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EGMR Nr. 43425/98 - Urteil vom 27. Mai 2003 (Skalka v. Polen)

Meinungsfreiheit (konstitutive Bedeutung in der Demokratie; Eingriff; Rechtfertigung: Schutz der unabhängigen Gerichte; Verhältnismäßigkeit; Gesetzesvorbehalt; legitimes Ziel; notwendig in einer demokratischen Gesellschaft); verhältnismäßige Strafzumessung (gerechter Schuldausgleich; Einhaltung allgemeiner Standards).

Art. 10 EMRK; § 46 StGB

Leitsätze des Bearbeiters

1. Die Meinungsfreiheit ist für die demokratische Gesellschaft von konstitutiver Bedeutung. Sie stellt eine der grundlegenden Voraussetzungen für ihre Fortentwicklung und die Selbstverwirklichung des Einzelnen dar. Ihr Schutzbereich umfasst auch Meinungen, die verletzen, schockieren oder beunruhigen.

2. Die Meinungsfreiheit kann ausnahmsweise eingeschränkt werden, jedoch sind die Ausnahmen eng auszulegen und das Bedürfnis für eine Einschränkung muss überzeugend dargelegt werden. Erforderlich kann eine Einschränkung gemäß Art. 10 II EMRK nur sein, wenn für sie ein dringendes gesellschaftliches Bedürfnis besteht. Für dessen Feststellung ist den Vertragsstaaten ein Einschätzungsermessen zuzugestehen, welches jedoch der Überprüfung durch den EGMR sowohl hinsichtlich der Gesetzgebung als auch der Gesetzesanwendung - einschließlich der Rechtsprechung - unterliegt. Der EGMR ist befugt, letztentscheidend einzuschätzen, ob eine Einschränkung mit Art. 10 EMRK vereinbar ist.

3. Der Schutz des Ansehens der Gerichte ist ein legitimes Ziel im Sinne des Art. 10 EMRK. Die für die Gerichte tätigen Personen haben die gleichen Persönlichkeitsrechte wie alle anderen Mitglieder der Gesellschaft, jedoch müssen die Staaten zwischen Kritik und Beleidigungen klar unterscheiden. Die verhältnismäßige Bestrafung einer Beleidigung verstößt nicht grundsätzlich gegen Art. 10 EMRK.

4. Auch wenn eine Bestrafung grundsätzlich gemäß Art. 10 EMRK zulässig ist, muss sich auch die Bestrafung im Einzelfall am Verhältnismäßigkeitsgrundsatz messen lassen. Wenn auch in erster Linie die nationalen Gerichte die Strafzumessung vorzunehmen haben, wahrt der EGMR fallbezogen die Einhaltung allgemeiner Standards im Rahmen der Verhältnismäßigkeitsprüfung. Bei diesen handelt es sich um die Schwere der Schuld, die Bedeutung der Straftat und die mögliche wiederholte Begehung der Tat.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE 1

9. The applicant was born in 1941. He is currently serving a prison sentence. 2

10. On 16 December 1993 the Nowy Targ District Court convicted the applicant of aggravated theft and sentenced him to imprisonment. While in prison, on unspecified dates the applicant wrote a letter to the Penitentiary Division of the Katowice Regional Court and he received a reply. Dissatisfied with that reply, on 15 November 1994 the applicant sent a letter to the President of the Katowice Regional Court, complaining about the judge who had replied to his letter. The relevant passages of the applicant's letter read: 3

"(...) It cannot be excluded that further acts of that kind on the part of the Penitentiary Division of the Regional Court would make me complain to the judicial supervision about the irresponsible clowns placed in that Division.

I will start by saying that any little cretin, whether he wears a gown or not, should vent his need to intimidate others by making allusions to legal responsibility [for their acts] on his mistress, if he has one, or on his dog, but not on me. I am not going to be afraid of any such clown who wants to intimidate me, but the truth is that my request of 18 August 1994 was addressed to the court, not to some fool.

I expect that the President of the Katowice Regional Court will somehow convey my request to that bully and that he will, at the same time, read his reply to me (...)

