



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

FOURTH SECTION

CASE OF KRZYSZTOF KANIEWSKI v. POLAND

(Application no. 49788/06)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

30/12/2008

This judgment may be subject to editorial revision.

In the case of Krzysztof Kaniewski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 49788/06) 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 Krzysztof Kaniewski (“the applicant”), on 5 December 2006.

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

3. On 21 February 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. Civil proceedings for dissolution of a partnership

6. On 6 November 1992 the applicant lodged a claim with the Warsaw Regional Court (*Sąd Okręgowy*) for dissolution of a partnership.

7. On 6 June 1995 the proceedings were stayed.

8. On 26 September 1996 the Warsaw Regional Court discontinued the proceedings.

9. The applicant appealed against this decision.

10. On an unspecified date the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed the decision on the discontinuance of the proceedings.

11. On 23 July 1997 the Warsaw Regional Court found that it was not competent to deal with the matter and referred the case to the Warsaw District Court (*Sąd Rejonowy*).

12. Between 26 February 1998 and 2 September 2002 the court scheduled eight hearings, two of which were adjourned.

13. On 2 September 2002 the court ordered that an expert report be obtained.

14. Between 25 November 2002 and June 2003 the expert witness prepared his report.

15. On 8 April 2004 the proceedings were stayed. The applicant appealed.

16. On 16 August 2004 the court rejected the applicant's appeal.

17. The proceedings are still pending before the Warsaw District Court.

B. Proceedings under the 2004 Act

18. On 14 June 2005 the applicant lodged a complaint under 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").

19. On 29 September 2005 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed his complaint on the ground that on the date of the entry into force of the 2004 Act no undue delays in the court's conduct could be discerned. The court acknowledged that the proceedings before 2004 had been unreasonably lengthy for various reasons such as the failure of

witnesses and lawyers to appear on numerous occasions and the unreasonably long period taken up by the preparation of a report by the expert witness. The court also found some periods of inactivity on the part of the Warsaw District Court (between 18 November 1998 and 24 September 1999 and between 9 December 1999 and 29 October 2001). However, the court stressed that the 2004 Act had entered into force on 17 September 2004 and could not be applied to the proceedings occurring before that date. Having analysed the conduct of the District Court in the period following the entry into force of the 2004 Act, the Regional Court found that the proceedings had been conducted with due diligence and within a reasonable time.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

21. 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 16,000 (the equivalent of EUR 5,000). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

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

23. 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).

24. 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).

25. 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, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

26. 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 UNFAIRNESS OF THE PROCEEDINGS

27. The applicant first complained that the proceedings in his case were unfair. He alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

28. However, the Court notes that the relevant proceedings are still pending before the first-instance court.

It follows that this part of the application must be declared inadmissible for failure to exhaust the domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

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

29. 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...”

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

31. The Court notes that the proceedings commenced on 6 November 1992. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted over 15 years at one level of jurisdiction.

A. Admissibility

32. 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

33. 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).

34. 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

exceeded a reasonable time, the Warsaw Regional Court 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).

35. 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 breach of Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed PLN 160,000,000 in respect of pecuniary and non-pecuniary damage.

38. The Government contested the claim claiming it to be highly excessive.

39. 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 awards the applicant EUR 13,500 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed PLN 486,84 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

41. The Government contested the claim.

42. 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 100 covering costs under all heads.

C. Default interest

43. 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 its list of cases;
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 13,500 (thirteen thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President