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

Press Release
issued by the Registrar of the Court

ECHR 237 (2015)
07.07.2015

Pilot judgment: Poland has to take further steps to tackle problem of lengthy court proceedings and adequately compensate victims

The case of Rutkowski and Others v. Poland (application nos. 72287/10, 13927/11 and 46187/11) concerned the applicants' complaints that the length of the proceedings before the Polish courts in their respective cases had been excessive and that the operation of the remedy at national level for the excessive length of court proceedings was defective.

In today's **Chamber** judgment[1] in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a hearing within a reasonable time) of the European Convention on Human Rights**, and**

a violation of Article 13 (right to an effective remedy).

The Court concluded that the situation of which the applicants complained had to be qualified as a practice which was incompatible with the European Convention and decided to apply the pilot-judgment procedure.[2]

The Polish Government had argued that a 2013 resolution by the Polish Supreme Court, acknowledging that the previous practice as regards compensation for unreasonable length of proceedings had been defective, had put an end to that practice. However, an increased inflow of repetitive cases before the Court in 2013 and 2014 involving length of proceedings and insufficient compensation at national level showed that further measures were needed. The Council of Europe's Committee of Ministers, in the course of the execution of the Court's judgments, was to monitor such measures to be taken by Poland.

There are about 650 similar cases pending before the Court at different stages of the procedure. The Court decided to communicate to the Polish Government all new applications, giving it a two-year time limit for processing those cases and affording redress to all victims.

Principal facts

The applicants, Wiesław Rutkowski, Mariusz Orlikowski, and Aleksandra Grabowska, are Polish nationals who live in Warsaw, Łódź, and Poznań respectively.

In Mr Rutkowski's case, the complaint concerns criminal proceedings against him on suspicion of participating in an organised criminal group. He was charged with those offences in September 2002 and was eventually acquitted in July 2010.

Mr Orlikowski's and Ms Grabowska's complaints concern two different sets of civil proceedings. Mr Orlikowski lodged a claim for damages against his landlord in March 1999 and in November 2010 an appeal court eventually granted his claim in part. Ms Grabowska joined the proceedings in a civil

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2 See here for further information on the pilot-judgment procedure.

case in April 2000 which concerned the rights to property she had inherited. In June 2013 an appeal court eventually upheld a decision rejecting her claim.

While their respective proceedings were pending, all three applicants lodged complaints about the length of the proceedings under a law enacted in 2004 providing for remedies for breaches of the right to have a case examined in judicial proceedings without undue delay ("the 2004 Act"). Mr Rutkowski was awarded the equivalent of 500 euros (EUR) in compensation. Mr Orlikowski's and Ms Grabowska's complaints were dismissed. As regards the assessment of the length of the proceedings, in both Mr Rutkowski's and Ms Grabowska's case, the courts took into account only the period starting from the date on which the 2004 Act had entered into force. In Mr Orlikowski's case, they took into account only the period after the appeal court had quashed the judgment of the first instance court.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a hearing within a reasonable time), all applicants complained that the length of the proceedings in their respective cases had been unreasonable. They further complained, under Article 13 (right to an effective remedy), that the national courts had defectively applied the 2004 Act in that they had refused to acknowledge the excessive length of the proceedings and in consequence to grant them appropriate and sufficient just satisfaction.

The case originated in three applications which were lodged with the European Court of Human Rights on 30 November 2010, 21 February 2011 and 21 July 2011 respectively.

The case was communicated to the Polish Government for observations on 2 October 2012. The parties were also invited to express their views on whether the case revealed a systemic problem of excessive length of proceedings in Poland as well as ineffective operation of a domestic remedy in that respect and whether the case would be suitable for the Court's pilot-judgment procedure.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court found violations of Article 6 § 1 in respect of all three applicants on account of the unreasonable length of the proceedings in their respective cases before the Polish courts. While Mr Rutkowski's case had been of more than average complexity – involving a large number of accused – this did not justify the entire length of proceedings of seven years and ten months at one level of jurisdiction. As regards the other two applicants, the Court accepted both Mr Orlikowski's and Ms Grabowska's submission that their respective cases had not been particularly complex. The Court found no justification for the delays that had led to an overall length of proceedings of 11 years and

more than eight months in Mr Orlikowski's case and 13 years and two months in Ms Grabowska's case.

Article 13

Shortly after the introduction of the 2004 Act the Court had examined the remedies introduced by it and had found them to be "effective" within the meaning of Article 13. However, having regard to subsequent developments in the Polish judicial practice the Court saw good reason for reconsidering its previous position.

