



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

FOURTH SECTION

CASE OF JANUSZ DUDEK v. POLAND

(Application no. 39712/05)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Janusz Dudek 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. 39712/05) 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 Janusz Dudek (“the applicant”), on 29 October 2005.

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

3. On 14 January 2008 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 1954 and lives in Częstochowa.

5. On 23 October 2003 the applicant, who is a police officer, was charged with abuse of powers.

6. On 4 November 2003 the applicant was arrested by the police. On 5 November 2003 the applicant was released. The Kraków Appeal Prosecutor (*Prokuratura Apelacyjna*) suspended the applicant from professional duties and ordered that he be subjected to police supervision in view of the reasonable suspicion that he had committed the offence in question. It further referred to the need to secure the proper conduct of the investigation.

7. On 20 November 2003 the applicant lodged an application with the prosecutor, requesting access to the investigation file. On 28 November 2003 the prosecutor dismissed the application. He referred to the need to secure the proper conduct of the investigation.

8. In the meantime, on 22 November 2003, the applicant had lodged an application for his suspension from professional duties to be lifted or replaced by another preventive measure. The application was dismissed by the Prosecutor of Appeal. In his decision the prosecutor referred to the need to secure the proper conduct of the investigation and the seriousness of the offences the applicant was charged with.

9. In the course of the proceedings, on 4 March and 2 June 2004, 14 March 2005 and 28 April 2006, the applicant made unsuccessful applications for his suspension from professional duties to be lifted or replaced by another preventive measure and he appealed, likewise unsuccessfully, against decisions dismissing his applications. In his applications he referred to the poor financial situation of his family resulting from the lengthy application of the preventive measure.

10. On 4 April 2006 the Kraków Appeal Prosecutor decided to obtain a psychiatric report on the applicant and his ability to stand trial.

11. On 3 September 2007 the applicant lodged an application for his suspension from professional duties to be lifted or replaced by another preventive measure. On 2 October 2007 the Kraków Prosecutor of Appeal lifted the preventive measure.

12. In the course of the investigation the proceedings were severed on several occasions and of the 110 suspects in this case 75 were indicted. However, the investigation concerning the remaining suspects, including the applicant, has not yet been completed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions 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, refer only to the judicial phase of the proceedings. The

investigation phase of criminal proceedings is excluded from the scope of the 2004 Act.

THE LAW

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

14. 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 any criminal charge against him ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

15. The Government contested that argument.

16. The period to be taken into consideration began on 23 October 2003 and has not yet ended. It has thus lasted over five years and the proceedings are still at the investigation phase.

A. Admissibility

17. 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

1. The parties' submissions

(a) The Government

18. Relying on arguments related to the high degree of complexity of the case, and the number of suspects and witnesses that had to be heard, the Government submitted that the national authorities displayed due diligence in ensuring the proper examination of the case. They further noted that the length of the investigation had been partly attributable to the applicant who “excessively” exercised his procedural rights and lodged numerous appeals against many decisions in the course of proceedings.

(b) The applicant

19. The applicant submitted that the length of proceedings against him was unreasonable. He also maintained that he had been suspended from his professional duties for a long time and could not support his family and therefore had to apply for early retirement.

2. The Court's assessment

20. 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).

21. The Court admits that the case is indeed complicated in terms of the number of suspects and witnesses to be heard. However, the complexity of the case is not such as to lead to the investigation lasting five years without an indictment or the beginning of judicial proceedings in sight.

22. The Court likewise cannot accept the Government's argument that the length of proceedings is in a considerable part attributable to the applicant, who on numerous occasions appealed against the decisions extending the preventive measure imposed on him or requested the courts to lift or replace it by some other, less severe preventive measure. The Court considers that the normal use of an applicant's procedural rights, without the appearance of overusing them or lodging numerous manifestly ill-founded or trivial requests, cannot lead to the conclusion that the responsibility for the excessive length of proceedings is attributable to the applicant (see, by contrast, *Malicka-Wąsowska* no. 41413/98 (dec.) and *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, pp. 21-22, § 63). The Court observes that the duty to administer justice expeditiously is incumbent in the first place on the authorities, especially as during the substantial part of the investigation a preventive measure aiming at securing the proper course of the proceedings was applied to the applicant (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 130, ECHR 2000-XI).

23. 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).

24. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant also complained under Article 5 § 1 (c) of the Convention that his arrest on 4 November 2003 had been arbitrary and unnecessary.

26. The Court notes that this complaint was lodged outside the six-month time limit. It must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 300,000 Polish zlotys (PLN) in respect of pecuniary, non-pecuniary damage and costs and expenses.

29. The Government contested these claims.

30. 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 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant's general claim of PLN 300,000 also included a claim for costs and expenses. However, it is not clear what costs and expenses the applicant has actually incurred and whether his claim concerns costs in the proceedings before the domestic courts or those incurred before the Court. The applicant produced an invoice for PLN 2,400 for “legal assistance”, issued by a lawyer who represented him in the domestic proceedings. It is unclear whether the invoice in fact concerns the domestic proceedings complained of.

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

33. 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 are 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 150 for the proceedings before the Court.

C. Default interest

34. 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 the following amounts to be converted into Polish zlotys at the rate applicable at the date of the settlement :
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 150 (one hundred and fifty euros) in respect of costs and expenses, 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 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