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

FOURTH SECTION

DECISION

Application no. 68221/12
N.
against Poland

The European Court of Human Rights (Fourth Section), sitting on 16 June 2015 as a Committee composed of:

Faris Vehabović, *President,*
Krzysztof Wojtyczek,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 October 2012,

Having regard to the declaration submitted by the respondent Government on 24 March 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Ms N., is a Polish national, who was born in 1947 and lives in C. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 4).

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

The application had been communicated to the Government.

The circumstances of the case

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

The applicant was repeatedly hospitalised in a psychiatric hospital in Morawica from 4 to 25 July 2002 and subsequently from 29 June until

2 August 2006, from 17 August until 14 September 2006, from 15 January until 21 March 2008 and from 16 November 2010 until 16 February 2011.

She submitted a medical opinion drawn up in 2008 for the purposes of her detention in a psychiatric hospital. She was diagnosed as suffering from delusional syndrome (*zespół urojeniowy*).

At each occasion the applicant refused to give consent to the psychiatric treatment in a closed ward of the psychiatric hospital. The hospital asked the court for a permission to treat the applicant without her consent under the provisions of the 1994 Mental Health Act. The relevant decisions were given by the Kielce District Court. The court apparently found, in the light of medical opinions drawn up for the purposes of each case, that the applicant's condition made her psychiatric detention necessary as she refused to eat, could be dangerous to herself and possibly also to other persons.

The applicant did not appeal against these decisions.

In 2012 the applicant tried to institute two sets of civil proceedings, against various persons who had been involved in proceedings concerning her psychiatric treatment and against the State Treasury, for damage resulting from her allegedly unlawful hospitalisations without her consent and from allegedly inappropriate treatment. She submitted that she had been repeatedly humiliated, that she had never consented to the treatment, that she had been badly treated by the medical staff, that the decisions concerning her deprivation of liberty were unlawful and unjustified and that her reputation in the community had been ruined because she had been stigmatized as a person of unsound mind.

On 15 March 2012 she lodged a civil action with the Kielce Regional Court. She subsequently repeatedly requested that a legal-aid lawyer be assigned to the case to help her. She clearly stated that she did not know the law and she could not formulate her statement of claim in the manner required by law. It seems that she submitted such requests on a number of occasions, including on 30 April 2012.

On 2 May 2012 she reiterated her request for legal aid and submitted that she did not know how to formulate her complaints in conformity with the law.

Apparently two cases were opened by the Kielce Regional Court.

On 24 May 2012 the Kielce Regional Court asked the applicant to provide information as to her financial situation for the purposes of one of the cases. The applicant did so on 4 July 2012.

On 5 July 2012 the Kielce Regional Court ordered the applicant to supplement her statement of claim by indicating, within a week, the institution or establishment which should act as a representative of interests of the State Treasury in her case (*statio fisci*).

On 25 July 2012 the Kielce Regional Court returned the applicant's statement of claim (*zwrot pozwu*) in one of the cases to her finding that she

had failed to indicate the institution or establishment which should act as a representative of the State Treasury in her case.

In August and September 2012 the applicant complained about her difficulties in instituting the civil cases to the Ombudsman, Prosecutor General and the Registry of the Supreme Court.

Apparently later the applicant complained about this decision by requesting that the judges of the Kielce Regional Court be disqualified as they lacked impartiality. On 11 September 2012 that court ordered the applicant to clarify, within seven days, whether her request concerned the entire court or individual judges of that court; if the latter, she should submit their names and refer to *prima facie* evidence in support of her contention that they lacked impartiality.

On 26 September 2012 the applicant wrote to the court, submitting that her request to assign a legal-aid lawyer to her case had been dismissed, that she was unable to comply with the formal requirements formulated by the court and that she was unable to pursue the case. There was no reply to this letter.

On 3 October 212 the Kielce Regional Court served on the applicant a decision of 21 August 2012 by which it had decided that her statement of claim in the second case be returned to her.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that she was denied access to a civil court because her statement of claim had been returned to her by the Kielce Regional Court. She had previously asked the court on five occasions to assign a lawyer to her case under the legal-aid scheme to no avail.

THE LAW

The applicant complained that she had been deprived of a right of access to court. She relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by letter of 24 March 2015 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 declaration provided as follows:

> "The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the violation of Article 6 of the Convention by denying the applicant's access to a court in determination of her civil rights. Simultaneously, the Government declare that they are ready to pay the applicant the sum of 15,000 PLN which they consider to be reasonable in the light of the Court's case-law in similar cases (see, *inter alia, Bobrowski v. Poland*, judgment of 17 June 2008, application no. 64916/01 and *Laskowska v. Poland*, judgment of 13 March 2007, application no. 77765/01). 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 Convention. 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 period plus three percentage points.
>
> The Government 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 failed to reply to the Government's proposal. Instead, she sent several letters indicating that she wished to pursue her application.

The Court reiterates 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 reiterates that in certain circumstances, it may strike out an application 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 has examined the declaration carefully 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, 18 September 2007).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of the right of access to court (see, for example, *Bobrowski v. Poland*, no. 64916/01, 17 June 2008, *Laskowska v. Poland*, no. 77765/01, 13 March 2007 and *Tabor v. Poland*, no. 12825/02, 27 June 2006).

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 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 the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

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 accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 9 July 2015.

Fatoş Aracı
Deputy Registrar

Faris Vehabović
President