



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

FOURTH SECTION

CASE OF BOCZOŃ v. POLAND

(Application no. 66079/01)

JUDGMENT

STRASBOURG

30 January 2007

FINAL

09/07/2007

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 Boczoń v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 9 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 66079/01) 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”) by a Polish national, Mr Dariusz Boczoń (“the applicant”), on 25 April 2000.

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

3. On 1 December 2005 the Court decided to communicate the complaint concerning the length of the proceedings 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Gorlice.

5. The applicant served in the army between 1988 and 1989 and was dismissed due to his health problems. He maintained that his physical and mental health problems resulted from his military service.

6. On 27 December 1995 he applied for a military disability pension. On 8 February 1996 the Social Insurance Authority refused to grant his request. On 20 February 1996 the applicant appealed against this decision to the Kraków Regional Court.

7. On 19 March 1996 the Regional Court requested an expert opinion concerning the applicant’s health. On 8 May 1996 the expert submitted his

opinion. Subsequently, the court requested that two additional medical opinions be prepared.

8. On 14 June 1996 the applicant's lawyer requested the court to admit another expert opinion.

9. On 25 June 1996 another expert submitted her opinion to the court.

10. On 24 July 1996 the Regional Court forwarded two expert opinions to the applicant for comment. The applicant's lawyer submitted his observations on 14 August 1996.

11. On 20 August 1996 the Regional Court held a hearing. The applicant submitted documentation on his medical treatment, which was subsequently forwarded to the medical experts. On 24 September 1996 and 5 November 1996 two experts submitted their supplementary opinions.

12. On 2 December 1996 a hearing was held.

13. On 18 December 1996 the applicant's lawyer challenged the experts' opinions and demanded a new opinion to be prepared by the Institute of Forensic Medicine in Krakow.

14. On 22 January 1997 the Regional Court requested that the applicant be examined by specialists in laryngology, neuropsychiatry and internal medicine of the Institute of Forensic Medicine in Krakow.

15. On 14 July 1997 the court requested the Institute to accelerate the preparation of their opinion and to return the applicant's medical records to the court. On 8 August 1997 the Institute of Forensic Medicine submitted their opinion.

16. On 14 August 1997 the court forwarded the opinion to the applicant's lawyer for comment.

17. On 22 September 1997 the applicant's lawyer requested the court to extend the time-limit for submitting his observations due to his illness.

18. On 2 October 1997 a hearing was held.

19. On 18 October 1997 the applicant challenged the expert opinion of 8 August 1997 and requested an additional medical examination. He also submitted an opinion prepared by a privately commissioned expert. The court refused to admit this opinion as evidence in the case.

20. On 25 November 1997 the Institute of Forensic Medicine submitted a supplementary opinion in which they maintained their previous conclusions. On 9 January 1998 the applicant's lawyer requested the court to extend the time-limit for submitting his observations as the applicant was to undergo another examination.

21. A hearing was held on 16 February 1998.

22. On 20 February 1998 the applicant challenged the presiding judge. The court rejected his motion on 10 March 1998.

23. On 23 February 1998 the applicant informed the court that he had revoked his lawyer's power of attorney as he could no longer afford private legal representation.

24. On 18 May 1998 applicant requested that the hearing scheduled for 28 May 1998 be adjourned because of his medical examination planned for that day. On 28 May 1998 the court adjourned the hearing until 26 June 1998.

25. On 10 June 1998 the Nowy Sącz Regional Court requested the Kraków Regional Court for the case file of the proceedings as its examination was necessary to conduct proceedings for compensation against the State Treasury instituted by the applicant and pending at that time before the Nowy Sącz Regional Court.

26. On 16 June 1996 the Kraków Regional Court rejected the request because the next hearing in the case would be held very shortly.

27. On 26 June 1998 the Regional Court held a hearing and delivered a judgment, dismissing the applicant's appeal against the decision of the Social Insurance Authority of 8 February 1996.

28. On 31 August 1998 the applicant appealed against the judgment.

29. The Regional Court in Krakow transferred the case file to the Krakow Court of Appeal on 21 September 1998.

30. Between 10 and 23 March 1999 the case file was forwarded to the Przemyśl District Court before which another of the applicant's claims for compensation was pending at that time

31. On 14 April 1999 the applicant requested the Court of Appeal to accelerate the examination of his appeal. On 20 April 1999 the President of the court replied that since his case concerned pension matters, the hearing would be scheduled sooner than would normally have been the case.

32. On 8 June 1999 the Kraków Court of Appeal dismissed the applicant's appeal. On 28 July 1999 the applicant's lawyer lodged a cassation appeal with the Supreme Court.

