

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

FOURTH SECTION

DECISION

Application no. 35003/09
Marek JAROCKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 20 November 2012 as a Committee composed of:

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 June 2009,

Having regard to the declaration submitted by the respondent Government on 10 September 2012 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Marek Jarocki, is a Polish national, who was born in 1972 and lives in Tychy. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant runs a transportation company. In 2006 he was charged with four counts of fraud and one count of misappropriation of private property.

On 2 October 2008 the Tychy District Court, composed of an assessor (trainee judge), acquitted the applicant of two counts of fraud and convicted him in respect of the remaining charges. The applicant was sentenced to suspended eighteen months' imprisonment.

The trial court examined numerous documents and heard evidence from witnesses, including victims and the applicant. On the basis of a substantial amount of documentary evidence, it established that the applicant had entered into two contracts for provision of transportation services. Those contracts were executed but the applicant did not pay the relevant invoices. In the ensuing civil proceedings the applicant agreed to settle his debt but subsequently he failed to respect the agreement. The enforcement proceedings turned unsuccessful. Subsequently, owners of two companies filed criminal complaints against the applicant. The trial court found that at the time of entering into the relevant contracts the financial situation of the applicant's company had been very difficult and that he had intentionally entered into those agreements with the aim of not wanting to respect them. Similarly, the trial court established that the applicant entered into a lease agreement which he had subsequently failed to respect.

The applicant denied that he had intended to deceive his business partners; however the trial court did not consider his defence credible in the light of statements of other witnesses and the content of numerous relevant documents.

The applicant appealed. He submitted, *inter alia*, that all his requests to call evidence had been refused and that he had been deprived of a possibility to hear witness M.N.

On 10 February 2009 the Katowice Regional Court upheld the first-instance judgment. It found that the trial court had correctly scrutinised and assessed the evidence against the applicant. Despite the applicant's arguments to the contrary, the trial court had confronted the evidence against him with the applicant's defence and found that the evidence in the case had fully justified the finding of the applicant's guilt. The trial court had correctly relied on witness and documentary evidence when establishing the circumstances concerning the agreements entered into by the applicant and the financial situation of his company. The court noted that the refusal to hear evidence sought by the applicant had been justified and had had no bearing on the outcome of the case. Similarly, it did not establish any irregularities in respect of the hearing of witness M.N.

B. Relevant domestic law

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. Lack of independence of the assessor

The applicant complained that the Tychy District Court's judgment of 2 October 2008 had been given by the assessor who had lacked independence. He relied on Article 6 § 1 of the Convention which provides, in so far as relevant:

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

By letter dated 10 September 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The terms of the declaration 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 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."

The applicant did not comment on the Government's declaration.

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; *Gołubowski and 6 other applications v. Poland* (dec.), nos. 21506/08, 22650/08, 34732/08, 41594/08, 55405/08, 38781/09 and 49198/09, 5 July 2011). 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 case 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 the applicant and therefore the issue in the present case is limited to the institutional deficiency regarding the status of assessors. In the circumstances of the present case the Court accepts that the Government are not required to offer any compensation to the applicant in light of the *Henryk Urban and Ryszard Urban v. Poland* judgment.

The Court has carefully examined the terms of the Government's declaration. It observes that their declaration contains a clear acknowledgment of a breach of Article 6 § 1 of the Convention and refers 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 declaration as well as the absence of any factors which could distinguish the present case 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 application in so far as it concerns the complaint related to the lack of independence of the assessor (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 complaint at issue (Article 37 § 1 *in fine*).

Accordingly, it is appropriate to strike the application out of the list in so far as it concerns the complaint related to the lack of independence of the assessor.

B. Remaining complaints

The applicant alleged a breach of Article 6 on account of the trial court's refusal to call witnesses for the defence. He also complained that he had been mistakenly informed by the court that a hearing scheduled for 22 August 2008 would be cancelled which had deprived him of a possibility to question witness M.N. whose statements had been of significant importance for the outcome of the proceedings. He further alleged that he had not been informed about hearing of evidence from witnesses by the Warsaw District Court.

The applicant further complained under Article 6 § 1 and 6 § 3 of the Convention that the trial court had changed the classification of the offence with which he had been charged. Lastly, he alleged a breach of Article 1 of Protocol No. 4 to the Convention in that he had been sentenced to a term of imprisonment for failure to respect contractual obligations.

With regard to the alleged refusal of the trial court to call witnesses for the defence and other complaint concerning the assessment of evidence, the Court recalls that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national court (see *Garćia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

The applicant took issue with the trial court's refusal to call certain witnesses for his defence. However, the Katowice Regional Court rejected

his appeal on this point finding that the refusal had been justified in the light of the substantial amount of evidence obtained in the case and the irrelevant character of the proposed evidence. The Court notes that the appellate court convincingly established that the assessment of evidence by the trial court had been correct and that the evidence obtained in the case fully justified the applicant's conviction. It was also established that the trial court had respected the procedural rights of the applicant. The Court further observes that the applicant reproached the trial court for its refusal to hear certain witnesses; however it appears from the file that the applicant did not specify which witnesses he intended to call. As regards the lack of possibility to hear witness M.N., the Court notes that the appellate court found no irregularity in respect of hearing of this witness. In any event, the appellate court noted that there was ample witness and documentary evidence supporting the applicant's conviction. Having regard to the above, the Court considers that the guarantees of a fair hearing were duly observed in the applicant's case.

In respect of the applicant's remaining grievances, 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 this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration;

Decides to strike the application out of its list of cases in so far as it relates to the complaint concerning the lack of independence of the assessor in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President