



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

FOURTH SECTION

CASE OF MARSZAŁ v. POLAND

(Application no. 63391/00)

JUDGMENT

STRASBOURG

14 September 2004

FINAL

14/12/2004

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 Marszał v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr J. CASADEVALL,

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 24 August 2004,

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

PROCEDURE

1. The case originated in an application (no. 63391/00) 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, Mrs Jadwiga Marszał ("the applicant"), on 7 July 1999.

2. The applicant was represented by Mr J. Zaleski, a lawyer practising in Katowice, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 13 February 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.

THE FACTS

4. The applicant was born in 1954 and lives in Bytom, Poland.

A. Proceedings for compensation and reinstatement

5. The applicant worked as the head of the sales department in a coal mine "Rozbark" in Bytom. On 24 August 1994 she was dismissed from her job.

6. On 2 September 1994 she lodged a claim for compensation and reinstatement with the Bytom District Court of Labour (*Sąd Rejonowy*

Wydział Pracy). Before 26 January 1995 the trial court held four hearings and heard evidence from one witness.

7. On 2 March 1995 the parties reached a friendly settlement and the District Court discontinued the proceedings. On 16 March 1995 the applicant's lawyer asked the court to resume the proceedings, as the defendant company had failed to comply with the terms of the settlement. On 27 June 1995 the Katowice Regional Court (*Sąd Wojewódzki*) quashed the decision of 2 March and resumed the proceedings.

8. On 21 September 1995 the District Court held a hearing. On 23 October 1995 it stayed the proceedings until the conclusion of criminal proceedings against the applicant (referred to below). The applicant's further appeal against that decision was dismissed by the Katowice Regional Court of Labour on 28 December 1995.

9. On 28 January 1999 the applicant asked the court to resume the proceedings. On 25 March 1999 the court held a hearing. On 29 October 1999 it dismissed her application. On 29 December 1999, on the applicant's appeal, the Katowice Regional Court resumed the proceedings.

10. Between 9 March and 5 December 2000 the court held five hearings and heard evidence from five witnesses. On 5 December 2000 the Bytom District Court gave judgment. The court granted the applicant compensation and dismissed her claim for reinstatement. Both parties appealed.

11. On 8 May and 5 June 2001 the Regional Court held hearings. On 15 October 2001 the applicant sent a letter to the President of the Katowice Regional Court asking for a hearing date to be set.

12. On 21 November 2001 the Regional Court dismissed the defendant's appeal. 20 December 2001 the Regional Court gave judgment and dismissed the applicant's appeal. The judgment is final.

B. Criminal proceedings

13. On 30 December 1995 the Bytom District Prosecutor (*Prokurator Rejonowy*) submitted to the Bytom District Court (*Sąd Rejonowy*) a bill of indictment against the applicant and three other employees of the "Rozbark" coal mine. The applicant was charged with carrying out fraudulent financial operations. On 14 March 1996 the Bytom District Court returned the case-file to the District Prosecutor instructing him to complete the investigation. The District Prosecutor appealed. On 3 April 1996 the Katowice Regional Court (*Sąd Wojewódzki*) ordered the District Court to proceed with the case.

14. During the proceedings the District Court held fifteen hearings and heard evidence from several witnesses.

15. On 23 September 1998 the Bytom District Court delivered a judgment and acquitted the applicant. The District Prosecutor appealed.

16. On 8 February 1999 the Katowice Regional Court quashed the first-instance judgment and remitted the case to the prosecution authorities for a further investigation.

17. On 10 July 1999 the District Prosecutor ordered an expert opinion to be obtained. The expert submitted his opinion on 22 October 1999. On 2 August 1999 the Bytom District Prosecutor decided to stay the investigation until an expert on management prepared an opinion.

18. On 15 December 1999 the applicant sent a letter to the Regional Prosecutor complaining about the slow progress of the proceedings. On 20 March 2000 she sent another letter to the Minister of Justice (*Minister Sprawiedliwości*) asking about the progress of the investigation proceedings. In a letter of 14 March 2000 the Bytom District Prosecutor informed the applicant that there were difficulties in finding an expert competent to prepare an opinion.

19. On 30 April 2001 the expert on management submitted his opinion to the Prosecutor. The investigation was resumed on 2 July 2001.

20. On 28 December 2001 the District Prosecutor submitted to the Bytom District Court a bill of indictment against the applicant and three other persons.

