



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

FOURTH SECTION

**CASE OF PALKA v. POLAND**

*(Application no. 49176/99)*

JUDGMENT

STRASBOURG

11 October 2005

**FINAL**

*11/01/2006*

*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 Palka v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 20 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 49176/99) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Stanislaw Palka ("the applicant"), on 5 April 1996.

2. The applicant was represented by Mr W. Hermeliński, a lawyer practising in Warszawa. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki, and subsequently, Mr. J. Wołasiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that he had not had his case heard within a "reasonable time" and that he had no effective remedy against the protracted length of the proceedings.

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 17 February 2004 the Court declared the application admissible.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1947 and lives in Warsaw.

7. On 15 April 1992 a certain company U submitted a bill of exchange in the amount of PLN 50,000 signed by the applicant and requested the Warsaw District Court (*Sąd Rejonowy*) to issue an order for payment against him and other partners in the civil association K (*spółka cywilna*).

8. On 9 June 1992 the court made the order for payment, allowing the plaintiff's application. The applicant lodged an appeal against that order.

9. Subsequently, the applicant applied for exemption from the court fees. On 4 July 1996 the Warsaw Court of Appeal (*Sąd Apelacyjny*) finally allowed his application.

10. The Warsaw Regional Court scheduled hearings for 22 May, 18 September, 23 October and 24 November 1997. However, all of them were adjourned. Between 8 December 1997 and 18 May 1998 five hearings were adjourned.

11. On 18 June 1998 the Warsaw Regional Court gave judgment in which it upheld the Warsaw District Court's order of 9 June 1992. The applicant lodged an appeal against that judgment.

12. On 12 March 1999 the Warsaw Court of Appeal dismissed the applicant's appeal.

13. Subsequently, the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

14. On 13 November 2001 the Supreme Court dismissed the cassation appeal.

### II. RELEVANT DOMESTIC LAW

#### A. State's liability for a tort committed by its official

##### *1. Provisions applicable before 1 September 2004*

15. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort.

In the version applicable until 1 September 2004, Article 417 § 1, which lays down a general rule, read as follows:

“1. The State Treasury shall be liable for damage caused by a State official in the course of carrying out the duties entrusted to him.”

16. Article 418 of the Civil Code, as applicable until 18 December 2001 (see “C. Constitutional Court’s judgment of 4 December 2001 below), provided for the following exception in cases where damage resulted from the issue of a decision or order:

“1. If, in consequence of the issue of a decision or order, a State official has caused damage, the State Treasury shall be liable only if a breach of the law has been involved in the issue of the decision or order and if that breach is the subject of prosecution under the criminal law or of a disciplinary investigation, and the guilt of the person who caused the damage in question has been established by a final conviction or has been admitted by the superior of that person.

2. The absence of the establishment of guilt by way of a criminal conviction or in a decision given in disciplinary proceedings shall not exclude the State Treasury’s liability for damage if such proceedings cannot be instituted in view of the [statutory] exception to prosecution or disciplinary actions.”

## *2. Provisions applicable as from 1 September 2004*

17. On 1 September 2004 the Law of 17 June 2004 on amendments to the Civil Code and other statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw*) (“the 2004 Amendment”) entered into force. While the relevant amendments have in essence been aimed at enlarging the scope of the State Treasury’s liability for tort under Article 417 of the Civil Code – which included adding a new Article 417<sup>1</sup> and the institution of the State’s tortious liability for its omission to enact legislation (the so-called “legislative omission”; “*zaniedbanie legislacyjne*”) – they are also to be seen in the context of the operation of a new statute introducing remedies for the unreasonable length of judicial proceedings (see paragraphs 21-24 below).

Following the 2004 Amendment, Article 417<sup>1</sup>, in so far as relevant, reads as follows:

“3. If damage has been caused by failure to give a ruling (*orzeczenie*) or decision (*decyzja*) where there is a statutory duty to give them, reparation for [the damage] may be sought after it has been established in the relevant proceedings that the failure to give a ruling or decision was contrary to the law, unless otherwise provided for by other specific provisions.”

18. However, under the transitional provisions of section 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 (see paragraph 15 above) shall apply to all events and legal situations that subsisted before that date.

## **B. Constitutional Court's judgment of 4 December 2001**

19. On 4 December 2001 the Constitutional Court (*Trybunał Konstytucyjny*) dealt with two constitutional complaints in which the applicants challenged the constitutionality of Article 417 and 418 of the Civil Code. They alleged, in particular, that those provisions were incompatible with Articles 64 and 77 § 1 of the Constitution.

On the same day the court gave judgment (no. SK 18/00) and held that Article 417 of the Civil Code was compatible with Article 77 § 1 of the Constitution in so far as it provided that the State Treasury was liable for damage caused by the unlawful action of a State official carried out in the course of performing his duties. It further held that even though Article 418 of the Civil Code was compatible with Article 64 of the Constitution, it was contrary to Article 77 § 1 since it linked the award of compensation for such damage with the personal culpability of the state official concerned, established in criminal or disciplinary proceedings.

