



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

FOURTH SECTION

CASE OF MADEŁA v. POLAND

(Application no. 62424/00)

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 Madela v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Stanislav Pavlovschi,

Lech Garlicki,

Ján Šikuta,

Päivi Hirvelä, 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. 62424/00) 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, Ms Barbara Madeła (“the applicant”), on 30 November 1999.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K.Drzewicki and subsequently, Mr J.Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 14 January 2003 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 1936 and lives in Warsaw, Poland.

5. On 20 October 1994, J.B. (the applicant's neighbour) lodged a claim for payment against the applicant with the Warsaw District Court (*Sąd Rejonowy*).

6. On 8 December 1994 the court held a hearing and ordered J.B. (“the plaintiff”) to submit a copy of the statement of claim.

7. On 3 March 1995 the court stayed the proceedings as the plaintiff had failed to comply with its order.

8. Subsequently, on 17 May 1995, J.B.'s husband – M.B. – sued the applicant in the Warsaw District Court seeking payment.

9. On 4 July and 26 September 1995 the court held hearings.

10. At a hearing on 21 November 1995 the court heard evidence from one witness. On 28 December 1995 the court heard evidence from M.B.

11. On 20 November 1996 the court resumed the proceedings which had been stayed on 3 March 1995.

12. On 25 November 1996 the court decided to join both cases.

13. On 24 February 1997 the court notified the housing co-operative - *Osiedle Młodych* – that it would be in their interest to join the proceedings.

14. On 23 April 1997 the court held a hearing and heard evidence from one witness.

15. On 10 June 1997 the applicant challenged the impartiality of the presiding judge. On 7 July 1997 the court dismissed her challenge.

16. On 29 July 1997 the court ordered that expert evidence be obtained. On 24 March 1998 an expert submitted his report to the court.

17. At a hearing held on 2 June 1999 the plaintiffs withdrew their statement of claim in respect of the applicant. On the same date the court discontinued the proceedings against the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The legal provisions and practice applicable at the material time are set out in paragraphs 26-35 of the judgment delivered by the Court on 30 May 2006 in the case of *Barszcz v. Poland*, no. 71152/01.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained that the length of the proceedings had been incompatible with the “reasonable-time” requirement set out 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 20 October 1994 and ended on 2 June 1999. It thus lasted for four years, seven months and thirteen days at one level of jurisdiction.

A. Admissibility

22. 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

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

28. The Government contested the claim, arguing that the application was manifestly ill-founded. In the alternative, they asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction, or to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

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 considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis it awards the applicant 3,400 euros (EUR) under that head.

B. Costs and expenses

30. The applicant also claimed PLN 9,272.59 for costs and expenses incurred before the domestic courts.

31. The Government contested the claim.

32. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). It further notes that the costs of the domestic proceedings can be awarded if they are incurred by an applicant in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium* (former Article 50), judgment of 18 October 1982, Series A no. 54, p. 8, § 17). In the present case the Court finds that, the costs of the proceedings before the domestic courts cannot be considered to have been actually and necessarily incurred in order to prevent or to have redressed a breach of the Convention. The claim concerning those costs must therefore be rejected.

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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of the settlement:
 - (i) EUR 3,400 (three thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) any tax that may be chargeable on the above amounts;
 - (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