



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

FOURTH SECTION

CASE OF WOJTUNIK v. POLAND

(Application no. 64212/01)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

12/03/2007

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 Wojtunik 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 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 64212/01) 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”) on 4 June 1999 by a Polish national, Mr. M. Wojtunik (“the applicant”).

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

3. On 28 October 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

A. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Świnoujście.

5. On 1 December 1992 the applicant brought an action against his former employer before the Szczecin Regional Court for payment of 88,674 zlotys in compensation for refraining from undertaking any professional activity in competition to that of his former employer. His contract of employment provided for such compensation for a period of six months after the termination of his contract of employment (“the competition clause”).

6. Hearings were held on 3 March 1993, 27 August 1993 and 26 October 1993. On 26 October 1993 the Szczecin Regional Court dismissed the applicant's action. The applicant appealed to the Poznań Court of Appeal.

7. On 24 March 1994 an appeal hearing was held.

8. On 5 May 1994 the Poznań Court of Appeal quashed the judgment and remitted the case.

9. On 20 December 1994 a hearing was held during which the court examined witnesses.

10. On 7 February 1995, 4 April 1995 and 16 May 1995 further hearings were held. On 16 May 1995 the court decided to have witnesses examined by other courts for reasons of economy of proceedings. It sent its request to these courts on 27 July 1995. On 12 October 1995 and 10 December 1995 the requested courts examined witnesses.

11. On 6 February 1996, 18 March 1996 and 19 November 1996 further hearings were held.

12. On 29 January 1997 the Szczecin Regional Court gave a judgment in which it allowed the applicant's claim in part – it awarded him 44,621 zlotys. Both parties appealed.

13. On 31 July 1997 the Poznań Court of Appeal dismissed the applicant's action in its entirety. The applicant lodged a cassation appeal.

14. On 24 February 1998 the Supreme Court of Appeal quashed the judgment and remitted the case.

15. On 22 October 1998 a hearing was held before the Poznań Court of Appeal during which the parties agreed to enter into negotiations.

16. On 28 January 1999 a judicial settlement was concluded and the proceedings were discontinued. According to the settlement, the applicant obtained 61,000 zlotys.

B. RELEVANT DOMESTIC LAW AND PRACTICE ¹

17. 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 party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.

18. On 18 January 2005 the Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Law

¹ For a more detailed presentation of the relevant domestic law see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005.

produced legal effects as from the date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date but only when they had not yet been remedied.

THE LAW

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

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 proceedings began on 1 December 1992 and ended on 28 January 1999. They therefore lasted 6 years, 1 month and 28 days. However, the period to be taken into consideration began only on 1 May 1993, when recognition by Poland of the right of individual petition took effect.

22. The period under the Court’s scrutiny lasted therefore 5 years, 8 months and 29 days for three levels of jurisdiction.

A. Admissibility

23. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that after 17 September 2004, when the 2004 Act had come into force, the applicant had the possibility of lodging with the Polish civil courts a claim for compensation for damage suffered on account of the excessive length of proceedings under Article 417 of the Civil Code read together with section 16 of the 2004 Act. They maintained that the three-year limitation 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.

24. The applicant contested the Government’s arguments.

25. The Court observes that in the present case the proceedings at issue ended on 28 January 1999, 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 for tort set out in Article 442 of the Civil Code had expired before 17 September 2004.

26. 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 *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006) and the Government have not submitted any new elements which would lead the Court to depart from its previous findings.

27. The Government further submitted that such a possibility had existed in Polish law even before the entry into force of the 2004 Act following the the Constitutional Court judgment of 4 December 2001, which took effect on 18 December 2001.

28. The applicant contested the Government's arguments.

29. The Court notes that it has already examined whether after 18 December 2001 and prior to the entry into force of the Law of 17 June 2004 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no evidence of any judicial practice had been provided to show that a claim for compensation based on Article 417 of the Civil Code had ever been successful before the domestic courts (see *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003 and *Malasiewicz v. Poland*, no. 22072/02, 14 October 2003). As the Government have failed to submit any new arguments which would cast doubt on its conclusions in these cases, the Court will abide by its previous findings.

30. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

31. 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

32. The applicant complained about the length of the civil proceedings.

33. The Government submitted that the case was very complex and difficult. In particular, the courts had to examine the nature of the activities performed by the applicant in three companies as well as the structural changes which had taken place within the business of the applicant's former employer.

34. The Government further maintained that the interests of the applicant were of a purely pecuniary nature.

35. The applicant did not comment on these issues.

36. The Government were of the opinion that, as regards the conduct of the authorities, the courts had conducted the proceedings with due diligence and that there were no periods of inactivity by the courts. They further

stated that “special diligence” was not required in this case, unlike the position in cases concerning employment and pensions.

37. The applicant contested the Government’s arguments, stating that hearings had not been held at regular intervals and that the courts had not shown due diligence.

38. The Government accepted that the applicant had not contributed to the length of the proceedings.

39. The applicant did not comment on this issue.

40. 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, *Kuśmierek v. Poland*, no. 10675/02, 21 September 2004, § 62; *Zynger v. Poland*, no. 66096/01, 13 July 2004, § 45).

41. In the Court’s opinion the case was of average complexity and the applicant did not contribute to the length of the proceedings. The Court further observes that significant periods of unexplained inactivity attributable to the authorities occurred in this case. In particular, there were delays between 3 March 1993 and 27 August 1993 (5 months), between 26 October 1993 and 24 March 1994 (5 months), between 5 May 1994 and 20 December 1994 (7 months), between 18 March 1996 and 19 November 1996 (8 months) and between 24 February 1998 and 22 October 1998 (8 months). Furthermore, it took over two months (from 16 May 1995 to 27 July 1995) for the court to send a request to have witnesses examined by other courts.

42. The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17). The Court’s case-law indicates that “employment disputes” are not confined to those in which an applicant seeks reinstatement or a determination of his right to a pension. The notion of “employment disputes” is broader and includes also other employment-related issues, such as recognition of a right to a professional qualification (see, *Caleffi v. Italy*, judgment of 24 May 1991, Series A no. 206-B). In the present case the applicant sought compensation for refraining from undertaking any professional activities in competition with those of his former employer under the “competition clause” included in his contract of employment. The period during which the applicant was obliged to comply with the “competition clause” extended to six consecutive months after the termination of his contract of employment. Thus, the purpose of the “competition clause” was to provide the applicant with the means of subsistence in return for his renunciation of certain professional

activities for quite a considerable time. Therefore, the Court finds that in the present case special diligence was required on the part of the authorities.

43. 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).

44. 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. 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 91,000 PLN (23,000 EUR) in respect of pecuniary and non-pecuniary damage.

47. The Government contested the claim as exorbitant and ill-founded.

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 awards the applicant EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant did not submit any claims 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 application admissible;
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, 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 amounts 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 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President