



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

FOURTH SECTION

CASE OF KRAWCZAK v. POLAND

(Application no. 40387/06)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Krawczak v. Poland,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Stanislav Pavlovski,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 40387/06) 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 Janusz Krawczak (“the applicant”), on 22 September 2006.

2. The applicant was represented by Mrs M. Sykulska-Przybysz, a lawyer practising in Tczew. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 of the excessive length of proceedings and under Article 13 of the Convention that the remedy provided for by the 2004 Act was ineffective because it did not allow a claimant to claim compensation for the delay which occurred before the date of entry into force of the 2004 Act. He also alleged a violation of Article 6 read in conjunction with Article 13 of the Convention in that he had been deprived of his right to have the remedy examined by an impartial court. He contended in this connection that certain judges who had ordered his pre-trial detention to be prolonged had also examined his length of proceedings complaint.

4. On 12 March 2007 the Court decided to give notice of the application 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.

5. The Government submitted a unilateral declaration and invited the Court to strike out the application, in accordance with Article 37 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Poznań.

A. Criminal proceedings against the applicant

7. On 17 June 1999 the Gdańsk District Court (*Sąd Rejonowy*) remanded the applicant in custody for three months on three counts of armed robbery. It considered that that measure was indispensable in order to secure the proper conduct of the proceedings, having regard to the serious nature of the offences in question and the likelihood of a custodial sentence.

8. The first hearing took place on 28 December 2001. Since that date almost 180 hearings have been scheduled and nearly 400 witnesses heard. Many hearings have been adjourned.

9. On 21 September 2005 the court decided that, because of the lengthy illness of a judge rapporteur, a new bench should be appointed. This meant that the proceedings had to be restarted.

10. On 24 November 2005 the Gdańsk Regional Court (*Sąd Okręgowy*) severed the bill of indictment and ordered that cases against fifteen other co-accused be tried in separate proceedings.

11. The proceedings are still pending.

B. Proceedings under the 2004 Act

12. On 30 January 2006 the applicant lodged a complaint about the undue length of the criminal 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”) and requested just satisfaction of PLN 10,000.

13. On 23 March 2006 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed his complaint on the ground that since the date of entry into force of the 2004 Act no undue delays in the proceedings could be discerned, the proceedings having been conducted with due diligence and within a reasonable time. The court observed that the 2004 Act had entered into force on 17 September 2004 and could not be applied to the proceedings before that date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

15. On 31 August 2007 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed a payment to the applicant of PLN 10,000 (the equivalent of EUR 2,700). They invited the Court to strike out the application in accordance with Article 37 of the Convention.

16. The applicant did not agree with the Government's proposal. He considered that the amount proposed did not constitute sufficient just satisfaction for the damage he had sustained and requested the Court to continue the examination of the application.

17. As the Court stated in *Tahsin Acar* (cited above, §§ 74-77), a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations – such as the present declaration – made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declarations and the parties' observations submitted outside the framework of any friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement.

18. The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

19. The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State under Articles 6 and 13 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Kusmieriek v. Poland*, no. 10675/02, judgment of 21 September 2004; and *Zynger v. Poland*, no. 66096/01, judgment of 13 July 2004) and the requirement of an effective remedy capable of providing appropriate redress for the damage resulting from the breach of this right (see *Kudla v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Krasuski v. Poland*, no. 61444/00, ECHR 2005-... (extracts); *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-...; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-...). Where the Court has found a breach of these Articles it has awarded just satisfaction, the amount of which depended on the particular features of the case.

20. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court notes in the first place that the relevant Polish remedies against excessive length of proceedings introduced in 2004 proved to be ineffective in the circumstances of the present case, because the Court of Appeal refused to apply the provisions of the 2004 Act to the period before its entry into force (see paragraph 12 above).

21. Further, the Court observes that although the Government acknowledged in their unilateral declaration that the domestic proceedings had been unreasonably lengthy, they did not offer the applicant adequate redress. The Court considers that the sum proposed in the declaration in respect of non-pecuniary damage suffered by the applicant as a result of the alleged violation of the Convention does not bear a reasonable relationship to the amounts awarded by the Court for non-pecuniary damage in similar cases.

22. It cannot be excluded that where an applicant has been speedily awarded compensation of PLN 10,000 by a domestic court under the 2004 Act, and has been promptly paid, the Court might consider the amount to be compatible with its own awards in such cases, bearing in mind the principles which it has developed in this connection for determining victim status and for assessing its own award in cases where it has found a

breach of the reasonable-time requirement (see *Cocchiarella*, cited above, §§ 85-107; *Scordino v. Italy* [GC], no. 36813/97, §§ 193-215, 29 March 2006; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004). However, these considerations cannot be applied to a unilateral declaration which addresses a situation where the remedy has failed or was not available to an applicant who had to introduce proceedings under the Convention in order to obtain redress (see *Wawrzynowicz*, cited above, § 40).

23. On the facts and for the reasons set out above, the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see, by contrast, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

24. That being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

25. The applicant complained that the length of the proceedings was 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 submit observations on the admissibility and merits of the complaint, in view of their acknowledgment of the violation of Article 6 of Convention in their unilateral declaration.

