

Judgment in the case PiS v Sadurski, Warsaw 18 June 2020

Oral reasons (summary)

General: Comparing the modus operandi of PiS ([Law and justice, currently ruling party in Poland) to the functioning of an organized criminal group was a metaphor and is within the boundaries of permitted criticism. The suit dismissed. The judgment is non-final.

Specific points made by Judge Sylwia Urbańska:

- The use of the metaphor (comparing a party to an organized criminal group) was an expression of opinion about the abuse of the state apparatus by a political party for its own purposes, making use of nondemocratic methods;
- Judge Urbańska referred to the Constitution of Poland (Art. 54), international human rights conventions, case law of the Polish Supreme Court and of the European Court of Human Rights (ECtHR)
- The court explained that it must weigh and balance two values: freedom of speech and a right to a good name;
- The court emphasized the key importance of freedom of expression in democratic societies, which extends to statements which may be shocking and harsh, because this is required by pluralism;
- The court found that the expression by Wojciech Sadurski (WS) was expression of an opinion. It was a metaphor, a comparison, and not a statement of fact. As an example, Judge Urbańska said that if someone calls another a sheep [in Polish: "baran"] it does not mean that that other person is an animal but that they are considered not too bright;
- The statement by WS was on Twitter, i.e. a medium characterized by brevity and immediate responses. Such a medium may justify sharper statements;
- The situational context is also important. WS's statement was on the eve of the "Independence March" of 11 November 2018 [Poland's Independence Day], an event which in Poland regularly triggers great emotions, especially after the March a year before, in 2017. At that time, the Judge recalled, foreign media and the European Parliament had found that it was one of the most significant assemblies of a fascist, nationalistic, xenophobic character;
- The judge recalled that President Andrzej Duda in one of his interview had stated that some slogans were raised at the Independence March which should not have been there, and which should be espoused by no decent person in Poland. She pointed out that one cannot escape historical context and the fact that Poland was so damaged by fascist ideology; she added that any possible revival of such ideology should raise concerns and should be responded to, and this "should" signifies a duty. This duty falls especially on some groups, such as journalists, historians, philosophers, sociologists etc.

- WS's Tweet revealed his emotional attitude to the planned Independence March; it is framed in terms of "decency"; it is an opinion in terms of right and wrong. It is clear that a person who holds such opinions must not remain passive and inactive if they are to act decently;
- The statement by WS may be disliked, might shock and irritate, but this is a matter of taste and culture rather than legal prohibitions;
- Another important factor is that the defendant is a critic of a ruling party; according to the judge it is one of the implications of ECtHR's case law that there are some groups which have a slightly broader space in public discourse: journalists, politicians, and active participants in public discourse, who express criticism of the authorities. The same case law implies that politicians, public figures and political parties must cope with harsher criticism. In particular, this applies to a ruling party which must tolerate criticism of itself and of its members, and in this context Judge Urbańska referred to several ECtHR cases against Poland which established such standards of freedom of expression.

Note

The case arose out of civil suit by Prawo i Sprawiedliwość (PiS) i.e. Law and Justice Party (plaintiff) against Professor Wojciech Sadurski (University of Sydney and University of Warsaw). Case number II C21/19, suit lodged on 21 January 2019 in the District Court for Warsaw, 2nd Civil Law Department.

Factual basis: W. Sadurski published a text on Twitter (10 November 2018) characterizing PiS as "an organized criminal group". In the Justification for its suit, the Plaintiff cited "the common understanding of Organized Criminal Group", and the fact that the party is not such a group and has no criminal character.

The first court hearing took place in Warsaw on 27 November 2019. W.Sadurski attended court in person, and was cross-examined as to the circumstances of his statement which was the basis of the suit by the plaintiff.

The plaintiff demanded: A public apology, an injunction restraining the defendant from making any future statements which imply that the activities of the party PiS may be in any way compared to any criminal activities; payment of PLN 20 thousand [approx. EUR 4600, US \$ 5230] to a nominated charity.