



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

FOURTH SECTION

CASE OF JOŃCZYK v. POLAND

(Application no. 75870/01)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

12/02/2007

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 Jończyk 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,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *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. 75870/01) 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 Marek Jończyk (“the applicant”), on 27 June 2000.

2. The applicant was represented by Mr Z. Huziuk, a lawyer practising in Łódź, Poland. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and, subsequently, Mr J. Wołásiewicz, of the Ministry of Foreign Affairs.

3. On 3 May 2004 the President of the Fourth Section decided to communicate the complaint concerning the length of proceedings 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 1936 and lives in Łask-Kolumna, Poland.

A. Facts prior to 1 May 1993

5. In 1983 the applicant was injured in a traffic accident. He was subsequently granted a special disability pension from the State Insurance Company (*Powszechny Zakład Ubezpieczeniowy* - "PZU"). The applicant was not satisfied with the amount of the pension and on 31 March 1992 he lodged a claim for a reassessment of the amount with the Łask District Court (*Sąd Rejonowy*). The first hearing was held on 21 April 1993.

B. Facts after 30 April 1993

6. The trial court held hearings on 17 May and 28 October 1993. A hearing scheduled for 24 December 1993 was adjourned at the defendant's request. Subsequently, on 23 March 1994 the court held a hearing.

7. On 30 March 1994 the Łask District Court gave judgment and dismissed the applicant's claim.

8. On 25 August 1994, upon the applicant's appeal, the Łódź Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment and remitted the case in respect of part of the claims to the Łask District Court.

9. On 9 December 1994 the District Court held a hearing.

10. Between 3 February 1995 and 15 March 1996 the court held six hearings. A hearing listed for 9 June 1995 was adjourned as the defendant had not been properly summoned. At a hearing held on 30 June 1995 the applicant requested that an expert opinion be obtained. On 9 August 1995 the applicant withdrew his motion concerning matters of evidence. A hearing scheduled for 20 November 1995 was adjourned as the applicant's lawyer had not been properly summoned.

11. On 28 June 1996 the court ordered that expert evidence be obtained. On 17 March 1997 the court urged the expert to submit the opinion. The expert's report was submitted to the court on 31 December 1997.

12. Subsequently, hearings were held on 6 February and 4 March 1998. The trial court held four further hearings between 8 April 1998 and 8 February 1999. At a hearing held on 8 April 1998 the court proposed that the parties conclude a friendly settlement. The proposal was rejected. A hearing scheduled for 5 June 1998 was adjourned as both parties failed to appear before the court.

13. On 12 February 1999 the District Court gave judgment. Both parties appealed.

14. On 30 June 1999 the Sieradz Regional Court dismissed the applicant's claim.

15. The proceedings were terminated by the judgment of the Supreme Court (*Sąd Najwyższy*) of 21 January 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The legal provisions applicable at the material time as well as matters of practice are set out in paragraphs 26-35 of the judgment delivered by the Court on 30 May 2006 in the case of *Barszcz v. Poland*, no. 71152/01.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

17. 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...”

18. The Government contested that argument.

19. 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 Court notes that the proceedings began on 31 March 1992 and ended on 21 January 2000. They therefore lasted approximately 7 years and 10 months, out of which a period of 6 years, 8 months and 21 days falls within the Court’s jurisdiction *ratione temporis*.

A. Admissibility

20. 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

21. 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).

22. 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).

23. 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 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

24. Additionally, the applicant complained under Article 6 § 1 that he did not have a fair trial, in particular he alleged that the courts had wrongly assessed the evidence and had committed errors of fact.

25. The Court reiterates that according to Article 19 of the Convention, the Court’s duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

In the present case, the Court finds no indication that the courts went beyond the margin of appreciation left to them in respect of the assessment of evidence, or that the proceedings were otherwise unfair.

26. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 300,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

29. The Government considered that the sum in question was exorbitant and should be rejected. They asked the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction. Alternatively, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and with reference to national economic conditions.

30. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

31. The applicant, who was represented before the Court, claimed reimbursement of costs and expenses incurred in the preparation of his application to Strasbourg. He left the amount of an award to the discretion of the Court.

32. The Government contested the claim.

33. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court finds that the applicant has not produced any evidence supporting his claim as required by Rule 60 § 2 of the Rules of Court. Accordingly, it makes no award under this head.

C. Default interest

34. 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State 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 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