



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

FOURTH SECTION

CASE OF LIPOWICZ v. POLAND

(Application no. 57467/00)

JUDGMENT

STRASBOURG

19 October 2004

FINAL

19/01/2005

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 Lipowicz 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 28 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 57467/00) 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 Lipowicz ("the applicant"), on 10 May 1999.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, and subsequently, Mr. J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the length of civil proceedings in his case had been excessive.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 6 May 2003 the Court declared the application admissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1948 and lives in Budapest, Hungary.

7. The applicant used to work in the Budapest office of the company "Ars Antiqua Restauro" ("A.A.R.") registered in Poland. On 17 May 1995

he was dismissed from his job. On 27 May 1995 he lodged a claim for reinstatement with the Warsaw District Court (*Sąd Rejonowy*).

8. The court held hearings on 27 July and 5 December 1995. On 1 February 1996 the applicant asked the court to issue an interim order to safeguard his claim in the proceedings. On 2 April 1996 the court refused his request. On 14 May 1996 the Warsaw Regional Court (*Sąd Wojewódzki*) dismissed the applicant's appeal against that decision.

9. On 2 April 1996 the court held a hearing. At the next hearing held on 23 July 1996 the applicant modified his claim. As a consequence, the case was transferred to the Regional Court.

10. The court held further hearings on 5 November and 17 December 1996. It also decided that two witnesses should be heard by two other courts. The witnesses were heard by the Cracow District Court and the Wrocław District Court on 30 June and 3 September 1997, respectively. On 26 November 1997 and 20 January 1998 the Regional Court held hearings. The hearing listed for 2 February 1998 was cancelled.

11. At the hearing held on 7 April 1998 the Regional Court ordered the applicant to specify his claim. On 27 April 1998 the applicant modified his claim.

12. On 27 May 1998 the court stayed the proceedings on the ground that the applicant had not complied with the order of 7 April 1998.

13. Upon the applicant's appeal, on 9 July 1998 the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed the decision of 27 May 1998.

14. On 30 March 1999 the Regional Court ordered the applicant to specify his claim. On 4 April 1999 he submitted his pleading to the court.

15. On 1 June 1999 the court held a hearing.

16. On 9 November 1999 the Regional Court stayed the proceedings because the president of the defendant company, who was its representative, had died. Upon the applicant's appeal the Warsaw Court of Appeal quashed that decision on 28 December 1999.

17. On 27 September 2000 the court again stayed the proceedings, since the defendant company had not yet appointed a new representative. That decision was set aside by the Warsaw Court of Appeal on 21 November 2000.

18. On 15 February 2001, for the third time, the Regional Court stayed the proceedings. On 26 May 2001 the Warsaw Court of Appeal dismissed the applicant's appeal.

19. On 27 August 2001 the applicant's lawyer asked the trial court to appoint a guardian to act on behalf of the "A.A.R."

20. On 4 December 2002 the Warsaw District Court appointed a guardian. The proceedings were resumed at a later unknown date.

21. On 11 February 2003 the Warsaw Regional Court gave judgment. The applicant lodged an appeal against this judgment.

22. On 3 December 2003 the Warsaw Court of Appeal upheld the first-instance judgment.

23. The applicant filed a cassation appeal with the Supreme Court. It appears that the cassation proceedings are pending.

THE LAW

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

24. The applicant complained that the length of the proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention, which 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...”

The Government contested this view.

A. Period to be taken into consideration.

25. The period to be taken into consideration began on 27 May 1995 and in the light of the material available to the Court at the date of the adoption of the present judgment has not yet ended. It thus has already lasted 9 years and 4 months.

B. Reasonableness of the length of the proceedings

1. The Government's submissions.

26. The Government submitted that the case had been complex as the applicant had modified his claim.

27. They further claimed that what was at stake for the applicant in the proceedings was solely of a pecuniary nature.

28. The Government were further of the opinion that the applicant had significantly contributed to the length of the proceedings as he had on several occasions modified his claim.

29. Lastly, they maintained that the authorities had shown due diligence in the proceedings.

2. The applicant's submissions

30. The applicant argued that his case had not been complex.

31. He further maintained that there had been much at stake for him in the proceedings as they concerned his claim for reinstatement.

32. Lastly, he stressed that the manner in which he had exercised his procedural rights had not substantially delayed the proceedings.

3. *The Court's assessment*

33. 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 GC], no. 26614/95, 15 October 1999, § 60).

34. In the present case the Court first observes, that what was at stake for the applicant in the proceedings in question was of crucial importance to him, taking into consideration that he sought reinstatement. In this respect the Court reiterates that an employee who considers that he or she has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, employment disputes by their nature calling for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see, among other authorities, the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72, and the *Caleffi v. Italy* judgment of 24 May 1991, Series A no. 206-B, p. 20, § 17). The Court cannot therefore accept the Government's view that special diligence was not necessary in the present case.

35. 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).

36. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant sought an award of USD 85,000 in respect of pecuniary and non-pecuniary damage. In addition he also asked for USD 10,000 to be paid to charity.

40. The Government submitted that the applicant's claims were excessive and that there had been no causal link between the length of the proceedings and the amount claimed.

41. 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 him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

42. 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 4,000 euros (“EUR”) under that head.

B. Costs and expenses

43. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

44. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *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 4,000 (four thousand 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 on the above amount;

(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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President