



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

FOURTH SECTION

CASE OF DYBO v. POLAND

(Application no. 71894/01)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

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 Dybo v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 23 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 71894/01) 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 Czesław Dybo ("the applicant"), on 30 November 1999.

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

3. On 17 December 2002 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. It also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1919 and lives in Lubań, Poland.

5. The applicant was involved in administrative proceedings concerning the amount of the veteran benefit he had been receiving since 1974. On 12 September 1995 the Supreme Administrative Court gave a judgment in his case. The court, *inter alia*, ordered the Office for Veterans and Persecuted Persons (*Urząd do Spraw Kombatantów i Osób Represjonowanych*) to pay the applicant a sum of PLN 10 as reimbursement of the court fees. In May 1997 the applicant received from the Office for Veterans and Persecuted Persons only a half of the awarded sum (PLN 5).

6. In April 1997 the applicant lodged with the Lubań District Court (*Sąd Rejonowy w Lubaniu*) a civil action against the Office for Veterans and Persecuted Persons. He claimed compensation and payment of, *inter alia*, the remaining sum of PLN 5.

7. On 7 May 1997 the Lubań District Court transmitted the case to the Warsaw District Court.

8. The Warsaw District Court held one hearing and on 30 November 1998 it gave a default judgment (*wyrok zaoczny*) against the defendant ordering it to pay PLN 50 in compensation and PLN 30 as a reimbursement of the court fees. The court ordered that the judgment should be immediately enforceable.

9. On 30 March 1999 the defendant lodged an objection against this decision.

10. On 18 October 1999 the Warsaw District Court suspended the enforcement order in respect of the judgment of 30 November 1998.

11. The applicant asked the court to order again that the judgment of 30 November 1998 be immediately enforceable. On 29 October 1999 the Warsaw District Court dismissed his request. The applicant appealed against this decision and was ordered to pay the court-fees. On 22 August 2000 his appeal was rejected due to the applicant's failure to pay the court fees. In the appeal procedure against this decision he was also ordered to pay the court-fees. Finally, the applicant paid the court-fees and on 16 December 2002 the Warsaw Regional Court (*Sąd Okręgowy*) examined his appeal against the decision of 29 October 1999 and dismissed it.

12. On 23 October 1999 the Warsaw District Court, sitting *in camera*, decided that the applicant would be heard by the Lubań District Court. It appears that this court failed to hear the applicant and on 25 April 2002 the trial court repeated its request.

13. On 28 June 2002 the Lubań District Court heard the applicant.

14. The proceedings are pending before the Warsaw District Court.

THE LAW

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

15. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement 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 ... hearing within a reasonable time by [a] ... tribunal...”

16. The Government contested that argument.

17. The period to be taken into consideration began in April 1997 and has not yet ended. It has thus lasted six years and five months.

A. Admissibility

18. The Government submitted that the applicant's litigation was of vexatious nature and that his application to the Court constituted an abuse of a right of individual application under Article 35 § 3 of the Convention. Moreover, the Government argued that the applicant did not intend to pursue his application because he did not provide detailed information as to the facts of his case after October 1999.

19. The applicant stated that he was unable to comment on the Government's submissions because they were written in English. He submitted that he did not understand this language and could not afford the costs of translation.

20. The Court observes that the applicant's action originated from the lack of full enforcement of a final judgment of the Supreme Administrative Court. In his action, in addition to payment of the remaining sum of PLN 5, the applicant sought compensation. In the light of the above and taking into consideration the fact that the applicant is eighty-four years old and disabled, the Court is not persuaded by the Government's arguments that the applicant's litigation was vexatious and his application to the Court should be considered as an abuse of a right of individual application.

21. Furthermore, the Court considers that on the basis of the applicant's submissions to the Court, there is no indication that he does not intend to pursue his application.

22. The Court notes that the application 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. The Court will therefore declare the case admissible.

B. Merits

1. The submissions before the Court

23. The Government acknowledged that the case was not complex.

24. As regards the conduct of the applicant, the Government submitted that he partly contributed to the length of the proceedings because he had been lodging requests and appeals.

25. The Government stressed that what was at stake for the applicant was of pecuniary nature and of minor importance as his claim concerned the sum of PLN 5.

26. With regard to the conduct of the domestic authorities, the Government were of the opinion that they showed due diligence in ensuring the proper course of the proceedings.

27. The applicant stressed that the Office for Veterans and Persecuted Persons treated him unfairly and humiliated him by, *inter alia*, failing to enforce the Supreme Administrative Court's judgment. In the consequence, he turned to the court for help and redress. However, the court not only did not award him any compensation but also caused additional stress and financial hardship by prolonging the proceedings.

2. *The Court's assessment*

28. 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* [GC], no. 26614/95, § 60, 15 October 1999).

29. As regards the complexity of the case, the Court observes that the Government acknowledged that the case was a simple one.

30. The Court is not persuaded by the Government's arguments that the applicant contributed to the overall length of the proceedings by actively participating in the proceedings. Moreover, the Court is of the opinion that the applicant's requests and appeals were important for him as they concerned enforceability of the default judgment and exemption from the court fees (see paragraph 11 above).

31. As regards the conduct of the domestic authorities, the Court notes that since the beginning of the proceedings, in April 1997, the Warsaw District Court held only one hearing on 30 November 1998 at which it gave a default judgment (see paragraph 8 above). Although subsequently the trial court took some action since it dealt with the applications concerning the enforceability order and exemption from the court-fees, this does not justify the lack of examination of the merits of the applicant's case. Moreover, the Court notes that the examination of the applicant's appeal against a decision to dismiss his application to grant the enforceability order lasted over three years which significantly contributed to the delay in examining the case (see paragraph 11 above).

32. The Court is of the view that what was at stake for the applicant, was of minor importance.

33. The Court considers that, in the particular circumstances of the instant case, a period of six years and five months exceeds a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant did not claim any particular sum in respect of pecuniary and non-pecuniary damage. However, he requested the Court to grant him just satisfaction in the amount it considered equitable, given the detriment suffered by him on account of the length of the proceedings in his case.

36. The Government 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.

37. The Court is of the view that the applicant must have experienced some frustration and irritation because of the delays involved. Bearing in mind the modest nature of what was at stake in the domestic proceedings, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed reimbursement of the costs and expenses incurred before the domestic courts and for those incurred before the Court. However, he did not specify the amount sought in this respect and did not provide any supporting documents.

39. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

40. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court dismisses this claim.

C. Default interest

41. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President