



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

FOURTH SECTION

CASE OF CHYB v. POLAND

(Application no. 20838/02)

JUDGMENT

STRASBOURG

22 August 2006

FINAL

22/11/2006

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 Chyb 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 11 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 20838/02) 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, Ms Zofia Chyb (“the applicant”), on 27 November 2001.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. On 24 August 2005 the President of the Fourth Section decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1942 and lives in Piaseczno, Poland.

5. In 1982 the applicant divorced. On 17 March 1983 she initiated before the Warsaw District Court (Sąd Rejonowy) civil proceedings concerning the division of matrimonial property. The estate consisted of a semi-detached house.

6. Afterwards, until February 1991, the court held thirteen hearings.

7. Between 18 January 1995 and 7 November 1997 six hearings were held. Subsequently, the District Court ordered that an expert opinion be prepared.

8. On 22 April 1998 the court held a hearing and on 5 June 1998 it gave a partial decision.

9. On 23 September 1998 and 8 July 1999 the District Court held hearings and decided that another expert opinion should be prepared.

10. On 30 January 2001 the court held a hearing.

11. On 4 June 2001 the Warsaw District Court gave a decision in which it divided the property in question. The applicant submitted that the judgment became final on 25 June 2001. According to the Government's submission a party had lodged an appeal which was subsequently withdrawn. On 11 September 2001 the appellate proceedings were finally discontinued.

II. RELEVANT DOMESTIC LAW

A. The State's liability for torts committed by its officials

1. Provisions applicable before 1 September 2004

12. 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 performance of the duties entrusted to him."

13. Article 418 of the Civil Code, as applicable until 18 December 2001, provided for the following exception in cases where damage resulted from the issuing of a decision or order:

"1. If, in consequence of the issuing 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 issuing of the decision or order and if that breach is the subject of a criminal prosecution or 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 person's superior.

2. The fact that such guilt has not been established by means of a criminal conviction or 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 a [statutory] bar to prosecution or disciplinary action."

2. Provisions applicable from 1 September 2004

14. 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 were in essence aimed at enlarging the scope of the State Treasury’s liability for tort under Article 417 of the Civil Code – including the addition of a new Article 417¹ and provision being made for the State’s tortious liability for its omission to enact legislation, a concept known as “legislative omission” (*zaniedbanie legislacyjne*) – they are also to be seen in the context of the operation of a new statute introducing remedies in respect of the unreasonable length of judicial proceedings.

Following the 2004 Amendment, Article 417¹, 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 do so, 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 other specific provisions provide otherwise.”

15. However, under the transitional provisions of section 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 applies to all events and legal situations that subsisted before that date.

B. The Constitutional Court’s judgment of 4 December 2001

16. 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 Article 64 and Article 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 actions of State officials in the performance of their 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 to the personal culpability, established in criminal or disciplinary proceedings, of the State official concerned.

17. 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 the actions of a public authority consisting in the issuing of unlawful decisions or orders will follow from the general principles on State liability as 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 on State liability, as laid down in specific statutes, and not necessarily only those listed in the Civil Code.”

C. The 2004 Act

18. 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. ...”

19. Section 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of section 18 in the following terms:

“A party which 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.”

D. Other relevant provisions of the Civil Code

20. Article 5 of the Civil Code states:

“No one shall exercise any right of his in a manner contrary to its socio-economic purpose or to the principles of co-existence with others (*zasady współżycia społecznego*). No act or omission [fulfilling this description] on the part of the holder

of the right shall be deemed to be the exercise of the right and shall be protected [by law].”

21. 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 three years following the date on which the claimant learned of the damage and of the persons liable for it. However, the claim shall in any case lapse ten years following the date on which the event causing the damage occurred.”

Article 417(2) provides that after the expiry of the limitation period the person against whom the claim is directed may avoid liability unless he waives his right to raise the allegation that the action is time-barred.

THE LAW

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

22. 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...”

23. The Government contested that argument.

24. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 11 September 2001. It thus lasted 8 years 4 months and 13 days for one level of jurisdiction.

A. Admissibility

25. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004, when the 2004 Act had come into force, the applicant had a possibility of lodging a claim for compensation for damage suffered due to the excessive length of proceedings with the Polish civil courts under Article 417 of the Civil Code read together with Article 16 of the 2004 Act. They argued that the three-year prescription period for the purposes of a compensation claim in tort based on the excessive length of proceedings

could run from a date later than the date on which a final decision in these proceedings had been given.

The Government further submitted that such a possibility had existed in Polish law even before the entry into force of the 2004 Act ever since the judgment of the Constitutional Court of 4 December 2001, which entered into force on 18 December 2001.