33. On 19 April 2000 the Supreme Court dismissed his cassation appeal as being ill-founded.

II. RELEVANT DOMESTIC LAW

34. For a detailed presentation of the relevant domestic law concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006, §§ 26-35.

THE LAW

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

35. 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...”

36. The Government contested that argument.

37. The period to be taken into consideration began on 27 December 1995 and ended on 19 April 2000. It thus lasted 4 years and 3 months for three levels of jurisdiction.

A. Admissibility

38. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the 2004 Act came into force, the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage suffered due to the excessive length of proceedings under Article 417 of the Civil Code read together with section 16 of the 2004 Act. 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.

39. The Government further submitted that such a possibility had existed in Polish law even 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.

40. The applicant contested the Government's arguments.

41. The Court observes that in the present case the proceedings were concluded on 19 April 2000, 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.

42. 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.), 11215/02, 31 May 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

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

44. 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

45. The applicant complained about the length of the proceedings. He maintained that the case had not been particularly complex. He claimed that had his motions and evidence been admitted by the court, the number of expert opinions needed would have been reduced.

46. The Government submitted that the case had been complex. They maintained that, given the nature of the applicant's claims, the court had had to obtain several expert reports relating to his previous and current state of health in order to establish whether there had been a causal link between the applicant's service in the army and the deterioration of his health.

The Government further argued that the applicant had contributed to the length of the proceedings as he had instituted five other sets of proceedings, related to the present case, before courts in different cities. As a result, the court had received requests from those courts to have the case file forwarded to them for examination.

As regards the conduct of the public authorities, the Government were of the view that the courts had conducted the proceedings with due diligence. The Regional Court had set short time-limits for the parties to submit their observations and had urged experts to present their reports promptly.

47. The Government concluded that the length of the proceedings in question had not been excessive as they had lasted only two years in the first-instance court and about one year in each of the following instances. Therefore, there had been no violation of the applicant's right to a hearing within a reasonable time.

48. 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; *Zynger v. Poland*, no. 66096/01, § 45, 13 July 2004). The Court reiterates that special diligence is required in pension disputes (see, *inter alia*, *H.T. v. Germany*, no. 38073/97, § 37, 11 October 2001).

49. The Court agrees that the case could be considered complex insofar as it was necessary to conduct several medical examinations in order to establish the merits of the applicant's claim.

50. With regard to the conduct of the authorities and of the applicant, the Court reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 40) and that in civil proceedings the parties too must show "due diligence" (see the *Pretto and Others v. Italy* judgment of 8 December 1983, Series A no. 71, pp. 14-15, § 33).

51. The evidence before the Court does not disclose any significant period of inactivity that could be attributable to the domestic courts. During the period under consideration the case was examined by the Insurance Authority and, subsequently, by three judicial instances, including the Supreme Court. It is true that the opinions of several medical experts were requested by the domestic courts. The Court notes, however, that on several occasions the applicant contested the experts' opinions and demanded new medical examinations to be conducted. The applicant also contested the opinion prepared by the specialists whom he himself had designated (see paragraphs 16 and 23 above).

In this connection the Court recalls that while the applicant is entitled to make use of his or her procedural rights, he or she must bear the consequences when it leads to delays (*Malicka-Wąsowska v. Poland* (dec.), no. 41413/98, 5 April 2001). The Court observes that the procedural right to challenge an expert opinion does not entitle a party in the proceedings to challenge all successive opinions with a view to obtaining a conclusion in his or her favour. That may scarcely be regarded as consistent with the diligence which must be shown by a plaintiff in civil proceedings and must have contributed to the overall length of the proceedings in the present case.

52. The Court concludes that the proceedings in the applicant's case did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

53. The applicant also complained about the unfavourable outcome of the proceedings, alleging their unfairness and bias on the part of the courts.

54. 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 in 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 insofar 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).

55. In the light of all the material in its possession and insofar as the applicant's complaint about the outcome has been substantiated, the Court finds that it does not disclose any appearance of a violation of the Convention. In particular, it finds no elements which would indicate that the national courts went beyond their proper discretion in the assessment of the facts or reached arbitrary conclusions.

56. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

57. The applicant also alleged that the unfairness of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions (that is his pension entitlement), as guaranteed by Article 1 of Protocol No. 1. That Article reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

58. The Court notes that even assuming the applicability of Article 1 of Protocol No. 1, this complaint is linked to the unfairness complaint examined above (paragraphs 53 - 56) and must therefore likewise be declared inadmissible.

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 no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 30 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President