



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

FOURTH SECTION

CASE OF ŁUKJANIUK v. POLAND

(Application no. 15072/02)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

26/03/2007

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 Łukjaniuk 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 17 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 15072/02) 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, Mrs Jolanta Łukjaniuk (“the applicant”), on 2 May 2001.

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

3. On 16 February 2006 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 1960 and lives in Gołdap, Poland.

5. In September 1994 the applicant entered into a contract with the Białystok Poultry Company. Under the terms of the contract, the applicant bought 11,733 chicks from the company which she was to raise for a period of two months. Subsequently, the applicant was to deliver the chickens to the company against a payment of an agreed price. In November and December 1994 the applicant purchased foodstuff from a company in Kętrzyn to feed the birds. Subsequently, about 60% of the chicks died.

6. On 1 March 1995 the applicant filed a compensation claim with the Suwałki Regional Court against the company producing the foodstuff. She asserted that her chicks had died as a result of being fed the foodstuff purchased from the company. The defendant company contested its liability for the damage sustained by the applicant. On an unspecified date the applicant increased her claim.

7. The first hearing was fixed for 2 June 1995, but the Regional Court adjourned it due to the applicant's absence. However, it appears that the applicant's lawyer was present at that hearing. The next hearing was held on 30 June 1995. On 7 September 1995 the Regional Court visited the site. Subsequent hearings were held on 21 December 1995, 8 February and 12 December 1996, 5 May and 23 June 1997, 9 February and 23 March 1998. On 5 January 1998 one of the experts was heard by the Warsaw District Court at the Suwałki Regional Court's request.

8. The Regional Court ordered the preparation of three veterinary reports. On 8 February 1996 it ordered that a second report be drawn up. However, that report was only submitted to the court on 12 November 1996. The preparation of a third report was ordered on 12 December 1996 at the applicant's request as she had contested the expert findings in the previous reports. The third report was submitted to the court on 23 March 1997.

9. On 31 March 1998 the Regional Court delivered its judgment. It awarded the applicant PLN 5,616, which represented 15% of the compensation sought, together with statutory interest. It ordered the applicant to pay PLN 4,320.82 for the outstanding court fee. It also held that the applicant was not required to reimburse the litigation costs of the defendant company.

10. On 21 April 1998 the applicant filed an appeal against the Regional Court's judgment. The defendant company also filed an appeal.

11. On 16 July 1998 the Białystok Court of Appeal held a hearing. On 30 July 1998 the Court of Appeal upheld the first-instance judgment for the most part. It amended it only in respect of the litigation costs of the defendant company. It ordered the applicant to cover a part of those costs (PLN 1,200), having regard to her difficult financial situation.

12. On 10 September 1998 the applicant filed a cassation appeal with the Supreme Court against the judgment of the Court of Appeal. On 14 March 2000, in reply to her query, the applicant was informed by the Supreme Court that due to the large number of cassation appeals pending before that court a hearing would be held approximately two years from the date of lodging the cassation appeal.

13. On 2 February 2001 the Supreme Court held a hearing. It dismissed the applicant's cassation appeal on the same day.

14. On 11 June 2001 the Suwałki Regional Court issued an execution warrant on behalf of the applicant. On 27 September 2001 the Bailiff of the Kętrzyn District Court stayed the enforcement proceedings at the

applicant's request. On 2 October 2001 and 8 January 2002 the applicant requested the Suwałki Regional Court to amend the execution warrant due to the change of the defendant company's name. That warrant was issued on 9 April 2002. On 14 May 2002 the Regional Court's judgment of 31 March 1998 was successfully enforced.

15. On 27 September 2001, at the applicant's request, the President of the Suwałki Regional Court suspended until 31 May 2002 the obligation to pay the court fees. On 3 June 2002 the applicant paid PLN 2,000 as part of the outstanding court fees. On 27 June 2002 the President of the Regional Court agreed that the applicant could pay the remaining court fees in 24 monthly instalments.

II. RELEVANT DOMESTIC LAW

16. The legal provisions applicable at the material time as well as matters of practice concerning the remedies against unreasonable length of proceedings 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 AS REGARDS THE LENGTH OF PROCEEDINGS

17. The applicant complained that the length of the substantive 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..."

18. The Government contested that argument.

19. The period to be taken into consideration began on 1 March 1995 and ended on 2 February 2001. It thus lasted 5 years, 11 months and 5 days for three levels of jurisdiction.

