



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

FOURTH SECTION

CASE OF BISZTA v. POLAND

(Application no. 4922/02)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

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 Biszta 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,

Ms P. HIRVELÄ, *judges*,

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

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 4922/02) 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 Kazimierz Biszta (“the applicant”), on 1 August 2001.

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

3. On 12 September 2006 the Court declared the application partly inadmissible and 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 1953 and lives in Wrocław.

1. Main proceedings (civil proceedings for payment)

5. On 12 March 1994 the applicant filed a claim for payment against a contractor before the Wrocław Regional Court, Commercial Law Division.

6. On 21 February 1995 the case file was transferred to the competent Civil Law Division of the same court.

7. On 12 October 1995 the Wrocław Regional Court dismissed the claim and the applicant lodged an appeal against this judgment.

8. The judgment was quashed on 27 March 1996 by the Wrocław Court of Appeal and the case remitted for re-examination.

9. On 24 October 1997 the Wrocław Regional Court again disallowed the applicant's action and his subsequent appeal was dismissed on 14 May 1998 by the Wrocław Court of Appeal. The judgment was served on the applicant on 10 December 1998.

10. On 22 December 1998 the President of the Wrocław Court of Appeal, in reply to the applicant's hierarchical complaint, stated that the length of the proceedings was excessive.

11. On 11 January 1999 the applicant lodged a cassation appeal through his legal-aid lawyer appointed on 21 December 1998. He maintained, *inter alia*, that he had not been informed by the courts in due time about the possibility of having a legal-aid lawyer appointed to his case.

12. On 11 May 2001 the Supreme Court refused to entertain the cassation appeal, having found that there was no need of interpretation of provisions which did not give rise to serious difficulties, no flagrant breach of law and no grounds for nullity of proceedings.

13. On 1 June 2001 the afore-said decision was served on the applicant.

2. Proceedings under the 2004 Act

14. On 22 October 2004 the applicant lodged a claim for damages under section 16 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") read in conjunction with Article 417 of the Civil Code. He sought compensation in the amount of PLN 10,000.

15. The complaint was rejected on 29 November 2004 by the Supreme Court on procedural grounds. The court further noted that even if the claim had not been dismissed for formal shortcomings it would have been in any event inadmissible as time-barred.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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 PROCEEDINGS

17. 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 12 March 1994 and ended on 11 May 2001. It thus lasted 7 years, 2 months and 1 day for 3 levels of jurisdiction.

A. Admissibility

20. 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.

21. 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*, cited above; and *Barszcz v. Poland*, no. 71152/01, § 45, 30 May 2006). The following was also noted by the Supreme Court in its judgment of 29 November 2004 (see paragraph 15 above). The present case belongs to this group of applications as the proceedings at issue ended on 11 May 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.

22. 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

23. 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).

24. 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).

25. 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

26. 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

27. The applicant claimed PLN 4,371,429¹ in respect of pecuniary and non-pecuniary damage.

28. The Government contested the claim.

29. 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 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant also claimed PLN 14,709² for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

31. The Government contested the claim.

¹ Approximately EUR 1,171,650

² Approximately EUR 3,942

32. 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 by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

33. 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 remainder of 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 1,800 in respect of non-pecuniary damage and EUR 100 in respect of costs and expenses to be converted into the 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 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 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President