



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

FIRST SECTION

DECISION

Application no. 3529/14
Zdzisław PARKITNY
against Poland

The European Court of Human Rights (First Section), sitting on 16 December 2020 as a Committee composed of:

Linos-Alexandre Sicilianos, *President*,

Krzysztof Wojtyczek,

Lorraine Schembri Orland, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 28 December 2013,

Having regard to the declaration submitted by the respondent Government on 6 July 2020 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:

FACTS AND PROCEDURE

1. The application was introduced by Ms Danuta Parkitna, the mother of late Sebastian Parkitny. She died on 28 May 2014. Mr Zdzisław Parkitny, the father of Sebastian Parkitny continued the proceedings. They were represented before the Court by Ms K. Dworska, and Mr G. Wilga, lawyers practising in Katowice and Warsaw respectively.

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

3. Sebastian Parkitny was remanded in custody on 16 December 2006. Two weeks later his medical condition suddenly deteriorated. On 31 December 2006 he was urgently admitted to a civilian hospital where he died the following day. The criminal investigation between 2007 and 2013 did not establish the cause of death.

4. The applicant complained under Article 2 of the Convention that the prison guards had not taken appropriate measures to ensure the safety of his

son. He also complained that the authorities had failed to carry out an effective investigation into the circumstances of his son's death.

5. The application had been communicated to the Government under both limbs of Article 2 of the Convention.

6. Mr Zdzisław Parkitny died on 11 June 2015. By letter of 31 August 2015 Ms Małgorzata Molecka expressed a wish to pursue the application in his stead. She was the only close relative of the late parents of Sebastian Parkitny, being a niece of Ms Danuta Parkitna and a cousin of Sebastian Parkitny.

7. The Government expressed the view that Ms Małgorzata Molecka was eligible to pursue the application. They accepted that she had a sufficient interest in the case as a close relative of Mr Sebastian Parkitny and his parents.

THE LAW

A. Standing of Ms Małgorzata Molecka

8. The Court notes that the parents of Mr Sebastian Parkitny died after the introduction of the application. Subsequently, Małgorzata Molecka has informed the Court that she wishes to pursue the application introduced by the parents of Sebastian Parkitny. She was their only close relative.

9. The Government did not object to Ms Małgorzata Molecka's wish to pursue the application.

10. The Court notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings or the existence of a legitimate interest claimed by a person wishing to pursue the application (see *Léger v. France* (striking out) [GC], no. 19324/02, § 43, 30 March 2009). In the present case, the Court accepts that Ms Małgorzata Molecka, the niece of Ms Danuta Parkitna, has the requisite interest and standing to pursue the application.

B. Complaints under Article 2

11. The applicant alleged a breach of substantive and procedural aspects of Article 2 of the Convention.

12. After the failure of attempts to reach a friendly settlement, by a letter of 6 July 2020 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:

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“2. The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of violation of Article 2 of the Convention with respect to its procedural limb, i.e. on account of failure to conduct effective investigation in the present case.

3. Simultaneously, they declare that they are ready to pay to the applicant the sum of EUR 15,000 (fifteen thousand euros) which they consider to be reasonable in the light of the individual circumstances of the present case, as well as the Court’s case-law in similar cases (...).

4. The sum referred to above, which is to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be converted into Polish zlotys at the rate applicable on the date of payment and will be payable within three months from the date of notification of the final ruling taken by the Court to strike the case out of its list of cases. 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 the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points as applicable during the default period. The payment will constitute the final resolution of the case.

5. At the same time the Government wish to submit that with respect to the complaint under Article 2 of the Convention in its substantive limb they point out that they are unable to assess whether there was a violation of this provision due to the inadequacy of the investigation in the present case. For this reason they refrain from submitting any observations in this part.

6. 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...”

13. By a letter of 6 August 2020, Ms Molecka indicated that she was not satisfied with the terms of the unilateral declaration. She submitted, *inter alia*, that the allegations made in the present case had been serious since they concerned unexplained death in custody. The prison service placed Sebastian Parkitny, a first-time detainee, in a cell occupied by prisoners known for their notorious misbehaviour. It failed to ensure his safety, even though it had had knowledge of the threat of abuse. Furthermore, the authorities failed to conduct an effective investigation into the circumstances of his death.

14. Ms Molecka pointed out that the Government’s declaration did not contain any measures to improve the efficiency of investigations regarding deaths of detainees, which, in her view, amounted to a structural problem in Poland. She also noted that the implementation of the undertakings made in the unilateral declaration was not subject to the supervision of the Committee of Ministers. She requested the Court not to accept the unilateral declaration and to continue the examination of the case.

15. 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”.

16. 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.

17. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

18. The Court has established in a number of cases, including those brought against Poland, its practice concerning the procedural obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death of a detainee (see, among many other authorities, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 74, ECHR 2002-II; *Slimani v. France*, no. 57671/00, § 30, ECHR 2004-IX; *Dzieciak v. Poland*, no. 77766/01, §§ 104-105, 9 December 2008; and *Molga v. Poland* (dec.), no. 78388/12, 17 January 2017 § 78). It also recalls that its strike-out decision could not extinguish the Government’s continuing obligation to conduct an investigation in compliance with the requirements of the Convention (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 118, ECHR 2016).

19. Having regard to the nature of the admissions contained in the Government’s declaration, the fact that the gist of the case concerns the procedural aspect of Article 2, 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)).

20. 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*).

21. 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).

22. In view of the above, it is appropriate to strike the case out of the list.

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For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 2 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 21 January 2021.

Renata Degener
Deputy Registrar

Linos-Alexandre Sicilianos
President