



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

FOURTH SECTION

CASE OF MALISZEWSKI v. POLAND

(Application no. 40887/98)

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 Maliszewski 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. 40887/98) 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, Roman Maliszewski ("the applicant"), on 8 December 1997.

2. The applicant was not represented before the Court. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

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

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 the 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 the Court.

6. On 10 July 2001 the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

7. 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).

THE FACTS

8. The applicant was born in 1958 and lives in Gliwice, Poland.

9. In December 1989 riots broke out in the Nowogard prison, where the applicant was serving his sentence in a medical ward due to his mental state. The applicant contends that he was beaten up by the prison officers who had been called to suppress the riots. Subsequently, he was transferred to the Brzeg prison where he was allegedly assaulted by a prison officer.

10. On 14 March 1991 the applicant filed an application with the Szczecin Regional Court (*Sąd Wojewódzki*) for compensation against the State Treasury. He claimed that he had sustained injuries as a result of the assaults by the prison officers in the Nowogard prison.

11. On 20 March 1991 the court exempted the applicant from payment of court fees. On 29 March 1991 he was granted legal aid.

12. On 27 August 1991 the court held a hearing.

13. At the end of 1991, at the applicant's lawyer request, the court stayed the proceedings, considering that the determination of the case depended on the outcome of the criminal proceedings against the prison officers involved in the events in the Nowogard prison.

14. On an unknown date in 1992 the criminal proceedings were terminated by the judgment of the Goleniów District Court (*Sąd Rejonowy*).

15. On 14 October 1992 the applicant's lawyer requested the Szczecin Regional Court to resume the proceedings.

16. On 10 February 1994 the trial court set a time-limit for the applicant to submit addresses of six witnesses to be heard by the court. On 1 March 1994 the applicant's lawyer requested the trial court to assist in establishing addresses of the witnesses.

17. On 24 October 1994 the Szczecin Regional Court resumed the impugned proceedings.

18. On 4 January 1995 the applicant complained to the trial court about the excessive length of the proceedings.

19. On 10 January 1995 the court held a hearing. Two witnesses did not appear. The court ordered an expert report by a psychiatrist.

20. On 29 April 1995 the applicant again complained to the court about the length of the proceedings.

21. On 16 May 1995 the court requested prisons in Gdańsk, Siedlce and Sztum to submit information on the whereabouts of three witnesses indicated by the applicant's lawyer. It also requested the Warsaw District Court, Stargard Szczecinski District Court and Gliwice District Court to take evidence from certain witnesses.

22. On 2 June 1995 the Stargard Szczecinski District Court informed the trial court that its request had not been executed because the whereabouts of the witnesses were unknown.

23. In the meantime, the applicant had changed his domicile by moving to Gliwice. On 13 May 1996 the trial court requested that the Gliwice District Court obtain the expert report due to the applicant's new domicile.

24. On 29 June 1995 the applicant was heard before the District Court.

25. On 23 October 1995 the trial court requested the Wyszaków Regional Court for legal assistance in taking evidence from a certain witness. On 17 November 1995 the Wyszaków Regional Court informed the trial court that the requested witness had failed to appear before the court.

26. On 1 February 1996 the Warsaw Regional Court heard a witness.

27. On 8 February 1996 the applicant's lawyer withdrew the evidence motion due to difficulties in establishing the whereabouts of the witnesses.

28. On 26 February 1996 the applicant complained to the trial court about the excessive length of the proceedings.

29. On 9 April 1996 the Institute of Forensic Medicine of the Silesian Medical Academy informed the court that it was not able to prepare a medical opinion on the applicant's state of health.

30. On 13 May 1996 the trial court requested the Gliwice Regional Court for legal assistance in obtaining a psychiatric opinion.

31. On 21 November 1996 the expert on psychiatry informed the court that he would not prepare the opinion since the applicant had failed to appear despite being summoned.

32. On 28 March 1997 the applicant informed the court that he had not been properly summoned for the psychiatric examination. On 28 May 1997 the applicant's lawyer informed the trial court that the applicant had not obtained any summons for the psychiatric examination.

33. On 3 June 1997 the court held a hearing.

34. On 17 September 1997 the presiding judge in the proceedings was changed.

35. On 19 September and 12 November 1997 respectively the applicant complained to the court about the excessive length of the proceedings.

36. On 18 February 1998 the court held a hearing and ordered an expert report by a psychiatrist.

37. On 28 April 1998 the applicant reported to the Knurów Psychiatric Clinic for examination but the doctor who had scheduled the appointment was absent. Later, the examination was carried out. On 8 May 1998 the opinion was submitted to the court.