20. On 18 December 2001, the date on which the Constitutional Court's judgment took effect, Article 418 was repealed. The Constitutional Court's opinion on the consequences of the repeal read, in so far as relevant:

"The elimination of Article 418 of the Civil Code from the legal system ... means that the State Treasury's liability for an action of a public authority consisting in the issue of unlawful decisions or orders will flow from the general principles of State liability laid down in Article 417 of the Civil Code. This, however, does not rule out the application in the present legal system of other principles of State liability laid down in specific statutes and not necessarily only those listed in the Civil Code."

## **C. The Law of 17 June 2004**

21. On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5 (1) of the 2004 Act.

Section 2, in so far as relevant, reads as follows:

"1. Parties to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

Section 5 provides, in so far as relevant:

“1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ...”

22. Section 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of section 18 (see paragraph 46 below) in the following terms:

“A party who has not lodged a complaint about the unreasonable length of the proceedings under section 5 (1) may claim – under Article 417 of the Civil Code ... – compensation for the damage which resulted from the unreasonable length of the proceedings after the proceedings concerning the merits of the case have ended.

23. Article 442 of the Civil Code sets out limitation periods in respect of various claims based on tort. That provision applies to situations covered by Article 417 of the Civil Code. Article 442, in so far as relevant, reads:

“1. A claim for compensation for damage caused by a tort shall lapse 3 years following the date on which the claimant learned of the damage and the persons liable for it. However, the claim shall in any case lapse 10 years following the date on which the event causing the damage had occurred.”

24. Section 18 of the 2004 Act lays down the following transitional rules in relation to the applications already pending before the Court:

“1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.

2. A complaint lodged under subsection 1 shall indicate the date on which the application was lodged with the Court.

3. The relevant court shall immediately inform the Minister of Foreign Affairs of any complaints lodged under subsection 1.”

## THE LAW

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

25. The applicant complained that the length of the proceedings had been 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...”

26. The Government contested that argument.

27. The period to be taken into consideration began not on 15 April 1992, when the applicant started the proceedings, but only on 1 May 1993 when the recognition by Poland of the right of individual petition took effect. The period in question ended on 13 November 2001. It follows that the proceedings in the applicant’s case lasted eight years and over six months within the Court’s jurisdiction *ratione temporis*.

28. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

29. 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

30. 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.

There has accordingly been a breach of Article 6 § 1.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant also alleged a breach of Article 13 of the Convention in that he had no effective remedy in respect of the excessive length of proceedings. Article 13 reads as follows.

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

32. The Government maintained that the applicant could, under Article 417 of the Civil Code, seek compensation for damages arising from unreasonable length of the proceedings. The applicant disagreed with the Government and submitted that the remedy in question was purely theoretical and could not be regarded as effective.

33. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland*

[GC], no. 30210/96, § 156, ECHR 2000-XI). The means available to an applicant in domestic law for raising a complaint about the length of the proceedings are “effective”, within the meaning of Article 13 of the Convention, if they “prevent the alleged violation or its continuation, or provid[e] adequate redress for any violation that has already occurred”. Article 13 thus offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays that have already occurred. The fact that a given remedy is of a purely compensatory nature is not decisive, regardless of whether the proceedings in question have been terminated or are still pending (see *Kudła*, cited above, §§ 158-159; *Caldas Ramirez de Arrellano v. Spain* (dec.), no. 68874/01, ECHR 2003-I; *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII; and *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

34. The Court further notes that, in previous similar cases before the Court the Polish Government have been unsuccessful in their pleading that a civil action under Article 417 of the Civil Code created an effective remedy in length of proceedings cases (see, for instance, *Małasiewicz v. Poland*, no. 22072/02, § 32). However, that situation changed with the entry into force of the 2004 Act. In particular, the Court finds that Article 16 of the 2004 Act provides an explicit legal basis for the possibility of seeking damages under Article 417 of the Civil Code for the protracted length of judicial proceedings.

35. The Court has already held that from 17 September 2004, the date on which the 2004 Act entered into force, an action for damages based on Article 417 of the Civil Code acquired a sufficient level of certainty to become an “effective remedy” within the meaning of Article 13 of the Convention for an applicant alleging a violation of the right to a hearing within a reasonable time in judicial proceedings in Poland (see *Krasuski v. Poland*, no. 61444/00, § 72, 14 June 2005).

36. Finally, the Court notes that on 17 September 2004, when the 2004 Act came into force, the limitation period of three years between that date and the date of the final domestic decision had not expired (see *Ratajczyk v. Poland* (dec.), no 11215/02, 31 May 2005).

37. There has accordingly been no violation of Article 13 in the present case.

### III. 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 claimed 50,000,000 Polish zlotys (PLN) in respect of pecuniary and 50,000 United States Dollars (USD) in respect of non-pecuniary damage.

40. The Government contested these claims and found them exorbitant.

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. 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 particular circumstances of the instant case and deciding on an equitable basis, the applicant should be awarded 4,000 euros (EUR) in respect of non-pecuniary damage.

### **B. Costs and expenses**

43. The applicant also claimed EUR 1,000 by way of legal costs incurred before the Court.

44. The Government submitted that the claim was excessive.

45. 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 considers that the sum claimed should be awarded in full.

### **C. Default interest**

46. 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* that there has been no violation of Article 13 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months [from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention], EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the settlement, plus any tax that may be chargeable;
  - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President