



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

FOURTH SECTION

CASE OF LUDWICZAK v. POLAND

(Application no. 31748/06)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Ludwiczak 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 31748/06) 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 Eugeniusz Ludwiczak (“the applicant”), on 17 July 2006.

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

3. On 13 September 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was 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 1945 and lives in Ostrów Mazowiecka.

A. Main proceedings

5. On 9 November 1992 the applicant lodged with the Ostrów Mazowiecka District Court (*Sąd Rejonowy*) a claim for payment against his ex-employer, a construction company.

6. On the same day the case file was sent to the Warszawa District Court which was competent to deal with the subject-matter.

7. The first hearing was scheduled for 22 February 1993. It did not take place because on 21 December 1992 the Warszawa District Court stayed the proceedings due to the fact that on 3 December 1992 winding-up proceedings had been instituted against the defendant.

8. On 5 April 1994 the applicant's claim was entered on the list of claims (*lista wierzytelności*).

9. On 27 May 1994 the Warszawa District Court refused to resume the proceedings.

10. On 18 September 2000 the Warszawa District Court was informed that the winding-up proceedings had been discontinued.

11. The proceedings were resumed on 6 April 2001. On the same day the case was joined to similar claims lodged against the defendant, and registered under a new reference number. The court adjourned the trial until 1 February 2002.

12. It appears that between the date when the proceedings were resumed and the day on which the first-instance judgment was given, no hearing took place. The trial was adjourned 11 times on procedural grounds, such as, for example, the appointment of the defendant's curator then its liquidator, and the need to supplement the evidence and to appoint an expert.

13. On 24 July 2006 the Warszawa District Court, following the applicant's motion, appointed a lawyer for the applicant.

14. On 31 October 2006 the Warszawa District Court gave judgment and discontinued the proceedings in respect of the applicant.

15. On 18 December 2006 the applicant's lawyer lodged an appeal. It was rejected by the Warszawa District Court on 9 February 2007 on procedural grounds, i.e. failure to pay the so-called "basic court fee" (*opłata podstawowa*).

B. Proceedings under the 2004 Act

16. On 6 December 2006 the applicant lodged with the Warszawa Regional Court (*Sąd Okręgowy*) a complaint 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") which entered into force on 17 September 2004. The applicant sought a ruling declaring that the length of the proceedings before the Warszawa District Court had been excessive.

17. On 25 January 2007 the Warszawa Regional Court dismissed his complaint. The court examined the course of the impugned proceedings and held that there had been no delays for which the Warszawa District Court

could be held responsible, although it admitted that the proceedings had been lengthy.

18. On 26 February 2007 the Warszawa Regional Court rejected the applicant's appeal against the decision of 25 January 2007 as inadmissible in law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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 and *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

20. On 22 April 2008 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready 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 20,000 (the equivalent of approx. EUR 5,900). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

21. 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.

22. 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).

23. 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).

24. 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).

25. 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

26. 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..."

27. The Government refrained from taking a position on the merits of the applicant's complaint.

28. The Court notes that the proceedings commenced on 9 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 ended on 9 February 2007. It thus lasted thirteen years, nine months and thirteen days at one court instance.

A. Admissibility

29. 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

30. 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).

31. 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). 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. 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.”

A. Damage

33. The applicant claimed 9,206 US dollars (USD) in respect of pecuniary damage and 20,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested these claims.

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, and having regard to the fact that the proceedings were

stayed for almost eight years due to objective reasons, it awards the applicant EUR 9,300 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. 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. *Rejects* the Government's request to strike the application out of its list of cases;
2. *Declares* the application admissible;
3. *Holds* that there had 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, EUR 9,300 (nine thousand three hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President