



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

FOURTH SECTION

CASE OF DRABICKI v. POLAND

(Application no. 15464/02)

JUDGMENT

STRASBOURG

14 November 2006

FINAL

14/02/2007

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 Drabicki 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 Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 15464/02) 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 Kazimierz Drabicki ("the applicant"), on 8 October 2001.

2. The applicant was represented by his son, Mr J. Drabicki. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 28 November 2005 the President of the Fourth Section decided to communicate the applicant's 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 1926 and lives in Rzeszów.

5. In 1992 the applicant, who was a pensioner, received from the Social Security Board (*Zakład Ubezpieczeń Społecznych*) a substantial amount of money (over 57,000,000 old Polish zlotys) by way of adjustment of his pension.

6. Subsequently, the Social Security Board found that the sum had been awarded to the applicant by mistake and started to deduct money from his pension. The applicant instituted proceedings against the Board. According to the applicant, in 1996 the Rzeszow Court of Appeal allowed his action and found that the Board's deductions had been illegal.

7. On 28 July 1997 the Social Security Board instituted civil proceedings against the applicant in the Rzeszów District Court (*Sąd Rejonowy*) claiming the remaining sum of PLN 10,000.

8. Between 7 November 1997 and 24 February 1998 the court held four hearings.

9. On 10 March 1998 the court gave judgment in which it allowed the plaintiff's action. The applicant appealed against the judgment.

10. On 9 June 1998 the Rzeszów Regional Court (*Sąd Wojewódzki*) held a hearing at which it dismissed the applicant's appeal. On 6 August 1998 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

11. On 11 April 2001, sitting *in camera*, the Supreme Court refused to entertain the cassation appeal.

II. RELEVANT DOMESTIC LAW

12. 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

13. 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..."

14. The Government contested that argument.

15. The period to be taken into consideration began on 28 July 1997 and ended on 11 April 2001. It thus lasted over 3 years and 8 months for 3 levels of jurisdiction.

A. Admissibility

16. 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.

17. 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 11 April 2001, which is more than three years before the 2004 Act came into force. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

18. The Government further submitted that the applicant's litigation was of vexatious nature and that his application to the Court constituted an abuse of the right of individual application under Article 35 § 3 of the Convention.

19. The applicant considered the Government's objection indecent.

20. The Court observes that the present case originated in a civil action instituted by the Social Security Board against the applicant. In view of this, and given the general nature of the Government's argument, the Court finds no grounds whatsoever for concluding that the applicant's application to the Court is an abuse of the right of individual application.

21. 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

22. 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 applicants and the relevant authorities and what was at stake

for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. 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 agrees 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). However, the Court reiterates that, as it has repeatedly held, Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, amongst many other authorities, *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, p. 37, § 15 and *Süssmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1190, § 57). The Court notes that, in the present case, the applicant's cassation appeal lay dormant in the Supreme Court for over thirty months which constitutes an unreasonable delay (see *Domańska v. Poland*, no. 74073/01, 25 May 2004, § 32).

24. 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

25. The applicant further complained that the proceedings in his case were "unfair".

26. 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).

27. 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

28. 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

29. The applicant claimed over 40,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 5,000 in respect of non-pecuniary damage.

30. The Government contested these claims.

31. 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 1,200 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed PLN 2,800 for the costs and expenses incurred before the domestic courts.

33. The Government contested the claim.

34. 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

35. 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 1,200 (one 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 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President