



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

FOURTH SECTION

CASE OF CICHLA v. POLAND

(Application no. 18036/03)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Cichla 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 18036/03) 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 Bożena Cichla (“the applicant”), on 20 May 2003.

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

3. On 1 September 2005 the President of the Fourth Section decided to communicate 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 1962 and lives in Wieluń, Poland.

5. On 1 September 1994 the applicant’s husband died in a road accident. He worked as a driver and was killed when a truck in front of him, carrying an inflammable substance, exploded.

6. On 27 February 1996 the applicant, on behalf of herself and her three children, lodged a civil action with the Kalisz Regional Court (*Sąd Wojewódzki*). She claimed compensation for her husband’s death and

directed her action, *inter alia*, against the company that owned the truck and the “Warta” Insurance Company.

7. On 9 October 1996 the trial court held the first hearing.

8. Subsequently, hearings were held once a year on 8 December 1997, 27 September 1998 and 26 November 1999. In 2000 no hearings were held.

9. On 19 December 2001 and 13 February 2002 the trial court held hearings. On the latter date the court stayed the proceedings. They were resumed on 18 August 2003. Subsequently, the court ordered that an expert opinion be prepared. The court scheduled two hearings but they were adjourned.

10. On 24 October 2004 the applicant lodged with the Łódź Court of Appeal (*Sąd Apelacyjny*) a complaint about a breach of the right to have her case heard within a reasonable time. She relied on the 2004 Act. On 22 December 2004 the Court of Appeal dismissed her complaint. The court examined the course of the impugned proceedings and held that there were no delays for which the Regional Court could be held responsible. Some delays were caused by the actions of the defendant. The court finally held that the case was complex and required the taking of expert evidence.

11. In May and June 2005 the experts submitted their opinions to the court.

12. On 20 September 2005 the Kalisz Regional Court gave judgment. It allowed the action and granted the applicant compensation. The defendant lodged an appeal against the judgment.

13. On 19 June 2006 the Łódź Court of Appeal held a hearing at which it dismissed the appeal. The judgment is final.

II. RELEVANT DOMESTIC LAW

14. 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.

15. Section 2 of the 2004 Act reads, in so far as relevant:

“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).”

16. Section 5 reads, in so far as relevant:

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

17. Section 12 provides for measures that may be applied by the court dealing with the complaint. It reads, in so far as relevant:

“1. The court shall dismiss a complaint which is unjustified.

2. If the court considers that the complaint is justified, it shall find that there was an unreasonable delay in the impugned proceedings.

3. At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a fixed time-limit. Such instructions shall not concern the factual and legal assessment of the case.

4. If the complaint is justified the court may, at the request of the complainant, grant ... just satisfaction in an amount not exceeding PLN 10,000 to be paid by the State Treasury. If such just satisfaction is granted it shall be paid out of the budget of the court which conducted the delayed proceedings.”

A more detailed rendition of the relevant domestic law provisions is set out in the Court’s decision *Charzyński v. Poland* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-....

THE LAW

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

18. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

19. The Government contested that argument.

20. The period to be taken into consideration began on 27 February 1996 and ended on 19 June 2006. It thus lasted 10 years and almost 4 months for two levels of jurisdiction.

A. Admissibility

21. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that she had not lodged a civil claim for compensation for damage suffered due to the excessive length of proceedings with the Polish civil courts under Article 417 of the Civil Court.

22. The applicant generally contested the Government’s arguments.

23. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

24. The Court also reiterates that, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001, *Kaniewski v. Poland*, no. 38049/02, §§ 32–39, 8 November 2005).

25. The Court notes that the applicant lodged a complaint about the length of the proceedings under the 2004 Act but it was dismissed on 17 March 2005 by the Warsaw Regional Court. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37–43).

26. The Court considers therefore that, having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

27. The Court notes 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 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). 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. The Court notes that the trial court held hearings once a year and that the longest period of inactivity lasted between November 1999 and December 2001. Therefore the conduct of the court contributed to the overall delay and showed a lack of diligence in the proceedings in which there was a lot at stake for the applicant. In this connection the Court considers that the Warsaw Court of Appeal in dismissing the applicant's complaint that the length of the proceedings in her case exceeded a reasonable time failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

30. 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. 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 30,000 euros (EUR) in respect of pecuniary and 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 awards the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant did not claim reimbursement of costs and expenses.

C. Default interest

36. 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 7,000 (seven 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President