



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

FOURTH SECTION

CASE OF RAWA v. POLAND

(Application no. 38804/97)

JUDGMENT

STRASBOURG

14 January 2003

FINAL

14/04/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rawa v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Registrar*,

Having deliberated in private on 10 December 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 38804/97) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Stanisław Rawa (“the applicant”), on 18 April 1997.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the civil proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section IV.

7. By a decision of 4 June 2002 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1930 and lives in Warsaw.

9. The applicant, a professional army officer, took an early retirement in 1965.

10. On 13 June 1994 the applicant filed a civil action against the Ministry of National Defence, claiming that he had been deprived of adequate medical treatment, to which he was entitled as a retired army officer. He maintained that numerous errors committed by military dentists and their incompetence had led to irreversible bodily harm and damage to his health.

11. On 21 July 1994, on the Warsaw Regional Court's order, the applicant particularised his claim. He sought a finding of the defendant's liability, a sum of 1 PLN as compensation, and reimbursement of legal costs. On 3 August 1994 the Warsaw Regional Court gave a decision stating its lack of jurisdiction and forwarded the case to the Warsaw District Court.

12. On 8 August 1994 the applicant extended his claim and alleged that his heart illness had been caused by the defendant ministry. On 5 September 1994 the applicant submitted, on the court's order, a statement of his financial and family situation. On 21 September 1994 the court exempted the applicant from the court fees.

13. On 22 September, 12 and 27 October 1994, the applicant filed his further objections as to the work and conduct of the dentists concerned. On 5 December 1994 the Ministry of National Defence sent copies of the applicant's statement of claim to the Central Clinical Hospital at the Warsaw Medical Academy and to the court. The Ministry also declared that the hospital had been authorised to represent the State Treasury in the case. On 20 December 1994 the defendant's counsel filed a reply to the applicant's statement of claim with the court and requested it to summon three dentists as witnesses.

14. The applicant submitted his further pleadings on 21 November, 27 December 1994 and 21 February 1995. The hearing scheduled for 28 February had to be adjourned due to illness of the judge rapporteur. The applicant's further pleadings were lodged with the court on 21 March, 11 and 24 April, 7 and 31 May, 16 and 30 June, 20 July, and 1, 7 and 21 August 1995. On 28 August 1995 the court held a hearing. It heard the applicant and one witness. Subsequently the applicant filed his pleadings on 21 September, 9 and 23 October 1995.

15. The second hearing was held by the court on 30 October 1995. The court interviewed one witness, a dentist who had treated the applicant in the

defendant ministry polyclinic. The other witness, summoned for that date, failed to appear. The court accordingly adjourned the hearing.

16. The applicant filed his pleadings on 24 November and 19 December 1995. The subsequent hearing was fixed for 21 December 1995. It had to be adjourned as the defendant's lawyer and the witness failed to comply with the summons. The applicant was told by the judge that the next hearing would be held on 15 February 1996, at 9.15 a.m.

17. On 15 February 1996 the applicant appeared before the court an hour after the hearing had begun. He complained to the President of the Warsaw District Court that he had not been properly informed about the time fixed for the hearing. He further complained that, after having waited several years for the trial, he had been denied the opportunity of questioning witnesses and had not been allowed to examine the minutes of the hearing. The President of the District Court was of the view that the applicant's complaint was unfounded, explaining that the applicant himself bore the blame for having arrived late for the hearing.

18. On the same day the court decided to appoint professor J.P. as an expert. The applicant filed his further pleadings on 1 January, 12 and 19 February, 10 and 22 April 1996. In May 1996 the expert opinion reached the court. The applicant filed his pleadings and motions, *inter alia* as to the expert opinion, on 15 May, 19 and 26 July, 6, 19, 20 and 26 August 1996. On 10 September 1996 the defendant's lawyer submitted her observations as to the expert opinion.

19. The applicant submitted his new pleadings and various motions on 19 September, 11 December 1996, 11 February, 4, 10, 12 and 24 March, 7, 17 and 21 April, 12 May, 18 and 20 August 1997. On 21 August 1997 the applicant submitted two sets of questions to the expert, altogether fifty questions. He submitted further pleadings on 4 November 1997, and 2 and 16 February 1998.

