

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

FOURTH SECTION

DECISION

Application no. 21506/08
Piotr GOŁUBOWSKI against Poland
and 6 other applications

The European Court of Human Rights (Fourth Section), sitting on 5 July 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above applications,

Having regard to the declarations submitted by the respondent Government on 8 and 28 April 2011 requesting the Court to strike the applications out of the list of cases and the applicants' replies to those declarations,

Having deliberated, decides as follows:

THE FACTS

The applicants are:

1. Application no. 21506/08 (lodged on 21 April 2008)
Mr Piotr Gołubowski, a Polish national who was born in 1970 and is currently detained in Gdańsk Remand Centre.

2. Application no. 22650/08 (lodged on 17 April 2008)
Mr Marcin Ziółkowski, a Polish national who was born in 1978 and is currently serving a prison sentence in Iława Prison. He was represented before the Court by Mr M. Chomentowski, a lawyer practising in Ostrołęka.

3. Application no. 34732/08 (lodged on 14 July 2008)
Mr Stefan Górecki, a Polish national who was born in 1955 and lives in Wrocław. He was represented before the Court by his wife, Ms Jolanta Górecka.

4. Application no. 41594/08 (lodged on 26 August 2008)
Mr Janusz Orylski, a Polish national who was born in 1957 and lives in Szczecin.

5. Application no. 55405/08 (lodged on 4 November 2008)
Mr Michał Zarembski, a Polish national who was born in 1976 and lives in Gdańsk.

6. Application no. 38781/09 (lodged on 13 July 2009)
Mr Andrzej Sawioła, a Polish national who was born in 1964 and lives in Chorzów.

7. Application no. 49198/09 (lodged on 7 September 2009)
Mr Sebastian Paciorek, a Polish national who was born in 1978 and is currently serving a prison sentence in Łupków prison.

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

A. Background facts

1. 21506/08 Gołubowski

On 10 September 2004 the applicant was arrested on suspicion of car theft. On the same day the Sopot District Court, composed of an assessor, remanded him in custody. He was released on 4 November 2004. On an unspecified date in 2005 the prosecution filed a bill of indictment with the Sopot District Court. The applicant was charged with a number of car thefts.

On 6 October 2005 the Sopot District Court, composed of an assessor and two lay judges, convicted the applicant as charged and sentenced him to three years' imprisonment and a fine (case no. II K 84/05). The applicant appealed. On 4 October 2006 the Gdańsk Regional Court upheld the first-instance judgment. The applicant lodged a cassation appeal. On 22 October 2008 the Supreme Court dismissed it as manifestly ill-founded.

It appears that the applicant unsuccessfully attempted to have the proceedings reopened on the basis of the Constitutional Court's judgment of 24 October 2007.

The applicant further refers to three other sets of criminal proceedings: a) proceedings terminated by the Bartoszyce District Court's judgment of 17 September 2003 (no. II K 56/03); b) proceedings terminated by the Gdańsk District Court's judgment of 11 May 2005 (no. III K 311/05); and c) proceedings terminated by the Bartoszyce District Court's judgment of 1 March 2006 (no. II K 914/05).

2. 22650/08 Ziółkowski

The applicant was charged with extortion, bribery and theft of an identity document. On 5 September 2006 the Ostrołęka District Court, composed of an assessor, convicted the applicant as charged and sentenced him to five and a half years' imprisonment. The applicant appealed. On 13 December 2006 the Ostrołęka Regional Court upheld the first-instance judgment. The applicant lodged a cassation appeal. On 6 December 2007 the Supreme Court dismissed his cassation appeal as manifestly ill-founded.

