

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

FOURTH SECTION

DECISION

Application no. 9848/10
Stanisław GARBACZEWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 29 May 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 3 February 2010,

Having regard to the declaration submitted by the respondent Government on 14 February 2012 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, Mr Stanisław Garbaczewski, is a Polish national who was born in 1963 and lives in Biała Podlaska. 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 applicant, may be summarised as follows. The applicant was a railway security officer at Polish Railways.

1. Criminal proceedings against the applicant

(a) Main proceedings (case nos. VII K 1149/07, XI Ka 277/08, VII K 822/08, XI Ka 539/09, VII K 525/10, XI Ka 865/11)

On 19 May 2006 the applicant was charged with theft of wood.

By a judgment of 14 January 2008 the Biała Podlaska District Court conditionally discontinued the proceedings. The prosecutor appealed against this judgment.

On 6 May 2008 the Lublin Regional Court quashed the judgment and remitted the case.

On 30 March 2009 the Biała Podlaska District Court, having reconsidered the case, found the applicant guilty as charged and sentenced him to a term of imprisonment of one year suspended on probation. The applicant appealed against this judgment.

On 6 October 2009 the Lublin Regional Court quashed the judgment and remitted the case.

On 27 July 2011 the Biała Podlaska District Court gave judgment. The applicant and the injured party appealed against the judgment.

On 10 January 2012 the Lublin Regional Court again quashed the first-instance judgment and remitted the case.

The proceedings appear to be pending to date.

(b) Proceedings under the 2004 Act (case no. XI S 1/10)

On 6 January 2010 the applicant lodged a complaint with the Lublin Regional Court under 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"). He sought a finding that the length of the proceedings had been excessive and claimed compensation in the amount of PLN 50,000.

By a decision of 17 February 2010 the Lublin Regional Court dismissed the complaint. The court analysed in detail the course of the proceedings and held that they had been conducted in a correct and timely manner. It further noted that the applicant and his co-accused had not attended some of the court hearings for health-related reasons, thereby contributing to the overall length of the proceedings.

2. Administrative proceedings concerning the licence to possess and use a weapon within the framework of the applicant's duties as a railway security officer

On 2 April 2007 the applicant's supervisor, the Warsaw Regional Railway Police Commissioner (*Komendant Regionu Straży Ochrony Kolei w Warszawie*), requested the Lublin Regional Police Commissioner (*Komendant Wojewódzki Policji*) to grant the applicant a licence to possess and use firearms while on duty as a railway security officer (*strażnik ochrony kolei*). By a decision of 27 June 2008 the Lublin Regional Police Commissioner, applying section 15 paragraph 1 (6) of the Law of 21 May 1999 on Weapons and Ammunition (*ustawa z dnia 21 maja 1999 r. o broni i amunicji*), refused to grant the licence, holding, *inter alia*, that given the nature of the offence "committed" by the applicant he could no longer be regarded as offering a sufficient guarantee that the weapon would not be used for purposes contrary to public security or public order. The applicant appealed against this decision.

On 15 October 2008 the Chief Police Commissioner (*Komendant Główny Policji*) upheld the first-instance decision. It held that the criminal proceedings against the applicant in connection with the theft charges were pending and that pursuant to section 15 paragraph 1 (6) of the Law of 21 May 1999 on Weapons and Ammunition this fact alone constituted a sufficient basis for the refusal to grant the applicant the permit to possess and use a firearm. The Commissioner added that certain facts relied on by the applicant could not be considered as "justifying the established [facts as to his] criminal conduct." The applicant lodged a complaint against this decision with the Warsaw Regional Administrative Court.

By a judgment of 11 March 2009 the Warsaw Regional Administrative Court dismissed the applicant's complaint. In the written grounds for the judgment, the court noted that the criminal proceedings in connection with the charges brought against the applicant were still pending, and underlined that pursuant to the relevant provisions of domestic law this fact alone justified the refusal to grant the applicant the licence to possess and use a firearm.

It appears that the applicant did not lodge a cassation appeal against the judgment.

