



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

FOURTH SECTION

CASE OF TEKIELA v. POLAND

(Application no. 35785/07)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Tekiela v. Poland,

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 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 35785/07) 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 Bogusław Tekiela (“the applicant”), on 23 July 2007.

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

3. On 3 April 2008 the President of the Fourth Section gave 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 1962 and lives in Ostrów Wielkopolski.

A. Civil proceedings for damages

5. On 3 February 2003 the applicant instituted civil proceedings for damages against W.U. before the Kielce Regional Court. On 4 February 2003 the case was transferred to the Kraków Regional Court. Hearings

before that court were held on 8 May, 3 July, 14 and 23 October 2003. On the last date the court assigned an expert to prepare a report which was submitted to the court on 31 December 2003. Further hearings were scheduled for 20 April and 25 May 2004.

6. By a judgment of 8 June 2004 the applicant's claim was dismissed. On 1 December 2004 the appellate court quashed the first-instance judgment and the case was remitted.

7. A hearing was held on 11 March 2005. On 2 May 2005 the Regional Court admitted evidence based on an expert opinion. The expert's report was submitted to the court on 19 July 2005. As the parties objected, the court decided that a new expert should be found. However, it could not find one competent to examine the issues involved in the case.

8. On 29 September 2005 the applicant complained that the proceedings were too lengthy. In October 2005 the court took steps to find an expert, to no avail.

9. Ultimately the court decided that two experts should give their opinion as it was impossible to find one competent to deal with all aspects of the case. One expert was found and the task of preparing a partial opinion was assigned to him. On 27 January 2006 the case file was sent to him. Another expert was asked to prepare an opinion to complete the first one after he had received the case file with the first report. The full report was submitted to the court on 4 September 2006.

10. On 2 and 3 October 2006 the parties filed their objections concerning the report. On 19 February and 27 March 2007 hearings were held. On the latter date the applicant modified and extended his claim. The next hearing was scheduled for 8 April 2007. On 23 May 2007 the court gave a judgment and allowed the applicant's claim in part.

11. The parties appealed. On 21 November 2007 the Kraków Court of Appeal dismissed both appeals. In February 2008 both parties lodged cassation appeals with the Supreme Court. The case is currently pending before that court.

B. Proceedings under the 2004 Act

12. On an unspecified date the applicant filed, under the Law of 17 June 2004 (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"), a complaint about the breach of the right to a fair trial within a reasonable time. He also claimed compensation for the excessive length of the proceedings.

13. On 29 January 2007 the Kraków Court of Appeal found that from October 2005 until January 2006 the Regional Court had failed to conduct the proceedings expeditiously. It dismissed the applicant's request to be

awarded compensation and ordered the Regional Court to give a judgment on the merits of the case before July 2007.

14. On 2 April 2007 the court rejected the applicant's appeal against this decision, finding that no appeal was available in law against it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

16. 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..."

17. The Government contested that argument.

18. The period to be taken into consideration began on 3 February 2003 and has not yet ended. It has thus lasted five years and nine months for three levels of jurisdiction.

A. Admissibility

19. The Court notes that the Government raised a preliminary objection 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 for compensation for damage suffered due to the excessive length of the proceedings. Such a claim was provided for by Article 417 of the Civil Code.

20. The Court has already examined and rejected the Government's arguments in this respect on many occasions (see *Cichla v. Poland* no. 18036/03, § 21-26, 10 October 2006; and *Jagiello v. Poland*, no. 59738/00, § 24, 23 January 2007). 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.

21. 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.

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

B. Merits

23. 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).

24. 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).

25. The Court further notes that the applicant had recourse to the domestic remedy provided for by the 2004 Act (see paragraph 15 above). He filed a complaint about a breach of his right to a fair trial within a reasonable time with the Kraków Court of Appeal.

The Court observes that the purpose of the complaint about the unreasonable length of the proceedings under that Act is twofold. Firstly, the complainant may obtain a finding of an infringement of the "reasonable-time" principle and, where appropriate, may be awarded just satisfaction in an amount not exceeding PLN 10,000. Secondly, he can request the court to instruct the court which examines the merits of the case to take certain measures within a fixed time-limit and thus to accelerate the impugned proceedings (see *Michalak v. Poland*, no. 24549/03, § 16, 1 March 2005). In the present case, in its decision of 29 January 2007 the Court of Appeal found that the lower court had failed to conduct the proceedings speedily, but dismissed the applicant's request for compensation. However, it made use of its competence to instruct the court before which the proceedings were pending at that time and ordered it to give a judgment on the merits of the applicant's case before July 2007.

The Court notes with approval that this order was complied with as subsequently the first-instance judgment was given by the Kraków Regional Court on 23 May 2007. Hence, the remedy used by the applicant provided adequate redress to the applicant in that it resulted in the acceleration of the proceedings.

26. However, 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 that the proceedings in the present case, seen as a whole, had been conducted speedily. In particular, the Court notes that considerable and repeated delays in the proceedings were caused by the difficulties in obtaining the expert opinions. It observes in this connection that experts work in the context of judicial proceedings supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, among many other authorities, *Musiał v. Poland* [GC], no. 24557/94, § 48, ECHR 1999-II; *Wojnowicz v. Poland*, no. 33082/96, § 65, 21 September 2000).

27. 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.

28. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicant complained that his complaint about a breach of his right to a trial within a reasonable time was not effective. He referred to Article 13 of the Convention which 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 submitted that this complaint should be declared inadmissible on account of the applicant’s failure to seek compensation for the excessive length of the proceedings before a civil court (see paragraph 19 above).

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 (see *Kudla ibid.*; and *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 188-189, ECHR-2006-...).

33. The fact that in the present case the applicant’s complaint under the 2004 Act failed in that no financial award was made does not in itself render the remedy under the 2004 Act incompatible with Article 13.

34. 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, e.g., *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

35. 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.

36. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 10,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

39. The Government contested the claim.

40. 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 900 (nine hundred euros) in respect of non-pecuniary damage.

B. Costs and expenses

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

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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 900 (nine hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President