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

FIRST SECTION

DECISION

Application no. 18460/15
Artur KARCZYŃSKI
against Poland

The European Court of Human Rights (First Section), sitting on 23 May 2017 as a Committee composed of:

Aleš Pejchal, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 April 2015,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Artur Karczyński, is a Polish national, who was born in 1973 and lives in Sławki.

2. The facts of the case, as presented by the applicant, may be summarised as follows.

3. The applicant is a police officer. He was arrested on 24 March 2010. On the same day he was charged by the Tychy District Prosecutor with having committed an offence of passive bribery by taking 500 Polish Zlotys (PLN – approximately 125 euros (EUR)) from a certain L.K. in exchange for not pressing charges against his son I.K. On the same day preventive measures were applied against the applicant. A temporary ban on exercising his profession and bail were imposed on him.

4. By a decision of 1 June 2010 the Tychy District Court lifted the preventive measures. It noted that such measures could be ordered in order to secure proper course of criminal proceedings, but only when there was sufficient evidence available to support a suspicion that indeed an offence

had been committed. In the present case there was no good basis for such a conclusion on the part of the prosecution as only very scant evidence was available. On the same day the Tychy District Court held that the applicant's arrest on 24 March 2010 was not justified as it had not been shown why a simple summons would not have well served the same purpose.

5. On 24 June 2010 the Sosnowiec District Court convicted I.K. and L.K. of having given, on an unspecified date between February and June 2008, a bribe to the applicant. As the defendants did not request to prepare the written grounds of this judgment, none were prepared. The defendants did not appeal and the judgment became final.

6. On 31 October 2011 the Sosnowiec District Court acquitted the applicant. The court summarised the available evidence and noted numerous discrepancies in the testimony given by I.K. and L.K. It concluded that, given these discrepancies and the scarcity of the evidence in general, it was impossible to establish the material facts, their date, the amount of the alleged bribe and any other elements significant for the finding of the applicant's guilt. The prosecution appealed. On 28 February 2012 the Katowice Regional Court dismissed the appeal. It was of the view that the conclusions of the lower court as to clearly insufficient evidence against the applicant were correct.

7. Subsequently the applicant lodged with a civil court a compensation claim against the State Treasury represented by the prosecution. He sought compensation for pecuniary and non-pecuniary damage occasioned by the criminal proceedings against him which, in his view, were unlawful. He referred to stress, humiliation, loss of good name and reputation, health problems and difficulties in his work and family life occasioned by the proceedings.

8. On 23 April 2013 the Katowice Regional Court allowed his claim. The court recounted the course of the criminal proceedings against the applicant. It noted that the State Treasury could be civilly liable if the acts and decisions given in the exercise of the State's public powers which had given rise to damage were unlawful. In this connection the court observed that the prosecution had failed to act with the objectivity required by the Code of Criminal Procedure, as it had failed to examine circumstances capable of exonerating the applicant, had refused to take the evidence he had requested and had focused only on gathering evidence pointing to his guilt.

9. The court further referred to the decisions by which both the applicant's arrest and the subsequent preventive measures imposed on him were held by the Tychy District Court to have been unjustified in the light of scant evidence against him (see paragraph 4 above). Reference was also made to the findings of the courts in the criminal case against the applicant; in particular to the discrepancies between the testimony of the two witnesses

and to the prosecution's failure to establish the circumstances material for the existence of a criminal offence. The court concluded that despite the absence of a justified suspicion an investigation had been instituted, charges against the applicants brought and a bill of indictment lodged with the court. The court was of the view that this amounted to unlawfulness within the meaning of Article 417 of the Civil Code.

As to the existence of damage to the applicant's good name, it was caused by the fact that the proceedings had led to the applicant, who had previously had very good service record, being branded at his workplace as an untrustworthy person. The court concluded that there had been causal link between the defendant's acts and the damage suffered by the applicant. It assessed the damage at PLN 75,000 (PLN – approximately EUR 18,750), having regard to the humiliation and stress resulting from the criminal proceedings conducted against the applicant without a sound basis. The defendant State Treasury appealed.

10. On 7 November 2014 the Katowice Court of Appeal allowed the appeal and dismissed the applicant's claim in its entirety. The court disagreed with the view expressed by the first-instance court as to the unlawfulness of the prosecution's acts. It was of the opinion that the prosecution had had sufficient grounds on which to consider that a criminal offence had been committed. It also expressed a view that there were no grounds for a definite conclusion to the effect that the prosecutor had not had at its disposal at the material time sufficient evidence to justify the opening of the investigation against the applicant.

11. The court acknowledged that the applicant had ultimately been acquitted by a final judicial decision of 28 February 2012. However, in the court's view, the mere acquittal did not prove *per se* that the institution of the criminal proceedings had been unlawful; this would have been the case in particular if the evidence against the applicant had been fabricated by the prosecution, or in the manifest absence of evidence against the applicant or if the proceedings had been instituted in violation of the applicable procedural provisions. It was obvious that the proceedings conducted against the applicant had resulted in him feeling seriously wronged. This was not, however, relevant for the assessment of the lawfulness of the prosecutor's actions in his case.

