



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

FOURTH SECTION

CASE OF OPÁLKO v. POLAND

(Application no. 4064/03)

JUDGMENT

STRASBOURG

15 January 2008

FINAL

15/04/2008

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 Opalko v. Poland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Kristaq Traja,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 4064/03) 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 Stanisław Opalko (“the applicant”), on 22 January 2003.

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

3. On 19 March 2007 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 President also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

4. On 10 December 2007 at 5.35 p.m. the Government sent a facsimile to the Court informing it that they were ready to settle the case. However, having regard to the fact that it was considering a draft of a judgment in the case at that stage, the Court decided to treat the Government's initiative as belated and to proceed with its deliberations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1935 and lives in Komorowice.

6. In 1986 the applicant was arrested and detained on remand on a charge of stealing 4 tons of coal. The subsequent criminal proceedings against him ended in 1991, when he was finally acquitted.

7. On 22 January 1992 the applicant lodged with the Wrocław Regional Court (*Sąd Wojewódzki*) an action for compensation for unlawful detention in 1986.

8. On 22 August 1994 the court held the first hearing, which was however adjourned.

9. At the second hearing held on 31 August 1995 the court dismissed the applicant's action.

10. On 7 September 1995 the applicant lodged an appeal against the decision. However, the case file was transferred to the Wrocław Court of Appeal (*Sąd Apelacyjny*) only on 21 May 1999.

11. On 14 July 1999 the Court of Appeal dismissed the appeal.

12. August 1999 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

13. On 6 February 2002 the Supreme Court allowed the appeal, quashed both judgments and remitted the case to the Regional Court.

14. The Wrocław Regional Court held the first hearing on 24 September 2002. Subsequently, on seven occasions, the composition of the court changed so the proceedings had to start from the beginning.

15. On 16 March 2005 the applicant lodged a complaint about the unreasonable length of the proceedings under section 5 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").

16. On 29 April 2005 the Wrocław Court of Appeal allowed the complaint and granted the applicant PLN 2,000 in compensation (approximately EUR 514). The court analysed the course of the impugned proceedings in the light of the criteria which the Court itself applies and concluded that the Regional Court had violated the applicant's right to a hearing without unjustified delay.

17. On 14 October 2005 the Wrocław Regional Court gave judgment. The court allowed the applicant's action and granted him PLN 27,000 in compensation for his unlawful detention in 1986. The applicant appealed.

18. On 19 April 2006 the Wrocław Court of Appeal upheld the judgment.

19. The applicant did not lodge a cassation appeal and the judgment became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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 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

21. 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...”

22. The Government did not comment on the merits of the applicant's complaint.

23. The Court notes that the proceedings commenced on 22 January 1992. 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 19 April 2006. It thus lasted almost 13 years for three levels of jurisdiction.

A. Admissibility

24. The Government raised an objection that the applicant cannot be considered a “victim”, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time. The Court notes that this issue falls to be determined in the light of the principles established under the Court's case-law (*Cocchiarella v. Italy* [GC],

no. 64886/01, §§ 69-107, ECHR 2006-... and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...).

25. The Wroclaw Court of Appeal analysed the course of the impugned proceedings in the light of the criteria which the Court itself applies. It concluded that the Regional Court had violated the applicant's right to a hearing without unjustified delay and awarded the applicant the equivalent of EUR 514 in respect of the length of the proceedings. The just satisfaction awarded by the Court of Appeal amounts to approximately 7 per cent of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings. The Court thus concludes that the redress provided to the applicant at domestic level, considered on the basis of the facts of which he complains before the Court, was insufficient (see *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007). In these circumstances, the argument that the applicant has lost his status as a “victim” cannot be upheld.

26. The Government also submitted that the applicant had not exhausted remedies available under Polish law. They maintained that he had not lodged a civil claim for compensation for damage suffered due to the excessive length of proceedings with the Polish civil courts under Article 417 of the Civil Code.

27. The applicant contested the Government's arguments and submitted that he had made use of a remedy available to him and, particularly given his advanced age, he should not be required to initiate another set of proceedings.

28. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

29. The Court also reiterates that, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001, *Kaniewski v. Poland*, no. 38049/02, §§ 32-39, 8 November 2005).

30. The Court notes that the applicant lodged a complaint about the length of the proceedings under the 2004 Act. On 26 April 2005 the Poznan

Court of Appeal admitted that the proceedings had been lengthy and awarded the applicant the equivalent to EUR 514 in compensation.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37-43).

31. The Court considers therefore that, having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland*, no. 18036/03, § 26, 10 October 2006). Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

32. 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

33. 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).

34. 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).

35. 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. Moreover, the Court notes that the case lay dormant for three and a half years before being transferred to the Court of Appeal and that the Government failed to give any explanation of this delay (see paragraph 9 above). 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

36. 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

37. The applicant claimed 20,000 Polish zlotys (approximately 5,500 euros (EUR) on the date on which the claim had been submitted) in respect of non-pecuniary damage.

38. The Government submitted that the claim was exorbitant.

39. The Court considers that the applicant must have sustained non-pecuniary damage resulting from the protracted length of the proceedings. In the particular circumstances of the case it considers that it should award the full sum claimed.

B. Costs and expenses

40. The applicant also claimed PLN 3,000 for the costs and expenses incurred before the domestic courts and the Court.

41. The Government contested the claim.

42. 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 considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 covering costs under all heads.

C. Default interest

43. 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 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) for 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 15 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President