



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

FOURTH SECTION

CASE OF CZAUS v. POLAND

(Application no. 18026/03)

JUDGMENT

STRASBOURG

22 January 2008

FINAL

22/04/2008

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 Czaus v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ján Šikuta, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 18026/03) 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 Mirosław Czaus (“the applicant”), on 27 May 2003.

2. The applicant was represented by Mr J. Szczechowicz, a lawyer practising in Olsztyn. The Polish Government were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 3 April 2007 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it was 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 1956 and lives in Olsztyn, Poland.

5. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The first set of civil proceedings against Ms J.R. and Mr G.M.

6. On 12 September 2000 the applicant instituted before the Olsztyn Regional Court (*Sąd Okręgowy*) civil proceedings against Ms J.R. and Mr G.M. in which he claimed payment for construction work he had carried out. The applicant requested that his claim be considered in a summary procedure (*postępowanie nakazowe*).

7. On 10 October 2000 the court allowed the action and issued a payment order against the defendant. The defendant appealed.

8. Subsequently, all the judges of the Olsztyn Regional Court asked to be excluded from trying the case as the defendant was married to one of the judges. The case was thus transferred to the Warsaw Regional Court where it was filed under case no. XV GC 375/01.

9. The court held the first hearing on 8 October 2002. The next hearings were held on 20 February and 28 November 2003.

10. On 27 May 2004 the Warsaw Regional Court gave judgment in which it allowed a part of the applicant's action.

11. The applicant lodged an appeal against this judgment.

12. On 22 August 2005 the applicant lodged a complaint about a breach of the right to have his case heard within a reasonable time. He relied on 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").

13. On 24 August 2005 the Warsaw Court of Appeal (*Sąd Apelacyjny*) held the first hearing.

14. On 3 October 2005 the Warsaw Court of Appeal dismissed the complaint about the unreasonable length of the proceedings. The court established that the Regional Court had been inactive for many months which led to the unjustified protraction of the proceedings. However, the inactivity occurred before the entry into force of the 2004 Act and thus could not be taken into consideration.

15. The proceedings on the merits of the applicant's civil action are pending before the appeal court.

B. The second and third set of civil proceedings

16. In July 1999 the applicant lodged civil proceedings for payment with the Warsaw District Court (*Sąd Rejonowy*) against the limited liability company "Auto Żoliborz".

17. On 31 January 2003 the court gave a judgment. The applicant appealed.

18. On 7 May 2004 the Warsaw Regional Court quashed the impugned judgment and remitted the case.

19. On 24 May 2005 the Warsaw District Court gave a judgment.

20. The appeal lodged against this judgment was rejected on 18 October 2005 as it had been lodged out of time.

21. On 17 May 2001 the applicant initiated another set of civil proceedings against Mr A.S. and Mr J.C.

22. On 17 May 2001 the Olsztyn District Court gave a judgment in which it partly allowed the applicant's action. The applicant appealed.

23. On 3 March 2003 the Olsztyn Regional Court partly allowed the appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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 described 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 WITH REGARD TO THE FIRST SET OF PROCEEDINGS

25. 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...”

26. The Government did not comment on the admissibility and merits of the applicant's complaint.

27. The period to be taken into consideration began on 12 September 2000 and has not yet ended. It has thus lasted to date over 7 years for two levels of jurisdiction.

A. Admissibility

28. 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

29. 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).

30. 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). Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case had exceeded a reasonable time, the Warsaw Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

31. Having examined all the material submitted to it, the Court considers that there are no grounds justifying a different conclusion in the present case. In particular, the Court notes that no hearing was held in the period of almost two years after the case had been transferred to the Warsaw Regional Court (see paragraphs 8 and 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 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant also complained about the unreasonable length of two other sets of civil proceedings.

However, 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 ..."

33. With regard to the complaint about the length of the civil proceedings for payment against the limited liability company "Auto Żoliborz", the Court notes that the proceedings lasted between July 1999 and October 2005 (see paragraphs 16 and 20 above). The other set of proceedings complained of, against Mr A.S. and Mr J.C., lasted between May 2001 and March 2003 (see paragraphs 21 and 23 above) and thus

ended less than three years before 17 September 2004, the date on which the 2004 Act had come into force.

34. The Court observes that, pursuant to section 16 of the 2004 Act, it was open to persons such as the applicant to seek compensation in tort from the State Treasury, relying on Article 417 of the Civil Code for damage caused by the allegedly excessive length of proceedings in which a judicial decision on the merits of the case had already been given (see *Turzyński v. Poland* (dec.), no. 10453/03, 22 November 2005).

35. The Court has already examined whether a civil action for damages brought under section 16 of the 2004 Act read together with Article 417 of the Civil Code was an effective remedy in respect of the length of judicial proceedings. It held, having regard to the characteristics of these remedies and notwithstanding the absence of established judicial practice in respect of such claims, that these remedies were effective in respect of persons who on 17 September 2004, when the 2004 Law entered into force, could still lodge such an action with the competent domestic court (see *Krasuski v. Poland*, judgment of 14 June 2005, §§ 69-72).

36. Moreover, as to the set of proceedings that ended in October 2005, it was open to the applicant to lodge a complaint about a breach of the right to have his case heard within a reasonable time under the 2004 Act.

37. However, the applicant has chosen not to avail himself of the available remedies in either set of proceedings.

38. It follows that both complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 15,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

41. The Government submitted that the claim was excessive.

42. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him 3,500 euros (EUR) under that head.

B. Costs and expenses

43. The applicant also claimed PLN 5,368 for the costs and expenses incurred before the domestic courts. That sum included PLN 2,928, equivalent to EUR 773 on the date of the invoice, for the costs of representation before the Court and PLN 244, equivalent to EUR 65, for the costs of translation into English.

44. The Government contested these claims.

45. 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. It considers it reasonable to award the applicant EUR 850 for the costs and expenses incurred before the Court.

C. Default interest

46. 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 first set 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 in respect of the unreasonable length of the first set of the proceedings;
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 and EUR 850 (eight hundred and fifty 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 22 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President