



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

FOURTH SECTION

CASE OF RYCHLICZY v. POLAND

(Application no. 51599/99)

JUDGMENT

STRASBOURG

18 May 2004

FINAL

18/08/2004

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 Rychliccy v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mr S. PAVLOVSKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 27 April 2004

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 51599/99) 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 two Polish nationals, Mrs Jolanta Rychlicka and Mr Ryszard Rychlicki ("the applicants"), on 8 January 1999.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz.

3. The applicants complained, *inter alia*, under Article 6 § 1 of the Convention about the length of compensation proceedings.

4. The applications were 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. By a decision of 7 May 2002, *re merits* (Rule 54 § 3), the Court declared the applications partly admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

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

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are a married couple living in Goleniów.

9. On 2 October 1988 the second applicant was seriously injured in a car accident during his professional military service in a military unit in G. On 3 November 1988 the investigations concerning the accident were discontinued, as the driver who had caused it had died.

10. Following the accident, the second applicant became disabled. On 14 December 1989 the military medical panel assessed his health loss at 100 per cent. He lost his ability to speak, is tetraplegic and suffers from depression. On 10 April 1990 the second applicant left military service.

11. On 23 November 1992 the military unit G. informed the State Insurance Company (Państwowy Zakład Ubezpieczeń), hereinafter referred to as SIC) of the accident and inquired about possible insurance entitlements that the second applicant might have had.

12. On 2 February 1993 the first applicant, acting also on behalf of her husband, lodged with the Szczecin Regional Court a compensation claim against the G. military unit and against the Stargard Szczeciński branch of the SIC. She also claimed to be granted a monthly allowance as she had to give up work in order to take full-time care of her husband. She submitted a power of attorney given by her husband. On 12 May 1993 the court ordered the applicants to identify the defendant more precisely.

13. On 11 June 1993 the Szczecin Regional Court exempted the applicants from the court fees.

14. On 23 February 1994 the applicants requested the court to fix a date for the hearing in the case.

15. On 8 December 1994 the court ordered that the statement of claim be served on the defendants.

16. On 29 December 1994 the Stargard Szczeciński branch of the SIC, the second defendant, lodged its written pleadings with the court. On 5 January 1995 the defendant military unit G. filed with the court its reply to the applicant's statement of claim, and on 10 January 1995 it lodged further pleadings. On 21 January 1995 the court ordered the applicant to respond to the defendants' pleadings.

17. On 15 March 1995 the Stargard branch of the SIC requested the court to summon the Goleniów branch of the SIC as another defendant.

18. On 10 April 1995 the applicants concluded a settlement with the Goleniów branch of the SIC, providing for a payment of PLN 20,000 and a monthly pension.

19. The court summoned the Goleniów branch of the SIC on 15 November 1995 to participate in the proceedings. On 16 January 1996

the statement of claim was served on the third defendant. On 19 February 1996 the Goleniów branch of the SIC submitted pleadings in which it requested that the proceedings against it be discontinued, referring to the settlement of 10 April 1995.

20. On 12 April 1996 the court ordered that the applicants be served with this reply and fixed the hearing for 4 July 1996.

21. On 13 May 1996 the applicants requested the Szczecin Regional Court to have regard to the second applicant's disability and to transmit the case to the District Court in Goleniów in the vicinity of their domicile. On 17 July 1995 the Szczecin Regional Court informed the applicants that under the applicable legal provisions the case had to be conducted before the Szczecin Regional Court as it was the latter which was competent to entertain it, regard being had to the amount of the claim.

22. On 25 July 1996 a first hearing was held in the case. The court discontinued the proceedings concerning the Goleniów branch of the SIC and requested the applicants to specify their claim against the Stargard branch of the SIC. The court also allowed the applicant's request to have a legal aid lawyer appointed to the case. On 20 August 1996 the local Bar Association appointed Z.K. to the case. On 4 October 1996 the court ordered that relevant case documents be served on him. On 3 January 1996 the court urged Z.K. to state the applicant's position.

23. On 18 February 1997 the lawyer assigned to represent the second applicant in the case under the legal aid scheme lodged with the court his pleadings on behalf of the plaintiffs. The court summoned him to specify the claims and rectify some other shortcomings in the pleadings. On 2 April 1997 he specified the applicants' compensation claims at 60,000 PLN (Polish zlotys). On 28 May 1997 the court ordered that pleadings be served on the defendants.