Not only does [the judge] write rubbish about my alleged request for a pardon, which my request was absolutely not, but he also intimidates me. If he is such a brilliant lawyer that he is able to reply to questions that were not asked - and his legal skills can be seen if the content of my letter is compared with his reply - he should find a relevant legal provision to use against me. It would not change the fact that such a limited individual, such a cretin should not take the post of a reliable lawyer who would know how to reply to a letter. A cretin he will remain and I see no reason to be afraid of any legal consequences. "You know, you

understand, shut up" - that is all the education he has, as a fool does not need any better."

11. Subsequently, on an unspecified date, the Sosnowiec District Prosecutor instituted criminal proceedings against the applicant. On 31 January 1994 the prosecuting authorities lodged a bill of indictment against the applicant with the Sosnowiec District Court. He was charged with proffering insults against a State authority at its headquarters or in public, an offence punishable under Article 237 of the Criminal Code 1969, committed by sending a letter to the President of the Katowice Regional Court. In this letter the applicant had insulted an unidentified judge of that court's Penitentiary Division and all judges of that court. The applicant had been questioned in connection with the offence. He had stated that he had not meant the court as a whole, but only one judge, and this in his personal, not professional, capacity. He maintained that the letter could only be regarded as an insult against a private person, but not a State institution. 4

12. On 6 September 1995 the Sosnowiec District Court convicted the applicant of insulting a State authority and sentenced him to eight months' imprisonment. The court found that on 15 November 1994 the applicant had sent a letter to the President of the Regional Court in which he referred to all judges of the Regional Court's Penitentiary Division in an insulting and abusive manner as "irresponsible clowns". Moreover, further on in the same letter, he referred in a particularly insulting manner ("*w sposób szczególnie obraŸliwy*") to an unidentified judge of the same Division, to whom he had allegedly written certain letters, which remained unanswered. 5

13. The court had regard to the results of the applicant's examination by psychiatrists who found that he could be held criminally responsible. 6

The court further took into consideration the questioning of the applicant during the investigations. He had denied that he had committed a criminal offence. He had stated that the charge against him did not correspond to the facts of the case as in his letter he referred to a particular person, not to the court as a whole, and that the phrases construed as insults concerned the judge in his personal capacity only. When later heard by the court, the applicant had stated that he had written this letter with a specific person in mind, namely a judge who had previously examined his various complaints. He maintained that he had not named that judge, because the letter from the Penitentiary Division in reply to his complaints, which had provoked him to write his impugned reply, had not been signed. The applicant had also stated that he was of the view that the opinions formulated in his letter were, in the circumstances of the case, correct. 7

14. The court considered that it was beyond any doubt that it was the applicant who had written the impugned letter. The analysis of its content and form led to the conclusion that the applicant had acted with the firm intention of insulting the Regional Court as a judicial authority. He had first addressed himself to the judges of that court as a group, and then focused on one unidentified judge. Accordingly, it had to be understood that the applicant had insulted the court as the State authority, and the unidentified judge could be regarded as a symbol of that court. 8

The court further observed that the applicant, as a citizen, had a constitutional right to criticise the State authorities. However, the impugned letter had largely exceeded the limits of acceptable criticism and was directly aimed at lowering the court in the public esteem. 9

The court further observed that the sentence was commensurate with the applicant's degree of guilt and with the seriousness of the offence. The assessment of the latter had been made having regard to the nature and importance of the interests protected by the criminal law provision applied in the case, i.e. by Article 237 of the Criminal Code. 10

15. The applicant and his officially assigned lawyer lodged appeals against this judgment. 11

16. On 19 June 1996 the Katowice Court of Appeal, following a request from all of the judges of the Katowice Regional Court to be allowed to step down, considered that, in view of fact that the offence had been directed against the judges of that court, it was in the interest of the good administration of justice and the impartiality of the court that the appeal be transferred to the Bielsko-Bia³a Regional Court. 12

