



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

FOURTH SECTION

CASE OF MLYNARCZYK v. POLAND

(Application no. 51768/99)

JUDGMENT

STRASBOURG

14 December 2004

FINAL

14/03/2005

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 Młynarczyk v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 23 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 51768/99) 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, Mr Jan Młynarczyk ("the applicant"), on 9 April 1999.

2. The applicant was represented by Ms B. Słupska-Uczkiewicz, a lawyer practising in Wrocław.

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

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

5. 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.

6. By a decision of 3 February 2004 the Court declared the application admissible.

THE FACTS

7. The applicant was born in 1950 and lives in Wrocław, Poland.

A. Facts prior to 1 May 1993

8. The applicant, who is a trombone player and since 1969 has been playing with the jazz band “Sami Swoi”, became its leader after a split in 1990. Mr Z.C. who had left the band in the same year, started playing with a new band using the name “The New Sami Swoi Orchestra”.

9. On 30 October 1990 the applicant lodged with the Wrocław Regional Court (*Sąd Wojewódzki*) an action for protection of his personal rights against Z.C. The applicant contended that the defendant had infringed his personal rights by having used the name “Sami Swoi” without his consent. He requested the court, *inter alia*, to order the defendant not to use that name in the future.

10. On 17 July 1992 the trial court dismissed his action.

11. The applicant appealed against that judgment.

B. Facts after 30 April 1993

12. On 9 December 1993 the Wrocław Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case to the trial court.

13. On 12 June and 5 September 1995 the court held hearings. Both parties applied for an expert opinion. The applicant made a friendly settlement proposal but the defendant did not agree to it.

14. On 13 February 1996 the applicant requested the court not to order an expert opinion and argued that such opinion would be unnecessary.

15. On 15 February 1996 the trial court, sitting *in camera*, ordered preparation of an expert opinion.

16. In March 1996 the applicant asked for exemption from the costs of the expert opinion and appealed against the decision of 15 February 1996. On 1 April and 23 May 1996 the court dismissed his applications.

17. In August 1996 the court-appointed expert refused to prepare his opinion. Subsequently, the trial court twice requested the Katowice University Musical Academy to indicate an expert.

18. On 12 March 1997 the court ordered a new expert, Mr A.Z., to prepare an opinion. However, that expert failed to prepare the requested opinion.

19. In June 1997 the court appointed another expert, Mr K.K., to write an opinion in the case. However, due to his illness, the expert failed to prepare the opinion.

20. On 9 March 1998 the trial court ordered Mr H.M. to prepare an expert opinion. The expert did not prepare the opinion and in December 1998 he returned the case-file to the court.

21. On 6 January 1999 the trial court fined the expert for non-compliance with the court's order.

22. On 15 February 1999 the court ordered another expert, Mr T.T., to prepare an opinion.

23. On 2 July 1999 the expert submitted his opinion to the court.

24. Between 6 September 1995 and 24 November 1999 no hearings were held.

25. Subsequently, the trial court held hearings on 25 November and 17 December 1999.

26. On 14 January 2000 the Chorzów District Court heard a witness.

27. The next hearings were held on 23 May, 13 July, 18 September, 3 November and 17 November 2000.

28. On 1 December 2000 the Wrocław Regional Court gave judgment and ordered the defendant to publish a press statement that the applicant was solely entitled to use the name "Sami Swoi" for his band. It dismissed the remainder of the applicant's action.

29. The defendant appealed against that judgment to the Wrocław Court of Appeal.

30. On 18 May 2001 the Wrocław Court of Appeal gave judgment in which it dismissed the defendant's appeal.

THE LAW

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

31. 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..."

32. The Government contested this view.

A. Period to be taken into consideration.

33. The period to be taken into consideration began on 30 October 1990 and ended on 18 May 2001. They therefore lasted over ten years and six months out of which the period of eight years and eighteen days falls within the Court's jurisdiction *ratione temporis*.

B. Reasonableness of the length of the proceedings

1. The Government's submissions.

34. The Government contended that the case was complex as it concerned personal rights.

35. As regards the conduct of the authorities the Government submitted that the courts acted diligently and that “a certain prolongation of the proceedings was caused by the difficulties in preparing an expert opinion and this cannot entirely be attributed to the judicial authorities”. The Government argued that the court had properly supervised the experts.

2. The applicant's submissions

36. The applicant disagreed with the Government's submissions and argued that the proceedings exceeded reasonable time.

37. Moreover, he argued that the case was of significant importance for him and that the protracted length of the proceedings caused a situation of legal uncertainty as to who could profit from the legacy of the “Sami Swoi” jazz band, which was very famous in the 1970s. That was of benefit to the defendant and confused the public.

3. The Court's assessment

38. 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, no. 26614/95, 15 October 1999).

39. As regards the conduct of the domestic authorities the Court observes that several substantial periods of inactivity occurred in the course of the proceedings. In particular, no hearings were held between September 1995 and November 1999. While it is true that during this period the domestic court took some actions and waited for an expert opinion to be prepared, the Court notes that the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44). Finally, the Court observes that eighteen months elapsed between the quashing of the first-instance judgment by the Court of Appeal on 9 December 1993 and the date on which the trial court held the first

hearing. The Court notes that the Government did not provide any explanation for this delay.

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.

II. 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. The applicant claimed 600,000 Polish zlotys (PLN) in respect of pecuniary and in respect of non-pecuniary damage.

45. The Government submitted that the applicant's claims were exorbitant.

46. 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).

47. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature, such as distress and frustration on account of the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on an equitable basis, the applicant should be awarded 4,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant also claimed PLN 23,000 by way of legal costs incurred before the Court and costs and expenses incurred before the domestic courts.

49. 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.

50. 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 above criteria and the nature of the issues before it, the Court considers it reasonable to award the applicant the sum of EUR 1,500 covering costs and expenses for the proceedings before the Court.

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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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.

Done in English, and notified in writing on 14 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President