

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

FOURTH SECTION

DECISION

Application no. 4955/09
Tomasz ZAGAŃCZYK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 March 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 December 2008,

Having regard to the declaration dated 30 November 2011 submitted by the respondent Government on 7 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 Tomasz Zagańczyk, is a Polish national who was born in 1973 and lives in Warsaw. He was represented before the Court by Mr Ł. Czuła, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

On 6 September 2004 the applicant sued the Bank Handlowy S.A. for reinstatement and rectification of his employment certificate.

On 29 November 2006 the Warszawa-Śródmieście District Court (labour section), composed of an assessor and two lay judges, dismissed the applicant's claims.

On 2 December 2008 the Warsaw Regional Court dismissed the applicant's appeal.

On 9 December 2008 the applicant requested the Regional Court to appoint a legal-aid lawyer with a view to filing a cassation appeal. According to the applicant, his request was dismissed.

It appears that on 12 December 2008 the applicant lodged with the Warsaw Regional Court a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act"). On an unspecified later date the Warsaw Regional Court rejected his complaint since it had been filed after the termination of the proceedings. The applicant did not lodge any other complaint in respect of the excessive length of the proceedings.

B. Relevant domestic law and practice

1. Assessors (junior judges)

The relevant domestic law and practice regarding the status of assessors, including the landmark judgment of the Polish Constitutional Court of 24 October 2007 (case no. SK 7/06), are set out in the Court's judgment in the case of *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 16-25, 30 November 2010.

2. The Law on the National School for the Judiciary and the Prosecution Service

On 23 January 2009 Parliament enacted the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*), which entered into force on 4 March 2009. The law establishes a comprehensive and centralised institution responsible for training judges and prosecutors.

In response to the Constitutional Court's judgment of 24 October 2007 the Law on the National School for the Judiciary and the Prosecution Service abolished the institution of assessors as provided for by the Law of 27 July 2001 on the Organisation of Courts (section 60 (12)). Furthermore,

it specifically provided that as from 5 May 2009 assessors ceased to be authorised to exercise judicial powers (section 68 (1)).

THE LAW

A. Lack of independence of the assessor

The applicant complained that the District Court had been composed of an assessor (junior judge) who lacked independence. He relied on Article 6 § 1 of the Convention which provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

By letter dated 30 November 2011 which was received on 7 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 terms of the declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration -their acknowledgement of the fact that the first-instance court which dealt with the applicant's case, sitting as an assessor, was not an independent tribunal, as required by Article 6 § 1 of the Convention. ...
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> In these circumstances, and having regard to the Court's judgment of 30 November 2010 in the case of *Henryk Urban and Ryszard Urban v. Poland* in which it stated that the fact of acknowledging the violation of the applicants' right to have their case heard by an independent tribunal, as guaranteed by Article 6 § 1 of the Convention, constitutes in itself sufficient just satisfaction for non-pecuniary damage and that the State's legal actions (*i.e.* adoption of the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa I Prokuratury*) on 23 January 2009) to remedy the shortcomings underlying the institution of assessors by abolishing it and introducing new, comprehensive and centralised system for training judges effectively remedied the lack of independence of assessors within the Polish judiciary system, the Government submit that their unconditional acknowledgment of the fact that the applicant's right under Article 6 § 1 of the Convention was restricted should be found by the European Court a sufficient redress for any damage suffered by the applicant as a result of his case being decided by an assessor before the first-instance court. (...)
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> 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 requested the Court to continue the examination of his case and to reject the Government's unilateral declaration. He claimed that there had been a violation of Article 6 § 1 of the Convention in the present case.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application or part thereof 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".

Article 37 § 1 *in fine* includes the proviso that:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

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 (see *Martyna v. Poland* (dec.), no. 72040/01, 15 January 2008; *Gołubowski and 6 other applications v. Poland* (dec.), nos. 21506/08, 22650/08, 34732/08, 41594/08, 55405/08, 38781/09 and 49198/09, 5 July 2011). 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* (preliminary issue) [GC], no. 26307/95, § 75-77, ECHR 2003-VI).

The Court recalls that it has already dealt with the institution of Polish assessors from the standpoint of Article 6 of the Convention. In *Henryk Urban and Ryszard Urban v. Poland* (no. 23614/08, 30 November 2010), its leading judgment on the issue, the Court examined in detail the question of the independence of a "tribunal" composed of an assessor in terms of conformity with the requirements of Article 6 § 1 and found, *inter alia*, as follows:

> "48. The Constitutional Court considered the status of assessors in its leading judgment of 24 October 2007. It held that section 135 § 1 of the 2001 Act, providing that the Minister of Justice could confer the exercise of judicial powers on assessors, fell short of constitutional requirements because assessors did not enjoy the necessary guarantees of independence, notably *vis-à-vis* the Minister. The Court notes that in its analysis of the question of the independence of assessors the Constitutional Court referred to the Strasbourg case-law and observed that Article 45 of the Constitution was modelled on Article 6 § 1 of the Convention (...).
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> 51. (...) The Court notes that the Constitutional Court's findings were made in the context of an abstract review of the constitutionality of statutory provisions but, mindful of the principle of subsidiarity, considers that they may be applied to the facts of the present case, having regard to the similarity between the constitutional and the Convention requirements in so far as judicial independence is concerned and the

