



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

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FIRST SECTION

Application no. 21181/19
Igor Zygmunt TULEYA
against Poland
lodged on 10 April 2019

STATEMENT OF FACTS

1. The applicant, Mr Igor Tuleya, is a Polish national, who was born in 1970 and lives in Warsaw. He is represented before the Court by Mr J. Dubois, 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 served as a district court judge for twelve years. In 2010 he was appointed as a judge at the Warsaw Regional Court where he adjudicates criminal cases. He sat on a bench in a number of cases that attracted widespread media interest. For example, he adjudicated in the case of M.G. where he critically assessed the investigating measures applied by the Central Anti-corruption Bureau against the suspect. He also adjudicated in the case of abuse of authority by public officials in the course of the vote in the Sejm (the lower chamber of the Polish parliament) on the budget bill in December 2016.

4. The applicant is well-known among the judges and by the public at large. Cases in which he adjudicated were commented on by politicians and representatives of the State authorities. The applicant is also involved in the

activities of the associations of judges, which defend, *inter alia*, the rule of law in Poland.

5. As a judge, the applicant is subject to disciplinary liability. The rules of disciplinary liability of judges were significantly changed by the Act of 8 December 2017 on the Supreme Court amending the Act on the Organisation of Common Courts (“the 2017 Amending Act”) which entered into force on 3 April 2018. The Minister of Justice – Prosecutor General assumed significant powers in the new model of disciplinary liability. The minister appoints, *inter alia*, the disciplinary representative for the judges of the common courts (*Rzecznik Dyscyplinarny Sędziów Sądów Powszechnych*; “disciplinary representative”) and his two deputies as well as judges adjudicating in the disciplinary court of first-instance. The 2017 Amending Act established also the office of the disciplinary representative of the Minister of Justice who is appointed by the minister.

6. The Act on the Supreme Court of 8 December 2017 law established a new Disciplinary Chamber (*Izba Dyscyplinarna*) in the Supreme Court. The Disciplinary Chamber acts as a court of second-instance in disciplinary matters of judges of the common courts.

7. After the entry into force of the 2017 Amending Act, the disciplinary representative and his two deputies initiated many disciplinary proceedings against judges in connection with the content of their rulings or their public activities. Those proceedings were initiated mostly against judges who openly criticised the legislative changes concerning the judiciary introduced by the Government in 2016-2018.

8. Most of these proceedings are at the stage of a preliminary inquiry (*czynności wyjaśniające*), which is initiated by the disciplinary representative under section 114 § 1 of the 2017 Amending Act “after initial determination of circumstances necessary to establish constituent elements of a disciplinary offence” (“*po wstępnym ustaleniu okoliczności koniecznych dla stwierdzenia znamion przewinienia dyscyplinarnego*”). In practice, the disciplinary representative initiates proceedings concerning a certain activity of a judge that could, in his view, make out constituent elements of a disciplinary offence, and summons a judge to make a written or oral statement or to give evidence as a witness. According to the applicant, judges in respect of whom such proceedings were initiated do not have a properly defined status in those proceedings and do not enjoy adequate procedural safeguards. Those preliminary inquiry proceedings should have been concluded within thirty days, but in most cases this time-limit has not been respected.

9. The deputy disciplinary representative initiated seven different disciplinary proceedings concerning the applicant on the basis of section 114 § 1 or § 2 of the 2017 Amending Act:

1) case no. RDSP 712-2/18 concerning “[the applicant’s] comments in a television programme on 17 July 2018 in the station TVN24, in particular

those concerning the National Council of the Judiciary and the administration of justice”. On 9 August 2018 the applicant was summoned to make a written statement on the above;

2) case no. RDSP 712-3/18 regarding “possible unauthorised dissemination of information from the investigation no. VIII Kp 1335/17”. On 14 August 2018 the applicant was summoned to make a written statement;

3) case no. RDSP 714-61/18 concerning “excess of limits of freedom of expression of a judge with regard to [the applicant’s] public comments about other judges and representatives of constitutional authorities”. This case concerned the applicant’s comments made at the Woodstock music festival in Poland. On 5 September 2018 the disciplinary representative summoned the applicant to give evidence as a witness. The applicant did so in the presence of his lawyer;

