



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

FOURTH SECTION

CASE OF WILKOWICZ v. POLAND

(Application no. 74168/01)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Wilkowicz 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 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 74168/01) 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 Benedykt Wilkowicz (“the applicant”), on 17 May 2001.

2. The applicant, who had been granted legal aid, was represented by Mr P. Sołhaj, a lawyer practising in Kraków. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged, relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, that his right to a fair hearing and his right to the peaceful enjoyment of his possessions had been breached because of delays in the enforcement of a judgment given by a civil court and of a final administrative decision granting him certain social insurance rights.

4. On 6 January 2008 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. By a decision of 25 August 1995 the Social Insurance Authority in Kraków awarded a pension to the applicant. It was to be paid to him for a period beginning on 1 May 1993.

6. Under the applicable provisions of domestic law, the Military Pensions Office was competent to make payments to the applicant, but it failed to do so. In a letter to the Office dated 16 October 1995, the Director of the Social Insurance Authority confirmed the applicant's entitlement to a military pension.

7. As the Military Pensions Office still refused to make payments, apparently considering that the 1995 decision was not in conformity with the law, the applicant lodged an action with the Kraków Regional Court on 8 November 1995, complaining about the Office's failure to pay. In its pleadings, the Office argued that the decision had been given in breach of substantive provisions of the applicable social insurance laws. It further indicated that it had informed the Social Insurance Authority about its doubts as to the lawfulness of the decision. Subsequently, the Authority had summoned the applicant to undergo an additional medical examination. As the applicant had failed to comply with the summons, payment of a part of his pension had been stayed with effect from 1 May 1996.

8. By a judgment of 4 March 1999 the court allowed the applicant's action. It ordered the Military Pensions Office to pay the amount of pension due for the period from 1 May 1993 to 1 May 1996. It noted the decision staying payment of the applicant's pension. However, it stressed that the decision given on 25 August 1995 had not been appealed against and, as a result, had become final. The Office was therefore bound by it. There were no grounds for not paying the applicant the amounts due for the years 1993-1996. The court was not competent to re-examine the lawfulness of the 1995 decision in the proceedings before it.

9. The Military Pensions Office appealed. It reiterated that, in its view, the 1995 decision had not been in compliance with the substantive law.

10. On 28 November 2000 the Kraków Court of Appeal upheld the judgment, finding that the first-instance court had correctly found that it had not been empowered to re-examine the lawfulness of the 1995 decision. It further reiterated that this decision had to be complied with by the Office.

11. On 29 November 2000 the applicant reiterated his request to have the amounts due paid to him, but to no avail. Subsequently, the Military Pensions Office lodged a cassation appeal against this judgment with the Supreme Court.

12. On 1 and 22 March 2001 the applicant complained to the Ministry of Defence and to the Prime Minister about the Office's failure to pay him the pension.

13. By a decision of 16 May 2002 the Supreme Court dismissed the appeal lodged by the Office, finding that it had failed to comply with the relevant procedural requirements.

14. In December 2002 the Military Pensions Office paid the applicant the amounts in arrears together with statutory interest.

II. RELEVANT DOMESTIC LAW

15. Under Article 388 § 1 of the Code of Civil Procedure, as applicable at the material time, judgments of the second-instance courts were immediately enforceable.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

16. The applicant complained under Article 6 § 1 of the Convention that he had been unable for a long time to obtain payment of sums owed to him by a State body under a final and binding decision given in 1995. He further complained under Article 1 of Protocol No. 1 to the Convention about the delay in the enforcement of the judgment given in 1999.

17. In so far as relevant, these Articles read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

18. The Government argued that the application was inadmissible. The applicant could not claim to be a victim of a breach of the Convention since the courts had ultimately acknowledged that the Military Pensions Office had erred in not complying with the final and valid decision given on 25 August 1995 by the Social Insurance Authority. Furthermore, the applicant had in the end been paid the amounts in arrears, together with statutory interest. They further argued that the applicant had failed to exhaust the relevant domestic remedies. He should have lodged a separate civil action in tort, claiming damages against the State Treasury under Article 417 of the Civil Code for the losses which he had incurred. He could also have instituted enforcement proceedings governed by the Administrative Enforcement Act.

19. The applicant disagreed. He submitted that he retained his victim status. He had obtained a final decision determining his pension in 1995, but the Military Pensions Office had refused to pay. His efforts to obtain payment had been unsuccessful and his complaints had not produced any result. He had had no choice but to bring a civil action for payment, to make the Office act in conformity with the law. He had been successful and his claim had been vindicated by the judgment of the appellate court. In these circumstances, and having regard in particular to the fact that his civil action had been successful, he should not be required to embark on yet another set of civil proceedings.

20. As to the applicant’s status as a victim, the Court reiterates that for an applicant to be deprived of this status, the State must acknowledge a breach of his rights and afford adequate redress (see *Amuur v. France*, 25 June 1995, § 36, *Reports of Judgments and Decisions* 1996-III). In the present case, the Court acknowledges that the domestic court, by the judgment of 4 March 1999 ordering the Military Pensions Office to pay to the applicant the amount of pension for the period from 1 May 1993 to 1 May 1995 compensated the applicant’s losses resulting from inflation. However, it did not award compensation for non-pecuniary loss, in respect of the non-enforcement. It did not therefore provide adequate redress (*Kukalo v. Russia (no. 2)*, no. 11319/04, § 26, 24 July 2008).