12. The applicant lodged a cassation appeal with the Supreme Court. He referred, *inter alia*, to Article 42 § 3 of the Polish Constitution, which guaranteed the presumption of innocence. On 21 October 2014 the Supreme Court refused to entertain his cassation appeal.

COMPLAINT

13. The applicant complains under Article 6 of the Convention that criminal proceedings against him were instituted without any justification as shown by the fact that he was ultimately acquitted.

14. Relying on Article 6 § 2 of the Convention, the applicant asserts that the dismissal of his compensation claim against the State Treasury for damage arising from the criminal proceedings against him violated the presumption of innocence.

THE LAW

A. Complaint concerning the institution of the criminal proceedings

15. The applicant complains that criminal proceedings against him were instituted without any justification, as shown by the fact that he was ultimately acquitted.

16. The Court notes that the application was lodged on 10 April 2015 and that the applicant had been finally acquitted by a judgment given on 28 February 2012 (see paragraph 6 above).

17. It follows that this part of the application has been lodged out of the six-month time-limit and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Complaint concerning an alleged breach of the presumption of innocence

18. Relying on Article 6 § 2 of the Convention the applicant asserts that the dismissal of his compensation claim against the State Treasury for damage arising from the criminal proceedings against him violated the presumption of innocence.

Article 6 § 2 of the Convention reads:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

19. The Court reiterates that Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". Viewed as a procedural guarantee in the context of a criminal trial itself, the presumption of innocence imposes requirements in respect of, *inter alia*, the burden of proof, legal presumptions of fact and law, the privilege against self-incrimination; pre-trial publicity and premature expressions, by the trial

court or by other public officials, of a defendant's guilt (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013).

20. However, in keeping with the need to ensure that the right guaranteed by Article 6 § 2 is practical and effective, the presumption of innocence also has another aspect. Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged. In these cases, the presumption of innocence has already operated, through the application at trial of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public (see *Allen*, cited above, § 94).

21. Once it has been established that there is a link between the criminal proceedings against an applicant and any subsequent set of proceedings complained about, the Court must determine whether, in all the circumstances of the case, the presumption of innocence has been respected (see *Rupp v. Germany* (dec.), nos. 60879/12 and 60892/12, § 63, 17 November 2015). In all cases, and no matter what the approach applied, the language used by the decision maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (see *Cleve v. Germany*, no. 48144/09, § 54, 15 January 2015; *Allen*, cited above, § 126; and *Reeves v. Norway* (dec.), no. 4248/02, 8 July 2004).

22. The Court notes that in the present case the applicant sought compensation in the civil proceedings for the damage caused to him by the criminal proceedings which had ultimately ended by his acquittal. It therefore accepts that there has been a link between the criminal proceedings against the applicant and the subsequent civil proceedings for compensation (see, for similar circumstances, *Rupp*, decision cited above, §§ 64-65). However, Article 6 § 2 does not guarantee *per se* a person charged with a criminal offence a right to compensation for lawful detention on remand or for costs where proceedings are subsequently discontinued or end in an acquittal (see, amongst others, *Allen*, cited above, § 82, and *Englert v. Germany*, 25 August 1987, § 36, Series A no. 123).

23. The Court notes that in the present case the first-instance court allowed the applicant's claim (see paragraphs 8-9 above), whereas subsequently the Katowice Court of Appeal overturned that judgment and dismissed his claim. Hence, it is only the decision of the latter court and the language it used (see paragraphs 10-11 above) which is subject to the Court's scrutiny in the present case.

24. The Court observes that the Court of Appeal expressed the view that in the light of evidence available at the material time the prosecutor had had sufficient grounds (*uzasadnione podstawy*) to consider that there was a suspicion of a criminal offence having been committed. Hence, the Court is of the view that that court's conclusion that the prosecutor had not acted unlawfully is not open to criticism; especially given 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 courts (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references, and *Antonicelli v. Poland*, no. 2815/05, § 48, 19 May 2009).

25. The Court of Appeal held that statutory provisions for civil liability of the State Treasury were not met, having examined the procedural decisions given by the prosecution in the light of the information available to the prosecuting authorities at the material time. The Katowice Court of Appeal was mindful of the fact that these decisions merely concerned the existence of a suspicion against the applicant with reference to the evidence available to the prosecution. Its reasoning led it to the conclusion that the applicant's subsequent acquittal did not *per se* render the decisions at issue unlawful.

26. The Court does not consider that the language used by the Court of Appeal, when assessing the statutory requirement of unlawfulness for its refusal of compensation, can be said to have undermined the applicant's acquittal or to have treated him in a manner inconsistent with his innocence.

27. Therefore the Court is satisfied that the Court of Appeal's decision did not amount to a finding of guilt or even to a suggestion of guilt on the applicant's part.

28. In conclusion, the decision complained of does not show any appearance of a breach of the right to be presumed innocent as guaranteed by Article 6 § 2.

29. Consequently, 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,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2017.

Renata Degener
Deputy Registrar

Aleš Pejchal
President