4) case no. RDSP 712-8/18 regarding a preliminary inquiry into reasons for making the reference by the Łódź Regional Court for a preliminary ruling to the Court of Justice of the European Union (“the CJEU”) in the case no. I C 205/17. The applicant submitted the identical reference to the CJEU. On 21 September 2018 the disciplinary representative summoned the applicant to give evidence as a witness;

5) case no. RDSP 712-12/18 concerning a public meeting at the European Solidarity Centre in Gdańsk on 28 September 2018. On 8 October 2018 the disciplinary representative summoned the applicant to make a written statement about his participation in this event, and to indicate who had organised the meeting, in what capacity had he participated in it and whether politicians had taken part in the meeting;

6) case no. RDSP 712-13/18 regarding a public meeting in Lublin on 30 September 2018. On 8 October 2018 the disciplinary representative sought the same information from the applicant as in the case referred to under 5);

7) case no. RDSP 712-8/2-18 concerning the reference for a preliminary ruling submitted by the Warsaw Regional Court (the applicant) to the CJEU. The preliminary question dealt with the compatibility of a new disciplinary regime for judges with Article 19 of the Treaty on the EU. On 29 November 2018 the disciplinary representative summoned the applicant to make a written statement with regard to possible “judicial excess” (*eksces orzecznicy*) on account of making that reference to the CJEU contrary to conditions stipulated in Article 267 on the Treaty on the Functioning of the EU.

10. On 10 October 2018 the applicant appeared before the deputy disciplinary representative to be questioned as a witness in connection with the proceedings no. RDSP 712-8/18 (point 4) above). The applicant asked that his lawyer be allowed to take part in the questioning. The deputy

disciplinary representative refused that request and a further appeal against the refusal was to no avail.

11. The applicant submits that, contrary to what has been indicated in the summons of 21 September 2018, the questioning concerned his own judicial activity. He made his statements as a witness on pain of criminal liability. According to the applicant, these statements were admitted as evidence to the case file of the proceedings concerning his own, alleged “judicial excess” (proceedings referred under point 7) above).

12. As a result of the seven disciplinary proceedings concerning the applicant, many items that were of an insulting or discrediting nature were published or broadcast on the State television, printed media or on internet portals. The disciplinary representative P.S. in his public communique of 17 December 2018 indicated that the applicant could have made false statements in the proceedings no. RDSP 712-8/18 (point 4) above). The applicant is confronted with many actions on unknown persons that impinge on his reputation. A parcel that allegedly contained anthrax bacteria was addressed to his professional address at the Warsaw Regional Court which caused the evacuation of the building.

B. Relevant domestic law

At the relevant time the rules of disciplinary liability of ordinary judges were regulated in the Act on the Organisation of Common Courts as amended by the Act of 8 December 2017 on the Supreme Court, which entered into force on 3 April 2018.

COMPLAINTS

13. The applicant complains under Article 8 of the Convention that his right to respect for his private life was violated. He alleges that his reputation as a judge was infringed as a result of conducting seven disciplinary proceedings in which he was being involved. These proceedings also undermine the authority of the judiciary. He alleges that the manner of conducting the disciplinary proceedings was disproportionate to the events to which the proceedings were related. The impugned proceedings cast doubt on the applicant’s professional competences as a judge as well as his objectivity and independence. The applicant further complains that the interference with his rights was not carried out “in accordance with the law” because the domestic law did not provide procedural safeguards against arbitrary actions of the disciplinary bodies.

14. The applicant alleges a violation of Article 13 with regard to his complaint under Article 8.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention on account of the initiation of seven sets of disciplinary proceedings against him? Reference is being made to *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018).

2. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

3. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 8, as required by Article 13 of the Convention?

4. Has there been an interference with the applicant's freedom of expression, in particular his right to impart information and ideas, within the meaning of Article 10 § 1 of the Convention?

5. If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?