



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

FOURTH SECTION

CASE OF MIERKIEWICZ v. POLAND

(Application no. 77833/01)

JUDGMENT

STRASBOURG

13 February 2007

FINAL

13/05/2007

*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 Mierkiewicz 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 23 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 77833/01) 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 Wojciech Mierkiewicz (“the applicant”), on 7 June 2001.

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

3. On 19 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 1946 and lives in Poznań, Poland.

5. On 27 June 1987 the applicant lodged a claim for payment against a certain M.R. with the Poznań District Court (*Sąd Rejonowy*).

6. The court held a number of hearings and ordered on four occasions that expert evidence be obtained. Expert reports were amended several times.

7. On 18 November 1993 the District Court found that it was not competent to deal with the case and referred it to the Poznań Regional Court (*Sąd Okręgowy*).

8. The Regional Court held the first hearing on 18 April 1995.

9. On 27 June 1995 the court ordered that an additional expert opinion be obtained. The expert submitted his report on 15 April 1996. It was subsequently modified several times at the court's request.

10. The Regional Court scheduled 12 hearings. Several of them were adjourned because the parties or expert witnesses had failed to appear.

11. On 23 December 1999 the court partly granted the claim.

12. On 31 August 2000 the Poznań Court of Appeal (*Sąd Apelacyjny*) amended the first-instance judgment.

13. On 29 November 2000 the Court of Appeal rejected the applicant's cassation appeal. The court found that the applicant had failed to indicate the grounds for lodging it.

14. On 26 April 2001 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's appeal against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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* (dec.) no. 15212/03, §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* (dec.) no. 11215/02, 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 WITH RESPECT TO THE LENGTH OF THE PROCEEDINGS

16. 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..."

17. The Government contested that argument.

18. The applicant lodged his claim on 27 June 1987. 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. 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 26 April 2001. It thus lasted 8 years for 3 levels of jurisdiction.

A. Admissibility

19. 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 the Polish courts under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

20. 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 26 April 2001, 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.

21. The Court notes that the application 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

22. 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).

23. 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).

24. 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.

25. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH RESPECT TO THE UNFAIRNESS OF THE PROCEEDINGS

26. Relying on Articles 6 § 1 and 13 of the Convention the applicant complained about the unfairness of the proceedings. He alleged that the courts had committed errors of fact and law when dealing with his case and that their judgments were unjust.

Pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

27. The Court notes that the applicant failed to lodge a cassation appeal against the final judgment given in his case in accordance with procedural requirements (see paragraph 13 above). Consequently, it was rejected by the Poznań Court of Appeal.

28. It follows that this complaint must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH RESPECT TO REJECTION OF THE APPLICANT’S CASSATION APPEAL

29. The applicant complained under Article 6 § 1 that the rejection of his cassation appeal had infringed his right of access to a court and to a fair trial.

30. The Court firstly recalls that the right to a court, guaranteed by Article 6 of the Convention, is not absolute and may be subject to limitations. However, the limitations applied cannot restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, *inter alia*, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, 12 July 2001, ECHR 2001-VII).

The Court observes that the applicant failed to comply with a procedural requirement for lodging his cassation appeal, namely he did not specify the grounds on which he relied. That requirement served the purpose of the

efficient administration of justice in proceedings before the Supreme Court and cannot be said to have amounted to a disproportionate limitation on the applicant's right to access to a court.

31. In view of the above it cannot be said that the rejection of the applicant's obviously unmeritorious cassation appeal infringed the very essence of his right to a court.

32. For these reasons the Court rejects the complaint under Article 6 § 1 of the Convention as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 150,000 Polish zlotys (PLN) in respect of pecuniary damage. He further maintained that his non-pecuniary damage was "inestimable".

35. The Government contested these claims.

36. 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 2,300 under that head.

B. Costs and expenses

37. The applicant did not seek reimbursement for costs and expenses.

C. Default interest

38. 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 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State 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 13 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President