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

FIRST SECTION

DECISION

Application no. 68561/13
Katarzyna Joanna WRONA
against Poland

The European Court of Human Rights (First Section), sitting on 12 December 2017 as a Committee composed of:
Aleš Pejchal, *President,*
Krzysztof Wojtyczek,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*
Having regard to the above application lodged on 21 October 2013,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Katarzyna Joanna Wrona, is a Polish national, who was born in 1970 and lives in Przylep.

A. The circumstances of the case

2. The applicant is a daughter of Mr J.T., who was a former director of the Polish Fishing Association (*Polski Związek Wędkarski* – "the PZW"). The accountant of the PZW, Ms S.B., was accused of financial fraud. The criminal case against her is ongoing. Mr W.R. replaced the applicant's father as a director of the PZW. Before becoming a director, Mr W.R. had been a financial specialist in the PZW and he was thus responsible over Ms S.B. for financial matters.

3. After the financial fraud had been discovered, the applicant's father informed the police. He was never accused or suspected of being involved in the fraud. Mr W.R., together with two other individuals, prepared the audit report of the fraud. In the conclusion of the audit report, the audit

committee, including Mr W.R., wrote that the applicant's father, as a member of the management board and director of the PZW, was responsible for the financial fraud. In its final recommendation, the audit committee advised the association to open disciplinary proceedings against the applicant's father and to terminate his employment contract.

4. The applicant's father resigned from his position as director of the PZW and suffered serious emotional distress related to the audit committee's conclusions.

5. In these circumstances, the applicant decided to support her father and defend him on the PZW's secure Internet forum. She used an avatar, instead of her real name, to post information. In defending her father, the applicant posted statements about Mr W.R. which he considered to be defamatory and untrue. In particular, she accused him of unethical behaviour, suggested that he was responsible for the financial audit in a certain institution and that he had been aware of ongoing financial fraud and had been co-operating with the accountant of the institution in carrying out the fraudulent activities. The applicant also wrote that Mr W.R. was using communist secret police methods to discredit his opponents, was spreading untrue information about them and had been dismissed from the police under suspicious circumstances.

6. In particular, the following statements made by the applicant were considered by W.R. to be defamatory:

(i) "Mr W.R. was above all suspicion and outside of the law even though he was employed in accountancy to control the finances" (*... poza wszelkimi podejrzeniami i poza prawem jak pan WR, który był zatrudniony w księgowości do kontrolowania finansów ...*), because it suggested that Mr W.R. should have controlled the financial activities of the PZW, whereas in fact it had not been his duty. It also suggested that he had known about the fraud;

(ii) "Based on the falsified audit report carried out by these men" (*opierając się na sfałszowanym protokole z kontroli przeprowadzonej przez wspomnianych na wstępie panów*), because it accused Mr W.R. of falsifying the audit report;

(iii) "I wonder what was the opinion of Mr W.R. on the annual balance sheet since the accountant continued to steal?! And he now heads the management office of the fishing association?! A former auditor and financial specialist in the police has not been able to identify the fraud under his nose for so many years?" (*Ciekawe jaka była opinia pana WR dot. bilansu, skoro księgowa kradła dalej? I ktoś taki kieruje teraz biurem Zarządu? Biegły rewident i specjalista ds. kontroli finansowej w policji nie wykrył przez tyle lat malwersacji pod swoim nosem?*), because she suggested that Mr W.R. had known about the fraud but had not reported it;

(iv) "Not only does he have a desire to become head of the association office, at which he aims at any price, ... his links to the accountant's activities may be disclosed" (*to nie dość że zostanie dyrektorem biura, na co ma chrapkę i do czego dąży za wszelka cenę, to jeszcze na jaw mogą wyjść jego powiazania z działalnością księgowej)*, because she accused him of participating in the fraudulent activities of the accountant;

(v) "... he was allegedly fired from the police in suspicious circumstances" (*obecny p.o. dyrektora podobno nawet z Policji wyleciał w dziwnych* okolicznościach), because she suggested that he had been dismissed for some suspicious activities;

(vi) "As it was a main tool in the communist secret police" (*jak to bylo w SB główną metoda*) and "typical communist slimebag" (*typowa esbecka gnida*), because she compared him to the secret communist police officers who had a very bad reputation in Polish society and used unethical methods of work.

