



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

FOURTH SECTION

CASE OF ZALUSKA v. POLAND

(Application no. 41701/07)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Żaluska 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 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 41701/07) 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 Jan Żaluska (“the applicant”), on 18 September 2007.

2. The applicant was represented by Mr W. Wrzecionkowski, a lawyer practising in Olsztyn. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 7 February 2008 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 1946 and lives in Warszawa.

A. Main proceedings [proceedings for redress for unwarranted pre-trial detention]

5. On 31 December 1991 the applicant instituted proceedings for redress for obviously unwarranted pre-trial detention (*o odszkodowanie za oczywiście niesłuszne tymczasowe aresztowanie*).

6. On 28 November 2000 the Warsaw Regional Court scheduled the first hearing for 9 January 2001.

7. On 9 January 2001 the applicant's representative requested the court for additional time to specify his claim for redress. The court adjourned the hearing *sine die*.

8. On 14 June 2004 the applicant's representative requested the court to grant him additional time to update legal and factual grounds for the applicant's claim. The court adjourned the hearing.

9. On 22 February 2005 the applicant's representative requested the court to exclude the presiding judge from the proceedings.

10. On 7 July 2005 the Regional Court dismissed the applicant's motion.

11. On 6 September 2005 the court scheduled the next hearing for 13 October 2005.

12. On 13 October 2005 the Warsaw Regional Court stayed the proceedings pending the outcome of civil proceedings instituted by the applicant. The applicant lodged an interlocutory appeal against this decision.

13. On 8 November 2005 the Warsaw Court of Appeal quashed the contested decision and resumed the examination of the case.

14. On 28 December 2005, 18 May, 25 September, 17 October and 24 October 2006 the Warsaw Regional Court held hearings.

15. On 5 December 2006 the Warsaw Regional Court again stayed the proceedings pending the outcome of the civil proceedings instituted by the applicant. The applicant lodged an interlocutory appeal against this decision.

16. On 9 February 2007 the Warsaw Court of Appeal quashed the contested decision and resumed the examination of the case.

17. On 30 March 2007 the court, due to a modification in the bench assigned to try the case (*zmiana składu sędziowskiego*), reopened the proceedings. One witness was heard. The court scheduled the next hearing for 15 June 2007.

18. Eventually, on 27 September 2007 the Warsaw Regional Court awarded the applicant PLN 2,277,838 in compensation for pecuniary damage and PLN 45,000 for non-pecuniary damage. Since this judgment was not appealed against, it became final on 19 October 2007.

B. Proceedings under the 2004 Act

19. On 20 April 2007 the applicant filed 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”). On 25 May 2007 the Warsaw Court of Appeal confirmed that the proceedings in question had indeed been lengthy and awarded the applicant PLN 3,000¹ by way of just satisfaction. The court stated, *inter alia*, that the periods of inactivity between 31 December 1991 and 28 November 2000, as well as between 9 January 2001 and 6 May 2004, only confirmed the fact that the court had contributed to the excessive length of the proceedings. The court further stated that the intervals between the hearings were considerable and contributed to the overall length of proceedings. The court also referred to the fact that the Warsaw Regional Court’s decisions of 13 October 2005 and 5 December 2006 to stay the proceedings were unwarranted and also affected the length of the proceedings. Finally, the court stated that, although the applicant’s representative had lodged several futile motions which affected the pace of the proceedings, the Warsaw Regional Court took no action to discipline him.

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 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

21. 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:

¹ EUR 900

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

22. The Government failed to comment.

23. The Court notes that the proceedings commenced on 31 December 1991. 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 27 September 2007. It thus lasted almost fourteen years and five months at one level of jurisdiction.

A. Admissibility

1. Parties' observations

24. The Government failed to submit their observations within the prescribed time-limit.

25. The applicant submitted only his claim for damages.

2. The applicant's victim status – compatibility ratione personae

26. In the present case the Warsaw Court of Appeal analysed the course of the impugned proceedings in the light of the criteria which the Court itself applies. It concluded that the Warsaw Regional Court had infringed the applicant's right to a hearing without unjustified delay and awarded the applicant the equivalent of EUR 900 in respect of the length of the proceedings. The just satisfaction awarded by the Court of Appeal amounts to approximately 6.9% of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings. It is further to be noted that the court awarded the applicant only 30% of the maximum amount of compensation available under section 12 of the 2004 Act (see paragraphs 19 and 20 above, the latter as regards references to domestic law and practice).

Therefore the Court finds that the redress afforded to the applicant at domestic level, considered on the basis of the facts of which he complains in the Convention proceedings, was insufficient.

Having regard to the above and the criteria for determining victim status in respect of length of proceedings complaints (as set out in: *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-....; *Scordino (no.1)* [GC], §§ 193-215, cited above; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

27. 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

28. 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).

29. 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).

30. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 303,030 euros (EUR)² in respect of non-pecuniary damage. He further claimed 856,113 euros (EUR)³ for pecuniary damage.

33. The Government contested these claims.

34. 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, ruling on an equitable basis, and having regard to the

² PLN 1.000.000

³ PLN 2.825.173

amount already awarded to the applicant under the 2004 Act (see paragraph 19 above) it awards the applicant EUR 12,300 (twelve thousand three hundred euros) in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed EUR 9,242⁴ for the costs and expenses incurred before the domestic courts and EUR 5,545⁵ for those incurred before the Court, namely the fee paid to the lawyer who represented him before the Court and submitted his observations as to financial claims under Article 41 of the Convention.

36. The Government contested these claims, alleging that the applicant had failed to submit relevant invoices.

37. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 500 (five hundred euros) for the proceedings before the Court.

C. Default interest

38. 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, the following amounts to be converted

⁴ PLN 30.500

⁵ PLN 18.300

into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,300 (twelve thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(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;

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