



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

FOURTH SECTION

CASE OF RADEK v. POLAND

(Application no. 30311/02)

JUDGMENT
(friendly settlement)

STRASBOURG

20 July 2004

This judgment is final but it may be subject to editorial revision.

In the case of Radek 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 Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 30311/02) 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 Mirosław Radek (“the applicant”), on 18 December 1998.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Jakub Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 of the Convention about the length of a set of civil proceedings.

4. On 10 September 2003 the Court decided to communicate the application 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.

5. On 15 September 2003, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 22 January 2003 and on 11 February 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1958 and resides in Wołów.

7. On 19 January 1999 the applicant instituted a civil action against the State Treasury before the Wrocław Regional Court. He claimed damages in

respect of inadequate medical care when he was in custody. He maintained that despite his numerous complaints to prison doctors he had been treated with painkillers only and eventually suffered a heart attack which could have been avoided.

8. The first hearing in the case was scheduled on 31 January 2000. On that date the court decided to order a report from medical experts. The court requested a forensic institute to file a report within a certain time-limit. On 17 February 2000 the case-file was transmitted to the Wrocław Forensic Institute. Apparently, the report was not delivered within the time-limit set. The applicant complained to the regional court and to the court of appeal about delays in the examination of his claim. He demanded that a hearing be scheduled. In reply, he was informed that a hearing would only be scheduled after receipt of the medical report.

9. On 11 December 2001 the court imposed a fine of PLN 500,00 on the Wrocław Forensic Institute for unjustified delays in delivering the report. On 5 June 2002 another fine of PLN 1000,00 was imposed on the institute. The report was eventually delivered on 16 March 2003. It confirmed that the applicant had not received adequate medical care in custody. It was sent to the parties for comments. On 23 April 2003 the defendant State Treasury filed its pleadings in which it challenged the conclusions of the expert report. The proceedings remain pending. No hearing was scheduled.

THE LAW

A. Admissibility

10. 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. Solution reached

11. The applicant complained under Article 6 § 1 of the Convention that the compensation proceedings exceeded a reasonable time.

12. On 11 February 2004 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 15,000 zlotys to Mirosław Radek. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgement by the

Court pursuant to the Article 39 of the Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

13. On 22 January 2004 the Court received the following declaration signed by the applicant:

“I note that the Government of Poland are prepared to pay me the sum of 15,000 zlotys covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the above mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Poland in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court’s judgement.”

14. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

15. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides the application admissible;
2. Decides to strike the case out of the list;
3. Takes note of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President