



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

FOURTH SECTION

CASE OF FIGIEL v. POLAND (no. 2)

(Application no. 38206/05)

JUDGMENT

STRASBOURG

16 September 2008

FINAL

16/12/2008

This judgment may be subject to editorial revision.

In the case of Figiel v. Poland (no. 2),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 28 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 38206/05) 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 Wojciech Figiel (“the applicant”), on 29 January 2005.

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

3. On 1 September 2006 the President of the Fourth Section of the Court 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.

4. The Government requested that the present application be joined to application no. 38190/05, which was lodged by the applicant (*Figiel v. Poland (no. 1)*) and which concerned the length of another and unrelated set of civil proceedings. On 6 May 2008 the President of the Chamber decided not to join the applications.

5. The Government submitted a unilateral declaration and invited the Court to strike both of the above-mentioned applications out of the list, in accordance with Article 37 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Warsaw.

A. Civil proceedings for payment

7. On 10 November 1999 the applicant lodged a claim for payment with the Warsaw District Court (*Sąd Rejonowy*). The applicant requested the court to make an order for payment against his business partner. The value of the claim was 500 Polish zlotys (PLN) (about 150 euros (EUR)).

8. On 9 January 2004 the Warsaw District Court gave judgment and dismissed the applicant's claim.

9. On 7 February 2004 the applicant appealed against the first-instance judgment.

10. On 30 November 2004 the Warsaw Regional Court heard the applicant's appeal and granted the claim for payment.

B. Proceedings under the 2004 Act

11. On 21 September 2004 the applicant lodged a complaint with the Warsaw Regional Court 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 before the Warsaw District Court had been excessive and that just satisfaction should be awarded to him.

12. On 9 November 2004 the Warsaw Regional Court gave a decision in which it acknowledged the excessive length of the proceedings (36 months and 7 days of inactivity on the part of the Warsaw District Court) but refused to grant the applicant any just satisfaction, holding that the applicant had failed to reason his request for just satisfaction and that the proceedings for payment of PLN 500 did “not seem to be particularly important for the applicant, who is a businessman”.

C. Application no. 38190/05

13. On 29 January 2005 the applicant lodged another application concerning the length of the civil proceedings for payment. Those proceedings lasted 5 years at one level of jurisdiction. The applicant made

use of the complaint provided for by the 2004 Act and the domestic court acknowledged the excessive length of the proceedings (35 months and 21 days of inactivity on the part of the Warsaw District Court) but refused to grant the applicant any just satisfaction.

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* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* (dec.), no. 11215/02, 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 TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

15. On 30 July 2007 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were prepared 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 to award the applicant PLN 10,000 (the equivalent of EUR 2,600) in respect of the two cases introduced by the applicant (see paragraphs 7 and 13 above). The Government invited the Court to strike out the applications in accordance with Article 37 of the Convention.

16. The applicant did not agree with the Government's proposal and requested the Court to continue the examination of the cases. He maintained that the amount offered was too low.

17. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances 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 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 and its

Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

18. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

19. It is to be noted that the amount proposed by the Government in their unilateral declaration refers to two separate cases brought by the applicant, one of which is the subject of the present proceedings.

20. While the amount proposed might be considered sufficient in a single case, it cannot be accepted as adequate just satisfaction for a breach of the reasonable-time requirement in two separate cases. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *a contrario*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

21. This 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

22. 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..."

23. The Government refrained from submitting observations on the admissibility and merits of the complaint.

24. The period to be taken into consideration began on 10 November 1999 and ended on 30 November 2004. It thus lasted 5 years and 22 days for two levels of jurisdiction.

A. Admissibility

25. In the present case the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time but refrained from making an award of just satisfaction (see paragraph 12 above). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the above-mentioned *Scordino (no. 1)* judgment, the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. 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).

27. 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).

28. 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. Regarding the applicant's allegations that his complaint about a breach of his right to a trial within a reasonable time was not effective, 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 protracted length of 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.”

30. The Government refrained from making any comments in that connection.

31. The Court reiterates 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. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI, §§ 156-157).

32. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. In particular, where the State has introduced a compensatory remedy, the Court must leave to it a wide margin of appreciation and allow it to organise the remedy – including the interpretation and application of the notion of “damage” in a given case – in a manner consistent with its own legal system, traditions and the standard of living in the country concerned (*loc. cit.*, and *Scordino (no. 1)*, cited above, §§ 188-189).

33. The fact that in the present case the applicant’s claim for just satisfaction failed and that the redress obtained from the domestic court was not sufficient for Convention purposes does not in itself render the remedy under the 2004 Act incompatible with Article 13, albeit that it has consequences for the Court’s assessment of his victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 25 above, with references to the Court’s case-law, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006).

As stated above, the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see paragraph 31 above, and, also, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant’s right to an effective remedy under Article 13 of the Convention has not been respected.

34. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government did not express an opinion on the matter.

38. The Court considers that it should award the full sum claimed.

B. Costs and expenses

39. The applicant also claimed EUR 150 for the costs and expenses incurred before the Court.

40. The Government did not express an opinion on the matter.

41. The Court awards the full sum claimed.

C. Default interest

42. 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 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*

(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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 150 (one hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(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 16 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President