17. On 10 September 1996 the Bielsko-Bia³a Regional Court upheld the contested judgment, having examined both the appeal lodged by the applicant himself and that of his lawyer. 13

The court first noted that the first-instance court had accurately established the facts of the case. The court went on to state that it shared the conclusions of the first-instance court, namely that the content and form of the letter called for the conclusion that the applicant had acted with the firm intention of insulting the Regional Court as a State authority. The legal assessment of the facts of the case was correct, and the sentence imposed corresponded to the degree of the applicant's guilt. The applicant had a long criminal record, even though he had been assessed positively by the 14

penitentiary services, and could be held criminally responsible. The applicant's lawyer had argued that the applicant had intended to insult a specific person, not an institution. However, in the light of the court's other findings, this analysis was rejected.

18. The applicant's lawyer lodged a cassation appeal with the Supreme Court. 15

19. On 2 June 1997 the Supreme Court dismissed the appeal and confirmed the contested judgment. The court referred to the grounds of appeal in which it had been argued that the conviction had been in flagrant breach of Article 237 of the Criminal Code in that the applicant's acts, in the light of his submissions as to his motives, did not amount to a punishable criminal offence. 16

20. The Supreme Court first noted that the grounds of the applicant's cassation appeal had been laconic and limited in their reasoning. Moreover, it clearly transpired therefrom that in fact the applicant's lawyer contested the assessment of evidence and the factual findings made by the lower courts, whereas the purpose of the cassation appeal was only to bring procedural complaints to the attention of the Supreme Court. This in itself constituted a sufficient basis for dismissing the appeal as not being in compliance with the requirements laid down by the applicable procedural provisions. 17

21. However, the court emphasised, it was worth noting that the Regional Court in its judgment had examined all complaints submitted in the appeal against the first-instance judgment, including those concerning the assessment of evidence and the factual findings of the first-instance court. No new arguments had been submitted to the Supreme Court to show that there had been any procedural shortcomings in the proceedings. Certainly the argument that the applicant's acts could not be regarded as a criminal offence could not be regarded as such a procedural complaint. 18

22. The Supreme Court went on to state that the applicant's abusive letter, referred to and quoted by the Regional Court, had clearly exceeded the limits of acceptable criticism. Even if it were acknowledged that in the second part of the letter the applicant had focused on one judge, it had to be recognised that at the beginning he had attacked all the judges of the Regional Court. The appellate court correctly had regard thereto. It had also indicated why it considered that the applicant's attitude could be qualified as an offence under Article 237 of the Criminal Code 1969. The Supreme Court therefore dismissed the cassation appeal as unfounded. 19

II. RELEVANT DOMESTIC LAW 20

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THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION 22

24. The applicant complained that his criminal conviction ran counter to Article 10 of the Convention, which reads: 23

"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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

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B. The Court's assessment 24

30. It is not in dispute between the Parties that the applicant's conviction amounted to an interference with the applicant's freedom of expression and that this interference was "prescribed by law" as required by Article 10 of the Convention, namely by Article 237 of the Criminal Code 1969, applicable at the relevant time. 25

31. It is also a common ground that the interference pursued a legitimate aim of maintaining the authority of the judiciary within the meaning of Article 10 of the Convention. 26

32. The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of 27

indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among others, the following judgments: Jersild v. Denmark, 23 September 1994, Series A no. 298, § 31; *Janowski*, cited above, § 30, ECHR 1999-I; and *Nilsen and Johnsen v. Norway*, no. 23118/93, § 43, to be published in the official reports of the Court's judgments and decisions; *Perna v. Italy*, no. 48898/99, § 38).

33. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". 28
The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Janowski*, cited above, § 30).

34. The work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed 29
by the rule of law, needs to enjoy public confidence. It should therefore be protected against unfounded attacks (see, e.g. *Prager and Oberschlick* , cited above, § 34; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-234, § 37).

The courts, as with all other public institutions, are not immune from criticism and scrutiny. Persons detained enjoy in 30
this area the same rights as all other members of society. A clear distinction must, however, be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Article 10 § 2 of the Convention.