24. On 2 July 1997 the applicants withdrew their claim against the Stargard branch of the SIC.

25. The next hearing was held on 30 October 1997. The court ordered that expert evidence be taken concerning the damage to the applicant's health caused by the accident, the future prospects of improvement, if any, and necessary rehabilitation. It also ordered that a military hospital provide the second applicant's medical file. The file was submitted on 15 November 1997. On 22 April 1998 the court requested another hospital to submit another medical file.

26. At the next hearing on 15 July 1998 the applicant's counsel specified the legal basis of the applicant's claim, submitting that the failure of the applicant's military unit to inform the SIC of the accident had resulted in the applicant's not receiving compensation to which he was entitled under the non-compulsory accident insurance policy. The court quashed its own decision of 30 October 1997 concerning the taking of medical evidence and requested the Stargard branch of the SIC to submit the accident file, having

regard to the applicant's submissions as to the legal basis of their claim. The Stargard branch of the SIC submitted the file to the court on 5 October 1998.

27. On 2 November 1999 the court discontinued the proceedings in so far as it related to the Stargard branch of the SIC. The applicants appealed, submitting that the proceedings should not have been discontinued as the SIC had failed to express its consent thereto. On 15 December 1998 the court requested the applicants' lawyer to rectify the formal shortcomings in the appeal. On 19 February 1999 the case-file was forwarded to the Poznań Court of Appeal. On 9 March 1999 the latter court summoned the applicants' lawyer to rectify some other shortcomings in the appeal. On 13 April 1999 the appellate court quashed the decision of 2 November 1999.

28. On 14 June 1999 the Stargard branch of the SIC requested that the proceedings against it be discontinued. On 27 July 1999 the court accordingly discontinued the proceedings.

29. The next hearing scheduled for 21 January 2000 was adjourned as the applicants' lawyer was ill. On 21 February 2000 the court requested the local bar to appoint another lawyer for the applicants and on 21 March 2000 the Szczecin Bar Association assigned Ms. E. W.G. to the case.

30. On 26 May 2000 the G-1 military unit informed the court that the G. military unit had been dissolved, the G-1 unit not being the legal successor of the former. At the hearing of 29 May 2000 the court stayed the proceedings in order to establish the legal successor of the G. military unit. On 14 June 2000 the proceedings were resumed. On 20 July 2000 the President of the Civil Division of the Court established that in fact the G-1 unit was the successor of the dissolved G. unit. At the hearing of 21 September 2000 the court allowed evidence from the SIC's accident file, closed the hearings and adjourned the delivery of the judgment until 29 September 2000.

31. On 29 September 2000 the court delivered the judgment by which it dismissed the applicants' claims, finding that the inactivity of the G. military unit had no bearing on the insurer's liability under the non-compulsory insurance scheme.

32. On 22 November 2000 the applicants lodged an appeal with the Szczecin Regional Court, to be forwarded to the Poznań Court of Appeal.

33. On 25 April 2001 the Poznań Court of Appeal dismissed the applicants' appeal.

34. On 29 May 2001 the applicants requested the Poznań Court of Appeal to exempt them from the cassation court fee. On 20 August 2001 the applicants requested the local bar to appoint another lawyer for lodging a cassation appeal.

35. On an unspecified date the court discontinued the proceedings concerning the lodging of the cassation. The applicants appealed against this decision.

36. The parties have not provided further information about the proceedings. The proceedings appear to be pending.

THE LAW

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

37. The applicants complained that the length of the proceedings was 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...”

A. The Parties’ submissions

38. As to the complexity of the case, the Government were of the opinion that this case had not been particularly complex.

39. As to the applicants’ conduct, the Government acknowledged that the applicants had not contributed to the length of the proceedings.

40. As to the conduct of the authorities, the Government were of the opinion that the judicial authorities had shown due diligence in dealing with the applicants’ case.

41. The applicants emphasised the long periods of inactivity on the part of the courts.

42. The Government finally argued that what was at stake in the proceedings was not particularly important for the applicants as in April 1995 they had been paid a lump sum of PLN 20,000 (appr. FF 40,000 at that time) under the compulsory insurance policy. Therefore, what was at stake for them in the present case which concerned their entitlements under the non-compulsory accident insurance scheme was of a pecuniary nature only and thus the proceedings did not necessitate particular diligence on the part of the courts.

