



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

FOURTH SECTION

CASE OF KUŚMIERKOWSKI v. POLAND

(Application no. 63442/00)

JUDGMENT

STRASBOURG

5 October 2004

FINAL

05/01/2005

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 Kuśmierkowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 14 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 63442/00) 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, Mr Henryk Kuśmierkowski ("the applicant"), on 11 April 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and Mr. J. Wołosiewicz.

3. On 10 July 2001 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 1953 and lives in Dębno, Poland.

5. In 1989 the applicant was injured in a traffic accident. Later, a medical board assessed his disability as being of the first degree (serious) and he was granted a disability pension. The applicant also applied to PZU S.A., an insurance company, for a monthly allowance compensating him for his loss of ability to work (*renta uzupełniająca*). The company refused his request.

6. On 14 May 1991 the applicant sued PZU S.A. in the Gorzów Wielkopolski Regional Court (*Sąd Wojewódzki*), seeking an award of a monthly allowance. On 23 November 1992 the court partly granted his claim. The applicant appealed.

7. On 19 May 1993 the Poznań Court of Appeal (*Sąd Apelacyjny*) partly quashed the contested judgment and remitted the case.

8. The Regional Court held hearings on 13 January and 25 August 1994. At the hearing held on 27 October 1994 the applicant modified his claim. On 24 March 1995 the trial court asked the applicant to specify his claim. On 9 May 1995 the applicant submitted to the court his modified statement of claim.

9. The court held hearings on 8 June 1995, 7 December 1995 and 29 February 1996. On 5 April 1996 the court ordered an expert opinion. It was submitted to the court on 31 May 1996. On 17 July 1996 the court ordered an opinion from yet another expert. The expert submitted it to the court on 27 July 1996.

10. The court held a hearing on 20 February 1997. The hearing scheduled for 22 May 1997 was cancelled. On 15 December 1997 a supplementary opinion was submitted to the court.

11. Further hearings were held on 29 January 1998 and 20 April 1999. On 17 June 1999 yet another supplementary expert opinion was submitted to the court. On 4 November 1999 the court held a hearing.

12. On 18 November 1999 the Regional Court gave judgment and dismissed the applicant's claim. The applicant appealed. On 13 June 2000 the Poznań Court of Appeal upheld the first-instance judgment. The judgment is final.

THE LAW

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

13. 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..."

14. The Government contested that argument.

A. Period to be taken into consideration

15. The Court first observes that the proceedings began on 14 May 1991 when the applicant lodged his claim with the Gorzów Wielkopolski Regional Court and ended on 13 June 2000. However, the period to be taken into consideration began on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. Their length accordingly amounted to 9 years and 1 month, of which the period of 7 years, 1 month and 12 days falls within the Court's jurisdiction *ratione temporis*.

16. In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999)

B. Admissibility

17. 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.

C. Merits

1. The Government's submissions

18. The Government submitted that the case had been complex as the trial court needed to obtain expert evidence.

19. They further stressed that the domestic authorities had shown due diligence in the proceedings. They were also of the opinion that the trial court had effectively supervised the experts.

20. Lastly, they argued that the applicant had contributed to the length of the proceedings as he had modified his claim on several occasions.

21. In conclusion they asked the Court to find that there had been no violation of Article 6 § 1 of the Convention.

2. The applicant's submissions

22. The applicant disagreed with the Government's submissions.

23. He further claimed that the authorities had not shown due diligence in the proceedings. In this respect he referred to the fact that there had been long intervals between the hearings.

24. Lastly, he stressed that the proceedings in his case had been excessively long.

3. *The Court's assessment*

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 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] § 60 cited above).

26. The Court considers that even though the case involved a certain degree of complexity on account of a need to obtain expert evidence, it cannot be said that this in itself justified the overall length of the proceedings.

27. The Court further observes that the applicant's conduct, in particular the manner in which he exercised his procedural rights, had not substantially contributed to the length of the proceedings.

28. Considering the conduct of the authorities the Court observes that there were several periods of inactivity in the proceedings i.e. between 27 October 1994 and 24 March 1995, 20 February and 15 December 1997, 29 January 1998 and 20 April 1999 (see paragraphs 8, 10 and 11 above). There were also delays resulting from the slow process of obtaining evidence.

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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**

32. The applicant did not seek any award in respect of pecuniary damage. He asked for PLN 16,000 in respect of non-pecuniary damage that he suffered as a result of the protracted length of the proceedings.

33. The Government contested this claim.

34. The Court 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 EUR 3,500 under that head.

B. Costs and expenses

35. The applicant also claimed PLN 8,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

36. The Government contested the claim.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were 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.

C. Default interest

38. 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of 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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President