7. Mr W.R. filed a private indictment bill against the applicant. On 18 September 2012 the Zielona Góra District Court convicted the applicant of defamation (Article 212 and 216 of the Criminal Code) and sentenced her to two months of communal work (twenty hours per month), a fine of 1,000 Polish zlotys (PLN) (approximately 250 euros (EUR)) and ordered her to publish an apology (VII K 986/11). On 4 April 2013 the Zielona Góra Regional Court specified the form of apology and dismissed an appeal lodged by the applicant (VII Ka 36/13).

8. The domestic courts held that the applicant's statement concerning Mr W.R.'s scope of duties and the fact that he knew or should have known about the financial fraud had been untrue. Additionally, the applicant's assertions that Mr W.R. had been dismissed from the police in suspicious circumstances had been groundless and based on a rumour that Mr W.R. had been accused of corruption. The domestic courts classified the remaining statements as value judgements which were defamatory, especially the one comparing Mr W.R. to the communist secret police, which had clearly negative connotations in Poland. The fact that the applicant was acting to defend her father and that he was a source of the information she had shared on the Internet forum did not absolve her of liability. The domestic courts also held that from the style and form of the applicant's statements, it was clear that she wanted to insult Mr W.R. and diminish his reputation. She also wanted to undermine confidence in him among the association members. Her remarks were further held to have been harmful to the perception of Mr W.R.'s dignity.

B. Relevant domestic law and practice

9. Article 212 of the Criminal Code provides in so far as relevant:

" 1. Anyone who imputes to another person, a group of persons, an institution, a legal person or an organisation without legal personality, such behaviour or characteristics as may lower the standing of such a person, group or entity in the opinion of the public or undermine public confidence in his or her necessary capacity to undertake a certain position, occupation or type of activity, shall be liable to a fine, restriction of liberty or imprisonment not exceeding one year.

2. If the perpetrator commits the act described in paragraph 1 through a means of mass communication, he or she shall be liable to a fine, restriction of liberty or imprisonment not exceeding two years. "

10. Article 213 of the Criminal Code provides as follows:

> " 1. If the allegation made in public is true, the offence specified in Article 212 § 1 shall be deemed not to have been committed.
>
> 2. Whoever raises or publicises a true allegation in defence of a justifiable public interest shall be deemed not to have committed the offence specified in Article 212 §§ 1 or 2; if the allegation regards private or family life, evidence of truthfulness shall be admitted only when it serves to prevent a danger to someone's life or to prevent the moral corruption of a minor. "

11. Article 216 of the Criminal Code provides, as follows:

> "§ 1. Anyone who insults another person in his presence or, although not in his presence, in public, or with the intention that the insult should reach that person, shall receive a fine or a penalty of restriction of liberty.
>
> § 2. Anyone who insults another person through the mass media shall receive a fine, a penalty of restriction of liberty or a penalty of deprivation of liberty for up to one year.
>
> § 5. Prosecution takes place under a private bill of indictment."

12. On 30 October 2006 the Constitutional Court, ruling on a legal question referred to it by the Gdansk District Court, declared Article 212 §§ 1 and 2 of the Criminal Code compatible with Articles 14 and 54 § 1 of the Constitution read in conjunction with Article 31 § 3 (case no. P 10/06). The court found that in some circumstances, the protection of rights and freedoms, such as the right to protect one's dignity, good name and privacy, might prevail over the protection of freedom of expression. The court further found that there was no basis to assume that protection of personal rights through civil law alone would be as effective as criminal-law protection. The latter did not in itself infringe the relevant provisions of the Constitution.

COMPLAINT

13. The applicant complained under Article 10 of the Convention that her right to freedom of expression had been infringed.

14. She argued that her criminal conviction for expressing her opinions on a secure Internet forum had violated her right to freedom of expression. The domestic courts had been wrong to examine each of her statements as true or false because most of them had been formulated as questions and were her private opinions. She had expressed her doubts and suspicions about the director of an association, the PZW, which had more than 600,000 members and was responsible for managing substantial sums of money. For those reasons, the director, Mr W.R., should have been treated as a public figure.

