



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

FOURTH SECTION

CASE OF ROMUALD KOZŁOWSKI v. POLAND

(Application no. 46601/06)

JUDGMENT

*The present version was rectified on 16 June 2009
in accordance with Rule 81 of the Rules of Court*

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Romuald Kozłowski 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 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 46601/06) 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 Romuald Kozłowski (“the applicant”), on 11 November 2006.

2. The applicant was represented by Mr A. Gózdź, a lawyer practising in Lublin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołaszewicz of the Ministry of Foreign Affairs.

3. On 6 December 2007 the President of the Chamber to which the case had been allocated 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 1947 and lives in Mieścisko. He is a retired police officer who had formerly been employed in the Civil Militia (*Milicja Obywatelska*). In 1974 the applicant had been dismissed from service for a disciplinary offence. He was rehired by the Police in 1991. He retired in 1994.

A. Civil proceedings for payment

5. On 27 September 1993 the applicant brought a civil action against the State Treasury for compensation on the grounds that in 1974 he had been unlawfully dismissed from his post at the Civil Militia and banned from working there until 1990. In addition the applicant claimed that he had not been hired by the new police services immediately after the change of the political regime, as he should have been, but only in April 1991.

6. The applicant sought compensation, which comprised damages for lost earnings from 1974 to 1990, for lost earnings and benefits from 1990 to 1991, and for alleged moral suffering due to the loss of employment.

7. On 9 November 1993 the Poznań Regional Court (*Sąd Wojewódzki*) rejected the claim on the ground that the civil court did not have jurisdiction over a dispute arising out of an employment relationship between a civil servant and the State (*niedopuszczalność drogi sądowej*).

8. As a result of an interlocutory appeal by the applicant, on an unspecified date the Poznań Court of Appeal (*Sąd Apelacyjny*) quashed that decision and remitted the case to the Poznań Regional Court.

9. On 10 August 1995 the Poznań Regional Court rejected the claim on the ground of lack of jurisdiction.

10. On 6 March 1996 the Poznań Court of Appeal quashed that decision and remitted the case indicating that the applicant's claim was of a civil character as it had arisen out of relations between a civil servant and the State which were of an administrative and legal character rather than from a bond of special trust and loyalty between the two.

11. On 4 November 1997 the Poznań Regional Court dismissed the applicant's claim.

12. On 25 February 1998 the Poznań Court of Appeal quashed the first-instance judgment in the part concerning the claim for compensation for lost earnings from 1990 to 1991 and remitted the case in this part to the lower court.

13. On 15 March 2001 the Poznań Regional Court dismissed the case. The applicant appealed.

14. It appears that on 25 April 2006 the appellate court issued an order to hold a hearing on 11 May 2006.

15. On 11 May 2006 the Poznań Court of Appeal delivered a judgment varying the judgment of the Poznań Regional Court of 15 March 2001 and ordering that the respondent pay the applicant a certain amount of compensation for lost earnings and benefits from 1990 to 1991.

A cassation appeal in the case was inadmissible in law.

B. Proceedings under the 2004 Act

16. On 29 April 2006 the applicant lodged a complaint about the unreasonable length of proceedings for compensation for lost earnings and benefits from 1990 to 1991 under the Act 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"). The applicant submitted that his civil case had been pending for over twelve years.

17. On 26 July 2006 the Supreme Court discontinued the proceedings under the 2004 Act on the ground that the civil proceedings which were the subject of the complaint had meanwhile terminated.

18. The court observed that the main purpose of the complaint about the unreasonable length of proceedings was to accelerate the proceedings before a trial court. In circumstances where the proceedings which were the subject of the complaint had already terminated it was no longer necessary for the court to examine the complaint under the 2004 Act. The Supreme Court noted that the applicant had admittedly lodged his complaint under the 2004 Act while the civil proceedings in question were still pending. Nevertheless, the appellate hearing, which turned out to be final, had been scheduled prior to the applicant's complaint. That, in the Supreme Court's opinion, constituted a decisive argument for holding that the proceedings under the 2004 Act ought to be discontinued without a ruling on the merits.

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 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

20. The applicant complained that the length of the proceedings for compensation for lost earnings and benefits from 1990 to 1991 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...”

21. The period to be taken into consideration began on 27 September 1993 and ended on 11 May 2006. It thus lasted twelve years and eight months for two levels of jurisdiction.

A. Admissibility

22. The Government raised a preliminary objection that the application should be rejected as being incompatible *ratione materiae* with the provisions of the Convention. In this respect, they referred to the Court's case-law (*Pellegrin v. France* [GC], no. 28541/95, § 67, ECHR 1999-VIII) and maintained that disputes relating to the career of civil servants were outside the scope of Article 6.

23. The applicant maintained that Article 6 was applicable.

24. The Court notes that the functional criterion adopted in *Pellegrin* has recently been developed. In the judgment in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, ECHR 2007) the Court held that it was for the Contracting States, in particular the competent national legislature, and not the Court, to identify expressly those areas of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual had to give way. If a domestic system bars access to a court, the Court will verify that the dispute is indeed such as to justify the application of the exception to the guarantees of Article 6. If it does not, then there is no issue and Article 6 § 1 will apply irrespective of whether the applicant seeks reinstatement or some other form of pecuniary redress (*ibid.*, §§ 61-62; see also *Efendiyeva v. Azerbaijan*, no. 31556/03, § 42, 25 October 2007).

In the present case, despite the fact that the applicant's claim had initially been rejected by the first-instance court on the ground of lack of jurisdiction, the courts had ultimately entertained the claim and examined the case on the merits. Therefore the applicant had access to a court to bring a civil action for damages which allegedly resulted from the decision to make him redundant.

25. The Court therefore finds that Article 6 of the Convention is applicable and dismisses the Government's objection in this regard. The Court also 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

26. 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).

27. 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).

28. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicant also complained under Article 13 of the Convention of the ineffectiveness of the remedy provided for by the 2004 Act.

30. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to complain of a breach of a right to a hearing within a reasonable time provided by Article 6 of the Convention. However, the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 and subsequent, ECHR 2000-XI and, *mutatis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98, § 56, ECHR 2001-I).

31. If the principle of subsidiary, which lies at the foundation of the Convention system, requires the Contracting States to establish in their domestic legal systems an effective remedy that will enable litigants to complain of excessive length of proceedings, the Contracting States are, nevertheless, afforded 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 (*Kudła, ibidem*, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 188-189, ECHR 2006-...).

32. The fact that the applicant did not succeed to have his complaint under 2004 Act examined on the merits does not render the remedy in itself ineffective within the meaning of Article 13.

The Court has already considered that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

33. In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy.

34. It follows that this complaint 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

35. 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

36. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage and made no claim in respect of pecuniary damage.

37. The Government contested the claim.

38. The Court awards the applicant EUR 8,500 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 1,830 for the costs and expenses incurred before the Court.

40. The Government contested the claim as not substantiated by any documents.

41. 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 considers it reasonable to award

the applicant, who was represented by a lawyer the sum of EUR 1,500 for the proceedings before the Court.

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 under Article 6 § 1 of the Convention 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 8,500 (eight thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement¹, 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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

¹ Rectified on 16 June 2009. The following clause has been added: “to be converted into Polish zlotys at the rate applicable at the date of settlement”.