



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

FOURTH SECTION

CASE OF GOLIK v. POLAND

(Application no. 13893/02)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

23/05/2007

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 Golik 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 7 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 13893/02) 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 Zenon Golik (“the applicant”), on 7 March 2002.

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

3. On 29 January 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 1948 and lives in Będzin.

5. The applicant was a police officer in Zawiercie. The Zawiercie police conducted an investigation into a car theft. On 30 November 1992 the applicant was instructed to verify whether a certain B.Ł. was in possession of the stolen car. The applicant and the previous owner of the car arrived at the house of B.Ł. where her parents returned the car to the owner.

6. On 24 December 1992 the Mysłowice District Prosecutor charged the applicant with abuse of power by having intimidated the parents of B.Ł. into

returning the car which had been purchased by their daughter. The prosecutor ordered the applicant's detention for a period of one month. On the same day the Mysłowice District Court dismissed the applicant's appeal against the detention order. On 30 December 1992 the Katowice Regional Prosecutor ordered the applicant's release.

7. On 14 June 1993 the District Prosecutor altered the charges against the applicant.

8. On 21 February 1994 the prosecution service filed a bill of indictment with the Mysłowice District Court. The applicant was charged with abuse of power. The charge related to the applicant's actions on 30 November 1992, when he had allegedly intimidated the parents of B.Ł. into returning the car purchased by their daughter from the previous owner.

9. B.Ł. took part in the proceedings as an auxiliary prosecutor. The trial court held hearings on the following dates: 30 March, 5 September, 17 October, 5 December 1994, 2 March, 12 June, 31 August 1995, and on 1 and 26 March 1996.

10. On 6 February 1996 the trial judge who heard the case was replaced by another judge. Consequently, the case had to be heard *de novo*.

11. Hearings scheduled for 10 November 1994, 3 April and 28 December 1995 were adjourned due to the absence of the applicant's counsel. A hearing scheduled for 19 January 1995 was cancelled at the applicant's counsel's request since he had other hearings listed for that day. Hearings scheduled for 15 May and 26 October 1995 were adjourned due to, respectively, the applicant's illness and the auxiliary prosecutor's absence. At the hearing on 23 April 1996 the applicant felt unwell and was taken to hospital. He was diagnosed with a heart condition.

12. Hearings scheduled for 25 June, 6 August and 6 September 1996 were adjourned due to the applicant's illness. On the last mentioned date the trial court ordered that the applicant be brought by the police to the next hearing fixed for 27 September 1996. However, the police failed to execute the order since the applicant had objected to his arrest on the grounds of his poor health.

13. On 27 September 1996 the trial court ordered that the applicant be remanded in custody on the ground that he had unlawfully obstructed the proceedings. The court noted that the applicant had submitted certificates of illness, although he had failed to have them confirmed by the court's medical expert. On 10 October 1996 the applicant was detained. The detention order was upheld on appeal on 11 October 1996.

14. The hearing scheduled for 6 November 1996 was adjourned, since the applicant had complained about the state of his health. The trial court accordingly ordered a report to be prepared in order to determine whether the applicant could participate in the trial. The report, submitted on an unspecified date, concluded that the applicant could take part in the

proceedings and that he could receive adequate medical treatment in detention.

15. On 13 November 1996 the District Court held a hearing. During the hearing the applicant was examined by a doctor. On the same day the trial court gave judgment. It convicted the applicant as charged and sentenced him to 18 months' imprisonment, suspended on probation, and a fine. It also ordered that the applicant be prohibited from working as a police officer for four years.

16. The trial court's judgment was served on the applicant's counsel on an unspecified date in May 1997. On 26 May 1997 the applicant appealed against the judgment.

17. Two hearings scheduled by the Katowice Regional Court for 25 July and 17 October 1997 were adjourned. A hearing listed for 5 March 1998 was adjourned due to the absence of the applicant's counsel.

18. On 7 April 1998 the Katowice Regional Court held a hearing and delivered its judgment. The Regional Court quashed the first-instance judgment and discontinued the criminal proceedings against the applicant.

19. On 10 June 1998 the applicant and the prosecutor appealed against the Regional Court's judgment.

20. On 23 November 2000 the Supreme Court quashed the judgment of the Regional Court and remitted it to the latter court for a renewed examination of the appeal against the trial court's judgment.

21. On 18 April 2001 the Regional Court held a hearing. On 20 April 2001 the applicant filed a request for the withdrawal of the judges of the Regional Court from the case. That request was later decided on an unspecified date.

22. On 7 September 2001 the Katowice Regional Court held a hearing and rendered its judgment. It upheld the District Court's judgment of 13 November 1996 for the most part, amending it only in respect of the legal basis of the applicant's conviction and sentence in connection with the entry into force on 1 September 1998 of the new Criminal Code. The applicant's counsel was present at the delivery of the judgment. No further appeal lay against that judgment.

23. It appears that a written copy of the Regional Court's judgment was finalised on 5 October 2001. The applicant was not entitled to receive *ex officio* a copy of the judgment and did not request its service.