21. As regards the alleged non-exhaustion of domestic remedies, the Court reiterates, at the outset, that where a final decision conferring a right on an individual is against the State, a person should not be expected to bring separate enforcement proceedings (see, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). In any event, and to reply more fully to their objection, in so far as the Government were of the view that he

should also have instituted two other sets of proceedings, civil and administrative, the Court reiterates that an individual is not required to try more than one avenue of redress when there are several parallel remedies available in various branches of law. It is for the applicant to select the legal remedy that is most appropriate in the circumstances of the case (see, among other authorities, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12, § 23, and *Boicenco v. Moldova*, no. 41088/05, § 80, 11 July 2006). In the present case, the applicant sought to have his rights originating in the final decision given in 1995 vindicated by way of civil proceedings and his efforts were successful.

22. The Court concludes that, having availed himself of the remedy provided by civil law, the applicant was not required to embark on another attempt to obtain redress by bringing another civil action and also instituting administrative enforcement proceedings. Accordingly, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. The Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must therefore be dismissed.

23. The Court notes that the application 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

24. The applicant submitted that the Military Pensions Office was not entitled in law to challenge the validity of the decision given by the Social Insurance Authority. The Office had been aware that the pension was the applicant's only income and that his health had suffered while he was serving in the army. Hence, its conduct had been spiteful and unjustified. Overall, it had interfered with the payment of the applicant's pension from 1995 until December 2002, that is, for a period of seven years. This failure to comply with the final decision amounted to a breach of the applicable social insurance laws.

25. The Government submitted that the State had not failed to comply with its obligation to secure to the applicant the effective enjoyment of his rights guaranteed by Article 1 of Protocol No. 1 to the Convention. There had been no interference with the applicant's rights. Despite the fact that the benefits due to him had remained unpaid for a certain period, his rights were safeguarded by civil law and he could have obtained redress at the domestic level.

26. As regards the applicant's complaint under Article 6 of the Convention, the Court reiterates that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be

inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V).

27. In terms of Article 1 of Protocol No. 1, a “claim” can constitute a “possession” if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). By virtue of Article 1 of the Convention, each Contracting Party “shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention”. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State. As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property, even in cases involving litigation between private individuals or companies. This means, in particular, that States are under an obligation to ensure compliance with the procedures enshrined in the legislation for the enforcement of final decisions, whether judicial or administrative, conferring rights on individuals (see *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005, with further references). This principle applies with all the more force when it is the State itself which is obliged to comply with such decisions.

28. As regards Article 1 of Protocol No. 1 to the Convention, in the present case the applicant became entitled to a disability pension from 1 May 1993 onwards, by virtue of a final decision given in 1995. This decision provided the applicant with enforceable claims and not simply a general right to receive support from the State. It had become final as no ordinary appeal lay against it. His entitlement to a pension, originating in this decision, was later stayed from 1 May 1996 onwards, but the decision remained valid in respect of the period from 1 May 1993 until 30 April 1996. The domestic courts reiterated, in their judgments of 1999 and 2000, that throughout this period this decision remained binding and enforceable. However, the Military Pensions Office eventually paid the pension in arrears to the applicant only in December 2002, that is to say, after seven years.

29. As regards Article 6 of the Convention, the Court further notes that on 28 November 2000 the Kraków Court of Appeal upheld the judgment in the applicant’s favour given by the first-instance court on 4 March 1999. Under the applicable provisions of the Polish law on civil procedure, the

second-instance judgment was immediately enforceable (*Ungureanu v. Moldova*, no. 27568/02, § 26, 6 September 2007). However, in the present case the Military Pensions Office paid the applicant the amounts in arrears only in December 2002, that is, after two years.

30. The Court finds that the above periods were incompatible with the requirements of the Convention.

31. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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.”

B. Damages, costs and expenses

33. The applicant claimed 111,753.83 Polish zlotys (PLN) in respect of pecuniary damage and PLN 50,000 in respect of non-pecuniary damage. The applicant argued that the former amount corresponded to the part of his pension which had not been paid to him after the Social Insurance Authority had stayed payments in 1966 on account of his failure to undergo an additional medical examination (see paragraph 7 above).

He further claimed PLN 3,000 for the costs and expenses incurred before the Court.

34. The Government considered that the claims for damages were excessive and as such should be rejected. They further argued that the applicant had not submitted any evidence to the effect that the costs which he claimed had actually been borne by him.

35. 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 5,460 euros (EUR) in respect of non-pecuniary damage.

36. The Court notes that the applicant, who was granted legal aid for the purpose of the proceedings before the Court, has not submitted any proof that he incurred any expense over and above the amount of EUR 850 which he received in legal aid. There is therefore no call to make any award under this head.

B. Default interest

37. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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, EUR 5,460 (five thousand four hundred and sixty euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President