3. 34732/08 Górecki

On 27 October 2004 the prosecution filed a bill of indictment with the Rybnik District Court. The applicant was charged with numerous counts of fraud. On 13 July 2006 the Rybnik District Court, composed of an assessor, convicted him as charged and sentenced him to five years' imprisonment and a fine. The applicant appealed. On 19 February 2007 the Gliwice Regional Court upheld the first-instance judgment. The applicant lodged a cassation appeal. On 21 December 2007 the Supreme Court

dismissed his cassation appeal as manifestly ill-founded. This decision was served on the applicant on 14 January 2008.

4. 41594/08 Orylski

The applicant worked as an inspector in the Department of Agriculture of the Office of the Zachodniopomorskie Region. On 9 January 2004 the applicant received a notice of termination of his contract.

On an unspecified date in 2004 the applicant brought an action in the Szczecin District Court, requesting the court to declare the notice of termination of his contract invalid. Subsequently, he brought an action for reinstatement and compensation.

It appears that the case was first heard by the Szczecin District Court, sitting as a bench composed of Judge M.Ł. and two lay judges. Subsequently, it was heard by a panel composed of the assessor E.G. and two lay judges. On 26 April 2008 the Szczecin District Court held a hearing. On 28 April 2006 the Szczecin District Court dismissed his action.

The applicant appealed. On 30 January 2008 the Szczecin Regional Court held a hearing at which the applicant raised the issue of the lack of independence of the assessor. On the same date the Regional Court upheld the first-instance judgment. The Regional Court's judgment was served on the applicant on 29 February 2008.

On 31 December 2008 the applicant requested the Szczecin Regional Court to appoint a legal-aid lawyer and exempt him from the cassation appeal fee. He further requested leave to appeal out of time since he had been unable to file his cassation appeal in time due to a long-term illness. It appears that his requests were refused.

5. 55405/08 Zarembski

(a) The first set of proceedings (no. VI K 241/07)

On 14 December 2006 the applicant was arrested and subsequently charged with offences related to forgery of documents and illegal crossing of the border. On 27 August 2007 the Szczecin District Court, composed of an assessor, convicted the applicant as charged and sentenced him to 15 months' imprisonment. On 7 January 2008 the Szczecin Regional Court upheld the first-instance judgment. The applicant did not lodge a cassation appeal.

(b) The second set of proceedings (no. II K 113/06)

The applicant was charged with three counts of fraud. On 17 December 2007 the Gdańsk-Południe District Court, composed of an assessor, convicted the applicant of one count of fraud and acquitted him in respect of the other counts. It sentenced him to 18 months' imprisonment. The applicant appealed. He argued that the examination of his case by the

assessor was inadmissible. On 8 May 2008 the Gdańsk Regional Court dismissed his appeal. It considered the objection as to the composition of the first-instance court and dismissed it with reference to the findings of the Constitutional Court. The applicant did not lodge a cassation appeal.

6. 38781/09 Sawioła

The applicant was charged with insurance fraud. On 6 March 2003 the Chorzów District Court, sitting as a bench composed of a judge and two lay judges, convicted the applicant as charged and sentenced him to a suspended sentence of twelve months' imprisonment and a fine. The applicant appealed. On 3 October 2003 the Katowice Regional Court quashed the first-instance judgment and remitted the case.

On 28 April 2006 the Chorzów District Court, sitting as a bench composed of assessor B.K. and two lay judges, convicted the applicant as charged and sentenced him to a suspended sentence of eight months' imprisonment. The applicant appealed. On 17 October 2006 the Katowice Regional Court again quashed the first-instance judgment and remitted the case.

On 21 October 2008 the Chorzów District Court, sitting as a bench composed of assessor E.D.-Ł. and two lay judges, convicted the applicant as charged and sentenced him to a suspended sentence of eight months' imprisonment. The applicant appealed. On 9 February 2009 the Katowice Regional Court upheld the first-instance judgment.

7. 49198/09 Paciorek

On an unspecified date in 2007 the applicant was charged with robbery and possession of drugs and detained on remand. On 6 March 2008 the Myślenice District Court, composed of an assessor, prolonged his detention on remand until 11 June 2008.