21. On 28 August 2003 the Bytom District Court discontinued the criminal proceedings against the applicant.

THE LAW

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

22. The applicant complained that the length of both sets of the proceedings in her case had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. That Article reads, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ... by [a] ... tribunal...”

23. The Government contested this view.

24. 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, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60).

A. Civil proceedings

1. Period to be taken into consideration

25. The period to be taken into consideration began on 2 September 1994 and ended on 20 December 2001. It thus lasted 7 years, 3 months and 3 weeks.

2. Admissibility

26. 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. It must therefore be declared admissible.

3. Merits

27. The Government submitted that the case was particularly complex, as the civil proceedings were linked to the criminal proceedings. They admitted that the applicant had not contributed to the length of the proceedings. As to the conduct of the relevant authorities, they contended that the authorities had shown due diligence in the course of the proceedings. In the conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

28. The applicant generally disagreed with the Government's observations and alleged that her right to a hearing within "reasonable time" had been violated.

29. The Court considers that even though the case involved a certain degree of complexity, it cannot be said that this in itself justified the overall length of the proceedings.

30. As regards the conduct of the applicant, the Court observes that the Government acknowledged that the applicant had not in any way contributed to the length of the proceedings (see paragraph 27 above).

31. As to the conduct of the national authorities the Court notes that the proceedings were stayed for a substantial period of more than four years (see paragraphs 8 and 9 above). It further considers that the Government's observations do not explain this delay.

32. Lastly, the Court notes that what was at stake in the litigation at issue was undoubtedly of crucial importance to the applicant, as it concerned an employment dispute and a claim for reinstatement. Consequently, it required that the domestic courts show special diligence and expedition in handling her case.

33. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time.

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

B. Criminal proceedings

I. Period to be taken into consideration

35. The period to be taken into consideration began on 30 December 1995 and ended on 28 August 2003. It thus lasted nearly 7 years and 8 months.

2. Admissibility

36. 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. It must therefore be declared admissible.

3. Merits

37. The Government claimed that the applicant's case had been complex. The complexity of the case stemmed from the nature of the offence with which the applicant was charged. In that context, they stressed that during the investigation the prosecutor had heard evidence from 200 witnesses. Also, the first bill of indictment contained a list of 85 witnesses to be heard and the second a list of 94 witnesses. Moreover, there had been four co-accused in the proceedings. The Government further argued that the only preventive measure imposed on the applicant had been police supervision. Thus, the case did not require "special diligence" unlike in the cases concerning persons kept in detention for a considerable part of or the whole period of proceedings (see, *Kreps v. Poland*, judgment of 26 July 2001, § 52). Lastly, they submitted that the applicant had not contributed to the length of the proceedings.

38. The applicant generally disagreed with the Government's observations and alleged that there had been a violation of Article 6 § 1.

39. Considering the complexity of the case, the Court accepts the Government's assertion that it was complex. That is clearly shown by the volume of evidence obtained and heard during the proceedings. However, it cannot be said that this in itself justified the overall duration of the proceedings.

40. As regards the conduct of the applicant, the Court notes that the Government acknowledged that the applicant had not contributed to the length of the proceedings (see paragraph 37 above). It finds no reason to hold otherwise.

41. With reference to the conduct of the national authorities, the Court observes that there were delays in the proceedings which resulted from the slow process of obtaining evidence. There was a substantial period of inactivity i.e. between 2 August 1999 and 30 April 2001 (see paragraphs 17-19 above).

42. Consequently, having regard to the overall duration of the proceedings, the Court finds that the reasonable time requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant sought an award of 39,237.25 Polish zlotys in respect of pecuniary damage. That amount corresponded to 50 % of 5 years’ salary which the applicant should have received if she had not been dismissed from her job. She further claimed the sum of 30,000 Polish zlotys for non-pecuniary damage that she had suffered as a result of the protracted length of the proceedings.

46. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention. They further argued that the applicant’s claims were excessive.

47. As regards the pecuniary damage, the Court’s conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to her under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

48. The Court further considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot sufficiently be compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 5,000 euros (“EUR”) under that head.

B. Costs and expenses

49. The applicant also claimed 12,000 Polish zlotys for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In particular, she asked for 1,250 Polish zlotys for fees and costs in the preparation and presentation of her case before the Convention institutions.

50. The Government invited the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 14, § 36).

51. According to the Court's case-law, an applicant is entitled to reimbursement of the costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 300 for the proceedings before the Court.

C. Default interest

52. 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 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement, together with 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President