

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

FOURTH SECTION

DECISION

Application no. 52677/09
by Marian BRZĄKAŁA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 March 2012 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 September 2009,

Having regard to the declaration submitted by the respondent Government on 1 September 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

1. The applicant, Mr Marian Brząkała, is a Polish national who was born in 1954 and lives in Odolanów. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

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

3. The applicant instituted civil proceedings on 14 February 2001. On 16 February 2005 the Kalisz Regional Court admitted that there was a delay and awarded redress of PLN 1,000 (one thousand PLN). On 10 December

2008 the Łódź Court of Appeal upheld the judgement. On 6 April 2009 the legal-aid lawyer refused to produce a cassation appeal.

COMPLAINTS

4. The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

5. He also alleged a breach of Article 13 of the Convention in that his case was not examined by the Supreme Court.

THE LAW

A. Length of proceedings

6. The applicant complained about the length of the proceedings. He relied on Article 6 § 1 which, in so far as relevant, provides as follows:

Article 6 § 1

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

7. By letter dated 1 September 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.

8. The declaration provided as follows:

> "The Government's endeavour to secure a friendly settlement of the matter has remained unsuccessful. The applicant refused to accept the friendly settlement on terms proposed by the Court.
>
> That being the case, the Government hereby wish to express – by way of the unilateral declaration – its acknowledgement of the fact that the length of the civil proceedings in the present case was in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention, the applicant can be considered a victim of a violation of his right to a hearing within "a reasonable time".
>
> Consequently, the Government are prepared to pay the applicant PLN 9,500 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."

9. In a letter of 27 December 2011 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low**.**

10. 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".

11. 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.

12. 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).

13. The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time and about the lack of an effective remedy capable of providing redress for a breach of this right (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-IX; and *Charzyński v. Poland* (dec.) no. 15212/03, HR 2005- ...).

14. 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 by this Court in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

15. The Court further notes that this decision constitutes a final resolution of this application only in so far as the proceedings before the Court are concerned. It is without prejudice to the applicant's right to seek further remedies should the impugned proceedings protract.

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. Complaint under Article 13 of the Convention

16. The applicant further complained that his case was not examined by the Supreme Court.

17. However, the Court considers that this complaint discloses no appearance of any violation of the provisions of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to 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

Päivi Hirvelä
President