

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

FOURTH SECTION

DECISION

Application no. 16853/10
Alfred WÓJCIK
against Poland

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

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 February 2010,

Having regard to the declaration submitted by the respondent Government on 20 December 2011 requesting the Court to strike 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 Alfred Wójcik, is a Polish national who was born in 1947 and lives in Kraków. 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. Civil proceedings for payment instituted by the applicant

On 21 September 2006 the applicant lodged a claim against a certain company, seeking payment for a defective notebook.

A first hearing was held on 13 March 2007. The court requested that an expert opinion be submitted.

On 14 May 2007 the expert submitted his opinion. It appears that the opinion was served on the applicant on 28 December 2007.

On 21 October 2008 the Kraków District Court (*Sąd Rejonowy*) dismissed the applicant's claim (*case no. I C 1038/06/P*).

The applicant lodged his appeal on 27 November 2008.

On 5 November 2009 the Kraków Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal (*case no. II Ca 311/09*).

2. Proceedings under the 2004 Act

On 26 March 2008 the applicant lodged a complaint under 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") in respect of the civil proceedings and asked for just satisfaction.

On 14 May 2008 the Kraków Regional Court acknowledged that the proceedings were unreasonably lengthy, in that between May and November 2007 they were not conducted with due diligence (case *no. II S 27/08*). The court refused to award just satisfaction to the applicant.

B. Relevant domestic law and practice

The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are set out in the Courts 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 in its judgments in the cases of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V and *Krzysztofiak v. Poland*, no. 38018/07, §§2331, 20 April 2010.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the civil proceedings. In that respect the applicant alleged that due to the excessive length of the proceedings he had lost most of his clients, as he had been unable to meet his obligations, not having any notebook at his disposal.

THE LAW

A. Length of proceedings

The applicant complained about the length of the proceedings. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

By letter dated 20 December 2011 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 unreasonable length of civil proceedings in the applicant's case (Article 6§1 of the Convention).

Consequently, the Government are prepared to pay to the applicant the sum of PLN 4,000 (four thousand Polish zlotys) 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 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 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 24 January 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low. He further stated that the sum did not correspond to a financial loss which he had allegedly suffered as a result of the excessive length of the impugned proceedings.

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).

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 compensation proposed in the amount of PLN 4,000 – 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*).

Accordingly, it should be struck out of the list.

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.

Fatoş Aracı Deputy Registrar	George Nicolaou President