



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

FOURTH SECTION

CASE OF JAGIELLO v. POLAND

(Application no. 59738/00)

JUDGMENT

STRASBOURG

23 January 2007

FINAL

23/04/2007

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 Jagiello 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,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 4 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 59738/00) 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 January Jagiełło (“the applicant”), on 30 August 1999.

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

3. On 1 December 2005 the Court decided to give notice of the application to the Government.

4. 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1936 and lives in Warsaw, Poland.

6. On 28 November 1995, the applicant, who is a taxi driver by profession, was involved in a traffic accident.

7. On 28 February 1996 the applicant was charged with causing the accident. On 2 September 1997 the applicant was served with a bill of indictment.

8. The hearing set for 16 March 1998 was adjourned due to the presiding judge’s illness. On 11 July 2001 the Warsaw District Court (*Sąd Rejonowy*)

held the first hearing in the case. The hearing set for 20 September 2001 was adjourned due to the witnesses' absence.

9. On 7 December 2001 the court ordered an expert opinion to be obtained. On 30 April 2002 the expert submitted his opinion to the court. The court ordered a supplementary opinion to be obtained.

10. The hearing set for 18 September 2002 was adjourned. At the hearing held on 7 November 2002 the Warsaw District Court gave judgment. The applicant appealed.

11. On 6 June 2003 the Warsaw Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment and remitted the case.

12. Following the remittal, on 23 September 2004 the Warsaw District Court gave judgment. The court sentenced the applicant to one year imprisonment stayed for two years. The applicant appealed.

13. The applicant filed a complaint with the Warsaw Regional Court under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("2004 Act"). On 16 November 2004 the Warsaw Regional Court gave a decision and confirmed that the proceedings had indeed been lengthy. However, the court did not grant any compensation to the applicant.

14. On 29 April 2005 the Warsaw Regional Court held an appeal hearing and gave judgment. The judgment is final.

15. On 6 June 2005 the applicant again filed a complaint with the Supreme Court under the 2004 Act alleging that a copy of the final judgment had not yet been served on him. The Supreme Court rejected the complaint, on a later unknown date, as the applicant had never asked to be served with a copy of the final judgment.

16. On 21 February 2006 the applicant for the third time filed a complaint with the Warsaw Regional Court under the 2004 Act. On 29 September 2006 the court refused to deal with the merits of the complaint. The court held that the proceedings had already been terminated and therefore the complaint was groundless.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

18. 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...”

19. The Government contested that argument.

20. The period to be taken into consideration began on 28 February 1996 and ended on 29 April 2005. It thus lasted nine years and two months for two levels of jurisdiction.

A. Admissibility

1. The Government’s first preliminary objection

21. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that he had not lodged a civil claim for compensation for damage suffered due to the excessive length of the proceedings with the Polish civil courts under Article 417 of the Civil Court.

22. The applicant generally contested the Government’s arguments.

23. The Court notes that the applicant lodged a complaint about the length of the proceedings under the 2004 Act and the Warsaw Regional Court confirmed on 16 November 2004 that the proceedings had been lengthy. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37-43).

24. Furthermore, the Court has already held that having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

25. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. *The Government's second preliminary objection*

26. The Government submitted that the applicant could no longer claim to be a victim of a violation of the Convention as the Warsaw Regional Court in its decision of 16 November 2005 had acknowledged that the length of the proceedings in the present case had been excessive. The fact that the Regional Court had awarded no just satisfaction to the applicant could not affect the position, as the fees which he had paid when lodging the complaint had been returned to him.

27. The applicant contested the Government's arguments.

28. The Court recalls that an applicant's status as a victim within the meaning of Article 34 of the Convention depends, *inter alia*, on whether the redress afforded at domestic level on the basis of the facts about which he complains before the Court was adequate and sufficient having regard to Article 41 of the Convention.

29. In the present case the Regional Court found a violation of the applicant's right to a hearing without unjustified delay. However, it awarded him no just satisfaction. In these circumstances the Court is not satisfied that the redress obtained at domestic level was sufficient to deprive the applicant of the status of a victim for the purpose of Article 34 of the Convention. The Government's objection must therefore be dismissed (see *Palgutova v. Slovakia*, no. 9818/02, 17 May 2005 § 47-49).

30. 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

31. 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)

32. 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 v. France*, cited above).

33. 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.

34. 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

35. The applicant also complained that the proceedings in his case were unfair. In particular, he alleged errors of fact and law committed by the courts. He alleged a breach of Articles 6 § 3 (a) and 13 of the Convention. These complaints fall to be examined under Article 6 § 1 of the Convention which, in its relevant part, reads:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

36. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.

37. In the present case the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

38. It follows that this part of the application 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

39. 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

40. The applicant claimed PLN 360,000 [EUR 90,000] in respect of pecuniary and non-pecuniary damage.

41. The Government contested these claims.

42. 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 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant also claimed PLN 310.60 [EUR 77] for the costs and expenses incurred before the domestic courts and PLN 477.60 [EUR 120] for those incurred before the Court. These sums concerned in particular postage expenses.

44. The Government contested these claims.

45. 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 and considers it reasonable to award the sum of EUR 120 for the proceedings before the Court.

C. Default interest

46. 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 criminal 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 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage and EUR 120 (one hundred and twenty euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at the 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 23 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President