



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

FOURTH SECTION

**CASE OF WIATRZYK v. POLAND**

*(Application no. 52074/99)*

JUDGMENT

STRASBOURG

26 October 2004

**FINAL**

**26/01/2005**

*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 Wiatrzyk 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Mr D. SPIELMANN, *judges*,

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

Having deliberated in private on 5 October 2004,

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

**Commented [Note1]:** The Registrar's name is not to be lined up with the judges' names (no tab to be added).

**PROCEDURE**

1. The case originated in an application (no. 52074/99) 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, Stefan Wiatrzyk ("the applicant"), on 28 April 1999.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Ms S. Jaczewska of the Ministry of Foreign Affairs.

3. The applicant alleged that the labour law proceedings in his case exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

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 July 2003 the Court declared the application admissible.

**Commented [Note2]:** To be checked.

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

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

## THE FACTS

**Commented [Note3]:** Remember to use the Court Toolbar to make inserting of styles easy.

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1950 and lives in Miedźno, Poland.

9. In October 1991 the applicant was dismissed from work.

10. On 21 October 1991 he filed with the Częstochowa District Court (*Sąd Rejonowy*) a petition in which he requested that he be reinstated in his former post and awarded compensation.

11. On 18 May 1992 the court stayed the proceedings until the completion of criminal proceedings against the applicant, considering that the courts' findings in those proceedings could affect the outcome of the employment dispute.

12. On 31 July 1992 the criminal court gave judgment. On 27 November 1992 the second-instance court quashed it and remitted the case for re-examination.

13. On 22 May 1995 the District Court discontinued the labour law proceedings, because three years had passed since the date of staying them.

14. On 25 July 1995 it allowed the applicant's appeal and quashed that decision.

15. On 3 November 1995 the criminal court discontinued the proceedings against the applicant, considering that the theft of two boxes of glue committed by him was of an insignificant nature. On 23 February 1996 the second-instance court acquitted the applicant.

16. On 15 May 1996 the Częstochowa District Court gave judgment in respect of part of his claim. It reinstated the applicant in his former post. On 6 August 1996 the second-instance court dismissed his employer's appeal against that judgment.

17. On 4 March 1997 the Częstochowa District Court ordered an expert opinion concerning the calculation of the applicant's lost earnings. It was submitted on 26 August 1997. In September 1997 the court ordered a supplementary opinion.

18. At the hearing held on 14 January 1998 it requested the preparation of another supplementary opinion. It was submitted on 16 June 1998.

19. The court held a hearing on 5 February 1999. Subsequently, the parties exchanged their observations as to the amount of compensation for the applicant.

20. On 15 February 2000 the court held a hearing. On 20 April 2000 it ordered a supplementary expert opinion.

21. On 26 September and 14 November 2000 the court held hearings. On the former date it refused the applicant's request for an interim order.

22. On 28 December 2000 the court gave judgment. It awarded the applicant compensation for the lost earnings. Both parties appealed.

**Commented [Note4]:** To be checked.

23. On 16 May 2001 the Częstochowa Regional Court (*Sąd Okręgowy*) held a hearing.

24. On 31 May 2001 it dismissed a challenge to the participation in the proceedings of a judge lodged by the applicant's lawyer. The court imposed a fine on the lawyer for having used that remedy in bad faith.

25. On 13 June 2001 the court dismissed both appeals against the judgment of the District Court. The defendant lodged a cassation appeal with the Supreme Court.

26. On 19 November 2001 the Supreme Court rejected the defendant's appeal.

## THE LAW

**Commented [Note5]:** Titles to be preceded by I., II., III. (all caps); then A., B., C. (bold); then 1., 2., 3. (italics); etc. (see manual).

Possible sub-titles for the alleged violation of an article: "applicability of Article ..." and "compliance with Article ...".

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

27. The applicant complained that the length of the proceedings was 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..."

#### A. The Parties' submissions

28. The Government were of the view that the case had been complex. They made reference to an expert opinion that had been ordered by the District Court and the applicant's challenges to that opinion.

29. As to the applicant's conduct, they considered that the applicant had contributed to the delay in the examination of the case by his objections to the method of calculating the amount of compensation proposed by a court expert and the defendant. The Government stated that the applicant had changed his claim in October 1997. They made reference to his lawyer's challenge to the participation of a judge in the proceedings lodged in bad faith.

