

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

FOURTH SECTION

DECISION

Application no. 4815/09
Danuta OGŁUDEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 2 July 2013 as a Committee composed of:

David Thór Björgvinsson, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 January 2009,

Having regard to the declaration submitted by the respondent Government on 20 March 2013 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Ms Danuta Ogłudek, is a Polish national, who was born in 1959 and lives in Biała Nyska.

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

The part of the application concerning the unreasonable length of criminal proceedings 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.

1. Criminal proceedings against the applicant (case nos. II K 406/07 and II K 251/09)

On 10 April 2006 the applicant was arrested on suspicion of corruption. On 12 April 2006 the Nysa District Court remanded her in custody.

On 29 June 2007 a bill of indictment was lodged with the Nysa District Court. She was charged with two counts of corruption. The first hearing was scheduled for 12 February 2008. In 2008 and 2009 the court held several hearings. A number of hearings were adjourned mostly because of the absence of witnesses.

On 24 March 2009 the Nysa District Court gave judgment. The applicant was acquitted. The prosecutor appealed.

On 30 September 2009 the Opole Regional Court quashed the first-instance judgment and remitted the case.

On 9 November 2011 the Nysa District Court again acquitted the applicant. The judgment became final on 1 December 2011.

2. Proceedings under the 2004 Act (case no. VII S 21/10)

On 25 October 2010 the applicant filed a complaint under the Law of 17 June 2004 on complaints about the 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"). The applicant underlined that the proceedings had lasted unreasonably long. She added that the ongoing criminal proceedings against her had seriously affected her career as a clerk in the District Labour Office.

On 8 December 2010 the Opole Regional Court dismissed the applicant's complaint. It examined the proceedings at issue and did not find any periods of undue delay attributable to the court.

3. Civil proceedings for protection of personal rights

On 21 April 2006 the weekly magazine Nowa Trybuna Opolska published an article entitled "Straight from the office to a prison cell. Corruption. The suspect took bribes in exchange for benefits for unemployed" *("Zza biurka w urzędzie trafiła wprost do celi. Korupcja. Podejrzana brała łapówki w zamian za dotacje dla bezrobotnych".).* The above-mentioned article stated that the applicant had taken bribes, although at that time the criminal proceedings against her were pending investigation.

On 26 February 2007 the applicant lodged a claim for infringement of her personal rights by the weekly, seeking an apology and compensation in the amount of 10,000 Polish zlotys (EUR 2,500).

On 19 December 2007 the Opole Regional Court dismissed her claim. The applicant lodged an appeal.

On 29 August 2008 the Wrocław Appeal Court reversed the first-instance judgment. It held that the defendant had infringed the applicant's personal rights, including the right to be presumed innocent and ordered it to publish an official apology in the weekly. The Court of Appeal found that the order to publish an apology would constitute a sufficient redress for the infringement of her personal rights. It dismissed the pecuniary claim, considering that the amount sought was disproportionate to the infringement at issue. It appears that no further appeal lay against the judgment.

COMPLAINTS

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

2. The applicant also complained under Articles 6 § 2 and 8 of the Convention about the press article in which the journalist had stated that she had been guilty of a criminal offence while the criminal proceedings had been still pending.

THE LAW

The applicant complained about the excessive length of criminal proceedings against her. She relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 20 March 2013 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 their acknowledgement of the excessive length of proceedings pending before the Nysa District Court (ref. no. II K 251/09) and the applicant's inability to obtain financial redress from the domestic authorities.
>
> Consequently, the Government are prepared to pay the sum of PLN 7,100 for the applicant which they consider to be reasonable in the circumstances [of] the present case. 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 on 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 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 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 express her position 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 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 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, 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 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-V; *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 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*).

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 (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

The applicant also alleged that the publication of the article about her had amounted to a breach of Articles 6 § 2 and 8 of the Convention.

Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that this part of the application is 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 declaration in respect of the complaint 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