

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

FOURTH SECTION

DECISION

Application no. 52809/08
Danuta AGIER
against Poland

The European Court of Human Rights (Fourth Section), sitting on 27 March 2012 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 21 October 2008,

Having regard to the declaration submitted by the respondent Government on 19 April 2011 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Danuta Agier, is a Polish national who was born in 1953 and lives in Łòdź. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The application concerns civil proceedings instituted by the applicant. She lodged an action for compensation against one of her former employees.

On 29 November 2006 the Łòdź District Court dismissed the claim as manifestly ill-founded.

On an unknown date the applicant lodged an appeal.

On 19 February 2008 the applicant requested that the appeal hearing, scheduled for 21 February 2009, be adjourned due to her health problems.

At the hearing of 21 February 2008 the Łòdź Regional Court dismissed the applicant's request. No reasons were given for this decision. On the same date the appeal was dismissed.

On an unknown date the applicant was granted a legal-aid lawyer's assistance in order to produce a cassation appeal.

The time-limit to lodge the cassation appeal expired on 21 June 2008.

On 25 June 2008 the post made the first attempt to serve on the applicant the opinion of her legal-aid lawyer, refusing to lodge a cassation appeal. Finally the opinion was served on the applicant on 9 July 2008.

In the opinion the legal-aid lawyer argued in particular that the refusal to adjourn the appeal hearing could not be invoked as a basis for lodging the cassation appeal as the applicant had failed to provide the Łòdź Regional Court with a medical certificate issued by a medical expert, as required by the law. Apparently, she was also unable to provide it to the lawyer. As a result, he concluded that the cassation appeal stood no chance of succeeding.

B. Relevant domestic law and practice

The relevant domestic law and practice are summarized the judgment in the case *Siałkowska v. Poland*, no. 8932/05, 22 March 2007.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the lack of access to the Supreme Court.

The applicant complained also about the outcome of the proceedings alleging that it was unfair.

THE LAW

A. Access to the Supreme Court

The applicant complained about the lack of access to the Supreme Court. She relied on Article 6 § 1 of the Convention.

By letter dated 19 April 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government offer to pay to the applicant the sum of **PLN 8,000** which they consider to be reasonable in the light of the Court's case law. The sum referred to above which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points. "

In a letter of 19 May 2011 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low**.**

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court

considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

B. Remaining complaints

The applicant further complained that the proceedings in question were unfair, in particular due to the refusal by the Łòdź Regional Court to adjourn the appeal hearing, as requested by the applicant who was ill at the time. Moreover, the domestic courts dismissed the applicant's requests for evidence.

The Court has examined the remainder of the complaints as submitted by the applicant. As for the refusal to adjourn the hearing, it may be inferred from the documents submitted by the applicant, that she had failed to provide the trial court with a medical certificate, as required by the law. As for the requests for evidence, dismissed by the trial court, the applicant failed to substantiate this claim. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaint under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President