24. The applicant's first letter to the Court setting out the object of the application was dated 7 March 2002. It was sent by registered post on 8 March 2002.

II. RELEVANT DOMESTIC LAW

25. 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. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. The Government submitted that the application was inadmissible for failure to comply with the six-months' rule. They observed that the final domestic decision was the Katowice Regional Court's judgment given on 7 September 2001 and that the applicant had until 7 March 2002 to lodge his application. However, the applicant's first letter was received by the Registry on 19 March 2002 and thus more than six months after the final domestic decision was rendered. The Government further submitted that they had not been provided with any proof that the applicant's first letter had in fact been sent before the expiry of the six-month time-limit. The date printed on the applicant's letter (7 March 2002) should not be taken as the date on which the application had been lodged, since the applicant could have chosen this date arbitrarily. In addition, they argued that the applicant's first letter had been sent beyond the prescribed time-limit, having regard to the date of its arrival at the Registry.

27. The applicant disagreed and submitted that he had posted his first letter on 8 March 2002. He argued, however, that the time-limit began to run on 27 November 2001, which was the date of the service of the Regional Court's judgment.

28. The Court first recalls that the first day of a time-limit is considered to start on the day following the final decision, whereas "months" are calculated as calendar months regardless of their actual duration (see *Fleri Soler and Camillieri v. Malta*, no. 35349/05, § 31, 26 September 2006; *K. C. M. v. the Netherlands*, Commission decision of 9 January 1995, no. 21034/92, Decisions and Reports (DR) 80-A, p. 88). It further observes that under domestic law the applicant was not entitled to be served *ex officio* a written copy of the Regional Court's judgment and that he did not request the service of the judgment. In the present case, the final domestic decision was rendered on 7 September 2001. It follows that the six-months' time-limit provided for in Article 35 § 1 of the Convention started to run on the following day, namely 8 September 2001.

29. The Court notes that the applicant's first letter setting out the object of the application was dated 7 March 2002. That letter, as shown by the postage stamp on the envelope, was sent by registered post on 8 March 2002. Even if the date of dispatch of the first letter were to be considered as

the date of introduction of the application, the Court observes that the application was introduced before the expiry of the six-months' time-limit provided for by Article 35 § 1 of the Convention. In any event, the Court also points out that the requirements of the six-months' rule are complied with if the first communication has been made within the time-limit, although it may have arrived several days after its expiry (see *Angelova v. Bulgaria* (dec.), no. 38361/97, 6 June 2000, and *Erdogdu and Ince v. Turkey* [GC], nos. 25067/94 and 25068/94, § 30, ECHR 1999-IV).

Accordingly, the Government's preliminary objection must be dismissed.

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

30. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

31. The Government contested that argument.

32. The Court notes that the proceedings commenced on 24 February 1992 when the applicant was charged with abuse of power. However, 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. Nevertheless, 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 7 September 2001. It thus lasted 8 years, 4 months and 9 days for three levels of jurisdiction.

A. Admissibility

33. 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 section 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 entered into force on 18 December 2001.

34. The applicant contested the Government's arguments.

35. The Court observes that the proceedings at issue ended on 7 September 2001, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code became 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.

36. 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.

37. 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

38. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

39. 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 *Pélissier and Sassi*, cited above).

40. 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. It observes, in particular, that there was more than a 29-month period of inactivity in the proceedings before the Supreme Court between the date of lodging the applicant's cassation appeal and the date of 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, in respect of civil cases, *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 over 29 months, which constitutes an unreasonable delay (see *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004). 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant complained under Article 6 § 1 about the unfairness of the proceedings. He claimed that he had been wrongly convicted and that the domestic courts had erroneously assessed the facts and evidence. Invoking Article 7, he complained that he had been convicted without a legal basis. The applicant further complained under Article 13 that all the remedies he had used in the proceedings were not effective. He further alleged a violation of Article 8, claiming that the unjustified allegations against him had had adverse effects on his private and family life. Lastly, he alleged a violation of Articles 2 and 5 § 1 in relation to his detention between 24 and 30 December 1992 and between 10 October and 13 November 1996.

42. As regards the complaints 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.

43. In respect of the complaint concerning the applicant's detention, the Court observes that the first period of his detention lasted from 24 to 30 December 1992. It recalls that Poland recognised the right of individual petition as from 1 May 1993. Consequently, the complaint in respect of the first period of detention falls outside the Court's jurisdiction *ratione temporis*. The second period of the applicant's detention lasted from 10 October until 13 November 1996. However, the Court notes that the complaint in respect of that period was submitted outside the six-months' time-limit.

44. As regards all the remaining complaints, the Court, having examined them, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation

of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 900,000 Polish zlotys in respect of pecuniary and non-pecuniary damage.

47. The Government contested these claims.

48. 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 2,000 under that head.

B. Costs and expenses

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

C. Default interest

50. 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 2,000 (two 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 28 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President