



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

FOURTH SECTION

CASE OF POLITIKIN v. POLAND

(Application no. 68930/01)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

27/07/2004

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 Politikin 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. BORRERO BORRERO, *judges*

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

Having deliberated in private on 30 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 68930/01) 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, Ms Joanna Politikin ("the applicant"), on 4 July 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, by Ms S. Jaczewska, of the Ministry of Foreign Affairs.

3. On 11 February 2003 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.

THE FACTS

4. The applicant was born in 1942 and lives in Warsaw.

5. On 21 March 1994 the Municipal Housing Board for Warsaw-Żoliborz (*Zarząd Budynków Komunalnych "Żoliborz"*) lodged with the Warsaw District Court (*Sąd Rejonowy*) a civil action against the applicant. The plaintiff sought to terminate the payment of an annuity (*renta wyrównawcza*) to the applicant.

6. The trial court held hearings on 7 July, 19 October, 12 December 1994 and 9 February 1995.

7. On 20 February 1995 the District Court exempted the applicant from the court-fees.

8. On 5 March 1996 the court held a hearing.
9. On 23 December 1997 the trial court, sitting *in camera*, ordered an expert opinion. The opinion was submitted to the court in June 1998.
10. On 9 March 1999 the court held a hearing.
11. On 7 July 2000 the trial court ordered a supplementary expert opinion.
12. On 17 July 2001 the trial court decided to exempt the applicant from the costs of the expert opinion.
13. On 20 August 2002 the expert submitted his opinion to the court.
14. On 23 October 2002 the court held a hearing.
15. On 19 November 2002 the Warsaw District Court gave judgment in which it dismissed the plaintiff's claim and increased the applicant's annuity.
16. The parties did not appeal against it and the judgment became final.

THE LAW

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

17. 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 21 March 1994 and ended on 19 November 2002 with the Warsaw District Court's judgment. It thus lasted almost eight years and eight months.

A. Admissibility

20. The Government submitted that the applicant cannot claim to be a “victim” within the meaning of Article 34 of the Convention because she obtained a favourable ruling of the domestic court. They maintained that “the alleged violation of Article 6 was rectified by (...) dismissing the plaintiff's claim”. The Government concluded, that the application should be declared incompatible *ratione personae* with the Convention.

21. The applicant contested this view and submitted that her application to the Court concerned the unreasonable length of the proceedings and not the matter of not receiving the annuity.

22. The Court recalls that under Article 34 of the Convention it may receive applications from individuals and others “claiming to be the victim

of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see, *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1288, §§ 56-59).

23. The Court reiterates that the concept of "victim" as used in Article 34 of the Convention must be interpreted autonomously and independently of domestic law concepts, such as a capacity to bring or take part in legal proceedings (see, *Greek Federation of Customs Officers, Gialouris and others v. Greece*, no. 24581/94, Commission decision of 6 April 1995, DR 81-B, p. 123). The Court further recalls that the term "victim" refers to the person directly affected by the act or omission at issue, the existence of a violation being conceivable even in the absence of prejudice.

24. According to the case-law of the Court, the fact that the final judgment given in the domestic proceedings was in favour of the applicant, does not deprive her of "victim" status for the purposes of a length complaint (see, *Byrn v. Denmark*, no. 13156/87, Commission decision of 1 July 1992, DR 76, p. 5).

25. The Court considers that, since the applicant's complaint relates merely to the length of the domestic proceedings she can claim to have been directly affected by the allegedly excessive length of the proceedings to which she was a party and, thus, can be considered a "victim" within the meaning of Article 34 of the Convention (see, *Gavrielidou v. Cyprus* (dec.), no. 73802/01, 13 November 2003).

26. Accordingly, the Court rejects the Government's preliminary objection. It further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and 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

27. The Government submitted that the case was not very complex and that the applicant had not contributed to the length of the proceedings.

28. The Government further acknowledged that there were certain delays attributable to the domestic authorities. In particular, they agreed that some periods of inactivity were caused by the lengthy preparation of expert opinions.

29. Finally, the Government submitted that what was at stake for the applicant had already been satisfied by the domestic authorities.

30. The applicant submitted that the case was not complex and that in the course of the proceedings there were several delays for which the trial court and the court-appointed experts were responsible.

31. With regard to what was at stake for her, the applicant argued that the protracted length of the proceedings during which the payment of her annuity was suspended, caused a great hardship to her and her family.

2. *The Court's assessment*

32. 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).

33. The Court notes that the Government acknowledged that the case was not complex and that the applicant had not contributed to the length of the proceedings. It sees no reason to hold otherwise.

34. With regard to the conduct of the domestic authorities, the Court notes that the Government acknowledged that there were some periods of inactivity attributable to the trial court. Indeed, the Court observes that the Warsaw District Court remained totally inactive during several substantial periods lasting from twelve to twenty-one months (see paragraphs 7 to 15 above). Another substantial period of inactivity occurred between July 2000, when the court ordered a supplementary expert opinion, and August 2002, when this opinion was submitted to the trial court. The Court reiterates that 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, among many other authorities, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44).

35. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of almost eight years and eight 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

36. 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

37. The applicant claimed 20,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

38. The Government did not comment on the applicant's claim.

39. The Court is of the view that the applicant suffered damage of a non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, it awards the applicant EUR 4,700 in respect of non-pecuniary damage.

B. Default interest

40. 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 4,700 (four thousand seven hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of 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;

Done in English, and notified in writing on 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President