



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

FOURTH SECTION

CASE OF KUŹNIAK v. POLAND

(Application no. 13861/02)

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 Kuźniak 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. 13861/02) 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, Mr Henryk Kuźniak (“the applicant”), on 25 July 2001.

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

3. On 26 August 2005 the President of the Fourth Section decided to communicate the complaint concerning the length of the 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 1950 and lives in Konin, Poland.

5. On 5 October 1990 the applicant’s former wife instituted before the Konin District Court (*Sąd Rejonowy*) civil proceedings in which she requested division of their matrimonial property. The applicant was a party to these proceedings.

6. Until 19 January 1993 the court held several hearings and ordered the preparation of expert opinions.

7. On 7 September 1993 the court held a hearing. Five further hearings were held prior to 7 December 1993.

8. On 13 September 1994 the next hearing was held. In 1994 the District Court held in total four hearings.

9. Between 7 January 1995 and 21 December 1995 no hearings were held. In 1996 the court held hearings in February, September and December.

10. Subsequently the District Court held hearings at regular intervals. It held three hearings in 1997 and six in 1998.

11. Between 4 March and 9 December 1999 no hearings were held.

12. In 2000 the court held four hearings. On 24 March 2000 the Konin District Court gave a decision in which it divided the property in question.

13. Both parties appealed against that decision.

14. On 17 November 2000 the Konin Regional Court (*Sąd Okręgowy*) held a hearing.

15. On 1 December 2000 the Konin Regional Court dismissed the appeals. The reasoned decision was notified to the applicant on 6 February 2001. The decision was final as the domestic law did not provide for a possibility to lodge a cassation appeal with the Supreme Court.

II. RELEVANT DOMESTIC LAW

16. 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.”

17. 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.”

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 more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Krasuski v. Poland*, no. 61444/00, §§ 34-46,

ECHR 2005–... (extracts) and in *Charzyński v. Poland* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-....

THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The Court notes that the period to be taken into consideration began not on 5 October 1990 when the proceedings were initiated, but 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 1 December 2000. It thus lasted 7 years and 7 months for two levels of jurisdiction.

A. Admissibility

22. The Court firstly notes that the Government raised a preliminary objection 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 Section 16 of the 2004 Act.

23. However, the Court has already found that the civil action relied on cannot be regarded with a sufficient degree of certainty as an effective remedy in cases where the three-year limitation period for the State’s liability in tort expired before the entry into force of the 2004 Act on 17 September 2004 (see *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005, *Barszcz v. Poland*, no. 71152/01, § 45, 30 May 2006). The present case belongs to this group of applications as the proceedings at issue ended on 1 December 2000, which is more than three years before the 2004 Act had come into force. It follows that the Government’s plea of

inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

24. The Court further 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

25. 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).

26. 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.

27. 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

28. The applicant further complained that the proceedings in his case were “unfair”.

29. However, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

30. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the civil proceedings in the applicant’s case as a whole, it finds no indication that they were unfairly conducted.

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

III. 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 did not claim any particular sum in respect of pecuniary and non-pecuniary damage. He left that matter to the Court’s discretion and asked the Court to award him just satisfaction in the amount it finds appropriate.

33. The Government asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

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 4,200 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant did not claim any particular sum in respect of costs and expenses incurred before the domestic courts and the Court.

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 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 4,200 (four thousand two hundred 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