THE LAW

15. The applicant complained that her criminal conviction for defamation constituted an unlawful and disproportionate interference with her right to freedom of expression. She relied on Article 10 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the reputation or rights of others ... or for maintaining the authority and impartiality of the judiciary. "

16. The Court finds that the domestic judgment given in the course of the criminal proceedings against the applicant amounted to an interference with her right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. In principle, an interference with the applicant's rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of that Article. It should therefore be determined whether the interference complained of was prescribed by law, whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was necessary in a democratic society in order to achieve those aims (see *Cumpănă and Mazăre* v. Romania [GC], no. 33348/96, § 85, ECHR 2004-XI, and *Cieśla v. Poland* (dec.), no. 38652/15, § 15, 24 January 2017).

17. The interference referred to above was "prescribed by law"; it was based on the relevant provisions of the Criminal Code providing for the protection of personal rights, namely Articles 212 and 216 (see paragraphs 7 and 8 above).

18. The Court accepts that the interference with the applicant's freedom of expression pursued a legitimate aim, namely the protection of the reputation and rights of Mr W.R.

19. It remains to be ascertained whether the interference complained of was necessary in a democratic society.

20. The general principles for assessing whether an interference with the exercise of the right to freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention are well-settled in the Court's case-law. They were recently restated in *Pentikäinen v. Finland* ([GC], no.11882/10, § 87, ECHR 2015) and *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016). The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations were made, a

right which, as an aspect of private life, is protected by Article 8 of the Convention. In two fairly recent cases, the Court defined its own role in balancing these two conflicting interests. It went on to identify a number of relevant criteria where the right to freedom of expression is being balanced against the right to respect for private life (see *Axel Springer AG* v. *Germany* [GC], no. 39954/08, §§ 82-95, 7 February 2012, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 101-13, ECHR 2012). In cases such as the present one, the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending article or under Article 8 of the Convention by the person who was the subject of that article. Indeed, as a matter of principle these rights deserve equal respect (see *Axel Springer AG,* cited above, § 87, and *Cieśla* (dec.), cited above, § 22).

21. In the case at hand, the applicant acted as a private person and was defending her father, not acting in the public interest. Although Mr W.R. was a director of the PZW, a large national association, he was not a public figure. Thus the case involved a dispute between two private individuals, and the alleged defamatory statements were made in a semi-public manner, namely on a secure Internet forum of an association. For this reason, the authorities' margin of discretion to choose how to protect the rights of the parties involved and balance the rights under Articles 8 and 10 is wider. The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals is in principle a matter that falls within the Contracting States' margin of appreciation, (contrast *Bédat,* cited above, § 49, and see, *mutatis mutandis, Von Hannover (no. 2),* cited above, § 104).

22. In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on. Where the right to freedom of expression is being balanced against the right to respect for private life, the criteria laid down in the case-law that are relevant to the present case are the following: whether the impugned assertions contributed to a debate of general interest; how well known the person concerned was and the subject of the report; the prior conduct of the person concerned; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and, lastly, the severity of the sanction imposed (see *Axel Springer AG,* cited above, §§ 89-95, and *Von Hannover (No. 2)*, cited above, §§ 108-13).

23. In the case at hand, the applicant's statements did not contribute to a debate of general interest but served to protect her father. The statements were made on a secure Internet forum of the PZW where Mr W.R. was well

known; nevertheless, the impact of the applicant's statements was limited in range. Her statements were defamatory and were not based on facts (see paragraph 8). She exceeded the limits of fair criticism and resorted to expressions which were disrespectful and offensive. The applicant acted as a private person, not a journalist, and hid her identity behind an avatar. Some of her statements were purely value judgements, while others were offensive. For example, she compared Mr W.R.'s actions to methods used by the secret communist police. Lastly, as regards the sanctions imposed on the applicant, it should be noted that the use of criminal-law sanctions in defamation cases is not in itself disproportionate (see *Ziembiński v. Poland (no. 2)*, no. 1799/07, § 46, 5 July 2016). The applicant was ordered to publish an apology and sentenced to communal work and a fine of approximately EUR 250 (see paragraph 7) (contrast *Ziembiński (no. 2)*, cited above, § 46, and see, *mutatis mutandis, Cieśla* (dec.), cited above, §§ 26-27). The Court considers that those sanctions were not excessive in the circumstances of the present case.

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

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Renata Degener
Deputy Registrar

Aleš Pejchal
President