



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

FOURTH SECTION

CASE OF PRZYGODZKI v. POLAND

(Application no. 65719/01)

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 Przygodzki 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. BORREGO BORREGO,

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. 65719/01) 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 Jan Przygodzki ("the applicant"), on 21 December 1998.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołasiwicz 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 1954 and lives in Kielce, Poland.

5. On 8 and 9 November 1993 the national newspaper A published articles about unemployment and unfair treatment of employees by certain employers.

6. On 9 December 1993 the applicant lodged with the Kielce Regional Court (*Sąd Wojewódzki*) a civil action for protection of his personal rights (*o ochronę dóbr osobistych*) against the newspaper A and journalists B and C. The applicant, who at that time was the president of the "P" company and the president of the Polish Party of Unemployed, claimed that the articles included untrue information about him.

7. On 11 March 1994 the applicant was partly exempted from the court-fees.
8. On 8 June 1994 the trial court held the first hearing.
9. Subsequently, hearings were held on 14 November and 5 December 1994.
10. In 1995 the trial court held six hearings and heard several witnesses.
11. On 30 January, 18 April, 6 September and 3 October 1996 the court held hearings.
12. On 10 October 1996 the Kielce Regional Court gave judgment. It dismissed the applicant's action.
13. On 30 December 1996 the applicant lodged an appeal against this judgment.
14. On 28 February 1997 the Kraków Court of Appeal (*Sąd Apelacyjny*) held a hearing and dismissed his appeal.
15. On 5 May 1997 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).
16. On 22 December 1997 the Supreme Court allowed his appeal, quashed the impugned judgment and remitted the case.
17. On 3 July 1998 the Court of Appeal held a hearing and gave judgment. It again dismissed the applicant's appeal.
18. On 10 December 1998 the applicant lodged a cassation appeal with the Supreme Court.
19. On 4 July 2001 the Supreme Court refused to entertain the cassation appeal as it raised no important legal issues and was manifestly ill-founded.

THE LAW

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

20. 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 9 December 1993 and ended on 4 July 2001. It thus lasted seven years, six months and twenty-six days.

A. Admissibility

23. The Court notes that this complaint 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

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 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). Finally, the Court agrees that some delays in the procedure before the Supreme Court could be explained by the fact that, during the material time the Supreme Court had to deal with an increased workload and that subsequently the authorities had taken remedial actions (see, *Kepa v. Poland* (dec), no. 43978/98, 30 September 2003). Nevertheless, in the present case, the applicant's cassation appeal lay dormant in the Supreme Court for thirty months which constitutes an unreasonable delay.

25. 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).

26. 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. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 11 OF THE CONVENTION ON ACCOUNT OF AN UNFAIR TRIAL

27. The applicant complained that the facts of his case disclose a violation of Articles 6 and 11 of the Convention in that he did not have a "fair trial."

28. However, the Court finds that the applicant's assertions about the violations of the above provisions of the Convention are wholly unsubstantiated.

29. It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 300,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 2,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed reimbursement of the costs and expenses incurred before the domestic courts.

35. The Government submitted that they could not bear any responsibility for the costs and expenses incurred by the applicant during the proceedings before the domestic courts.

36. 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 dismisses this claim.

C. Default interest

37. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
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 2,500 (two thousand five hundred 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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President