20. In 1996 and 1997 hearings were scheduled by the Warsaw District Court on the following dates: 23 September 1996, 12 November 1996, 17 December 1996, 14 January 1997, 7 March 1997, 17 June 1997 and on two other unspecified dates. On 21 August 1997 the Warsaw District Court stated its lack of jurisdiction to entertain the case and the case was subsequently transferred to the Warsaw Regional Court. As on each occasion the court expert, professor J.P., failed to attend, the hearings were adjourned.

21. On 18 February 1998 the Warsaw Regional Court sent letters to J.P.'s two addresses - to the hospital and to his home address - in order to set a date for the hearing. The court's secretary also telephoned to the hospital to inform the expert about the need to achieve some progress in the proceedings, and to reiterate that a date had to be fixed so that he could finally attend the hearing. The expert informed the court that he could be present on 8, 9 and 14 July 1998, at 9 a.m.

22. On 3, 12, 18, 30 March, 20 April and 29 June 1998 the applicant filed his further pleadings with the Regional Court. In a letter of 31 March 1998, in reply to the applicant's earlier letter of complaint to the Ministry of Justice of 19 February 1998 about the lack of progress in the proceedings, the President of the Warsaw Regional Court admitted that the proceedings were too slow, but in his opinion the court could not be blamed for it, since the delay had mainly been caused by the persistent failure of the expert J.P. to attend hearings.

23. During the hearing held on 14 July 1998, the court took the oral evidence of the expert J.P. On 15 July 1998 the applicant filed a list of his further claims with the court. On 17 July 1998 at a session held *in camera* the court decided that additional expert opinions should be prepared within thirty days. The court subsequently made a few attempts to appoint experts, but they refused to prepare their opinions for various reasons. The experts' refusals were submitted to the court on 31 August, 20 October, 3 and 28 December 1998. On 31 July 1998 the Warsaw Regional Court answered the applicant's question of 27 July 1998 concerning the decision of 17 July 1998 to take additional evidence.

24. The applicant filed his new pleadings with the court on 24 September, 29 October 1998, 15 January and 19 February 1999. On 5 March 1999 the court sent to the applicant a list of experts practising in other towns and asked him if he would agree to visit one of them at his own expense. On 11 March 1999 the applicant informed the court that he had chosen the expert A.K.S. living in Kraków. The applicant filed his new pleadings on 12,13 May and 8 June 1999.

25. On 9 June 1999 the court requested A.K.S. to submit her report. On 30 June 1999 the expert opinion prepared by professor A.K.S. was submitted to the court. On 31 June 1999 the expert explained that she had not been able to complete her opinion earlier due to serious family problems. She also informed the court that she had summoned the applicant for 22 June 1999, at 10 a.m. He had not reported for the examination and answered that he could only do so in the afternoon. Following that, the applicant formulated a list of questions addressed to the expert and submitted that list to the court. On 18 August, 2 and 27 September 1999, 6 and 28 April 2000 the applicant lodged his further pleadings with the court.

26. On 11 May 2000 the defendant's lawyer submitted her observations on the merits of the case and informed the court that the Ministry of National Defence had to be summoned as a party to the proceedings.

27. On 17 May 2000 the President of the Warsaw Regional Court, in reply to the applicant's letter of 30 March 2000 addressed to the Ministry of Justice, informed him once again that difficulties in hearing the evidence, as well as other reasons beyond the court's control, had contributed to the excessive length of proceedings. It was true that no hearings had been held since 30 June 1999, but this was due to the fact that it was of primary

importance for the court to establish which institution had assumed the obligations of the Central Clinical Hospital at the Warsaw Medical Academy after the reforms of the public system of health services, which had become effective from 1 January 1999.

28. The applicant countered these arguments in two letters of complaint written to the Ministry of Justice of 22 and 25 May 2000. He complained *inter alia* that the expert had not managed to take a stand on a number of questions he had asked.

29. On 22 May 2000 the court summoned the Ministry of National Defence as a party to the proceedings and on the same date it informed the hospital about it. On 13 June 2000 the Ministry of Justice informed the applicant that the President of the Warsaw Regional Court in his letter of 17 May 2000 had given convincing grounds as to why the proceedings were prolonged, but that the case would thereafter be placed under its administrative supervision in order to expedite the proceedings.

30. On 3 July 2000 the applicant filed a letter with the Chancellor of the Jagiellonian University in Kraków contesting the expert opinion of 30 June 1999. On 3 October 2000 the university informed the court that the expert A.K.S. had died on 23 September 2000.

