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

FOURTH SECTION

DECISION

Application no. 62637/11
Tomasz DZIEDZIC
against Poland

The European Court of Human Rights (Fourth Section), sitting on 22 October 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 24 July 2007,

Having regard to the declaration submitted by the respondent Government on 15 January 2013 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 AND PROCEDURE

1. The applicant, Mr Tomasz Dziedzic, is a Polish national, who was born in 1969 and lives in Kraków. He was represented before the Court by Mr M. Grzybowski, a lawyer practising in Katowice.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Mrs. J. Chrzanowska.

3. The applicant essentially complains that his right to family life was not respected as he was deprived of a possibility to visit his detained wife and his new-born baby in the detention centre. He considers that the restrictions placed on his contacts with his wife and daughter violated his right to respect for his family life, guaranteed by Article 8 of the Convention.

4. The part of the application concerning Article 8 had been communicated to the Government.

THE LAW

5. The applicant complained that he was deprived of the possibility to visit his detained wife and that his contacts with his daughter staying with the mother were seriously restricted. He relied on Article 8 of the Convention.

6. After the failure of attempts to reach a friendly settlement, by a letter of 15 January 2013 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.

7. The declaration provided as follows:

> "(...) the Government would like to inform you that they decided to submit their unilateral declaration.
>
> *1. The facts*
>
> The Government agree with the presentation of the facts included in the statement of facts of 22 May 2012 prepared by the Court's Registry.
>
> *2. The Government's unilateral declaration*
>
> The application was introduced on 24 July 2007 and was communicated to the Government on 22 May 2012.
>
> (...) That being the case, the Government hereby wish to express - by way of the unilateral declaration - their acknowledgement of the violation of Article 8 of the Convention regarding the applicant's contacts with his wife and daughter.
>
> In these circumstances, and having regard to the particular facts of the case, the Government declare that they offer to pay to the applicant the amount of PLN 15,000 (fifteen thousand Polish zloty) 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.
>
> *3. The Government's submission to strike out the present application*
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> The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> Article 37 of the Convention provides that the Court may decide to strike an application out of its list of cases at any stage of the proceedings where the circumstances lead to one of the conclusions specified under (a), (b) or (c).

Pursuant to Article 37 § 1 (c), to which the Government is referring in their declaration, the Court may strike a case out for any reason established by the Court if it is no longer justified to continue the examination of the application.

The Government take notice of criteria emerging from the Court's case-law as to when it is appropriate to decide to strike out the application with reference to Article 37 § 1 (c) on the basis of the unilateral declaration made by the Government even if the applicant wishes the examination of the case to be continue (see *Tahsin Acar v. Turkey* [GC] (preliminary objection), no. 26307/95, §§ 75-77, ECHR 2003-VI; and also *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002, *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI, *Meriakri v. Moldova* (striking out), no. 53487/99, 1 March 2005, *Aleksentseva and 28 Others v. Russia* (restoring), no. 75025/01, 26 March 2006, *Van Houten v. the Netherlands* (striking out), no. 25149/03, 29 September 2005, *Denu v. the Netherlands*, no. 32321/03 (striking out), 4 May 2006).

In the first place the Court requires that the facts should not be in dispute between the parties. In this regard the Government agree in general with the statement of facts concerning the conduct of the proceedings in the applicant's case as prepared by the Registry of the Court and enclosed to the letter informing the Government that the above application is pending before the Court.

Secondly, the Court demands an admission of responsibility or liability for the alleged violation of the Convention. The Government's unilateral declaration contains an unconditional acknowledgement that in the present case Article 8 of the Convention has been violated.

Eventually, the Court takes into consideration the manner in which the Government intend to provide redress to the applicant. As transpires from the Government's unilateral declaration the Government accepted paying to the applicant as just satisfaction the amount of 15,000 PLN in the event of the Court's striking the case out of its list.

Consequently, the Government are of the opinion that the circumstances of the above application may lead to the conclusion set out in sub-paragraph (c) of Article 37 § 1 of the Convention, thus that it is no longer justified to continue the examination of the application in the light of the Government's unilateral declaration."

8. By a letter of 18 February 2013, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the Government did not indicate what significant measures should be taken in his case especially against officials responsible for the violation. Furthermore he considered that the Government did not undertake to adopt necessary measures to ensure respect for human rights and to avoid the violation of the Convention in the future.

9. 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".

10. It also recalls that in certain circumstances, it may strike out an application or part thereof 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.

11. 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] (preliminary objection), no. 26307/95, §§ 75-77, ECHR 2003-VI).

12. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1(c)).

13. 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*).

14. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

15. Relying on Article 13 the applicant also complained that there was no effective remedy against the prosecutor's decision regarding family visits.

Having regard to all the evidence in its possession, and in so far as this complaint is not absorbed by the previous and it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and 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 under Article 8 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President