

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

FOURTH SECTION

DECISION

Application no. 10769/08
by Adam KIERZEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 11 January 2011 as a Committee composed of:

David Thór Björgvinsson, *President,*
Päivi Hirvelä,
Mihai Poalelungi, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 February 2008,

Having regard to the declaration submitted by the respondent Government on 12 February 2010 requesting the Court to strike the part of 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 Adam Kierzek, is a Polish national who was born in 1965 and lives in Bydgoszcz. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

1. Criminal proceedings against the applicant (case no. XVI K 2006/06)

On 29 June 2001 the applicant was indicted before the Bydgoszcz District Court. He was charged with drunken driving.

On an unspecified date in 2001 or 2002 the case was remitted to the Bydgoszcz District Prosecutor.

On 8 October 2002 the first hearing was held. The court ordered that the applicant undergo a psychiatric examination and that an expert's opinion concerning his health be prepared. The hearing was adjourned until 14 January 2003.

On 14 January and 10 April 2003 the applicant was to undergo a psychiatric examination; however, he did not keep the appointment. The President of the Bydgoszcz District Court established that the applicant was detained in the Bydgoszcz Remand Centre. The next psychiatric examination was scheduled for 5 May 2003; however, the experts were not allowed to examine the applicant in the Remand Centre. On 11 July 2003 the trial court requested the Criminal Division of the Bydgoszcz District Court to allow the experts to examine the applicant in the Remand Centre. The request was granted and on 30 July 2003 the experts prepared an opinion on the applicant's health.

The hearing, scheduled for 6 November 2003, was cancelled due to the applicant's absence.

On 3 February 2004 the Bydgoszcz District Court heard the applicant and adjourned the hearing.

The hearing, set down for 24 February, was cancelled due to the applicant's absence.

On 5 April 2004 the Bydgoszcz District Court heard witnesses and adjourned the hearing until 11 May 2005.

On 10 May 2005, due to the judge's illness, the case was assigned to another judge. The hearing, set down for 11 May 2004, was adjourned until 15 June 2004.

On 28 June 2004 further witnesses were heard and the trial was adjourned until 16 August 2004. On that date the hearing was cancelled due to the judge's illness. The case was assigned to a third judge. The hearing was listed for 3 March 2005.

Subsequent hearings were held on 15 April, 10 June and 18 July 2005.

On 20 December 2005 the Bydgoszcz District Court gave judgment in the applicant's case.

On 6 February 2006 the applicant lodged an appeal with the Bydgoszcz Regional Court.

The hearing, set down for 18 May 2006, was cancelled due to the absence of the applicant's lawyer who had not been summoned.

On 27 July 2006 the Bydgoszcz Regional Court quashed the first-instance judgment and remitted the case to the Bydgoszcz District Court.

The retrial, listed for 13 November 2006, was adjourned until 30 January 2007 due to the absence of the applicant. At that time the applicant was detained in the Szczecin Remand Centre.

On 20 November 2006 the court ordered that the applicant undergo a psychiatric examination and that an expert's opinion on his health be prepared.

On 2 January 2007 the case was assigned to yet another judge because of the new division of work in the Bydgoszcz District Court.

The hearing, set down for 30 January 2007, was cancelled as the applicant's lawyer was absent due to her professional duties in another case.

On 6 April 2007, upon the request of the applicant, who wanted to have access to the expert's opinion on his health, the trial was adjourned until 25 May 2007. The applicant's lawyer, who was not present at the hearing, was ordered by the court to attend the next scheduled hearing.

On 25 May 2007 and 24 July 2007 witnesses and experts were heard. The next hearing was scheduled for 4 October 2007 as the presiding judge was on leave.

On 4 October 2007, upon the request of the applicant, who refused to be represented by his lawyer's substitute, the hearing was cancelled.

On 23 November 2007 other witnesses were heard and the trial was adjourned until 4 January 2008.

As it appears from the applicant's last letter of 15 August 2009, sent to the Registry of the Court, the proceedings are still pending before the Bydgoszcz District Court.

2. Proceedings under the 2004 Act (case no. IV S 16/07)

On an unspecified date in 2007 the applicant filed with the Bydgoszcz Regional Court a complaint about a breach of the right to a trial within a reasonable time in respect of the criminal proceedings instituted against him and asked for just satisfaction. He relied on 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"), which entered into force on 17 September 2004.

On 11 December 2007 the Bydgoszcz Regional Court dismissed his complaint. It limited its examination of the length of the proceedings to the period after the entry into force of the 2004 Act and stressed that the Act could not be applied to the protracted length of court proceedings occurring before that date. Having analysed the conduct of the District Court during the period after the entry into force of the 2004 Act, the court found that the proceedings had been conducted with due diligence and within a reasonable time.

B. Relevant domestic law and practice

The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

He also alleged a breach of Article 13 of the Convention in that he had not had an effective remedy against the excessive length of the proceedings.

THE LAW

A. Length of proceedings

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

Article 6 § 1

> "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 12 February 2010 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 hereby wish to express – by way of unilateral declaration – its acknowledgement of the violation of the applicant's right to have his case heard within reasonable time within the meaning of Article 6 § 1 of the Convention.
>
> Consequently, the Government are prepared to pay to the applicant the sum of PLN 12,000 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 of 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 the 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.
>
> 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 (...)"

In a letter of 2 March 2010 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

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)).

Accordingly, it should be struck out of the list.

Since the proceedings concerned as it appears are still pending before the domestic courts, the Court's strike-out decision is without prejudice to 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. Complaint about the lack of an effective remedy in respect of alleged excessive length of proceedings

In connection with the complaint about the excessive length of the proceedings, the applicant further alleged that he had no effective remedy at his disposal. He relied on Article 13 of the Convention which, in so far as relevant, provides as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court notes that it has already found in many cases that the 2004 Act does in general provide the applicant with an effective remedy in respect of the complaint about the length of the proceedings (*Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V). In particular, the applicant is entitled to make fresh complaints, provided that he lodges them at one-year intervals, which does not seem to be an unreasonable limitation.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to 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 6 § 1 of the Convention 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

David Thór Björgvinsson
President