



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

FOURTH SECTION

CASE OF R.P.D. v. POLAND

(Application no. 77681/01)

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 R.P.D. 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. 77681/01) 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 R.P.D. (“the applicant”), on 15 December 1999. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. The applicant alleged, in particular, that the length of the proceedings in his case exceeded a “reasonable time”.

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 8 April 2003 the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1981 and lives in Lublin, Poland.

8. The applicant underwent a heart operation in the Child Health Centre Hospital (*Centrum Zdrowia Dziecka*) in Warsaw-Międzylesie from 11 April to 27 May 1988. In May and June 1995 the applicant had been diagnosed with jaundice, which he considered to be a result of medical negligence.

9. On 10 September 1996 the applicant's mother filed an action for damages on his behalf with the Warsaw Regional Court (*Sąd Wojewódzki*) against the Child Health Centre Hospital. The applicant claimed that he had contracted jaundice during his stay in the hospital in 1988. In addition, he claimed that as a result of medical negligence he suffered from complications, including heart arrhythmia.

10. In March 1997 the defendant's counsel submitted his pleadings to the court. On 1 June 1997 the applicant's mother asked the court to adjourn the hearing until 30 June 1997 so that she would have sufficient time to prepare a reply to the defendant's submissions.

11. The first hearing was held on 20 November 1997. On 11 December 1997 the applicant submitted his pleadings to the court.

12. On 7 September 1998 the applicant asked to be granted legal aid. On 8 September 1998 the court granted his request and decided that the Warsaw Regional Bar would designate a lawyer for him.

13. On 29 September 1998 the applicant increased his claim.

14. The hearing listed for 5 October 1998 was adjourned at the request of the applicant's mother, since the Warsaw Regional Bar had not complied with the court's decision of 8 September 1998. The court again requested the Warsaw Regional Bar to designate a lawyer for the applicant.

15. On 16 December 1998 the court held a hearing. The applicant's counsel asked the court to order an expert opinion. On 11 February 1999 the court ordered an expert opinion from a panel of doctors (a cardiologist and an epidemiologist). On 24 March and 16 April 1999 respectively, the experts submitted their opinions to the court. On 15 May 1999 the applicant challenged both reports.

16. In her pleadings of 16 December 1999, the defendant's counsel argued that the Child Health Centre Hospital could not be a defendant in the case because it did not have standing in the proceedings and that the proper defendant should be the Minister of Health (*Minister Zdrowia*).

17. On 13 March 2000 the court held a hearing. On 24 March 2000 the court summoned the Minister of Health (representing the State Treasury) to join the proceedings as a defendant. On 9 October 2000 the Warsaw

Regional Court changed its decision of 24 March 2000 and summoned the Governor of Mazowsze as a defendant.

18. On 18 April 2001 the Regional Court ordered yet another expert to prepare an opinion. On 11 February 2002 the expert submitted his opinion to the court.

19. On 6 January 2004 the Warsaw Regional Court gave partial judgment. The defendant lodged an appeal with the Warsaw Court of Appeal.

20. On 23 June 2004 the Court of Appeal quashed the first-instance judgment and remitted the case. The proceedings are pending before the Warsaw Regional Court.

THE LAW

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

21. 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

22. The period to be taken into consideration began on 10 September 1996 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 8 years.

B. Reasonableness of the length of the proceedings

1. *The Government's submissions.*

23. The Government alleged that the case had been complex, as the trial court needed to obtain four expert reports. They submitted that the defendant in the proceedings had been changed twice, and this also prolonged the proceedings.

24. They further claimed that the authorities had shown due diligence in the case.

25. The Government admitted that the applicant had not significantly contributed to the length of the proceedings. Nevertheless, they were of the view that he had contributed to some extent to the prolongation of the proceedings as he had challenged the expert reports on three occasions.

26. Lastly, they were of the view that what had been at stake for the applicant in the proceedings had been of a purely pecuniary nature.

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

2. The applicant's submissions

28. The applicant argued that his case had not been complex and that the medical background had been rather simple.

29. He further claimed that he had not contributed to the length of the proceedings.

30. Referring to what was at stake for him in the proceedings, he maintained that the nature of the claim was of crucial importance to him as it concerned compensation for medical malpractice of which he had been a victim. He claimed that the financial compensation could have allowed him to have access to a better medical treatment. Therefore, the nature of the claim had required the domestic courts to display “special diligence” in handling his case.

31. Lastly, he invited the Court to find a violation of Article 6 § 1.

3. The Court's assessment.

32. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Humen v Poland*, [GC], no. 26614/95, § 60, 15 October 1999).

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

34. As regards the conduct of the applicant, the Court observes that the Government acknowledged that the applicant had not significantly contributed to the length of the proceedings (see paragraph 25 above).

35. As to the conduct of the national authorities, the Court notes that there were several delays in the proceedings. In particular there was significant delay when no hearing was held between 20 November 1997 and 16 December 1998 (see paragraphs 11 and 15).

36. Lastly, the Court considers that what was at stake in the litigation at issue was undoubtedly of crucial importance for the applicant since they were intended not only to result in compensation for his suffering but also to enable him to receive better medical treatment.

37. Consequently, having regard to the circumstances of the case and taking into account what was at stake for the applicant in the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant sought an award of PLN 32,400 in respect of pecuniary damage. He further claimed the sum of PLN 100,000 for non-pecuniary damage that he suffered as a result of the protracted length of the proceedings.

41. 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.

42. 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).

43. 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 5,500 euros (“EUR”) under that head.

B. Costs and expenses

44. The applicant also claimed 12,340 Polish zlotys for the costs and expenses incurred before the domestic courts and the Court.

45. The Government contested the claim.

46. 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

47. 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 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at a 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