On 8 September 2008 the Myślenice District Court, composed of an assessor, convicted the applicant as charged and sentenced him to three years and six months' imprisonment. On the same date the District Court prolonged the applicant's detention on remand.

The applicant appealed against the first-instance judgment. On 2 July 2009 the Kraków Regional Court dismissed his appeal.

On 21 July 2009 the applicant sued the State Treasury in the Warsaw Regional Court, seeking compensation on the ground that the judgment in his case had been given by an assessor. On 4 December 2009 the Regional Court dismissed his claims.

B. Relevant domestic law and practice

1. Assessors (junior judges)

The relevant domestic law and practice regarding the status of assessors, including the landmark judgment of the Polish Constitutional Court of 24 October 2007 (case no. SK 7/06), are set out in the Court's judgment in the case of *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 16-25, 30 November 2010.

2. The Law on the National School for the Judiciary and the Prosecution Service

On 23 January 2009 Parliament enacted the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*), which entered into force on 4 March 2009. The law establishes a comprehensive and centralised institution responsible for training judges and prosecutors.

In response to the Constitutional Court's judgment of 24 October 2007 the Law on the National School for the Judiciary and the Prosecution Service abolished the institution of assessors as provided for by the Law of 27 July 2001 on the Organisation of Courts (section 60 (12)). Furthermore, it specifically provided that as from 5 May 2009 assessors ceased to be authorised to exercise judicial powers (section 68 (1)).

THE LAW

A. Joinder of the cases

Given their similar legal background, the Court decides that the seven applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. Lack of independence of assessors

The applicants complained under Article 6 § 1 of the Convention about the lack of independence of the assessors who had examined their cases at the first-instance level. They all relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

Some of the applicants also relied on Articles 5 § 1 (a) and 6 § 2 of the Convention, complaining of the consequences which resulted from

judgments given by assessors, namely that they had been deprived of liberty and proved guilty by a body other than an independent court. However, the Court considers that the matter falls to be examined under Article 6 § 1 alone.

By letters dated 8 and 28 April 2011 the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

The terms of the declarations, which were identically worded in all cases, provided as follows:

> "The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the fact that the first-instance court which dealt with the applicant's case, sitting as an assessor, was not an independent tribunal, as required by Article 6 § 1 of the Convention.
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> In these circumstances, and having regard to the Court's judgment of 30 November 2010 in the case of *Henryk Urban and Ryszard Urban v. Poland* in which it stated that the fact of acknowledging the violation of the applicants' right to have their case heard by an independent tribunal, as guaranteed by Article 6 § 1 of the Convention, constitutes in itself sufficient just satisfaction for non-pecuniary damage and that the State's legal actions (*i.e.* adoption of the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*) on 23 January 2009) to remedy the shortcomings underlying the institution of assessors by abolishing it and introducing a new, comprehensive and centralised system for training judges effectively remedied the lack of independence of assessors within the Polish judiciary system, the Government submit that their unconditional acknowledgment of the fact that the applicant's right under Article 6 § 1 of the Convention was restricted should be found by the European Court a sufficient redress for any damage suffered by the applicant as a result of his case being decided by an assessor before the first-instance court.
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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."

Mr Gołubowski and Mr Ziółkowski submitted no comments on the Government's unilateral declaration filed in their cases.

In a letter of 18 May 2011 Mr Górecki expressed the view that the admission by the Government of a violation of Article 6 § 1 and the relevant legislative amendments did not constitute sufficient redress in his case. He pointed out that, having regard to the severity of the sentence imposed on him, the reopening of his trial and a subsequent re-examination of his case by an independent tribunal would be more appropriate. Such reopening would not, in his view, infringe legal certainty since the Court's judgments were effective only in respect of individual applicants and did not have an *erga omnes* effect. Furthermore, he submitted that the assessor adjudicating his case might have been acting under pressure, given that the investigation against the applicant had been twice discontinued and a bill

of indictment had been subsequently filed although no new evidence had been presented.

