



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

FOURTH SECTION

CASE OF NIEWIADOMSKI v. POLAND

(Application no. 64218/01)

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

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 Niewiadomski 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 5 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 64218/01) 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 Józef Niewiadomski (“the applicant”), on 14 June 1999.

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

3. On 26 August 2005 the President of the Fourth Section decided to give notice of the application 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 1933 and lives in Łódź, Poland.

A. The facts prior to 1 May 1993

5. In 1983 the Government decided to construct the Polish Mothers' Memorial Hospital (“the hospital”) in Łódź, the largest obstetric and

paediatric hospital in the country. At the same time the Citizens' Council ("the Council") of the hospital was established. It was responsible for fund-raising and oversight of the hospital's construction. The applicant served as a secretary general of the Council.

6. On 16 February 1991 the Łódź Regional Prosecutor charged the applicant and three other members of the Council with embezzlement of the hospital funds.

7. On 13 July 1992 the Regional Prosecutor lodged a bill of indictment with the Łódź Regional Court against the applicant and three other co-accused.

8. On 12 November 1992 the Regional Court sent the case back to the prosecution service for additional investigation. The prosecution appealed unsuccessfully against that decision. On 31 December 1992 the Regional Prosecutor discontinued the investigation in respect of certain charges.

B. The facts after 1 May 1993

9. On 14 December 1993 an amended bill of indictment against the applicant and two other defendants was lodged with the Łódź Regional Court. The applicant was charged with embezzlement of funds allocated to the Council.

10. The Regional Court held 11 hearings on the following dates: 16 and 17 May, 4 and 5 October 1994; 4 and 17 January, 14 February, 20 March and 12, 26 and 27 April 1995. It heard an unspecified number of witnesses and experts. Seven hearings were adjourned, including two on account of the judge's illness and one at the prosecutor's request. Other hearings appear to have been adjourned due to the failure of certain witnesses to appear.

11. On 4 May 1995 the Regional Court acquitted the applicant. The prosecution appealed against that judgment on 22 August 1995.

12. A hearing before the Łódź Court of Appeal scheduled for 14 February 1996 was adjourned since one of the judges could not be present. On 15 March 1996 the Court of Appeal quashed the acquittal and remitted the case.

13. A hearing scheduled for 10 January 1997 had to be adjourned on account of the illness of H.A. (one of the defendants). On 14 March 1997 the Regional Court stayed the proceedings on that ground. On 13 August 1997 the proceedings were resumed, after the Regional Court had obtained additional medical reports concerning H.A.

14. A hearing before the Regional Court scheduled for 6 October 1997 had to be adjourned due to the illness of I.C., one of the defendants. On 18 November 1997 the Regional Court made a severance order in respect of the proceedings against I.C.

15. The Regional Court held three hearings on the following dates: 26 March, 25 May and 4 June 1998. Four hearings had to be adjourned due to the applicant's absence. Three of those related to the fact that the applicant had had a heart attack and had to be hospitalised. One hearing was adjourned since the judge was on leave.

16. On 27 November 1998 the Regional Prosecutor requested the trial court to discontinue the proceedings. The applicant's lawyer supported that request.

17. On 30 December 1998 the Regional Court discontinued the proceedings against the applicant, pursuant to Article 17 § 1 subparagraph 2 of the new Criminal Code, which entered into force on 1 September 1998. It held that the acts with which the applicant had been charged did not constitute an offence under the new Criminal Code.

18. The applicant did not appeal against that decision.

19. The applicant also submits that throughout the trial many press articles had been published which showed him in a negative light and had had a bearing on the principle of the presumption of innocence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

20. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

21. The Government contested that argument.

22. 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 30 December 1998. It thus lasted 5 years and 8 months for two levels of jurisdiction.

A. Admissibility

23. The Court notes that this complaint 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

24. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

25. 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 *Pélissier and Sassi*, cited above).

26. 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 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

27. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him were unfair. He further complained that those proceedings did not terminate in his acquittal, but instead were discontinued.

28. However, the Court notes that the applicant did not appeal against the Regional Court's decision of 30 December 1998. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF IMPARTIALITY

29. The applicant also alleged that the courts were not impartial in his case on account of a hostile media campaign which had had an adverse effect on the principle of the presumption of innocence.

30. However, the Court notes that the applicant did not at any time raise the issue of the alleged lack of impartiality before the domestic courts. In addition, the Court notes that there is no evidence in the case file of any statement by a State official published by the press, which was capable of

raising issues relating to the presumption of innocence or the impartiality of the courts dealing with the applicant's case (see, *Kuvikas v. Lithuania*, no. 21837/02, § 55 *in fine*, 27 June 2006). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 12,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

33. The Government contested these claims.

34. 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 suffered some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

35. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts.

36. The Government contested the claim.

37. 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 it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

38. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of 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 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President