378/06, § 38, 23 February 2016; and *Surikov v. Ukraine*, no. 42788/06, § 86, 26 January 2017). It has not been disputed, however, that the information about the applicants' mental-health status was taken from the file of their civil case (see paragraph 3 above) and that the reporting was based on facts. The programme in question consisted in imparting factual information about the civil dispute between the applicants and the other party. The allegation that the applicants' mental-health status had been used as a means to cheat their buyers was central to these proceedings (see paragraph 3 above). It is of no relevance that the proceedings before the civil court were still ongoing. As established by the domestic courts during the impugned proceedings, the journalist had contacted the plaintiffs in the proceedings concerning the revocation of the real-estate transaction described above, consulted the case file, interviewed two other buyers, and invited the applicants to comment but in vain. The journalist was thus considered to have acted with the requisite diligence and in line with the applicable law. Given that the applicants' image was not revealed, he had not been under any obligation to obtain their consent for the programme (as regulated by section 14.6 of the Press Act).

19. The Court also finds it legitimate to use individual cases to highlight a more general problem and is satisfied that TVP's programme contributed to a public discussion of an important matter of public interest even though the applicant's business activities were of a rather small-scale (see, *mutatis mutandis*, *A. v. Norway*, cited above, § 71). As found by the appellate court, the journalist aimed to warn any future real-estate buyers about the applicants' record of what he considered to be problematic transactions (paragraphs 2 and 3 above).

20. The appellate court's line of reasoning was detailed, convincing and based on the careful and thorough review of the various factors that are relevant under the Convention. The Court is satisfied that, given the wide margin of appreciation available to the national authorities, the national courts struck a fair balance between TVP's freedom of expression under Article 10 (the journalist's freedom to impart information and the general public's right to receive such information) and the applicants' right to respect for their private life under Article 8 (their interest in having their reputation and privacy protected) (contrast, *mutatis mutandis*, *A. v. Norway*, cited above, § 74, and contrast *Putistin*, cited above, § 40, and *Marta Jelševar and Others*, cited above, § 37).

21. As for the applicant's complaint under Article 13, the Court notes that upon the appeal introduced by the respondent, the appellate court carried out a detailed review of the original decision of the regional court and

dismissed the applicants' claim. The fact that the jurisdiction of the Supreme Court is limited to the questions of law does not in itself disclose any appearance of a violation of the Convention.

22. Accordingly, this 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,

Declares the application inadmissible.

Done in English and notified in writing on 25 August 2022.

Attila Teplán Acting Deputy Registrar	Erik Wennerström President