26. The applicant contested the Government's arguments.

27. The Court reiterates that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them, before those allegations are submitted to the Court. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

The only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among many authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

28. The Court notes firstly that it has already examined whether after 18 December 2001 and prior to the entry into force of the 2004 Act a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for excessive length of proceedings or that such action offered reasonable prospects of success (see *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003, and *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003).

29. Subsequently, in view of the new developments at domestic level, most notably the entry into force of the 2004 Act, the Court reconsidered its previous position. It held that the civil action for damages brought under Article 417 of the Civil Code read together with section 16 of the 2004 Act was an effective remedy in respect of the length of judicial proceedings in respect of persons who on 17 September 2004, when the 2004 Act entered into force, could still lodge such an action with the relevant domestic court (see *Krasuski v. Poland*, no. 61444/00, § 72, 14 June 2005).

At the same time, regard being had to the limitation period of three years provided for in Polish law, the Court found that this remedy cannot be regarded as effective if more than three years elapsed between the date of the final decision and the entry into force of the 2004 Act, on 17 September 2004 (see, *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005).

30. The Polish Government have so far unsuccessfully been pleading that the civil action should be considered as an effective remedy even after the expiry of the limitation period (see, *Badowski v. Poland*, no. 47627/99, § 30, 8 November 2005, *Barszcz v. Poland*, no. 71152/01, § 45, 30 May 2006). The Court has reiterated in response to their argument that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). Accordingly, the Government's arguments have been rejected as being unsupported by documentary evidence or relevant judicial practice.

31. In the present case the Government pointed to the Wroclaw Regional Court's judgment of 29 September 2005 in which that court examined on the merits the claim for compensation for unreasonable length of the proceedings despite the fact that they had ended in 2000 and dismissed the claim. However, according to the Polish law the issue whether an action is time-barred cannot be examined by a court *ex officio* but must be raised by the defendant (see paragraph 21 above). The Court observes that there is no indication in this case that the defendant alleged that the limitation period had elapsed. Since the defendant had waived his right to rely on the limitation period, the domestic court consequently examined the merits of the claim.

The Government submitted that even when the defendant raises the objection that the action is time-barred, the domestic court can dismiss it if the application of the limitation period would violate "the principles of co-existence with others" contained in Article 5 of the Civil Code (see paragraph 20 above). Nevertheless, the Court notes that according to the judicial practice such an exception has only been granted in exceptional circumstances, in cases where important issues were at stake and provided that the delay was justified, for example in connection with claims for compensation for medical malpractice instituted by minors. The Government have not provided any example of judicial practice showing that the claim for compensation for unreasonable length of proceedings under Article 417 of the Civil Code could be considered exceptional enough by the domestic courts to exclude the application of the limitation period on the grounds of Article 5 of the Civil Code.

32. The Court thus considers that no evidence of judicial practice of the Supreme Court or at least of the appellate courts has been provided to show that the claim for compensation for unreasonable length of the proceedings

could be successful when the proceedings complained of have come to an end more than three years prior to 17 September 2004, if the defendant has not waived his right to rely on the limitation period (see *Barszcz v Poland*, cited above, § 45 and *Ratajczyk v. Poland*, cited above).

33. The Court observes that the proceedings at issue ended, according to the Government, at the latest on 11 September 2001, which is more than three years before the 2004 Act came into force. It follows that the limitation period for the State's liability in tort set out in Article 442 of the Code Civil expired before 17 September 2004.

In the light of the foregoing, the Court considers that a civil action for compensation provided for by Article 417 of the Civil Code read in conjunction with section 16 of the 2004 Act cannot be regarded with a sufficient degree of certainty as an effective remedy in the applicant's case. The Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

34. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. The Court will therefore declare it admissible.

B. Merits

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

36. 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).

37. 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

38. The applicant also complained that she had no effective domestic remedy at her disposal for her complaint under Article 6 § 1 of the Convention, as required under Article 13 of the Convention.

39. The Government contested that argument.

40. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

41. 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 *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see, among many other authorities, the *Kudła* judgment cited above § 160, *Bouilly v. France* (no. 2), no. 57115/00, § 22, 24 June 2003, *D.M. v. Poland*, no. 13557/02, § 47, 14 October 2003) and sees no reason to reach a different conclusion in the present case.

42. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. 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 30,000 polish zlotys (PLN) in respect of pecuniary damage and PLN 60,000 in respect of non-pecuniary damage.

45. The Government submitted that the claims were excessive.

46. 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 must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards the applicant 8,000 euros (EUR) under that head.

B. Costs and expenses

47. The applicant also claimed PLN 38,000 for the costs and expenses incurred before the domestic courts.

48. The Government contested the claim.

49. 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 reimbursement of costs and expenses in the domestic proceedings.

C. Default interest

50. 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;
2. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 8,000 (eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President