



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

FOURTH SECTION

CASE OF PAŚNICKI v. POLAND

(Application no. 51429/99)

JUDGMENT

STRASBOURG

6 May 2003

FINAL

06/08/2003

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 Paśnicki v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 8 April 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 51429/99) 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") by a Polish national, Mr Janusz Paśnicki ("the applicant"), on 17 March 1999.

2. The applicant was represented by Mr A. Zieliński, a lawyer practising in Szczecin, Poland. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to a "hearing within a reasonable time" had not been respected.

4. 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 15 October 2002 the Court declared the application admissible.

THE FACTS

7. The applicant was born in 1936 and lives in Kamień Pomorski, Poland.

8. The applicant was a manager of the Kamień Pomorski health resort. On 14 May 1990 he filed an action with the Szczecin Regional Court (*Sąd Wojewódzki*), in which he requested that a certain A.P. ("the defendant") be ordered to stop spreading information damaging to the good name of the applicant and to retract in the press his defamatory statements.

9. Subsequently, the court held hearings on 2 July and 5 September 1990.

10. On 3 October 1990 the court held a hearing. It heard a witness and decided to stay the proceedings until the completion of proceedings concerning the applicant's dismissal from the position of manager. On 27 December 1991 the dismissal proceedings were terminated.

11. On 30 January 1992 the applicant requested the court to resume the defamation proceedings. On 7 December 1992 the trial court resumed the proceedings.

12. On 5 March 1993 the court adjourned a hearing, because of the lack of the defendant's pleadings in the case file.

13. On 11 August 1993 the applicant extended his claim.

14. On 21 October 1994 the court held a hearing.

15. On 6 December 1995 the court adjourned a hearing at the defendant's request.

16. On 24 January 1996 the court closed the examination of the case and announced that the judgment would be delivered on 7 February 1996. On 6 February 1996 the court reopened the examination of the case and decided that the defendant would be heard in Kamień Pomorski. On 19 February 1996 the court heard the defendant.

17. On 28 February 1996 the Szczecin Regional Court gave judgment. It ordered the defendant to retract his statements concerning the applicant in certain newspapers at his own expense.

18. On 8 August 1996 the applicant received a copy of the judgment. Subsequently, the defendant lodged an appeal against that judgment.

19. On 12 November 1996 the Poznań Court of Appeal (*Sąd Apelacyjny*) held a hearing and on 21 November 1996 it gave judgment. The court quashed the judgment of the Szczecin Regional Court and remitted the case for re-examination.

20. Despite numerous complaints by the applicant and his lawyer, the Szczecin Regional Court listed no hearing until 12 May 1999. On 12 January 1999 the applicant's lawyer complained to the President of the Poznań Regional Court about the delay in the proceedings. In a reply of 27 January 1999, the President of the Regional Court admitted that the complaint was justified.

21. On 12 May 1999 the court held a hearing.

22. On 28 June 2000 the Szczecin Regional Court held a hearing. It heard the applicant and adjourned the examination of the case for the purpose of hearing the defendant before the Kamień Pomorski District Court. The defendant was heard on 25 August 2000.

23. The next hearing was listed for 29 December 2000. The court closed the examination of the case and informed the parties that the judgment would be delivered on 12 January 2001. On 26 January 2001 the court gave judgment and dismissed the applicant's claim. On an unspecified date, in the second half of 2001, he appealed against the judgment.

24. It appears that the proceedings are pending.

THE LAW

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

25. The applicant complained that the length of the proceedings in his case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

26. The Government contested this view.

A. Period to be taken into consideration

27. The Court first observes that the proceedings started on 14 May 1990 when the applicant filed an action with the Szczecin Regional Court. However, the period to be taken into consideration began not on that date, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings are apparently still pending. The total length of the applicant's case at the date of the adoption of this judgment accordingly amounts to 12 years, 10 months and 25 days, of which the period of 9 years, 11 months and 7 days, falls within the Court's jurisdiction *ratione temporis*.

28. In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Reasonableness of the length of the proceedings

29. 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, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Humen v. Poland* cited above, § 60; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

30. The Government submitted that the case had been complex to some extent. They referred to three other proceedings concerning the applicant's post, pending simultaneously with the present case. Furthermore, they maintained that the defendant had substantially contributed to the length of the proceedings.

31. The applicant disagreed with the Government and argued that the case had not been complex.

32. The Court notes that the case concerned the alleged infringement of personal rights. It observes that the nature of the factual issues to be considered by the courts appeared to be of certain degree of complexity. However, nothing indicates that the case was of a particular complexity.

2. Conduct of the applicant

33. The Court notes that it is common ground that the applicant did not contribute to the length of the proceedings.

3. Conduct of the judicial authorities and what was at stake for the applicant.

34. The Government acknowledged that there had been two periods of inactivity in the proceedings. They pointed to the delay from November 1994 to December 1995 and from 21 November 1996 to 12 May 1999. They further submitted that the other periods of inactivity, namely from 1 May 1993 to 21 October 1994 and from May to June 2000, had been largely caused by the conduct of the defendant.

35. The applicant stated that the courts had failed to handle his case with due diligence.

36. The Court notes that the civil action initiated by the applicant on 14 May 1990 has still not been the subject of a final judgment (see paragraphs 8-24 above). The Court observes that there were two significant periods of inactivity attributable to the authorities. The first one lasted from 21 October 1994 to 6 December 1995 (see paragraphs 14 and 16 above). The second period of inactivity lasted from 21 November 1996 to 12 May

1999 (see paragraphs 20-21 above). The Court would underline that both periods of inactivity were admitted by the Government.

37. The Court also observes that the domestic authorities acknowledged that the proceedings had not been conducted speedily. In particular, in reply to the applicant's complaint about the conduct of the proceedings, the President of the Poznań Regional Court of 27 January 1999 acknowledged that the applicant's complaint was justified (see paragraph 20 above).

38. Furthermore, the Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, pp. 2180–81, § 55 *in fine*). Therefore the delay in the proceedings must be mainly attributed to the national authorities.

39. Having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant did not claim any pecuniary damage. However, under the head of non-pecuniary damage, he asked the Court to award him PLN 30,000.

42. The Government considered that the amount claimed was excessive. They asked the Court to rule that finding a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

43. The Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of his case, which is not sufficiently compensated by the finding of violation of Article 6 § 1 of the Convention. In the

circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant EUR 4,500 under this head.

B. Costs and expenses

44. The applicant sought reimbursement of PLN 9,760 by way of legal costs and expenses incurred in the domestic court proceedings.

45. The Government submitted that the costs and expenses incurred by the applicant in the domestic proceedings should not be reimbursed.

46. The Court recalls that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefor (see *the Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, it considers that the applicant has not shown that the legal costs and expenses claimed by him were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (see *the Zimmermann and Steiner*, cited above, pp. 14-15, § 37). The Court accordingly dismisses the claim.

C. Default interest

47. 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* [GC], no. 28957/97, § 124, to be published in ECHR 2002-...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation 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 4,500 (four and a half 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 6 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President