



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

FOURTH SECTION

CASE OF KUFEL v. POLAND

(Application no. 9959/06)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Kufel 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 9959/06) 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 Adam Kufel (“the applicant”), on 13 February 2006.

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 Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1968 and lives in Tuchola.

A. Civil proceedings for payment

5. On 19 December 2002 the applicant instituted civil proceedings for payment of just satisfaction before the Tuchola District Court (*Sąd Rejonowy*) against the State Treasury, represented by the Bydgoszcz and Poznań branches of the Polish Television Company.

6. On 16 January 2003 the case was transmitted to the Poznań District Court. The applicant appealed against that decision and, on 24 March 2003, the Bydgoszcz Regional Court (*Sąd Okręgowy*) sent the case back to the Bydgoszcz District Court.

7. On 25 April 2003 the applicant was requested to pay court fees of 1,500 Polish zlotys (PLN).

8. On 28 May 2003 the applicant requested the court to exempt him from court fees.

9. On 16 June 2003 the Bydgoszcz District Court granted the applicant legal aid.

10. On 14 August 2003 a lawyer was appointed to represent the applicant. The applicant informed the court that he had requested exemption from court fees and that he had not asked for legal aid.

11. Consequently, on 23 August 2003, the Bydgoszcz District Court quashed its decision of 16 June 2003 granting the applicant legal aid.

12. On 2 September 2003 the Bydgoszcz District Court requested the applicant to rectify some procedural shortcomings in his claim.

13. On 15 September 2003 the shortcomings were rectified.

14. On 16 October 2003 the first defendant, the Bydgoszcz branch of the Polish Television Company, submitted its defence.

15. On 1 December 2003 the second defendant, the Poznań branch of the Polish Television Company, submitted its defence.

16. On 3 February 2004 the applicant's lawyer requested the court to extend the time-limit for submitting his comments on the defendants' pleadings.

17. On 5 March 2004 the applicant submitted his comments and maintained his claim.

18. On an unspecified date the reporting judge was replaced by another judge.

19. On 5 July 2004 the court listed a hearing for 13 September 2004. At the request of the defendants' lawyer, the trial was adjourned until 18 November 2004.

20. On 18 November 2004 the hearing was postponed until 13 January 2005.

21. At the hearing held on 13 January 2005 the Bydgoszcz District Court gave a decision transmitting the case to the Bydgoszcz Regional Court.

22. The next hearing was listed for 4 March 2005.

23. At a hearing held on 4 March 2005 the Bydgoszcz Regional Court found that it was not competent to deal with the subject-matter and transmitted the case to the Poznań Regional Court.

24. On 22 March 2005 the Poznań Regional Court transmitted the case to the Poznań District Court.

25. On 9 September 2005 the Poznań District Court listed a hearing for 16 November 2005.

26. On 16 November 2005 the Poznań District Court stayed the proceedings because both parties had failed to appear. According to the applicant, he failed to appear because he had not been informed of the hearing date.

27. On an unspecified date the applicant requested the court to resume the proceedings and to transfer the case for examination by the Bydgoszcz Regional Court.

28. On 27 December 2007 the Poznań District Court resumed the proceedings and dismissed the applicant's request as regards the transfer of the case to the Regional Court.

29. The proceedings are still pending before the Poznań District Court.

B. Proceedings under the 2004 Act

30. On 4 May 2005 the applicant lodged a complaint with the Poznań 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").

31. On 20 May 2005 the Poznań Regional Court rejected his complaint on account of a procedural mistake.

32. On an unspecified date the applicant again lodged a complaint with the Poznań Regional Court under section 5 of the 2004 Act. He sought a ruling declaring that the length of the proceedings before the Bydgoszcz District Court, the Bydgoszcz Regional Court and the Poznań Regional Court had been excessive and awarding him just satisfaction in the amount of PLN 10,000 (approximately 2,850 euros (EUR)).

33. On 21 March 2006 the Poznań Regional Court gave a decision in which it acknowledged the excessive length of the proceedings before the Bydgoszcz District Court, finding that there had been a period of unjustified inactivity between 16 April 2003 and 13 January 2005. It awarded the applicant PLN 1,000 (approximately EUR 285) in just satisfaction. Referring to the amount of just satisfaction, the court held that "having analysed all the circumstances of the case it found this amount to be sufficient for the applicant". Relying on section 4 of the 2004 Act, which provides that the complaint should be examined by the court immediately above the court conducting the impugned proceedings, the court refused to acknowledge the excessive length of the proceedings before the Bydgoszcz Regional Court and the Poznań Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. 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 set out 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 in its 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

35. 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...”

36. The Government contested that argument.

37. The period to be taken into consideration began on 19 December 2002 and has not yet ended. It has thus lasted over five years and six months for one level of jurisdiction.

A. Admissibility

38. The Court first notes that in May 2005 the applicant lodged a complaint concerning the length of the proceedings with the Poznań Regional Court under section 5 of the 2004 Act, and that it was examined by the Regional Court, which acknowledged that the proceedings before the District Court had been lengthy and awarded the applicant just satisfaction. The just satisfaction awarded amounted to approximately 10% of what the Court would be likely to have awarded the applicant at the time in accordance with its practice. Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR 2006-...), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

39. The Government 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 under Article 417 of the Civil Code seeking compensation for damage suffered due to the excessive length of the proceedings or a civil claim for compensation under Article 15 of the 2004 Act.

40. The applicant did not comment.

41. The Court notes that the applicant lodged a complaint concerning the length of the proceedings with the Poznań Regional Court under section 5 of the 2004 Act.

42. The Court has already examined the 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 concerning 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).

43. 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).

44. 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.

45. 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

46. 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).

47. 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).

48. 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. In

particular, the Court notes that since the beginning of the proceedings no substantial decisions have been taken, and that the case was transmitted from the District Court to the Bydgoszcz Regional Court and then to the Poznań Regional Court. Furthermore, the case has been dormant since 16 November 2005. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant submitted his just satisfaction claims but did not specify the amount claimed, leaving the matter to the Court’s discretion.

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

52. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,000 under that head.

B. Costs and expenses

53. The applicant did not make any claim for costs and expenses incurred in the proceedings.

C. Default interest

54. 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*
 - (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 5,000 (five thousand 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;
 - (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.

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

Lawrence Early
Registrar

Nicolas Bratza
President