43. In this connection, the first applicant argued that her husband had become totally disabled, that his health necessitated permanent care and assistance of other persons, that she was taking care of him on a continuous basis and that their financial situation was very difficult.

B. The Court's assessment

1. Period to be taken into consideration

44. The Court notes that the proceedings were initiated on 2 February 1993 and they are still pending. They therefore have already lasted 11 years and one month, of which 10 years and over 10 months fell after 1 May 1993, the date on which Poland's declaration acknowledging the right of individual petition became effective.

2. Reasonableness of the length of the proceedings

45. 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; *Zwierzynski v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

46. As to the complexity of the case the Court shares the Government's opinion that this case was not complex.

47. As to the applicants' conduct the Court considers that, although the applicant's lawyer showed a certain lack of diligence, they did not significantly contribute to the length of the proceedings.

48. Regarding the conduct of the authorities, the Court notes firstly that from 11 June 1993 to 8 December 1994 there was no progress in the proceedings. It was only on 8 December 1994 that the court ordered that the statement of claim be served on the defendants, i.e. one year and ten months after the case had been lodged with the court.

49. The Court notes that there was no progress in the case throughout 1995: during that year the court only took a decision to summon another branch of the insurance company as a co-defendant.

50. The Court observes that the second co-defendant lodged their pleadings with the court on 19 February 1996, but it was only on 12 April 1996 that the court ordered the pleadings to be served on the applicants.

51. The Court further observes that the first hearing on the merits of the case was held on 26 July 1996, i.e. more than three years and five months after the case had started.

52. Moreover, the applicants' lawyer appointed under the legal aid scheme lodged pleadings with the court on 2 April 1997 and the court ordered it to be served on the defendants on 28 May 1997.

53. The Court notes that on 2 November 1998 the Szczecin Regional Court discontinued the proceedings in respect of one of the defendants. This decision was quashed by the appellate court, on the applicant's appeal, on

the ground that it was flawed by the lack of the defendant's consent to the discontinuance, and a new identical decision was issued on 14 July 1999, i.e. a period of more than seven months without any progress in the case.

54. Finally, there was a delay between the procedural decision of 14 July 1999 and the next hearing held on 29 May 2000.

55. As to what was at stake for the applicants, the Court cannot accept the Government's argument. The overall circumstances of the case must be borne in mind, in particular the fact that the second applicant became totally disabled as a result of the accident. While it is true that the applicants were granted compensation in 1995, it cannot be said that this was sufficient to compensate them fully for all the consequences of the accident for the applicants' quality of life and reduced prospects.

56. Having regard to all the evidence before it, the Court concludes that a "reasonable time" within the meaning of Article 6 of the Convention has been exceeded. There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicants claimed 516,000 Polish zlotys (PLN) as compensation for pecuniary and non-pecuniary damage. They submitted that the amount claimed related to suffering and distress caused by the excessive duration of the proceedings. This amount included also 60,000 PLN from the life insurance policy and a life pension in the amount of 2,000 PLN per month. They referred to their difficult financial situation and to the fact that the second applicant had become totally disabled and that his health necessitated permanent care and assistance.

59. The Government noted that there was no causal link between the applicants' claim for compensation and the alleged violation of the Convention. They regarded the applicants' claims as exorbitant. The Government argued that the damage should be assessed in the light of the relevant case-law of the Court in its cases against Poland and of the relevant national economic circumstances.

60. The Court observes that there is no causal link between the facts in respect of which it has found a breach of the Convention and the pecuniary

damage for which the applicants seek compensation. The Court's conclusion, on the evidence before it, is that the applicants have failed to demonstrate that the pecuniary damage pleaded was actually caused by the length of the proceedings. Consequently, there is no justification for making any award to them under that head (see *Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-X).

61. On the other hand, the Court accepts that the applicants can reasonably be considered to have suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicants should be awarded 8,000 euros (EUR).

B. Costs and expenses

62. The applicants did not claim reimbursement of legal costs and expenses incurred in the proceedings.

C. Default interest

63. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President