



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

FOURTH SECTION

CASE OF DOROTA AND ZBIGNIEW NOWAK v. POLAND

(Application no. 17904/04)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Dorota and Zbigniew Nowak 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 17904/04) 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 two Polish nationals, Mrs Dorota Nowak and Mr Zbigniew Nowak (“the applicants”), on 10 May 2004.

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

3. On 28 April 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 applicants were born in 1962 and 1965 respectively and live in Ostrowiec Świętokrzyski.

A. First set of proceedings

5. On 27 November 1995 the applicants lodged with the Kielce Regional Court (*Sąd Okręgowy*) a claim for payment against Z.G. and J.D.

6. On 7 May 2001 the first instance court gave judgment. The defendants appealed.

7. On 13 March 2002 the Kraków Court of Appeal (*Sąd Apelacyjny*) partly remitted the case.

8. On 28 January 2004 the Kielce Regional Court gave judgment.

9. The proceedings were terminated on 9 November 2004 by the final judgment of the Kraków Court of Appeal.

B. Proceedings under the 2004 Act

10. On 7 February 2005 the applicants lodged with the Kraków Court of Appeal a complaint about a breach of the right to a trial within a reasonable time. They specifically relied on section 18 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.

11. The applicants sought a ruling declaring that the length of the proceedings before the Kielce Regional Court had been excessive. They asked for an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. EUR 2,500).

12. On 16 March 2005 the Kraków Court of Appeal gave a decision in which it acknowledged the excessive length of the proceedings before the Kielce Regional Court. It awarded the applicants jointly and severally PLN 10,000 in just satisfaction.

C. The second set of proceedings

13. On 9 May 2001 the applicants lodged a claim for payment against the City Office (*Urząd Miasta*) and District Office (*Starostwo Powiatowe*) with the Kielce Regional Court.

14. The first hearing was held on 24 October 2001.

15. On 29 October 2001 the applicants specified that they wished to continue the proceedings only against the City Office.

16. The hearing scheduled for 3 April 2002 was adjourned at the applicants’ request.

17. On 22 July 2002 the court held a hearing.

18. In a letter of 2 September 2002 the applicants requested the court to accelerate the proceedings and to list a hearing.

19. On 16 October 2002 and 12 March 2003 the court held hearings.

20. On 18 July, 30 September and 24 October 2003 the court ordered that an expert report be obtained. The expert’s report was submitted to the court on 3 January 2004.

21. On 11 February, 10 March, 28 July and 22 September 2004, 14 March and 30 May 2005 the court held further hearings, one of which was adjourned at the applicants' request.

22. On 9 June 2005 the Kielce Regional Court gave judgment. The parties filed their appeals on 1 August 2005.

23. On 18 January 2006 the Kraków Court of Appeal upheld the first instance judgment.

D. Proceedings under the 2004 Act

24. On 10 June 2005 the applicants lodged with the Kraków Court of Appeal a complaint about a breach of the right to a trial within a reasonable time under the 2004 Act.

25. The applicants sought a ruling declaring that the length of the proceedings before the Kielce Regional Court had been excessive. They asked for an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. EUR 2,500).

26. On 25 July 2005 the Kraków Court of Appeal dismissed the applicants' complaint. The court found that the Regional Court had given judgment on 9 June 2005, thus at the time of the examination of the complaint the proceedings before the court of first instance had terminated. The court further held that the purpose of the complaint about a breach of the right to a trial within a reasonable time under the 2004 Act was to accelerate the proceedings and not only to afford financial compensation. The court consequently held that in the facts of the case there was no basis for declaring that the length of the proceedings had been excessive.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. 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 FIRST SET OF PROCEEDINGS

28. The applicants complained that the length of the first set of proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention

29. The Court notes that the applicants availed themselves of the remedy provided for by the 2004 Act and they lodged a complaint about a breach of the right to a trial within a reasonable time (see paragraph 10 above).

30. The Regional Court acknowledged a breach of the applicants’ right to a hearing within a reasonable time and awarded them the equivalent of EUR 2500 in respect of the length of the proceedings (see paragraph 12 above). The just satisfaction awarded by the Regional Court, the maximum amount which can be claimed and granted under the 2004 Act, amounts to over 50 per cent of what the Court would be likely to have awarded the applicants at that time in accordance with its practice, taking into account the particular circumstances of the proceedings.

31. The Court thus concludes that the redress provided to the applicants at domestic level, considered on the basis of the facts of which they complained before the Court, had been sufficient.

32. Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment of *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR-2006-...), the Court concludes that this complaint must be rejected as being incompatible *ratione personae* with the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE SECOND SET OF PROCEEDINGS

33. In their submissions made on 2 October 2008 the applicants complained under Article 6 § 1 of the Convention about the unfairness of the second set of proceedings. In particular, they complained that the Court of Appeal failed to deal thoroughly with their appeal.

34. However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken...”

35. The Court notes that the proceedings in question ended with the Court of Appeal's judgment of 18 January 2006, thus more than six months before the date on which this complaint was submitted to the Court.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE SECOND SET OF PROCEEDINGS

36. The applicants 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..."

37. The Government contested that argument.

38. The period to be taken into consideration began on 9 May 2001 and ended on 18 January 2006. It thus lasted four years, eight months and twelve days for two court instances.

A. Admissibility

39. The Government raised a preliminary objection that the applicants had not exhausted domestic remedies available to them under Polish law, as required by Article 35 § 1 of the Convention. They maintained that the applicants should have lodged a complaint about the unreasonable length of the proceedings under section 18 of the 2004 Act. Moreover, the Government claimed that the applicants had failed to comply with Article 5 of the 2004 Act, by lodging their complaint under the 2004 Act after the termination of the first-instance proceedings.

40. The applicants did not comment on that matter.

41. The court observes that the applicants lodged their complaint about the excessive length of the proceedings after the first-instance court had given the judgment (see paragraphs 22 and 24 above). However, this ruling did not terminate the proceedings in the applicants' case, since the parties lodged the appeals against it (see paragraph 22 above). Finally, if the Court of Appeal had treated the applicants' complaint as lodged not in accordance with the formal requirements set out in the 2004 Act, it would have rejected the complaint on those grounds.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak*

v. *Poland* (dec.) no. 24549/03, §§37-43). For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

42. 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

43. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

44. 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). Furthermore, the Court considers that, in dismissing the applicants' complaint that the proceedings in their case exceeded a reasonable time, the Kraków Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005). In particular, the Court of Appeal did not examine period of the examination of the case by the first-instance court.

45. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants claimed a lump sum of PLN 84,412.29 in respect of pecuniary and non-pecuniary damage.

48. The Government contested the claim.

49. 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 applicants EUR 2,200 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicants did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

51. 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 second set of 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,200 (two thousand two 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Section Registrar

Nicolas Bratza
President