



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

FOURTH SECTION

CASE OF STEFAN KOZŁOWSKI v. POLAND

(Application no. 30072/04)

JUDGMENT

STRASBOURG

22 April 2008

FINAL

22/07/2008

This judgment may be subject to editorial revision.

In the case of Stefan Kozłowski 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 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 30072/04) 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 Stefan Kozłowski (“the applicant”), on 11 July 2004.

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

3. On 14 December 2006 the President of the Fourth Section, to which the case had been allocated, decided to give notice of the application 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 1970 and lives in Szczecin.

A. First set of criminal proceedings against the applicant

5. On an unspecified date in 1993 two sets of criminal proceedings against the applicant were instituted before the Szczecin District Court (*Sqd*

Rejonowy). The applicant was charged with armed robbery. On 10 May 1994 the respective proceedings were joined.

6. On 26 October 1999 the Szczecin District Court gave judgment and convicted the applicant.

7. On an unspecified date the applicant lodged an appeal.

8. On 16 February 2000 the Szczecin Regional Court (*Sąd Okręgowy*) remitted the case.

9. According to the applicant's submissions, the court refused to send him copies of the relevant documents concerning the impugned proceedings. Because of this, he could not submit detailed information about the dates of hearings and the reasons for their adjournment.

10. On 28 February 2005 the Szczecin District Court again gave judgment and sentenced the applicant to three years and six months' imprisonment.

11. According to the Government's submissions, the first-instance judgment was upheld by the Regional Court on appeal and the proceedings terminated in July 2005.

B. Second set of criminal proceedings against the applicant

12. On an unspecified date the applicant was charged with acting as part of an organised criminal group. The applicant has failed to produce any documents concerning this set of proceedings; he only stated that he had been convicted by a judgment of the Kraków Court of Appeal on 4 April 1996.

C. Proceedings under the 2004 Act

13. On an unspecified date the applicant lodged a complaint with the Szczecin Regional Court (*Sąd Okręgowy*) 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"). He sought a ruling declaring that the length of the proceedings in his case had been excessive and requesting an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN - approx. 2,500 euros (EUR)).

14. On 13 January 2005 the Szczecin Regional Court gave a decision in which it acknowledged the excessive length of the proceedings, finding that there had been some periods of unjustified inactivity (lasting from several months to some three years) on the part of the Szczecin District Court. It awarded the applicant PLN 5,000 (approx. EUR 1,222) in just satisfaction. Referring to the amount of just satisfaction, the court relied on the fact that the applicant had contributed to the length of the proceedings because he

“had lodged numerous letters with the court” and “because of his state of health a number of hearings had to be adjourned”.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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; *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

16. 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...”

17. The Government contested that argument.

18. The Court notes that the proceedings commenced on an unspecified date in 1993. However, the period to be taken into consideration can only begin on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The period in question ended on 22 July 2004. It thus lasted 11 years, 2 months and 24 days for two levels of jurisdiction.

A. Admissibility

19. As to the Government’s argument that the applicant cannot be considered a “victim”, within the meaning of Article 34 of the Convention, of a deprivation of his right to a hearing within a reasonable time, this issue falls to be determined in the light of the principles recently established in the Court’s case-law (see *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 - ...).

20. The Szczecin Regional Court analysed the course of the impugned proceedings in the light of the criteria which the Court itself applies. It concluded that the District Court had infringed the applicant's right to a hearing without unjustified delay and awarded the applicant the equivalent of EUR 1,220 in respect of the length of the proceedings. The just satisfaction awarded by the Regional Court amounts to approximately 12.5% 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. Therefore the Court finds that the redress afforded the applicant at domestic level, considered on the basis of the facts of which he complains in the Convention proceedings, was insufficient. In these circumstances, the argument that the applicant has lost his status as a "victim" cannot be upheld.

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

22. The applicant maintained that he had exhausted all remedies in respect of his complaint under Article 6 § 1.

23. The Court notes that the applicant lodged a complaint with the Szczecin Regional Court about the length of the proceedings under section 5 of the 2004 Act.

24. The Court has already examined remedies provided under sections 5 and 18 of the 2004 Act for the purposes of Article 35 § 1 of the Convention and found them effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Charzyński v. Poland* (dec.) no. 15212/03, §§ 36-43, and *Michalak v. Poland* (dec.) no. 24549/03, §§ 37-44).

25. Furthermore, the Court has already held 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, and *Jagiello v. Poland*, no. 59738/00, § 24, 23 January 2007).

26. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

27. 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

28. 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)

29. 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).

30. Having examined all the material submitted to it, the Court finds no 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 concurs with the Regional Court that in the instant case the length of the criminal proceedings complained of was excessive and failed to meet the “reasonable time” requirement.

31. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. Regarding the applicant’s allegation that his complaint about a breach of his right to a trial within a reasonable time was unjustly dismissed, the Court considered it appropriate to raise of its own motion the issue of Poland’s compliance with the requirements of Article 13 of the Convention, on account of indications that the applicant had no effective domestic remedy in respect of the unreasonable length of the civil proceedings.

This provision provides as follows:

“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 refrained from making any comments on this complaint.

34. The Court observes firstly that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

35. The Court has frequently held that the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term “effective” is also considered to mean that the remedy must be adequate and accessible (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-XIII).

Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective” within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII; *Scordino* (no. 1), cited above, §§ 186-188; and *Surmeli v. Germany* [GC], no. 75529/01, § 99, 8 June 2006). Lastly, the Court reiterates that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Surmeli*, cited above, § 98) and the mere fact that an applicant’s claim fails is not in itself sufficient to render the remedy ineffective (see *Amann v. Switzerland*, [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

36. The Court reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *e.g.*, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

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

38. The Court observes the amount awarded to the applicant was based on the exercise by the domestic court of its discretion as to what might constitute appropriate pecuniary redress in the circumstances of the applicant’s own case. The domestic court acknowledged the excessive length of the proceedings, awarded the applicant just satisfaction and gave reasons for the amount of compensation (see paragraph 14 above). The mere fact that the amount of compensation given was low does not of itself render the remedy ineffective (see, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006). In the light of the foregoing, the Court considers that the above-mentioned situation cannot be regarded as a breach of the applicant’s right to an effective remedy.

The Court would add, however, that different considerations might apply in a case where an applicant alleges that the domestic remedy itself fails to reflect the standards embodied in the relevant case-law of the Court, for example if the remedy confines the period to be assessed to the judicial phase of the proceedings to the exclusion of, say, the pre-trial investigation stage of criminal proceedings. A separate issue might also arise under Article 13 where the domestic courts consistently fail to apply Convention standards by erring in their interpretation of the remedy, for example by placing temporal restrictions on its application (see, in this connection, *Tur v. Poland*, §§ 62-68, 23 October 2007) or, where the proceedings at issue

have lasted a long time, by not giving reasons for a refusal to award damages or for making a very modest award (see in the latter connection, *Scordino*, cited above, § 204).

39. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. Lastly, the applicant, relying on Article 6 § 1 of the Convention, complained, in essence, of the alleged unfairness of some other set of criminal proceedings against him which, according to his submissions, terminated with the Kraków Court of Appeal's judgment of 4 April 1996.

41. The Court, having examined this complaint, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation of this Convention provision.

42. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed PLN 27,000 in respect of non-pecuniary damage.

45. The Government considered the claim excessive.

46. Making its assessment on an equitable basis and having regard to the sum awarded by the domestic authorities, the Court considers that it should award the full sum claimed in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

48. 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 proceedings admissible and the remainder of the application inadmissible;
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 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of payment, 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.

Done in English, and notified in writing on 22 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President