30. The Government were of the opinion that the courts had dealt with the case with due diligence. They pointed out that the Częstochowa Regional Court had fined the applicant's lawyer.

31. The Government finally argued that what was at stake for the applicant was only of a pecuniary nature and that he was reinstated in his former post at the first hearing after the completion of the criminal case.

32. The applicant submitted that he had not contributed to the delay. He stated that his motions concerning an expert opinion had related to the fact

that it had been incomplete and had contained errors. The applicant was of the view that, contrary to the Government's contention, his proposals as to the calculation of compensation had accelerated the examination of the case. He noted that on a number of occasions the defendant failed to comply with time-limits to submit certain documents and the court had not adequately reacted thereto.

## **B. The Court's assessment**

### *1. Period to be taken into consideration*

33. The Court recalls that the proceedings began on 21 October 1991 and ended on 19 November 2001. They therefore lasted 10 years and 29 days, out of which a period of 8 years, 6 months and 18 days falls within the Court's competence *ratione temporis*, Poland having recognised the right of individual petition as from 1 May 1993.

### *2. Reasonableness of the length of the proceedings*

34. The Court considers that the case was not particularly complex. The applicant did not unduly prolong the proceedings, since his pleadings were intended to ensure that the expert opinion was accurate. His lawyer contributed, however, to the delay by having challenged in bad faith the participation of a judge.

35. The Court observes that between March 1997 and June 1998 one expert opinion was prepared and two supplementary opinions. No effective measures were undertaken by the court to expedite the expert's work (the Government submit that in April 1998 the court "tried to speed up the work of the expert", but no details of that action have been provided). Subsequently, the court remained inactive until February 1999.

36. The Court would point out that the case concerned an employment dispute as to the lawfulness of the applicant's dismissal and thus at least until the final decision on his reinstatement in the former post, that is 6 August 1996, the District Court should have handled the case with special diligence (see *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII). It must be noted that the outcome of the main dispute depended on the court's findings in the criminal proceedings against the applicant. The latter lasted over 4 years, which, in view of the above-mentioned *Frydlender* case and the fact that the criminal case concerned the alleged theft of glue, cannot be considered as complying with the requirement of special diligence.

37. Having regard to all evidence before it, the Court concludes that the "reasonable time" within the meaning of Article 6 of the Convention has

been exceeded. 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 50,000 or 80,000 Polish zlotys (PLN) in respect of pecuniary damage. According to the applicant, these amounts corresponded to a potential remuneration he might have received if he had not been dismissed from work. He further claimed the sum of PLN 20,000 for non-pecuniary damage that he suffered as a result of the protracted length of the proceedings.

40. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

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 Kudla 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 EUR 3000 under that head.

### B. Costs and expenses

43. The applicant also claimed PLN 5,000 for the costs and expenses incurred before the domestic courts and PLN 500 for the costs and expenses in connection with the proceedings before the Court.

44. The Government submitted that the legal costs and expenses claimed by the applicant were partly irrelevant to the proceedings at issue. The Government recalled that only the costs actually incurred in the preparation

and defence of the applicant's case before the Court, not before the domestic courts, could be taken into consideration.

45. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

46. On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant had been incurred by him for this purpose.

47. The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on the material before it, the Court awards the applicant EUR 120 for translation and copying expenses which he incurred in the context of filing and pursuing his application.

### C. Default interest

48. 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 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 120 (one hundred and twenty euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys at a rate applicable at the date of the settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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.

**Commented [Note6]:** Add paragraph numbers manually and end each paragraph with a semi-colon and the last one with a full stop. Styles used: Ju\_List, Ju\_List a, Ju\_List i.  
The number of votes is to be indicated in letters.

**Commented [Note7]:** Refer to specific instructions on how to express just-satisfaction awards.

**Commented [Note8]:** Simple version.

**Commented [Note9]:** Option not applicable for Panel cases (judgment final by virtue of Article 5 § 4 of Protocol No. 11) and where right to request rehearing before the Grand Chamber has been waived (e.g. friendly-settlement cases).

Done in English, and notified in writing on 26 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President

**Commented [Note10]:** Change if necessary.