

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

FIRST SECTION

DECISION

Application no. 27476/15
Arkadiusz ŻOŁNACZ
against Poland

The European Court of Human Rights (First Section), sitting on 13 December 2022 as a Committee composed of:

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 27476/15) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 June 2015 by a Polish national, Mr Arkadiusz Żołnacz ("the applicant"), who was born in 1974 and lives in Nowa Iwiczna, who was represented by G. Fertak, a lawyer practicing in Warsaw;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs;

the Government's observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. In 2008 the applicant was indicted before the Warsaw Regional Court on multiple charges of bribery. During the criminal proceedings material classified as confidential was collected and used by the court as evidence. The applicant's lawyer did not challenge the decision to include the classified material in the case file. The applicant and his lawyer consulted the entire case file, which consisted of fifteen main volumes and one volume of classified material, on many occasions in 2008.

2. The applicant was convicted in 2012 and he lodged an appeal against the judgment as a whole. His lawyers consulted the classified material on several occasions. On 13 June 2013 the Warsaw Court of Appeal ultimately convicted the applicant of three offences and sentenced him to two years' imprisonment. The court remitted the case as regards the five remaining charges (a cassation appeal in the case was dismissed by the Supreme Court on 16 December 2014).

3. As regards the remaining five charges, the trial continued until 13 December 2017 when the Warsaw Regional Court acquitted the applicant.

4. In the meantime, the applicant attempted to re-open the proceedings which had ended on 13 June 2013. On 23 July 2015 the Supreme Court refused to re-open the case. The court examined the applicant's complaints that his access to the entirety of the case file had been limited, in breach of his defence rights, and dismissed them as manifestly ill-founded. It referred to the Court's case-law and reasoned that the limitations imposed on the applicant during the proceedings were not comparable to those imposed in previous cases where a violation had been found (see *Matyjek v. Poland*, no. 38184/03, 24 April 2007), despite the confidential character of some of the evidence. In particular, only a fraction of the reasons of the first-instance judgment had been confidential and they had in any case been consulted by the applicant and his lawyer in the secret registry of the court. The remainder of the reasoning had been public and notified to the applicant. The applicant had appealed against both the public and the confidential part of the judgment and had contested both the evidence classified as confidential and the legal basis on which it had been obtained. The Supreme Court furthermore noted that during the proceedings the applicant and his lawyer had consulted the confidential part of the file upon request and had been free to make use in the proceedings of the notes made from them.

5. The applicant complained under Article 6 §§ 1 and 3 (b) of the Convention of unfairness in respect of the proceedings, an infringement of his defence rights and a lack of equality of arms due to the fact that part of the evidence against him had been classified as confidential.

THE COURT'S ASSESSMENT

6. The Government raised a preliminary objection to the effect that the application should be rejected as an abuse of the right of individual application, since the applicant had withheld important facts from the Court. In particular, he had not informed the Court of the Supreme Court's judgment of 23 July 2015 which examined in detail his allegations under the Convention. Secondly, the applicant had not informed the Court that he had been acquitted of the majority of the charges in 2017.

7. The Government further argued that the application was in any event inadmissible as the Supreme Court had clarified that the applicant had not in

fact been limited in his right to access the case file, had been entitled to appeal against the entirety of the judgment of the court and, in respect of the majority of the charges, had been acquitted.

8. The applicant, represented by a lawyer of his choosing, did not submit any observations on the admissibility and merits of the application and did not comment on the Government's submissions. His lawyer stated that the applicant maintained his application and requested the Court to give a ruling.

9. The Court considers that in the absence of the applicant's submissions and in view of the clarifications by the Government, the application is manifestly ill-founded. In consequence, while it finds the applicant's lack of cooperation with the Court unacceptable, it is not necessary to examine the Government's preliminary objection whether it amounted to an abuse of the right of application.

10. In reaching its conclusion that the case is inadmissible, the Court has had regard to the Supreme Court's judgment of 23 July 2015 which analysed, in the light of the Court's case-law, the impact on the applicant's defence rights of the confidential character of part of the case file in his criminal case, and concluded that his allegations had not been supported by facts (see paragraph 4 above). The Court sees no reason to deviate from these findings.

11. It follows that the application is inadmissible and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President