27. The period to be taken into consideration began on 17 June 1999 and has not yet ended. It has thus lasted over 8 years and 7 months for one level 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 that 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 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 the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

There has accordingly been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. The applicant also alleged a breach of Article 13 of the Convention in that he had no effective domestic remedy in respect of the protracted length of the proceedings in his case. Article 13 reads:

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

33. The Government admitted that in the present case the remedy provided under the 2004 Act failed to redress the applicant's length of proceedings complaint.

A. Admissibility

34. The Court notes that this complaint is linked to that examined above and must therefore likewise be declared admissible.

B. Merits

35. The Court notes that, in the context of Article 13 and remedies for excessive length of proceedings, it has already held that such a remedy, or the aggregate of remedies, in order to be "effective" must be capable either of preventing the alleged violation of the right to a "hearing within a

reasonable time” or its continuation, or of providing adequate redress for a violation that had already occurred (see, *mutatis mutandis*, *Kudła v. Poland*, [GC], no. 30210/96, § 158 et seq., ECHR 2000-XI).

36. It has already examined the remedy under the 2004 Act for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the length of judicial proceedings in Poland (see *Charzyński*, cited above, §§ 36-42; *Michalak v. Poland* (dec.), no. 24549/03, §§ 37-43).

37. The Court notes that the national authorities are in principle better placed than an international court to evaluate the facts of a case. Nevertheless, in their assessment and appreciation they must apply standards which are in conformity with the principles embodied in the Convention as developed in the case-law of the Court. The Court has already indicated on a great number of occasions that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case taken as a whole and in this connection the Court’s approach consists in examining the overall length of the proceedings and in covering all stages of the proceedings (see *Majewski v. Poland*, no. 52690/99, § 34-35, 11 October 2005).

38. In the present case, the Gdańsk Court of Appeal dismissed the applicant’s complaint on the ground that since the date of entry into force of the 2004 Act no undue delays in the proceedings could be discerned (see paragraphs 11 and 12 above). In so doing, the domestic court examined only the period after the date of the entry into force of the 2004 Act, namely 17 September 2004. The Court notes that placing temporal restrictions on the application of the remedy is a common practice of the domestic courts and must be considered inconsistent with Convention standards (see, in this connection, *Tur v. Poland*, §§ 62-68, 23 October 2007; *Majewski*, cited above, § 36; and *Bako v Slovakia*, (dec), no 60227/00, 15 March 2005).

39. The Court would further observe that while the effectiveness of the remedy is undermined by the domestic courts’ restrictive approach to the scope of the remedy *ratione temporis*, the remedy itself may prove to be deficient in so far as it limits the domestic courts’ examination of the period to be assessed to the judicial phase of the proceedings alone. The Court notes that under the 2004 Act the domestic courts have no competence to examine separately the length of the pre-trial stage of criminal proceedings, which amounted in the instant case to a period of over two years. However, in order for the remedy to be Article 13 compliant, the domestic courts should take that period into account when assessing the length of the judicial phase of the proceedings and when calculating the amount of just satisfaction due in the circumstances of a particular case. The Court reiterates in this connection that a remedy may be accepted as effective only if it is capable of addressing all stages of the impugned proceedings.

40. Having regard to the above considerations and to the fact that a period of almost seven years was excluded from the domestic court's examination, the Court finds that the remedy under the 2004 Act, as applied in the present case, cannot be regarded as "effective" within the meaning of Article 13 of the Convention.

Accordingly, there has been a violation of that provision.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant complained under Article 6, read in conjunction with Article 13 of the Convention, that he was deprived of his right to have his claim examined by an impartial court because some of the judges of the Court of Appeal who examined his length of proceedings complaint had previously made orders remanding him in custody in the criminal proceedings.

42. The Court has already examined a complaint where a judge presiding over an applicant's trial in criminal proceedings had on many occasions dealt with his applications for release and found no violation of Article 6 of the Convention (see *Jasiński v. Poland*, no. 30865/96, §§ 48-58, 20 December 2005).

43. Reasoning *a maiori ad minus* and having examined the present complaints, regardless of other possible grounds of inadmissibility, the Court considers that the applicant's misgivings about the impartiality of judges examining his length complaint cannot be regarded as objectively justified.

44. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. This sum comprised the claim for costs and expenses in the amount of 1,989 zlotys (PLN) and EUR 25 (see paragraph 48 below).

47. The Government contested the claim.

48. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 7,000 under this head.

B. Costs and expenses

49. The applicant also claimed PLN 1,989 and EUR 25 for the costs and expenses incurred before the domestic courts and before the Court.

50. The Government contested the claim.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 sum of EUR 500 covering costs under all heads.

C. Default interest

52. 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the complaint concerning the excessive length of the proceedings and the complaint concerning the ineffectiveness of the domestic remedy against the length of proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 sums, to be converted into Polish Zlotys at the rate applicable at the date of settlement:
 - (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;

- (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
- (iii) 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President