31. On 14 September 2000 the applicant sent a letter of complaint to the Ministry of Justice, stating that he was not satisfied with the vague explanations he had obtained as to the length of the proceedings.

32. On 5 October 2000 the defendant filed its reply to the applicant's statement of claim. On 9 October 2000 the university answered the applicant's letter of 3 July 2000 and informed him that professor A.K.S. had been an expert appointed in the case and the university could not interfere with her opinion. On 25 September 2000 the defendant Ministry's lawyer submitted its reply to the statement of claim.

33. On 18 October 2000 the court held a hearing in the case. The applicant contested the opinion prepared by A.K.S. On 27 October 2000 the court informed the Mazowsze Governor that he would be summoned as a co-defendant in the case.

34. On 13 November 2000 the applicant was informed by the Complaints Department in the Ministry that the Warsaw Regional Court had been notified of the expert's death and that a new expert had been appointed. The proceedings would be resumed as soon as the appropriate expert opinion was submitted.

35. On 28 November 2000 a new expert opinion was ordered by the court. On 30 November 2000 the representative of the Mazowsze Governor stated that it was the Minister of National Defence who should be summoned as a defendant in the case. On 4, 22 and 27 December 2000 the applicant submitted his further pleadings. On 11 December 2000 the court received a letter from expert M.Z., refusing to prepare his opinion because

of his heavy workload. On 14 December 2000 the expert refused the reiterated request of the court.

36. The applicant filed his new pleadings on 23 and 30 January, 12 February, 16 and 21 March and 11 April 2001. On 24 April 2001 the court ordered expert J.P. to prepare his opinion in the case. On 30 May 2001 the expert refused to do so. The court ordered the Dental Institute of the Warsaw Medical Academy to appoint an expert in order to prepare an opinion. The expert from the institute likewise refused to prepare a report and stated that the first opinion prepared by the expert J.P. had been a professional and conclusive one. The applicant submitted his further pleadings to the court on 13 September, 2, 8 and 24 October 2001.

37. On 1 October 2001 the Ministry of Justice answered the applicant's letters and informed him that the length of proceedings in the present case was caused by the difficulties in obtaining an expert opinion. Answering the subsequent complaint of the applicant, the Ministry informed him that the independent court was considering the case and that no measures could be taken by the Ministry to interfere with the course of the proceedings. On 26 November 2001 the applicant submitted further pleadings to the court.

38. The court held a hearing on 13 December 2001. On 19 December 2001 it gave judgment and dismissed the applicant's claim. On 20 December 2001 the applicant requested to be served with the written grounds of the judgment. He was served with these on an unspecified date and in June 2002 he lodged an appeal against the first-instance judgment.

39. The proceedings are pending.

II. RELEVANT DOMESTIC LAW

40. Article 287 of the Code of Civil Procedure provides that a court shall impose a fine on an expert who, without reasonable cause, consistently fails to comply with his or her obligation to submit a report to the court, or submits such report with a delay.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant complained about the length of the civil proceedings under Article 6 § 1 of the Convention, which provides, as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. The parties' submissions

42. The Government argued that the case had been complex as the court had had to obtain a number of expert medical opinions in order to assess whether the applicant had received adequate medical treatment. The complexity of the case had also resulted from the fact that it had been difficult to establish the State entity, which, following the extensive reforms of the public health sector in Poland, should assume the obligations of the previous defendant.

43. As to the applicant's conduct, the Government maintained that he had contributed to the prolongation of the proceedings. They referred to the following: he had initially failed to specify the amount of his claim; he had later extended his claim; he had requested the court to put fifty questions to the expert; and that he had refused to report for the examination scheduled by the expert A.K.S. at the time which she had proposed. They further stressed that the applicant had submitted a list of a further thirty questions to her after she had submitted her report to the court; that he had contested the conclusion of that report and that had he filed numerous pleadings with the court of no relevance to the case.

44. The Government finally argued that the judicial authorities had showed due diligence in the conduct of the case. The courts had made numerous, albeit unsuccessful, attempts to expedite the proceedings by trying to summon experts, by fixing the dates for the hearings at regular intervals and by establishing the defendant State entity. The Government admitted that the experts' conduct had contributed to the length of the proceedings.

45. The applicant disagreed with the Government's arguments and reiterated that the proceedings in the case had been too long.

