



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

FOURTH SECTION

CASE OF PACHNIK v. POLAND

(Application no. 53029/99)

JUDGMENT

STRASBOURG

30 March 2004

FINAL

30/06/2004

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 Pachnik v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 9 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 53029/99) 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 Jerzy Pachnik ("the applicant"), on 13 November 1998.

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

3. On 3 July 2001 the Court 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.

4. 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

5. The applicant was born in 1934 and lives in Warsaw, Poland.

A. Facts prior to 1 May 1993

6. In 1989 the applicant, a lorry driver, was involved in a traffic accident. As a result of that accident he sustained serious head injuries. Subsequently, he was granted a disability pension.

7. In 1991 a criminal court acquitted the applicant of breaching traffic regulations and established that the accident had been caused by a defective road surface.

8. On 15 May 1992 the applicant lodged with the Warsaw Regional Court (*Sąd Wojewódzki*) an action for damages against the State Treasury – the Kielce Regional Directorate of State Roads (*Dyrekcja Okręgowa Dróg Publicznych*) and the State Insurance Company (*PZU S.A.*).

9. On 29 September 1992 the court decided to transfer the case to the Kielce Regional Court. On 30 October 1992, upon the applicant's appeal, the Warsaw Regional Court quashed the decision of 29 September 1992.

10. A hearing listed for 16 April 1993 was adjourned.

B. Facts after 30 April 1993

11. A hearing scheduled for 18 June 1993 was adjourned at the request of the defendants.

12. Subsequently, on 28 September 1993 the court held a hearing at which it heard the applicant.

13. On 23 November 1993 the Busko-Zdrój District Court, at the trial court's request, heard certain witnesses.

14. On 11 February 1994 the trial court held a hearing at which the parties applied to adduce new evidence. Upon the defendants' application the court adjourned the hearing *sine die*.

15. On 14 February 1995 the court ordered an expert opinion. In June 1995 the opinion was submitted to the court.

16. Between 12 February 1994 and 4 February 1996 no hearings were held.

17. Subsequently, hearings were held on 5 February 1996, 13 May 1997 and 5 January 1998 at which the court heard expert witnesses and ordered new expert opinions.

18. At the hearing held on 3 April 1998 the court joined as co-defendant a certain road works company.

19. On 8 June, 10 September and 15 December 1998 the court held hearings. All of them were adjourned at the request of the defendants or because of the absence of witnesses.

20. On 14 January 1999, at the trial court's request, the Kielce District Court heard a witness.

21. Subsequently, the trial court held hearings on 8 February and 1 April 1999.

22. On 23 September 1999 the Warsaw Regional Court gave judgment. It awarded the applicant non-pecuniary damages and a monthly allowance to be paid by the State Treasury – the Regional Directorate of State Roads. The court dismissed the applicant's claims in respect of two other co-defendants.

23. On 3 March 2000 the State Treasury lodged an appeal against the judgment.

24. On 31 July 2000 the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed the impugned judgment in respect of the monthly allowance awarded to the applicant and remitted it to the first-instance court. It upheld the remaining part of the judgment.

25. In February and March 2001 the applicant applied to adduce new evidence and asked the court to speed up the proceedings.

26. The trial court held the first hearing on 20 September 2001.

27. In 2002 the court held four hearings.

28. On 19 January 2004 the Warsaw Regional Court held a hearing and on 22 February 2004 it gave a partial judgment (*wyrok częściowy*). The proceedings in respect of the remainder of the claim are pending before the Warsaw Regional Court.

THE LAW

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

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

30. The Government contested that argument.

31. The Court notes that the period to be taken into consideration began not on 15 May 1992 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition of Poland of the right of individual petition took effect. The proceedings are pending (see paragraphs 8 and 28 above).

It follows that the proceedings have lasted so far over eleven years and eleven months, out of which ten years and eleven months are taken into consideration by the Court.

32. In assessing the reasonableness of the time in question the Court will have regard to the state of the case on 1 May 1993.

A. Admissibility

33. 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 it admissible.

B. Merits

1. *The submissions before the Court*

34. The Government submitted that the case was complex. They referred, *inter alia*, to the number of defendants and the fact that the trial court had ordered several expert opinions.

35. As regards the applicant's conduct the Government submitted that he did not contribute to the prolongation of the proceedings "to a significant degree." In this respect they noted that the applicant had appealed against the decision to transfer the case to the Kielce Regional Court given on 29 September 2002. The Government further acknowledged that the defendants were responsible for several delays.

36. The Government maintained that domestic authorities acted with due diligence and that there were no substantial periods of inactivity for which the courts could be held responsible.

37. With regard to what was at stake for the applicant, the Government acknowledged that the case concerned compensation to a victim of a road accident in examination of which the domestic authorities should display special diligence. The Government, however, argued that since 1989 the applicant had been receiving disability benefit and that his claim was partly decided on 31 July 2001. Therefore, they submitted that the remaining part of the applicant's claim was solely of a pecuniary nature.

38. The applicant submitted that he had turned to a court seeking compensation for an accident which caused his disability and suffering. However, after having been waiting for over ten years for the proceedings to end he lost faith in the Polish judiciary. The delay increased his fear that he would pass away before having his claim examined. Finally, the applicant submitted that the protracted length of the proceedings humiliated him and caused additional stress, frustration and financial hardship.

2. *The Court's assessment*

39. 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).

40. The Court considers that the case involved a certain degree of complexity as the facts of the case had to be assessed against the expert evidence. However, the complexity of the case cannot explain the overall length of the proceedings.

41. As regards the conduct of the applicant, the Court notes that it cannot examine the Government's contention that the applicant had contributed to the length of the proceedings since the alleged contribution took place before 1 May 1993, which is the date on which the declaration whereby Poland recognised the right to individual petition took effect. Accordingly, the Court holds that the information before it does not indicate that the applicant by his behaviour contributed to the length of the proceedings.

42. As regards the conduct of the domestic authorities the Court observes that several substantial periods of inactivity occurred in the course of the proceedings. In particular, no hearings were held between February 1994 and February 1996. The subsequent periods between hearings lasted fifteen and eight months (see paragraphs 16 and 17 above). While it is true that during these periods the domestic court took some actions and waited for expert opinions to be prepared, the Court notes that the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44). Finally, the Court observes that fourteen months elapsed between the quashing of the first-instance judgment by the Court of Appeal on 20 July 2000 and the date on which the trial court held the first hearing (see paragraphs 24 and 26 above). The Court notes that the Government did not provide any explanation for this delay.

43. The Court notes that the applicant's action concerned compensation and pension for an accident which made him an invalid and diminished the quality of his life. Therefore the Court agrees that what was at stake in the litigation at issue was of significant importance to the applicant and required that the domestic courts show diligence and expedition in handling his case.

44. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of over eleven years and eleven months, out of which ten years and eleven months are taken into consideration by the Court *ratione temporis*, without a final decision having yet been reached, 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

45. 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

46. The applicant claimed 300,000 Polish zlotys (PLN) in respect of pecuniary and PLN 200,000 in respect of non-pecuniary damage.

47. The Government submitted that the applicant’s claims were excessive.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

49. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, it awards the applicant 9,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant, who was unrepresented, also claimed PLN 60,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

51. Again, the Government submitted that the applicant’s claim was excessive.

52. 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 considers it reasonable to award the sum of EUR 100 for costs and expenses in the proceedings before the Court.

C. Default interest

53. 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President