3. Dismissal of the applicant from his post as a railway security officer and civil proceedings for reinstatement

On 11 November 2008 the applicant was given notice of dismissal from his position as a railway security officer at Polish Railways (*Polskie Linie Kolejowe*). This dismissal was related to the refusal to grant him a firearms licence. He then instituted civil proceedings against Polish Railways for reinstatement.

By a judgment of 24 February 2010 the Biała Podlaska District Court dismissed the claim. The applicant appealed against the judgment.

The subsequent course of the proceedings and their outcome are unknown.

B. Relevant domestic law and practice

During the administrative proceedings concerning the applicant's firearms licence application, section 15 paragraph 1 of the Law of 21 May 1999 on Weapons and Ammunition (*ustawa z dnia 21 maja 1999 r. o broni i amunicji*) read, insofar as relevant, as follows:

> "1. Firearms licence shall not be granted to:
>
> (...)
>
> 6) persons in respect of whom there exists a risk that they can use the firearm for purposes contrary to public security or public order, in particular those convicted, by virtue of a final court judgment, of an offence against life, health or property, or those against whom criminal proceedings in connection with such charges are pending."

COMPLAINTS

1. The applicant complained under Article 6 of the Convention that the length of the criminal proceedings against him had been excessive.

2. Further, the applicant complained that the refusal to grant him a firearms licence, as well as his subsequent dismissal from his position prior to the final determination of the criminal charges against him had amounted to a violation of Article 6 § 2 of the Convention.

3. Finally, without invoking any Convention provisions, the applicant complained that he had had to travel to another town in order to obtain a medical certificate justifying his absence during some of the court hearings in his case, as there had been no doctors entitled to issue the relevant certificate in his home town.

THE LAW

A. Length of proceedings

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

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

By letter dated 14 February 2012 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 wish to express – by way of the unilateral declaration – their acknowledgement of the unreasonable duration of the applicant's criminal proceedings (Article 6 § 1 of the Convention).
>
> Consequently, the Government are prepared to pay to the applicant the sum of PLN 10,500 (ten thousand five hundred Polish zlotys) 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 6 March 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low and requested the Court to continue the examination of the case.

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 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.

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).

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 (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; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007).

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 this part 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.

Since the proceedings concerned are still pending before the domestic courts, the Court's strike-out decision is without prejudice to the use by the applicant of other remedies to obtain redress for any delay in the proceedings which may occur after the date of this decision.

B. Remaining complaints

The applicant further complained that the refusal to grant him a firearms licence, as well as his subsequent dismissal from his position prior to the final determination of the criminal charges against him had amounted to a violation of Article 6 § 2 of the Convention.

However, it appears that the applicant did not lodge a cassation appeal against the judgment of the Warsaw Regional Administrative Court of 11 March 2009 concerning the licence refusal. It further appears that the proceedings concerning his dismissal appear to be still pending. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

Even assuming that the applicant exhausted the relevant domestic remedies, the Court notes that in the light of the Warsaw Regional Administrative Court's judgment of 11 March 2009, the licence refusal, which subsequently resulted in the applicant's dismissal, was not based on any prejudgment or bias as to his guilt, but on the sole fact that the charges had been brought against him. The Warsaw Administrative Court noted that the criminal proceedings against the applicant were still pending and underlined that pursuant to the relevant provisions of domestic law this fact alone justified the refusal to grant the applicant a firearms licence. Indeed, the refusal was mandatory and automatic pursuant to section 15 of the Law of 21 May 1999 on Weapons and Ammunition (see, *mutatis mutandis*, *Ţehanciuc v. Romania* (dec.), no. 20286/08, 22 November 2011, § 19). It follows that this part of the application is in any event manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

Insofar as the applicant may be understood as complaining about certain of the statements of the police authorities which could be interpreted as suggesting that the applicant had committed the offence with which he had been charged, the Court observes that the applicant did not lodge a civil action for infringement of his personal rights against the authorities which made the impugned remarks (see, *a contrario*, *Mirosław Garlicki v. Poland*, no. 36921/07, § 128-139, 14 June 2011). It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

Finally, the applicant complained that he had had to travel to another town in order to obtain a medical certificate justifying his absence during some of the court hearings in his case, as there had been no doctors entitled to issue the relevant certificate in his home town. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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 concerning the length of the proceedings 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