B. The Court's assessment

1. Period to be taken into consideration

46. The Court observes that the proceedings were instituted on 13 June 1994 and are presently pending before the second-instance court. The period to be considered is, therefore, over eight years.

2. Reasonableness of the length of the proceedings

47. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities (see, among many other authorities, the Styranowski

v. Poland judgment of 30 October 1998, *Reports* 1998-VIII, § 46; *Zawadzki v. Poland*, no. 34158/96, 20.12.2001, § 69).

48. As to the complexity of the case, the Court has no doubts that the examination of the applicant's claim necessitated the taking of medical evidence. Nonetheless, the issue of the alleged incompetence of military dentists examined by the domestic courts and of the alleged damage to the applicant's health do not seem to be of such complexity as to justify by themselves the duration of the proceedings. Furthermore, as regards the difficulties with identifying the State entity to become the new defendant in the case, which arose at the beginning of 1999, the Court observes that at that time the proceedings had already been pending before the domestic courts for four and a half years. In the light of the overall length of the proceedings, which have remained pending for over eight years, these difficulties cannot on their own justify their length.

49. As to the applicant's conduct, the Court notes that he had repeatedly submitted pleadings to the courts and a variety of questions to the court experts, many of which do not seem to have been of any relevance to the case. It is also noted that he challenged the expert opinion submitted on 30 June 1999. On the whole, the Court acknowledges that the applicant certainly did not facilitate the first-instance's court's task to rule on his claim, if only by multiplying his unsolicited pleadings. However, while the applicant may to some extent have contributed to the length of the proceedings, he cannot be regarded as having done so in a decisive manner.

50. As regards the conduct of the authorities, the Court notes, firstly, that the case had been pending for four years and a half when the reform of the health care system, implemented in January 1999, led to serious difficulties, and a resultant delay in identifying the new defendant to assume the obligations of the previous one (see §§ 27, 29, 35 above). The Court further notes that the Ministry of Justice twice acknowledged, in their letters of 13 June 2000 and 1 October 2001 (see §§ 29, 37 above) that the proceedings had been too long.

51. The Court observes that serious delays resulted from the failure of the expert, who was first assigned to prepare the report, to discharge his obligations. Between 1996 and 1998 that expert, Mr J.P., failed on ten occasions to comply with the summonses to the hearings. As a result, all these hearings had to be adjourned and there was no progress in the proceedings throughout this period. The Court notes in this respect that the Government acknowledged that the experts had considerably contributed to the length of the proceedings.

52. The Court further observes that under the applicable provisions of Polish law, the court was empowered to impose fines on experts failing in their obligation to attend the hearings, yet chose not to do so in the present case. Neither has it been shown that the court took any steps in order to establish the reasons for the expert's absence, or that it urged him to comply

with the summonses and to attend the hearings. The Court considers that the failure of that expert to prepare his opinion in accordance with the court's request was one of principal reasons for the prolongation of the proceedings. Moreover, the court countenanced the expert's negligent conduct by its failure to take any steps to discipline him. No explanation therefor has been advanced by the Government.

53. The Court further notes that between August and December 1998 four experts whom the court requested to prepare an additional opinion for the applicant's case, refused to do so. Later on, professor A.K.S. was requested to prepare her opinion and she prepared it within a short time (§§ 23-24). However, after professor A.K.S. had died in September 2000, three further experts refused to prepare a new opinion. This prolonged the proceedings further. The Court emphasises in this respect that it is ultimately the State which is responsible for ensuring that the system of obtaining opinions of specialists for the purposes of civil cases functions efficiently and that the primary responsibility for delays resulting from the slowness of experts rests with the State (the *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 14, § 32).

54. Having regard to all the evidence before it, the Court concludes that the "reasonable time" within the meaning of Article 6 of the Convention has been exceeded. There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant claimed 8,670,685 Polish zlotys (PLN) for pecuniary and non-pecuniary damage arising out of the length of proceedings.

57. The Government submitted that the applicant's claims were excessive. They emphasised that no causal link has been shown between the facts of the case and the damage allegedly suffered by the applicant. They argued that the damage should be assessed in the light of the relevant case-law of the Court in its cases against Poland.

58. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to

the circumstances of the case, the Court awards the applicant EUR 4,000, as compensation for non-pecuniary damage.

B. Costs and expenses

59. The applicant did not claim reimbursement of legal costs.

C. Default interest

60. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom*, No. 28957/95, 3 July 2002, § 124).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President