



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

FOURTH SECTION

CASE OF OSTROWSKI v. POLAND

(Application no. 63389/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

28 September 2004

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

In the case of Ostrowski 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 J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 63389/00) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Adolf Ostrowski (“the applicant”), on 17 October 1998.

2. The applicant was represented by Mr W. Hermelinski, a lawyer practising in Warszawa. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and subsequently Mr. J. Wołasiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his right to a “hearing within a reasonable time” had not been respected.

4. By a decision of 3 June 2003 the Court declared the application admissible.

5. On 4 June 2004, after an exchange of correspondence, 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 3 August 2004 the applicant submitted a formal declaration accepting a friendly settlement of the case. The Government's declaration was received on 5 July 2004.

THE FACTS

6. The applicant lives in Piotrków Trybunalski, Poland.

7. On 28 December 1993 the applicant sued the Polmozbyt State Enterprise ("the Polmozbyt") in the Łódź District Court (*Sąd Rejonowy*), seeking return of payment made for an allegedly defective car.

8. On 21 June 1994 the court ordered an expert opinion to be obtained. It was submitted to the court on 28 September 1994.

9. On 18 January 1995, FSO Warszawa, the manufacturer of the car, joined the proceedings as an intervener (*interwenient uboczny*) on behalf of the defendant.

10. The court held hearings on 30 June, 9 August and 6 October 1995.

11. On 19 October 1995 the court ordered that another expert opinion be obtained. It was submitted to the court on 29 November 1995. On 1 March and 29 April 1996 the court held hearings.

12. On 2 July 1996 the court requested the laboratory of the Łódź Regional Police Headquarters (*Wojewódzka Komenda Policji*) to prepare an expert report in respect of the defects of the car paint. On 25 July 1996 the laboratory informed the court that it was not competent to prepare the report. On 23 December 1996 the court quashed its order of 2 July 1996. On the same date it also ordered that the report at issue be obtained from the Institute of Forensic Experts (*Instytut Ekspertyz Sądowych*) in Cracow. The applicant could not place his car at the disposal of the Institute because the car registration book had not been renewed due to technical defects of the car.

13. The court held hearings on 5 December 1997 and on 20 January, 24 February and 22 September 1999.

14. On 29 September 1999 the Łódź District Court gave judgment and dismissed the applicant's claim. On 16 February 2000 the applicant asked the court to grant him leave to appeal out of time. On 20 June 2000 the court refused his request.

THE LAW

15. The applicant complained under Article 6 § 1 of the Convention that his right to a "hearing within a reasonable time" had not been respected.

16. On 5 July 2004 the Court received the following declaration signed by the applicant:

“I note that the Government of Poland are prepared to pay the sum of 15,000 Polish zlotys to Mr Adolf Ostrowski with a view of securing a friendly settlement of the above mentioned case pending before the European Court of Human Rights.

This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses and will be payable within three months from the date of notification of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. 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.

I accept the proposal and declare that the applicant waives 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 the applicant 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 judgment.”

17. On 3 August 2004 the Court received the following declaration from the Government:

“I declare that the Government of Poland offer to pay 15,000 Polish zlotys to Mr Adolf Ostrowski with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and it will be payable within three months from the date of notification of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. 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.”

18. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *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 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President