



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

FOURTH SECTION

CASE OF PIĄTKIEWICZ v. POLAND

(Application no. 39958/02)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

31/03/2008

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 Piątkiewicz 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 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 39958/02) 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 Piątkiewicz ("the applicant"), on 14 June 2000.

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

3. On 1 September 2006 the President of the Fourth Section of the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in Łódź.

1. Main proceedings - civil proceedings for payment

5. On 22 May 1991 the applicant filed a claim for payment against his former employer with the Łódź Regional Court (*Sąd Wojewódzki*). On 2 December 1991 the court gave judgment. Upon the applicant's appeal the Łódź Court of Appeal (*Sąd Apelacyjny*) remitted the case on 22 April 1992.

6. On 19 August 1993 the Regional Court held the first hearing in the case. Subsequently, hearings were held on 19 October 1993, 10 March and 26 April 1994.

7. In 1995 the court held two hearings, on 14 February and 13 June, and ordered the preparation of an expert opinion.

8. On 15 March 1996 the Łódź Regional Court gave a preliminary judgment.

9. On 14 August 1996 the Łódź Court of Appeal quashed the judgment and remitted the case.

10. On 16 June and 14 October 1997 the Regional Court held further hearings. On 28 October 1997 the Łódź Regional Court gave judgment. It was upheld by the Łódź Court of Appeal on 10 March 1998.

11. On 9 June 1998 the applicant lodged a cassation appeal. On 16 December 1999 the Supreme Court (*Sąd Najwyższy*) held one hearing and gave judgment in which it dismissed the cassation appeal.

2. Proceedings under the 2004 Act

12. On 16 March 2005 the applicant lodged a complaint under section 18 of 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”). On 10 May 2005 the Łódź Court of Appeal rejected the appeal as it was inadmissible in law.

13. On 13 June 2005 the applicant lodged a claim for damages under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code. He sought compensation for the alleged mistakes in the examination of his claims and for the protracted length of the proceedings.

On 30 September 2005 the Łódź Regional Court dismissed the claim. His appeal against the judgment was dismissed by the Łódź Court of Appeal on 18 May 2006. The applicant submitted that he had not lodged a cassation appeal with the Supreme Court. The Government maintained that such an appeal was pending before the Supreme Court.

3. Proceedings for reinstatement

14. In his letter of 30 March 2003 the applicant submitted additional complaints about another set of civil proceedings for reinstatement.

15. On 29 June 1999 the applicant appealed to the Olsztyn District Court against a decision to dismiss him from work.

16. On 19 October 2000 the Olsztyn District Court gave judgment. On 15 January 2001 the Olsztyn Regional Court upheld the first-instance judgment. The applicant filed a cassation appeal. On 27 February 2002 the Supreme Court rejected the applicant's cassation appeal for failure to comply with procedural requirements.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, 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 ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE CIVIL PROCEEDINGS FOR PAYMENT

18. The applicant complained that the length of the proceedings for payment 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...”

19. The Government contested that argument.

20. The Court notes that the proceedings commenced on 22 May 1991. 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. Nevertheless, 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 16 December 1999. It thus lasted 6 years, 7 months and 17 days for three levels of jurisdiction.

A. Admissibility

21. 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 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. Moreover, the applicant had lodged such a civil claim which had been

examined on the merits at two instances and is pending before the Supreme Court.

22. The applicant contested that argument and submitted that he had exhausted all available domestic remedies. In addition he argued that a claim for compensation under Article 417 of the Civil Code was not an effective remedy; nevertheless, he had attempted to make use of it, to no avail.

23. The Court has already examined whether after 18 December 2001 and prior to the entry into force of the 2004 Act 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 persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for excessive length of proceedings or that such action offered reasonable prospects of success (see *Skawińska v Poland* (dec.), no. 42096/98, 4 March 2003, and *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003). Subsequently, and following the entry into force of the 2004 Act, the Court has 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*, cited above; and *Barszcz v. Poland*, no. 71152/01, § 45, 30 May 2006, *Drabicki v. Poland*, no. 15464/02, § 17, 14 November 2006).

The present case belongs to this group of applications as the proceedings at issue ended on 16 December 1999, which is more than three years before the 2004 Act came into force. The Court reiterates that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. In view of the above findings, and since the applicant's attempt to obtain redress at the national level by making use of a remedy that is not regarded by the Court as effective in similar cases, the Court considers that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

24. The Government further submitted that the applicant had withheld information from the Court as he had failed to inform it that he had lodged civil proceedings for compensation under Article 417 of the Civil Code. Thus, his application to the Court constituted an abuse of the right of individual application under Article 35 § 3 of the Convention.

25. The applicant did not comment on the Government's objection.

26. The Court observes that the applicant in his letter of 15 November 2004 did inform the Registry of the Court about his intention to make use of the remedies introduced by the 2004 Act. In view of this, and given the general nature of the Government's argument, the Court finds no grounds

whatsoever for concluding that the applicant's application to the Court is an abuse of the right of individual application.

27. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

28. 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). 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).

29. 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).

30. 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. In particular, the Court notes that no hearing was held during a 10-month period between April 1994 and February 1995 as well as during a period of 18 months when the case was with the Supreme Court. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE CIVIL PROCEEDINGS FOR PAYMENT

31. The applicant first complained that the proceedings in his case were unfair. In particular, he alleged errors of fact and law committed by the courts, which, moreover, had incorrectly assessed the evidence. He alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

32. 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. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

33. 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. Indeed, his complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE PROCEEDINGS FOR REINSTATEMENT

34. Lastly, the applicant complained about unfairness and the unreasonable length of the proceedings for reinstatement.

35. However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken...”

36. The Court notes that the proceedings in question ended with the Supreme Court's judgment of 27 February 2002, thus more than six months before 30 March 2003, the date on which this complaint was submitted to the Court.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed almost 200,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 3,795,792 in respect of non-pecuniary damage.

39. The Government contested the claims and considered them irrelevant and exorbitant.

40. 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 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed PLN 2,125 for the costs and expenses incurred before both the domestic courts and the Court.

42. The Government contested the claims and submitted that only costs actually incurred by the applicant before the Court should be taken into consideration.

43. 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 applicant, who was not represented before the Court by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

44. 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 civil proceedings for payment 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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President