A. Admissibility

20. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when 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”) had come into force, the applicant had a possibility of lodging with the Polish civil courts under Article 417 of the Civil Code read together with Article 16 of the 2004 Act a claim for compensation for damage suffered due to the excessive length of proceedings. 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 before the entry into force of the 2004 Act ever since the judgment of the Constitutional Court of 4 December 2001, which had entered into force on 18 December 2001.

21. The applicant contested the Government’s arguments.

22. The Court observes that the proceedings at issue ended on 2 February 2001, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code had become effective. It follows that the limitation period for the State’s liability in tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

23. The Court notes that the arguments raised by the Government are the same as those already examined and rejected by the Court in previous cases against Poland (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-...; *Barszcz v. Poland*, no. 71152/01, §§ 41-45, 30 May 2006) and the Government have not submitted any new arguments which would lead the Court to depart from its previous findings. For these reasons, the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

24. 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

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 observes that the case was somewhat complex. However, it considers that this in itself cannot justify the overall length of the proceedings.

27. As regards the conduct of the applicant, the Court, having regard to the available evidence, does not find it established that the applicant contributed in any significant manner to the delays in the proceedings.

28. As regards the conduct of the judicial authorities, the Court notes that there were periods of inactivity in the proceedings before the Regional Court. It observes that no hearing was held between 8 February and 12 December 1996 due to a 9-month delay in the preparation of a veterinary report. In this connection the Court recalls that experts work in the context of judicial proceedings supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. ..., § 44). Similarly, no hearings were held before the Regional Court between 23 June 1997 and 9 February 1998. Furthermore, the Court observes that there was an approximately 29-month period of inactivity in the proceedings before the Supreme Court between the date of lodging the applicant's cassation appeal and the delivery of the judgment. The Court can accept that some delays in the procedure before the Supreme Court could be explained by the fact that at the material time the Supreme Court had to deal with an increased workload (see *Kępa v. Poland* (dec.), no. 43978/98, 30 September 2003). Nevertheless, in the present case the applicant's cassation appeal lay dormant in the Supreme Court for nearly 29 months, which constitutes an unreasonable delay (see *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004).

29. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained under Article 6 § 1 of the Convention that the proceedings had been unfair, referring to the amount of compensation awarded and the assessment of evidence by the domestic courts. She further complained that she had been ordered to pay the court fees and the costs of the defendant company. The applicant also complained that she had been unable to enforce the Regional Court's judgment as the defendant company had changed its name and head office.

31. As regards the complaint about unfairness of the proceedings, the Court recalls 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). It further recalls that the admissibility and assessment of evidence are matters that fall to be decided primarily at the domestic level. Having regard to the above, the Court considers that in the proceedings complained of, seen as a whole, there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair hearing within the meaning of Article 6 § 1 of the Convention.

32. In respect of the complaint regarding the orders for court fees and costs, the Court notes that the applicant was awarded only 15% of the compensation sought from the defendant. It further observes that the impugned orders reflected the ordinary rule that the party losing a case is required to reimburse the litigation costs of the successful party. The Court also notes that in respect of the order for costs the Court of Appeal took into account the applicant's difficult financial situation. Accordingly, it considers that the applicant's grievances about the impugned orders do not disclose any appearance of a breach of the requirements of Article 6 § 1 of the Convention.

33. As regards the complaint about the difficulties with the enforcement of the Regional Court's judgment, the Court considers that the respondent State cannot be held responsible for any such difficulties in so far as they resulted from changes to the name of the defendant company. In so far as the applicant could be understood as complaining about delays in enforcing the Regional Court's judgment, the Court notes that the applicant obtained an execution warrant on 11 June 2001 and the judgment was enforced on 14 May 2002. The Court observes that there was some delay in the enforcement proceedings as a result of the need to issue an amended warrant and that the delay in issuing one was attributable to the authorities. However, it considers that the overall length of the enforcement proceedings cannot be regarded as excessive.

34. It follows that all these complaints are 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

35. 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

36. The applicant claimed 21,827.10 Polish zlotys (PLN) in respect of pecuniary damage and PLN 40,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. 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 certainly suffered non-pecuniary damage, such as distress and frustration, on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under that head.

B. Costs and expenses

39. The applicant made no claim for costs and expenses.

C. Default interest

40. 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 1,000 (one thousand euros) in respect of non-pecuniary damage, 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 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 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President