In a letter of 13 May 2011 Mr Orylski objected to the striking out of his case on the basis of the unilateral declaration filed with respect to his application.

In a letter of 12 May 2011 Mr Zarembski submitted that he did not accept the terms of the Government's unilateral declaration filed in his case and claimed that he should have received 150,000 euros in compensation for non-pecuniary damage.

In a letter of 12 May 2011 Mr Sawioła requested the Court to reject the Government's unilateral declaration filed in his case. He welcomed the admission of a violation by the Government but expressed the view that he was also entitled to compensation for pecuniary and non-pecuniary damage, in particular as regards his legal costs incurred in the domestic proceedings. He also requested the Court to order the reopening of the domestic proceedings in his case. Furthermore, Mr Sawioła made submissions on the merits of his complaint under Article 6 § 1 of the Convention.

In a letter of 18 May 2011 Mr Paciorek did not take a position on the Government's unilateral declaration filed in his 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 or part thereof 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".

Article 37 § 1 *in fine* includes the proviso that:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

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 (see *Martyna v. Poland* (dec.), no. 72040/01, 15 January 2008)). 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* (preliminary issue) [GC], no. 26307/95, § 75-77, ECHR 2003-VI).

The Court recalls that it has already dealt with the institution of Polish assessors from the standpoint of Article 6 of the Convention. In *Henryk Urban and Ryszard Urban v. Poland* (no. 23614/08, 30 November 2010), its leading judgment on the issue, the Court examined in detail the question of the independence of a "tribunal" composed of an assessor in terms

of conformity with the requirements of Article 6 § 1 and found, *inter alia*, as follows:

> "48. The Constitutional Court considered the status of assessors in its leading judgment of 24 October 2007. It held that section 135 § 1 of the 2001 Act, providing that the Minister of Justice could confer the exercise of judicial powers on assessors, fell short of constitutional requirements because assessors did not enjoy the necessary guarantees of independence, notably *vis-à-vis* the Minister. The Court notes that in its analysis of the question of the independence of assessors the Constitutional Court referred to the Strasbourg case-law and observed that Article 45 of the Constitution was modelled on Article 6 § 1 of the Convention (...).
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> 51. (...) The Court notes that the Constitutional Court's findings were made in the context of an abstract review of the constitutionality of statutory provisions but, mindful of the principle of subsidiarity, considers that they may be applied to the facts of the present case, having regard to the similarity between the constitutional and the Convention requirements in so far as judicial independence is concerned and the reliance of the Constitutional Court on the relevant jurisprudence of the Court. (...) The important consideration for this Court is that the Constitutional Court found that the manner in which Poland had legislated for the status of assessors was deficient since it lacked the guarantees of independence required under Article 45 § 1 of the Constitution, guarantees which are substantively identical to those under Article 6 § 1 of the Convention.
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> 52. The Court underlines that the Constitutional Court set aside the regulatory framework governing the institution of assessors as laid down in the 2001 Act. It further stresses that the Constitutional Court did not exclude the possibility that assessors or similar officers could exercise judicial powers provided they had the requisite guarantees of independence (...). The Constitutional Court, referring to international standards, pointed to the variety of possible solutions for allowing adjudication by persons other than judges. In this connection, the Court notes that its task in the present case is not to rule *in abstracto* on the compatibility with the Convention of the institution of assessors or other similar officers which exist in certain Member States of the Council of Europe, but to examine the manner in which Poland regulated the status of assessors.
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> 53. Having regard to the foregoing, the Court considers that the assessor B.R.-G. lacked the independence required by Article 6 § 1 of the Convention, the reason being that she could have been removed by the Minister of Justice at any time during her term of office and that there were no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister (...). It is not necessary to consider other aspects of the status of assessors since their removability by the executive is sufficient to vitiate the independence of the Lesko District Court which was composed of the assessor B.R.-G."