35. It is finally recalled that in exercising its supervisory jurisdiction, the Court must look at the impugned interference in 31
the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see, among other authorities, *Nikula v. Finland,* no. 31611/96, 23 March 2002, § 44).

36. In the present case, the applicant, while serving a prison sentence, wrote a letter to the Penitentiary Division of the 32
Katowice Regional Court and received a reply. Obviously dissatisfied with that reply, on 15 November 1994 the applicant sent a further letter to the President of the Katowice Regional Court, complaining about the unidentified judge who had replied to his first letter. It is not open to doubt that the applicant used insulting words in his second letter. He stated that "irresponsible clowns" were placed in the Penitentiary Division of that court, and went on to shower further abuse upon the author of the reply complained of: "small-time cretin", "some fool", "a limited individual", "outstanding cretin" (see § 9 above). The Court also observes that the tone of the letter as a whole was clearly derogatory.

37. It should also be noted that the applicant did not formulate any concrete complaints against the letter, which had so 33
aggrieved him. He expressed his anger and frustration, but did not take reasonable care to articulate clearly why, in his view, the letter complained of deserved such a strong reaction.

38. On the other hand, as regards the requirements that the interference must comply with, and in particular as regards 34
the proportionality test to be applied (see § 34 above), the Court recalls that in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Ceylan v. Turkey* [GC], no. 23556/94, § 49, ECHR 1999-IV).

39. In this respect the Court's attention has been drawn, first and foremost, to the fact that the courts chose to impose 35
a prison sentence of eight months on the applicant, which cannot but be regarded as a harsh measure. The Court notes that the first instance-court observed that the sentence was commensurate with the applicant's degree of guilt and with the seriousness of the offence. The assessment of its seriousness had been made having regard to the nature and importance of the interests protected by the provision of substantive criminal law applied in the case (see § 13 above). In the Court's view, this reasoning of the domestic court does not seem to address sufficiently the question of why it considered that the applicant's guilt was so grave, and why, in the particular circumstances of the case, the offence was considered serious enough to warrant eight months' imprisonment.

The Court further notes that the applicant had never previously been convicted of a similar offence. Had the applicant 36
been so convicted, it would have been more acceptable that the courts would choose to impose a harsh sentence on him in order to make it more dissuasive in the face of his impenitence.

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40. As regards the context in which the impugned statements were uttered, the Court recalls that the phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge (*Worm v. Austria*, judgment of 29 August 1997, Reports 1997-V, § 40). What is at stake as regards protection of the authority of the judiciary, is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30). 37

41. In the circumstances of the present case the Court considers that the interest protected by the impugned interference was important enough to justify limitations on the freedom of expression. In consequence, an appropriate sentence for insulting both the court as an institution and an unnamed but identifiable judge would not amount to a violation of Article 10 of the Convention. 38

Therefore, the question in the case is not whether the applicant should have been punished for his letter to the Regional Court, but rather whether the punishment was appropriate or "necessary" within the meaning of Article 10 § 2. It is the Court's assessment that the sentence of eight months' imprisonment was disproportionately severe. Even if it is in principle, for the national courts to fix the sentence, in view of the circumstances of the case, there are common standards which this Court has to ensure with the principle of proportionality. These standards are the gravity of the guilt, the seriousness of the offence and the repetition of the alleged offences. 39

42. In the Court's view, the severity of the punishment applied in this case exceeded the seriousness of the offence. It was not an open and overall attack on the authority of the judiciary, but an internal exchange of letters of which nobody of the public took notice. Furthermore, the gravity of the offence was not such as to justify the punishment inflicted on the applicant. Moreover, it was for the first time that the applicant overstepped the bounds of the permissible criticism. Therefore, while a lesser punishment could well have been justified, the courts went beyond what constituted a "necessary" exception to the freedom of expression. 40

43. The Court therefore concludes that Article 10 has been violated. 41

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION 42

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FOR THESE REASONS, THE COURT UNANIMOUSLY 44

1. *Holds* that there has been a violation of Article 10 of the Convention ... 45