

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

FOURTH SECTION

CASE OF WINEROWICZ v. POLAND

(Application no. 4382/10)

JUDGMENT

STRASBOURG

21 June 2011

This judgment is final but it may be subject to editorial revision.



In the case of Winerowicz v. Poland**,**

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

Zdravka Kalaydjieva, *President,*
Lech Garlicki,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 31 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 4382/10) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Dariusz Winerowicz ("the applicant"), on 8 January 2010.

2. The Polish Government ("the Government") were represented by their Agent, Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 7 July 2010 the President of the Fourth Section of the Court decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was assigned to a Committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Gdańsk.

A. Main proceedings

5. On 16 April 1998 the applicant was arrested and remanded in custody.

6. On 1 April 1999 the applicant was released from pre-trial detention.

7. On 12 January 2000 the prosecution lodged a bill of indictment with the Gdańsk District Court (*Sąd Rejonowy*). The applicant was charged with several counts of receiving and counterfeit. The bill of indictment comprised charges against 19 accused.

8. In the proceedings the Gdańsk District Court scheduled some thirty eight hearings. At least sixteen of them were adjourned. On many occasions the court did not give any reasons for adjournment decisions.

9. The proceedings are still pending before the Gdańsk District Court.

B. Proceedings under the 2004 Act

10. On an unspecified date the applicant lodged with the Gdańsk Regional Court (*Sąd Okręgowy*) a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time *(Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki)* ("the 2004 Act").

11. On 16 July 2009 the Gdańsk Regional Court confirmed that the proceedings in question had indeed been lengthy. The court stated, *inter alia,* that on at least three occasions the Gdańsk District Court had adjourned hearings without giving reasons for its decision. It further stated that on eight occasions the hearings had lasted less than two hours, which taking into account the number of co-accused and difficulties in scheduling a date convenient to all the participants, was proof of bad organisation of the proceedings on the part of the Gdańsk District Court. Furthermore, the court held that on numerous occasions hearings had been adjourned as some of the co–accused had participated on these dates in another set of proceedings or because prison authorities had been given too short notice to organise transport of the accused from a remand centre to the courtroom. The court also pointed out that the Gdańsk District Court did not apply any disciplinary measures against the co-accused who systematically failed to appear for hearings. Finally, the Gdańsk Regional Court stated that the intervals between the hearings had been too significant; in particular on one occasion the Gdańsk District Court had adjourned a hearing for a period of one year without submitting exceptional reasons for its decision as required by the code of criminal procedure. According to the Gdańsk Regional Court, it resulted from the above that the Gdańsk District Court had significantly contributed to the excessive length of the proceedings. The Gdańsk Regional Court did not, however, examine the period prior to the entry into force of the 2004 Act.

12. The court awarded the applicant 1,000 Polish zlotys (PLN) (approx. 250 euros (EUR)) in just satisfaction. Referring to the amount of just satisfaction, the court held that having regard to the circumstances of the case, the amount of money awarded to him was adequate and compatible with the "social sense of justice".

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

14. On 14 March 2011 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant PLN 15,000 (the equivalent of approx. EUR 3,750). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

15. The applicant did not agree with the Government's proposal maintaining that the amount offered was too low.

16. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar,* cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

17. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of

proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non–pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (*see Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...,; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

18. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

19. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

20. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> " In the determination of ...any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal... "

21. The Government refrained from submitting any observations on the admissibility and merits of the complaint.

22. The period to be taken into consideration began on 16 April 1998 and has not yet ended. It has thus lasted thirteen years for one level of jurisdiction.

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Furthermore, the Court considers that, by not taking into account the overall period of the proceedings, the Gdańsk Regional Court failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

26. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

> " If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. "

A. Damage

28. The applicant claimed EUR 10,000 in respect of non–pecuniary damage.

29. The Government contested these claims as exorbitant.

30. The Court considers that the applicant must have sustained non-pecuniary damage on account of the unreasonable length of the criminal proceedings against him. Ruling on an equitable basis, it awards him the full sum claimed.

B. Costs and expenses

31. The applicant did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

32. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Zdravka Kalaydjieva
Deputy Registrar	President