The first element of the Court's test in the *Henryk Urban and Ryszard Urban* judgment concentrated on the institutional deficiency as regards the position of assessors *vis-à-vis* the Minister of Justice – Prosecutor General. However, in its analysis the Court also had regard to the second element of the test, namely whether the circumstances of a particular case could give rise to legitimate grounds for believing that the Minister of Justice – Prosecutor General had taken an interest in the proceedings (see *Henryk Urban and Ryszard Urban*, cited above, § 56).

As regards the issue of just satisfaction, the Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicants (see *Henryk Urban and Ryszard Urban*, cited above, § 62). Moreover, having regard to the reasons underlying its finding of a violation and to the principle of legal certainty the Court found no grounds which would require it to direct the reopening of the case (see *Henryk Urban and Ryszard Urban*, cited above, § 56, 63-66). This is the Court's general approach in assessors' cases to the issue of just satisfaction unless the existence of specific circumstances is shown in a particular case.

Furthermore, in the same judgment the Court found that:

> "67. (...) It is noteworthy that the constitutional and Convention deficiency regarding the status of assessors was remedied by the domestic authorities – which decided to abolish the office of assessor altogether – within the time-frame allotted by the Constitutional Court (...). Having regard to the above, it may be noted that the authorities of the respondent State took the requisite remedial measures in order to address and remedy the deficiency underlying the present case."

As regards costs and expenses, the Court found that there was no justification for awarding legal costs under Article 41 (*Henryk Urban and Ryszard Urban*, cited above, § 70).

In the present cases the Court cannot discern any circumstances which could give rise to an assumption that the Minister of Justice – Prosecutor General may have been taking an interest in the proceedings against or involving the applicants and therefore the issue in the present cases is limited to the institutional deficiency regarding the status of assessors. In the circumstances of the present cases the Court accepts that the Government are not required to offer any compensation to the applicants in light of the *Henryk Urban and Ryszard Urban v. Poland* judgment.

The Court has carefully examined the terms of the Government's declarations. It observes that their declarations contain a clear acknowledgment of a breach of Article 6 § 1 of the Convention and refer to the adoption of the Law on the National School for the Judiciary and the Prosecution Service which abolished the institution of assessors (see relevant domestic law above). Having regard to the nature of the admissions contained in the Government's declarations as well as the absence of any factors which could distinguish the present cases from the Court's approach in the case of *Henryk Urban and Ryszard Urban v. Poland* the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c); see, for the relevant principles *Tahsin Acar v. Turkey* (preliminary issue) [GC], cited above).

In light of all the above considerations, 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 the complaints at issue (Article 37 § 1 *in fine*).

Accordingly, it is appropriate to strike the applications out of the list in so far as they concern complaints related to the lack of independence of assessors.

C. Remaining complaints

Mr Gołubowski complained under Articles 5 § 1, 6 § 1 and 6 § 2 in respect of three sets of criminal proceedings against him other than the proceedings before the Sopot District Court. Mr Orylski complained under Article 6 § 1 that his case had not been heard within a reasonable time and that the Szczecin District Court had not been impartial, referring to Judge M.Ł. and assessor E.G. In his letter of 14 February 2009 Mr Orylski also complained about a breach of his right of access to the Supreme Court. Mr Zarembski made complaints under Articles 5 § 1, 6 § 1 and 6 § 2 in respect of the first set of criminal proceedings against him. Mr Paciorek complained under Article 5 § 3 that he had been remanded in custody by an assessor.

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 no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. It follows that these complaints are 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 declarations;

Decides to join the applications;

Decides to strike the applications out of its list of cases in so far as they relate to the complaints concerning the lack of independence of assessors in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of those applications inadmissible in so far as they raise other complaints.

Lawrence Early
Registrar

Nicolas Bratza
President