



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

FOURTH SECTION

CASE OF DURASIK v. POLAND

(Application no. 6735/03)

JUDGMENT

STRASBOURG

28 September 2004

FINAL

28/12/2004

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 Durasik 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 S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mrs F. ELEN-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. 6735/03) 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 Danuta Durasik (“the applicant”), on 6 February 2003.

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

3. On 18 February 2004 the President of the Fourth Section 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 was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1951 and lives in Łódź, Poland.

5. On 4 November 1993 the applicant lodged with the Łódź Regional Court (*Sąd Wojewódzki*) a civil action against the State Treasury – the Zgierz Hospital. She claimed compensation and a monthly pension for damage she had sustained as a result of a medical treatment at the Zgierz Hospital.

6. On 5 November 1993 the court exempted the applicant from the court-fees.

7. On 20 March 1995 the trial court held the first hearing.

8. Subsequently, hearings were held on 12 June and 13 November 1995.

9. On 27 November 1995 the Łódź Regional Court gave judgment. It dismissed the applicant's action. The trial court found no fault on the part of the doctors concerned and accordingly dismissed the liability of the State Treasury for the damage.

10. The applicant appealed against this judgment.

11. On 28 February 1996 the Lodz Court of Appeal (*Sąd Apelacyjny*) quashed the impugned judgment and remitted the case to the Regional Court.

12. The trial court held the first hearing on 2 October 1996.

13. At the subsequent hearings which were held on 29 August and 12 November 1997 the trial court ordered an expert opinion and heard an expert witness.

14. At the hearing held on 23 January 1998 the defendant asked the court to prepare another expert opinion.

15. Between 24 January 1998 and 18 January 1999 no hearings were held.

16. Subsequently, the Łódź Regional Court held six hearings and on 22 July 1999 it gave judgment. The trial court again dismissed the action.

17. The applicant appealed against the judgment.

18. The Łódź Court of Appeal held five hearings and on 9 October 2001 it gave judgment. The appellate court partly allowed the appeal and awarded the applicant PLN 4,000 in compensation. The court found, *inter alia*, that the doctors had failed to act diligently; consequently, the State Treasury was liable for the damage sustained by the applicant.

19. On 29 January 2002 the applicant lodged a cassation appeal with the Supreme Court.

20. On 29 October 2002 the Supreme Court (*Sąd Najwyższy*) rejected her cassation appeal.

THE LAW

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

21. The applicant complained that the length of the proceedings had been 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...”

22. The Government contested that argument.

23. The period to be taken into consideration began on 4 November 1993 and ended on 29 October 2002. It thus lasted almost nine years.

A. Admissibility

24. 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.

B. Merits

25. 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 following criteria: the complexity of the case, the conduct of the applicant and 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). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 50,000 euros (EUR) and a EUR 200 monthly pension in respect of non-pecuniary damage.

30. The Government submitted that the applicant's claims were excessive.

31. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards applicant EUR 5,000 under that head.

B. Default interest

32. 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, to be converted into Polish zlotys at the rate applicable at 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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