> reliance of the Constitutional Court on the relevant jurisprudence of the Court. (...) The important consideration for this Court is that the Constitutional Court found that the manner in which Poland had legislated for the status of assessors was deficient since it lacked the guarantees of independence required under Article 45 § 1 of the Constitution, guarantees which are substantively identical to those under Article 6 § 1 of the Convention.
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> 52. The Court underlines that the Constitutional Court set aside the regulatory framework governing the institution of assessors as laid down in the 2001 Act. It further stresses that the Constitutional Court did not exclude the possibility that assessors or similar officers could exercise judicial powers provided they had the requisite guarantees of independence (...). The Constitutional Court, referring to international standards, pointed to the variety of possible solutions for allowing adjudication by persons other than judges. In this connection, the Court notes that its task in the present case is not to rule *in abstracto* on the compatibility with the Convention of the institution of assessors or other similar officers which exist in certain Member States of the Council of Europe, but to examine the manner in which Poland regulated the status of assessors.
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> 53. Having regard to the foregoing, the Court considers that the assessor B.R.-G. lacked the independence required by Article 6 § 1 of the Convention, the reason being that she could have been removed by the Minister of Justice at any time during her term of office and that there were no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister (...). It is not necessary to consider other aspects of the status of assessors since their removability by the executive is sufficient to vitiate the independence of the Lesko District Court which was composed of the assessor B.R.-G."

The first element of the Court's test in the *Henryk Urban and Ryszard Urban* judgment concentrated on the institutional deficiency as regards the position of assessors *vis-à-vis* the Minister of Justice – Prosecutor General. However, in its analysis the Court also had regard to the second element of the test, namely whether the circumstances of a particular case could give rise to legitimate grounds for believing that the Minister of Justice - Prosecutor General had taken an interest in the proceedings (see *Henryk Urban and Ryszard Urban*, cited above, § 56).

As regards the issue of just satisfaction, the Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicants (see *Henryk Urban and Ryszard Urban*, cited above, § 62). Moreover, having regard to the reasons underlying its finding of a violation and to the principle of legal certainty the Court found no grounds which would require it to direct the reopening of the case (see *Henryk Urban and Ryszard Urban*, cited above, § 56, 63-66). This is the Court's general approach in assessors' cases to the issue of just satisfaction unless the existence of specific circumstances is shown in a particular case.

Furthermore, in the same judgment the Court found that:

> "67. (...) It is noteworthy that the constitutional and Convention deficiency regarding the status of assessors was remedied by the domestic authorities – which decided to abolish the office of assessor altogether – within the time-frame allotted by the Constitutional Court (...). Having regard to the above, it may be noted that the authorities of the respondent State took the requisite remedial measures in order to address and remedy the deficiency underlying the present case."

As regards costs and expenses, the Court found that there was no justification for awarding legal costs under Article 41 (*Henryk Urban and Ryszard Urban*, cited above, § 70).

In the present case the Court cannot discern any circumstances which could give rise to an assumption that the Minister of Justice – Prosecutor General may have been taking an interest in the proceedings instituted by the applicant and therefore the issue in the present case is limited to the institutional deficiency regarding the status of assessors. In the circumstances of the present case the Court accepts that the Government are not required to offer any compensation to the applicant in light of the *Henryk Urban and Ryszard Urban v. Poland* judgment.

The Court has carefully examined the terms of the Government's declaration. It observes that their declaration contains a clear acknowledgment of a breach of Article 6 § 1 of the Convention and refers to the adoption of the Law on the National School for the Judiciary and the Prosecution Service which abolished the institution of assessors (see relevant domestic law above). Having regard to the nature of the admissions contained in the Government's declaration as well as the absence of any factors which could distinguish the present case from the Court's approach in the case of *Henryk Urban and Ryszard Urban v. Poland* the Court considers that it is no longer justified to continue the examination of the application in so far as it concerns the complaint related to the lack of independence of the assessor (Article 37 § 1 (c); see, for the relevant principles *Tahsin Acar v. Turkey* (preliminary issue) [GC], cited above).

In light of all the above considerations, 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 complaint at issue (Article 37 § 1 *in fine*).

Accordingly, it is appropriate to strike the application out of the list in so far as it concerns the complaint related to the lack of independence of the assessor.

B. Length of proceedings

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

The Government argued that the applicant had not exhausted relevant remedies provided for by the Polish law. They noted that the applicant had lodged his complaint under section 5 of the 2004 Act after the proceedings in his case had been terminated, whereas this provision stipulated that such complaint "shall be lodged while the proceedings were pending". The applicant should have therefore lodged a complaint under section 16 of the 2004 Act, which provided that a party which had failed to lodge a complaint under section 5 of the same Act could claim compensation under Article 417 of the Civil Code for the damage which resulted from the unreasonable length of the proceedings after the proceedings on the merits of the case had ended. The Government submitted that the applicant had failed to avail himself of that remedy.

The applicant did not comment.

The Court recalls that it has found both a complaint under section 5 of the 2004 Act and an action for damages under section 16 of the 2004 Act in conjunction with Article 417 of the Civil Code to be effective remedies in respect of grievances of excessive length of judicial proceedings depending on the stage of the domestic proceedings (see, *Charzyński v. Poland* (dec.), no. 15212/03, § 36-42, ECHR 2005-V; *Krasuski v. Poland*, no. 61444/00, § 72, ECHR 2005-V (extracts); *Krystyna Misiak and Jan Misiak v. Poland*, no. 31193/04, § 123, 11 April 2011). The applicant lodged a complaint under section 5 on one occasion in 2008; however, his complaint was rejected as it had been filed belatedly. Subsequently, the applicant had the opportunity to pursue another remedy, but he failed to bring an action for damages under section 16 of the 2004 Act in conjunction with Article 417 of the Civil Code.

It follows that the complaint concerning the excessive length of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. Remaining complaints

The applicant complained under Article 6 § 1 of the Convention that two lay judges had sat in the first-instance court. He also complained about the seconded district court judge sitting in the Regional Court.

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. It follows that these complaints are 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;

Decides to strike the application out of its list of cases in so far as it relates to the complaint concerning the lack of independence of the assessor 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