38. A hearing listed for 3 June 1998 was adjourned. On 10 June 1998 the court held a hearing.

39. On 7 July 1998 the court gave judgment and dismissed the applicant's claim. The applicant appealed.

40. On 6 January 1999 the Poznań Court of Appeal held a hearing. On 13 July 1999 it upheld the first-instance judgment. It appears that the applicant did not lodge a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

THE LAW

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

41. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” principle, provided in Article 6 § 1 of the Convention, which reads as follows:

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

42. The Government contested that argument.

A. Period to be taken into consideration

43. The Court first observes that the proceedings started on 14 March 1991, when the applicant filed with the Szczecin Regional Court an application for compensation. However, the period to be taken into consideration began not on that date, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings in question ended on 13 July 1999 by the judgment of the Poznań Court of Appeal. Thus, they lasted eight years and four months, of which the period of six years, two months and twelve days falls within the Court’s jurisdiction *ratione temporis*.

44. The Court notes that in order to assess the reasonableness of the length of time in question, regard must be had to the stage reached in the proceedings on 1 May 1993 (see, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Admissibility

45. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The applicant’s submissions.

46. The applicant submitted that the case had not been complex. He stated that the courts, and more particularly, the court of first instance, had failed to handle his case with due diligence. In that regard, the applicant

especially criticised the manner in which the Szczecin Regional Court had proceed to obtain evidence from the witnesses indicated by him.

47. He further argued that he had not contributed to the length of the proceedings. In particular, the applicant stated that on one occasion he had not appeared before the psychiatric expert because he had not been duly summoned.

48. The applicant also maintained that he had expected the trial court to resume the proceedings after termination of the criminal case, without undue delay. Yet that court, despite the fact that the judgment in those other proceedings had been given on an unknown date in 1992, did not proceed with the applicant's claim. Almost two years elapsed and on 24 October 1994 the trial court resumed the proceedings.

2. The Government's submissions.

49. The Government contended that the case had been complex as it necessitated the obtaining of a legal assistance in order to take evidence from the witnesses indicated by the applicant's lawyer. The Government underlined that the Szczecin Regional Court had faced difficulties in establishing their whereabouts. They further submitted that due to the applicant's domicile the trial court had to request legal assistance in order to hear evidence from the applicant and obtain a psychiatric opinion on his state of health.

50. The Government maintained that the applicant had contributed to the length of the proceedings by requesting the court to stay the proceedings. Also, the fact that the applicant had not appeared before the psychiatric expert brought about a further delay in the proceeding.

51. The Government considered that the relevant courts had acted with due diligence in handling the applicant's case. However, the Government acknowledged two questionable periods in the examination of the case. The first one lasted from 27 August 1991 to 10 February 1994, of which the period after 1 May 1993 falls within the Government's responsibility. The second period lasted from 1 March 1994 until 8 February 1996. The Government claimed that the delays had been caused by objective reasons.

3. The Court's assessment.

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Humen v. Poland* cited above, § 60).

53. The Court considers that, even though the case involved a measure of procedural complexity on account of the need to transfer the case between different courts, it cannot be said that this in itself justified the length of the proceedings.

54. Leaving aside the question whether the respondent State can be held responsible for every delay in the proceedings, it is to be noted that, as admitted by the Government (see paragraph 51 above), there were delays in the proceedings. In particular, the Court observes that two years elapsed (almost one year and a half after 30 April 1993) between the date on which the applicant requested the court to resume the proceedings and the date on which the trial court resumed them. Moreover, the Court finds that there was a delay of over eight months, namely from 3 June 1997 to 18 February 1998, when the applicant's case lay completely dormant. The Court notes that the Government's observations do not explain these delays.

55. The Court also observes that after 1 May 1993 the Regional Court held only four hearings in the case, namely on 10 January 1995, 3 June 1997, 18 February 1998 and 10 June 1998.

56. The Court further notes that the applicant considered that the stay of the proceedings might expedite the determination of his claim. The Court finds no reason why the applicant's exercise of his procedural rights can be seen as dilatory conduct. It is not, therefore, persuaded by the Government's arguments that the applicant contributed to the length of the proceedings.

57. Consequently, 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

58. The applicant further complained under Article 3 of the Convention that he was assaulted by prison officers in December 1989.

Article 3 provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

59. The Court recalls that the complaint relates to facts which took place before 1 May 1993, the date on which Poland's declaration recognising the right of individual petition took effect.

60. Therefore, this part of the application is inadmissible as being incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed a total sum of EUR 50,000 as a compensation for non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of his trial.

63. 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.

64. 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 4,000 under this head.

B. Costs and expenses

65. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

66. 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. *Declares* admissible the complaint under Article 6 § 1 relating to the excessive length of the proceedings;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
5. *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