



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

FOURTH SECTION

CASE OF ZMALIŃSKI v. POLAND

(Application no. 52039/99)

JUDGMENT

STRASBOURG

22 March 2005

FINAL

22/06/2005

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 Zmaliński v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 1 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 52039/99) 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, Marek Zmaliński ("the applicant"), on 26 February 1999.

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

3. The applicant alleged, in particular, that his case had not been heard within 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 July 2003, the Court declared the application partly admissible.

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

7. By a decision of 6 May 2004 the Court declared inadmissible another applicant's application no. 26026/03, which was in part related to the application concerned no. 52039/99.

8. 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

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1957 and lives in Tychy, Poland.

10. He is a member and an employee of a labour co-operative (*spółdzielnia pracy*).

11. On 12 April 1991 he filed with the Warsaw Regional Court an action in which he requested the annulment of several resolutions adopted by the assembly of the representatives of the co-operative (*walne zgromadzenie*). The contested resolutions concerned the co-operative's finances.

12. Between 1992 and 1995, in addition to the original claim, the applicant challenged other resolutions relating to the division of the yearly profits of the co-operative.

13. On 18 November 1992 the court heard two witnesses and ordered an expert opinion.

14. On 14 May 1993 the applicant extended his claim.

15. On 9 September 1993 an expert refused to prepare the opinion ordered by the court, relying on the applicant's alleged lack of co-operation. The applicant submits that that allegation was not confirmed by the court.

16. At the hearing held on 15 October 1993 the court summoned the applicant to submit documents that could be of relevance to that opinion.

17. The opinion was submitted to the court in March 1994.

18. On 3 March 1994 the applicant modified his claim.

19. On 24 March 1994 the court issued a decision concerning the remuneration of the court expert. The decision was subsequently amended by the Warsaw Court of Appeal.

20. On 9 May 1994 the applicant extended his claim.

21. In a letter of 9 August 1994 the President of the Warsaw Court of Appeal admitted that the time-limit for preparing the expert opinion had not been observed by the expert and that there had been periods of inactivity on the part of the Regional Court. On 10 October 1994 the court refused the applicant's request for exemption from court costs. On 13 December 1994 the Warsaw Court of Appeal upheld that decision.

22. On 21 October 1994 and 4 April 1995 the applicant modified his claim.

23. According to the Government, on 19 May 1995 the court held a hearing. The applicant submits that it was adjourned because the defendant had not been duly summoned.

24. On 23 May 1995 the court dismissed the applicant's subsequent request for exemption from court costs. On 3 October 1995 the Warsaw Court of Appeal amended in part that decision.

25. On 7 February 1996 the Warsaw Regional Court held a hearing.

26. On 21 March and 1 July 1996 the applicant extended his claim.

27. The Government submit that the hearing scheduled for 4 December 1996 was adjourned, as the parties considered reaching a settlement. The applicant states that the court itself suggested the settlement of the case and gave the parties a time-limit to start negotiations. On 22 January 1997 the defendant informed the court that no settlement had been reached.

28. On 5 November 1997 the court held another hearing.

29. On 14 November 1997 it gave judgment in which it dismissed the applicant's action. The applicant appealed.

30. On 24 April 1998 the Warsaw Court of Appeal gave judgment. It quashed a part of the first-instance court's judgment and remitted the case in that part for re-examination. The applicant lodged with the Supreme Court a cassation appeal against the judgment of the Court of Appeal.

31. On 25 May 2001 the Supreme Court refused to admit that appeal.

32. Subsequently, pursuant to the judgment of the Warsaw Court of Appeal, some of the applicant's claims were remitted to the Warsaw Regional Court for re-examination.

33. On 14 January 2002 the Warsaw Regional Court held a hearing.

34. On 28 January 2002 it gave judgment in which it dismissed the applicant's claim. On 14 May 2002 the applicant appealed.

35. By a final judgment of 4 April 2003 the Warsaw Court of Appeal dismissed the applicant's appeal.

THE LAW

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

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

37. The Government contested this view.

A. Period to be taken into consideration

38. The Court recalls that the proceedings began on 12 April 1991 and ended on 4 April 2003. They therefore lasted 11 years, 11 months and 22 days, out of which a period of 9 years, 11 months and 3 days falls within the Court's competence *ratione temporis*, Poland having recognised the right of individual petition as from 1 May 1993.

B. Reasonableness of the length of the proceedings.

1. The Government's submissions.

39. The Government were of the view that the case had been complex, since it related to several resolutions of the defendant co-operative. They made reference to the necessity to order an expert opinion.

40. They submitted that the applicant had partly contributed to the delay by frequent extensions and modifications of his claims. They noted that he had failed to co-operate with an expert, which prolonged the preparation of her opinion.

41. They considered that the courts had dealt with the case with due diligence e.g.: in order to avoid delays the Regional Court had fixed short time-limits for the preparation of expert opinions. The Government noted, however, that those time-limits had been so short that two experts, "unfortunately", had refused to prepare their opinions, because they had been unable to comply with the time-limits.

2. The applicant's submissions

42. The applicant did not agree that the case had been complex. He was of the opinion that the modifications of his claims had not complicated it.

43. He denied having prolonged the proceedings. He submitted that he had not refused to co-operate with the expert, which had been confirmed by the court. The applicant observed that the court had ordered that expert to prepare her opinion despite her complaints about the applicant, which, in his view, had shown that those complaints had been unsubstantiated.

44. He pointed out that the preparation of the expert opinion had been slow, but the court had not taken any measures to accelerate it. Moreover, the court had granted the expert's requests for the extension of time-limits and had scheduled hearings at long intervals and periods of inactivity occurred.

3. The Court's assessment

45. 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).

46. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

47. The Court considers that the applicant's conduct, in particular the manner in which he exercised his procedural rights, had not substantially contributed to the length of the proceedings.

48. As regards the conduct of the authorities, the Court observes that there were periods of inactivity in the proceedings. In particular, the Warsaw Regional Court did not take any action between 7 February and 4 December 1996, as well as between 22 January and 5 November 1997. It took the Supreme Court approximately three years to decide that it would not examine the applicant's cassation appeal. The Court notes that the measure to expedite the expert's work referred to by the Government seems to have failed, since the opinion at issue was submitted only one year and four months after its ordering.

49. Consequently, even assuming that delays in the procedure before the Supreme Court can be explained as resulting from the pending reform of the cassation procedure in Poland (see, *Kępa v. Poland* (dec), no. 43978/98, 30 September 2003), the Court, assessing the circumstances of the case and having regard to the overall duration of the proceedings, finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 600 Polish zlotys (PLN) as compensation for pecuniary damage.

53. He also claimed PLN 50,000 in respect of non-pecuniary damage. He submitted that this amount related to suffering and distress caused by the excessive duration of the proceedings.

54. The Government did not comment on the applicant's claim.

55. 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).

56. 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 4,500 under that head.

B. Costs and expenses

57. The applicant claimed PLN 1,500 for the costs and expenses incurred before the domestic courts and the Court.

58. The Government did not comment on the applicant's claim.

59. 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 they have been actually and necessarily incurred and are 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 and considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 200 for the proceedings before the Court.

C. Default interest

60. 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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage and EUR 200 (two hundred 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.

Done in English, and notified in writing on 22 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President