



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

FOURTH SECTION

CASE OF MEJER AND JAŁOSZYŃSKA v. POLAND

(Application no. 62109/00)

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 Mejer and Jałoszyńska 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 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. 62109/00) 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 Polish nationals, Mr Jan Mejer (the first applicant) and Mrs Mirosława Jałoszyńska (the second applicant) on 24 May 1999.

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

3. The applicants alleged, in particular, that the length of the proceedings in their case had been incompatible with the "reasonable time" requirement.

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 3 June 2003 the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1942 and the second applicant was born in 1944. They both live in Wrocław, Poland.

8. On 19 May 1994 the applicants, employees of the Wrocław Technical University (*Politechnika Wrocławska*) and members of a trade union, were informed by their employer that as from 1 September 1994 their employment contracts would be modified and that they would be transferred.

9. On 24 May 1994 the applicants sued the Wrocław Technical University in the Wrocław-Śródmieście District Court (*Sąd Rejonowy*), seeking the annulment of the employer's decisions. The court joined their actions.

10. As a result of the applicants' refusal to accept the proposed changes to their employment contracts, they were dismissed from their jobs with effect from 31 August 1994. Subsequently, the applicants modified their claims and filed actions for reinstatement with the Wrocław-Śródmieście District Court.

11. On 15 September 1994 the court held a first hearing in the case. It imposed a fine on the defendant for having failed to appear before the court. The court held hearings on 20 October and 6 December 1994, and 10 January 1995. The hearing listed for 27 January 1995 was cancelled because the judge rapporteur was ill.

12. On 24 February 1995 the court held a hearing and heard evidence from the parties and witnesses. On 10 March 1995 the second applicant asked the court not to fix hearings on Wednesdays and Fridays, since she would not be able to appear before the court. At the hearing held on 1 June 1995 the court heard evidence from other witnesses. On 16 June 1995 the court ordered that the case file be obtained from the Wrocław-Śródmieście District Prosecutor (*Prokurator Rejonowy*).

13. On 6 July, 28 September and 7 December 1995, and 5 January 1996 the court held hearings.

14. On 16 January 1996 the District Court gave judgment. The applicants appealed.

15. On 16 April 1996 the Wrocław Regional Court (*Sąd Wojewódzki*) held a hearing. On 30 April 1996 the Regional Court quashed the first-instance judgment and remitted the case.

16. The hearing before the District Court listed for 31 July 1996 was adjourned because the defendant's lawyer had failed to appear before the court. On 4 October 1996 the court held a hearing and heard evidence from

a witness. The hearing listed for 5 December 1996 was adjourned because a witness had not appeared before it.

17. On 7 February 1997 the District Court gave judgment and ordered that the applicants be reinstated. The defendant appealed.

18. On 27 January and 28 April 1998 the Wrocław Regional Court held hearings. On 9 July 1998 the court ordered the defendant's lawyer to produce certain documentary evidence.

19. On 17 September 1998 the court adjourned a hearing because a summoned witness had not appeared before the court. On 26 November 1998 the court held a hearing and heard a witness.

20. On 10 December 1998 the Regional Court gave judgment. It set aside the first-instance judgment in respect of the applicants' reinstatement and awarded them compensation for unlawful dismissal.

21. The applicants lodged their cassation appeals with the Supreme Court (*Sąd Najwyższy*). On 15 October 1999 the Supreme Court set aside the judgment of the Regional Court and remitted the case.

22. On 9 May and 5 September 2000 the court held hearings. At the hearing held on 28 November 2000 the applicants challenged two judges of the Regional Court. On 12 December 2000 the court dismissed their request as unfounded.

23. Subsequently, on 2 February 2001 the applicants challenged seven judges of the Wrocław Regional Court. On 15 March 2001 the court dismissed this request as unfounded. Another hearing was held on 26 June 2001.

24. At the hearing held on 5 July 2001 the Regional Court gave judgment.

25. On 28 September 2001 the applicants lodged a cassation appeal with the Supreme Court.

26. On 5 December 2002 the Supreme Court dismissed the applicants' cassation appeal. The judgment is final.

THE LAW

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

27. The applicant complained that the length of the proceedings in their 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

28. The period to be taken into consideration began on 24 May 1994 and ended on 5 December 2002. It thus lasted 8 years, 6 months and 12 days.

B. Reasonableness of the length of the proceedings

1. The applicants' submissions

29. The applicants argued that their case had not been complex.

30. They further maintained that there had been much at stake for them in the proceedings, as they had concerned reinstatement.

31. Lastly, they stressed that the manner in which they exercised their procedural rights had not substantially delayed the proceedings.

32. In conclusion they invited the Court to find that there had been a violation of Article 6 § 1 of the Convention.

2. The Government's submissions

33. The Government argued that the case had involved complex issues of fact and law.

34. They further submitted that the authorities had shown due diligence in dealing with the case.

35. The Government were also of the opinion that the applicants had contributed to the prolongation of the proceedings. In particular, they had modified their claim on several occasions and they had also lodged two unfounded applications for the trial judges to step down.

36. Lastly, they claimed that there had been no violation of Article 6 § 1 in the proceedings.

3. The Court's assessment

37. 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).

38. In the present case the Court first observes, that what was at stake for the applicants in the proceedings in question was of crucial importance to them, taking into consideration that they 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).

39. The Court further considers that the applicants' conduct and the manner in which they exercised their procedural rights, had not substantially contributed to the length of the proceedings. In particular, the applicants' claims for the judges to step down resulted in a total delay of two months (see paragraphs 22 and 23 above).

40. 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).

41. 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.

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

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Both applicants sought an award of EUR 35,000 each, in respect of pecuniary damage. They further asked for EUR 15,000 for each of them in respect of non-pecuniary damage.

45. The Government submitted that the second applicant's claims were excessive and that there had been no causal link between the length of the proceedings and the amount claimed. They did not comment on the first applicant's claims.

46. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicants have 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 them under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

47. The Court further considers that the applicants 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 each of the applicants a total sum of 2,500 euros (“EUR”) under that head.

B. Costs and expenses

48. The second applicant also claimed EUR 400 for the costs and expenses incurred before the domestic courts (lawyer's fees).

49. The Government invited the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred in the preparation of the applicant's case before the Court and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 14, § 36).

50. According to the Court's case-law, an applicant is entitled to reimbursement of the 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 in the domestic proceedings.

C. Default interest

51. 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 to each of the applicants, 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 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 applicants' claims 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