



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

FOURTH SECTION

CASE OF PIELASA v. POLAND

(Application no. 66463/01)

JUDGMENT

STRASBOURG

30 January 2007

FINAL

30/04/2007

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 Pielasa v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

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. 66463/01) 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, Ms Irena Pielasa (“the applicant”), on 22 April 1999.

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

3. On 19 December 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Mińsk Mazowiecki, Poland.

5. The investigation against the applicant started on 30 December 1992.

6. On 31 August 1993 the Mińsk Mazowiecki District Prosecutor (*Prokurator Rejonowy*) lodged a bill of indictment against the applicant and another person with the Mińsk Mazowiecki District Court (*Sąd Rejonowy*). She was indicted on a charge of fraud.

7. The first hearing was scheduled for 18 May 1994. Subsequently the court held 5 hearings at intervals ranging from 1 to 9 months. They were adjourned due to the absence of the co-accused or her counsel.

8. At a hearing on 14 January 1997 the court returned the case to the prosecutor for further investigation.

9. On 27 June 1997 the prosecutor lodged a new bill of indictment with the District Court.

10. The court held hearings on 25 March, 21 May, 19 June and 8 September 1998.

11. On 11 September 1998 the court acquitted the applicant.

12. On 12 November 1998 the Mińsk Mazowiecki District Prosecutor appealed against the first-instance judgment.

13. At a hearing on 29 January 1999 before the Siedlce Regional Court (*Sąd Okręgowy*) the prosecutor withdrew his appeal. In consequence, the court decided not to examine it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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 the 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

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 31 August 1993 and ended on 29 January 1999. It thus lasted 5 years and 5 months, for two levels of jurisdiction.

A. Admissibility

18. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that from 17 September 2004, the date of entry into force of the 2004 Act, the applicant had a possibility of seeking compensation for the damage resulting from the excessive length of proceedings before Polish courts, under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

19. However, the Court has already held that the civil action relied on by the Government cannot be regarded as an effective remedy with a sufficient degree of certainty 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 29 January 1999, which is more than three years before the 2004 Act had come into force. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

20. 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

21. 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)

22. 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).

23. 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

24. 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

25. The applicant claimed 50,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

26. The Government did not express an opinion on the matter.

27. 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, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of the proceedings – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,500 under that head.

B. Costs and expenses

28. The applicant also claimed PLN 3,000 for the costs and expenses incurred before the domestic courts without providing any substantiation.

29. The Government did not express an opinion on the matter.

30. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court notes that she has not produced any evidence supporting his claim as required by Rule 60 § 2 of the Rules of Court. Accordingly, it makes no award under this head.

C. Default interest

31. 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage to be converted into the national currency 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 30 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President