



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

FOURTH SECTION

CASE OF WYSZCZELSKI v. POLAND

(Application no. 72161/01)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Wyszczelski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*.,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 72161/01) 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 Andrzej Wyszczelski (“the applicant”), on 5 September 2000.

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

3. On 18 March 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1941 and lives in Pruszków, Poland.

5. On 29 June 1993 the applicant lodged a motion with the Warsaw Regional Court (*Sąd Wojewódzki*) claiming PLZ (old zlotys) 100,000,000 from the insurance company “PZU” as compensation for his traffic accident. He also claimed a supplementary disability pension.

6. On 14 April 1994 the court ordered an expert opinion. It was submitted to the court in June 1994.

7. On 15 December 1994 the court ordered the expert to supplement her opinion. On 27 April 1995 the court appointed another expert. On 7 December 1995 the court held a hearing.

8. At the hearing held on, 23 April 1996 the court stayed the proceedings until the termination of social insurance proceedings instituted by the applicant against the Social Insurance authorities. These proceedings had in fact been terminated by a judgment of the Warsaw Regional Labour Court of 19 March 1996.

9. On 16 August 1996 the applicant submitted the copy of the judgment of 19 March 1996 to the Warsaw Regional Court and requested the court to resume the compensation proceedings against the insurance company “PZU”.

10. On 28 November 1996 the court held a hearing and resumed the proceedings.

11. On 11 March 1997 the applicant modified his claim, having regard to the inflation rate.

12. The court held further hearings on 13 May 1997, 18 September 1997, 27 November 1997, 2 September 1998, 22 October 1998, 21 October 1999, 9 December 1999, 17 February 2000, 24 October 2000 and 4 December 2000.

13. The court ordered two further expert opinions in 1997.

14. On 26 February 1999 the applicant requested the Director of the insurance company to conclude an out-of-court settlement in order to terminate the proceedings. This proposal was refused.

15. On 5 March 1999 yet another expert opinion was ordered by the court. It was submitted to the court on 9 August 1999. On 17 February 2000 the court requested the experts to supplement their opinion. The supplemented opinion was submitted to the court on 13 May 2000.

16. On 18 December 2000 the court closed the examination of the case. On 15 January 2001 the Warsaw Regional Court gave judgment and ordered the insurance company to pay PLN 25,000 to the applicant.

17. The applicant lodged an appeal with the Warsaw Court of Appeal (*Sąd Apelacyjny*), claiming a higher amount of compensation.

18. On 25 April 2002 the Warsaw Court of Appeal gave judgment. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

19. On 21 October 2003 the Supreme Court gave judgment and remitted the case to the Court of Appeal.

20. On 4 February 2004 the Warsaw Court of Appeal remitted the case to the Regional Court.

21. On 3 March 2005 the applicant lodged a complaint with the Warsaw Court of Appeal under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (“2004 Act”). On 25 April 2005 the Court of Appeal dismissed it as manifestly ill-founded.

The court held that it could only assess the proceedings after the remittal by the Court of Appeal i.e. after 4 February 2004, however, after that date there had not been any significant delays in the proceedings.

22. In the light of the information available to the Court at the date of the adoption of the present judgment, the proceedings are pending before the Regional Court.

THE LAW

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

23. 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...”

24. The Government contested that argument.

25. The period to be taken into consideration began on 29 June 1993 and has not yet ended. It has thus already lasted more than [12 years and 2 months, 13 days].

A. Admissibility

26. The Court notes that the applicant made use of the remedy provided for by the 2004 Act and lodged a complaint about the unreasonable length of the proceedings. However, this complaint failed as the Warsaw Court of Appeal examined only the period of time after the remittal of the case by the appellate court, i.e. after 4 February 2004. The court did not take into consideration the overall period of the examination of the case by the domestic courts as required by the constant case-law of the Convention organs (see, *Majewski v. Poland*, no. 52690/99, §§ 31-37, 11 October 2005).

27. Consequently, the Court observes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. The applicant maintained that he had not contributed to the length of the proceedings. Despite his poor health, he had always appeared at

hearings. Furthermore, on several occasions he asked the courts to conduct the proceedings speedily. He further pointed, that the delays in the proceedings had been caused by the slow process of obtaining evidence. Moreover, in the proceedings before the Regional Court the judge rapporteur had been changed on three occasions. Lastly, the applicant stressed that there had been much at stake for him in the proceedings as they concerned compensation for traffic accident. In his opinion there had been a violation of Article 6 § 1.

29. The Government argued that the case had been complex. The authorities had shown due diligence in the proceedings. According to the Government, the applicant had contributed to the prolongation of the proceedings as he had modified his claim. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

30. 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).

31. As to the conduct of the applicant the Court notes that it does not appear that his conduct and in particular the fact that he had modified his claim had significantly prolonged the trial.

32. Considering the conduct of the authorities the Court observes that there were delays resulting from the slow process of obtaining evidence. Moreover, the present case had been examined by the court of first-instance for a substantial period of more than 8 years.

33. 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).

34. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 70,000 PLN [approx. 17,500 euros] in respect of non-pecuniary damage. He further asked for 46,000 PLN [approx. 11,500 euros] under the head of pecuniary damage. This amount included in particular the salary that the applicant's wife would have received if she had not had to take care of the applicant during the proceedings in the case.

38. The Government contested the claim.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant certainly must have sustained non pecuniary damage such as frustration and distress on account of the protracted length of the proceedings. Accordingly, it awards the applicant EUR 4,000 under this head.

B. Costs and expenses

40. The applicant also claimed 8,500 PLN [approx. 2,125 EUR] for the costs and expenses incurred before the domestic courts. That amount corresponded in particular to the lawyer's and experts' fees.

41. The Government contested the claim.

42. 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 in the domestic proceedings.

C. Default interest

43. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 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, to be converted into Polish zlotys at the 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President