As shown by the fact in the applicants' case, considerable delays which had occurred in their respective proceedings had not been taken into account by the courts dealing with their complaints. Contrary to the Court's established case-law on the assessment of the reasonableness of the proceedings, those courts had not examined the overall length of the proceedings but only selected parts of them. In two of the applicants' cases, the courts had disregarded the periods before the entry into force of the 2004 Act; in the case of one applicant the appeal court had limited its assessment to the court instance at which the main proceedings were pending. The approach taken by the courts in the applicants' cases reflected the principle of "fragmentation of proceedings" established by the Polish Supreme Court in numerous rulings between 2005 and 2012. Following that principle assessment of a length complaint was to be limited to the period after the 2004 Act's entry into force and to the court instance at which the case was currently pending.

The "fragmentation" of the proceedings had decisive consequences for the outcome of the applicants' claims for compensation, which were either entirely rejected or only partly granted. The amount of compensation granted to Mr Rutkowski corresponded to only 5.5% of what the Court would have awarded him had there been no remedy at national level. The domestic award thus had to be considered manifestly unreasonable in the light of the standards set by the Court. In conclusion the Court found that their complaints under the 2004 Act had failed to provide the applicants with appropriate and sufficient redress.

There had accordingly been a violation of Article 13.

Article 46

The Court considered that it was justified to apply the pilot-judgment procedure, since the facts of the applicants' case revealed the existence of a systemic problem giving rise to many similar applications. Having regard to the considerable scale of the problem of excessive length of proceedings in Poland accompanied by the lack of sufficient redress for a breach of the reasonable-time requirement, the Court found that the situation of which the applicants complained had to be qualified as practice incompatible with the Convention.

Since the introduction of the remedy under the 2004 Act in Poland, the Court had delivered 280 judgments finding a breach of the reasonable-time requirement in cases where the applicants had unsuccessfully attempted to obtain a ruling acknowledging that breach and to be granted compensation before the Polish courts. In addition, in 358 similar cases such a breach had been acknowledged by the Government and they had paid compensation under the terms of a friendly settlement or a unilateral declaration. There were currently about 650 similar cases pending before the Court and over 300 Polish cases involving the excessive length of judicial proceedings were pending at the execution stage before the Committee of Ministers.

The Court considered that the systemic problem leading to a practice incompatible with Article 6 § 1 and Article 13 of the Convention required Poland to implement comprehensive large-scale legislative and administrative actions. However, as regards Article 6 § 1, the Court abstained from indicating any specific measures to be taken, noting that the Committee of Ministers, in the course of the execution of judgments, was better placed to monitor such measures that needed to be taken by Poland.

As shown by the general measures adopted by the Polish Government in execution of a previous Grand Chamber judgment concerning the length of proceedings[3] those measures had three principal aims: the simplification and acceleration of the proceedings; the transfer of some responsibilities from judges to non-judicial officers; where appropriate the transfer of some cases traditionally examined by the courts to other legal professions, for instance public notaries. While the Court welcomed those developments it noted that the scale and complexity of the problem of excessive length of proceedings required the State to make further consistent long-term efforts to achieve compliance with Article 6 § 1.

As regards the practice incompatible with Article 13, the Court noted that in a March 2013 resolution the Polish Supreme Court had decided that in the light of Convention standards the principle of "fragmentation" of proceedings no longer had any basis. However, the Court was not persuaded by the Polish Government's argument that the resolution had put an end to the previous defective practice as regards compensation for unreasonable length of proceedings. The Court noted in particular that it had not been established that the lower courts in Poland had put the resolution in practice. Indeed in 2013 and 2014 there had been an increased inflow of repetitive cases before the Court involving length of proceedings and insufficient compensation at national level.

As regards the procedure to be followed in similar cases, the Court decided that those applications which were pending before the Court were to be communicated to the Polish Government. It was necessary to allow the Government a two-year time limit for processing those communicated applications and affording redress to all victims – by way of, for example, friendly settlements – who had lodged their applications with the Court before the delivery of today's judgment. Pending the adoption of such measures, the Court decided to adjourn adversarial proceedings in all those cases for two years from the date on which today's judgment becomes final.

As regards future cases which might be lodged after the delivery of today's judgment, the Court decided to adjourn adversarial proceedings for one year following the delivery of the judgment. After the expiry of that term the Court will decide on a further procedure, in the light of subsequent developments and, in particular, any measures that may be taken by Poland in execution of the present judgment.

Just satisfaction (Article 41)

The Court held that Poland was to pay Mr Rutkowski 9,200 euros (EUR) in respect of non-pecuniary damage and EUR 750 in respect of costs and expenses; it was to pay Mr Orlikowski EUR 8,800 in respect of non-pecuniary damage and EUR 750 in respect of costs and expenses; and it was to pay Ms Grabowska EUR 10,000 in respect of non-pecuniary damage and EUR 180 in respect of costs and expenses.

The judgment is available only in English.

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[3] *Kudła v. Poland* Grand Chamber judgment of 26 October 2000

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.