



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KEŚICCY v. POLAND

(Application no. 13933/04)

JUDGMENT

STRASBOURG

16 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Kęsiccy 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,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 13933/04) 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, Mr Zbigniew Kęsicki and Mrs Wiesława Kęsicka (“the applicants”), on 10 April 2004.

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

3. On 9 June 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1948 and 1949 respectively and live in Warszawa.

A. First set of proceedings for payment

5. On 25 October 1993 the applicants lodged with the Szczecin Regional Court (*Sąd Wojewódzki*) a statement of claim for payment.

6. On 9 March 1995 the court gave a judgment *in absentia*, in favour of the applicants. The applicants asked the bailiff of the District Court (*Komornik Sądu Rejonowego*) to institute enforcement proceedings.

7. On 16 May 1995 the applicants were ordered to pay court fees.

8. On 3 April 1996 the court granted the defendant retrospective leave to appeal and ordered the enforcement proceedings to be adjourned.

9. In the course of the enforcement proceedings the applicants asked to be exempted from court fees. By a decision of the Szczecin District Court (*Sąd Rejonowy*) given on 1 April 1997 they were exempted from court fees.

10. On 9 April 1997 the court decided to stay the proceedings following the death of the defendant. The proceedings were resumed on 27 September 2002.

11. The first hearing in the case was scheduled for 21 May 2003.

12. On 16 October 2003 the court gave judgment *in absentia* in favour of the applicants. The enforcement proceedings are pending.

B. Second set of proceedings for payment

1. Main proceedings

13. On 12 November 1993 the applicants sued M.L. and L.F. before the Warsaw District Court. They sought payment.

14. On 25 February 1994 the court found that it lacked competence to deal with the case and referred it to the Szczecin Regional Court.

15. On 9 March 1995 the Szczecin Regional Court gave a partial judgment *in absentia* in favour of the applicants as regards the claim against L.F.

16. On 21 June 1995 the court gave the final judgment *in absentia*.

17. On 28 September 1995 the court rejected the interlocutory appeal lodged by M.L. On 29 April 1997 it granted L.F. retrospective leave to appeal.

18. In a letter of 9 March 1998 the applicants complained to the Ministry of Justice (*Ministerstwo Sprawiedliwości*) about the delay in the proceedings.

19. On 18 May 1998 the President of the Regional Court (*Prezes Sądu Okręgowego*) acknowledged the delay and informed them that he had ordered the court to proceed speedily with the proceedings.

20. On 23 August 1998 L.F. died. His heirs, T.I. and J.Ł. replaced L.F. as the defendant in the proceedings.

21. On 9 November 2001, 19 February and 3 October 2003 the court held hearings.

22. On 19 November 2003 the applicants complained to the Ministry of Justice, the Ombudsman (*Rzecznik Praw Obywatelskich*) and the President of the Regional Court about the delay in the proceedings and violation of

their right to a trial within a reasonable time, guaranteed by Article 6 of the Convention.

23. On 22 December 2003 the Szczecin Regional Court quashed the partial judgment of 9 March 1995 and dismissed the applicants' claim. The applicants appealed.

24. The hearing scheduled for 19 October 2004 was adjourned.

25. On 11 October 2005 the Poznań Court of Appeal (*Sąd Apelacyjny*) upheld the first instance judgment.

26. On 29 November 2005 the Poznań Regional Court officially appointed a lawyer who was supposed to lodge a cassation appeal on the applicants' behalf. On 12 December 2005 the applicants indicated that they wished to renounce free legal assistance.

27. On 30 January 2006 they asked the Ombudsman to lodge a cassation appeal on their behalf. On 1 September 2006 the Ombudsman refused the applicants' request.

2. The applicants' complaint under the 2004 Act

28. On 18 March 2005 the applicants lodged a complaint with the Supreme Court (*Sąd Najwyższy*) under section 5 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").

29. The applicants sought a ruling declaring that the length of the proceedings in the present case had been excessive and an award of just satisfaction.

30. On 12 May 2005 the Supreme Court dismissed their complaint, considering that it was called upon to examine only the conduct of the immediately inferior court. Consequently, the Supreme Court took into consideration the period between the date when the case had been allocated to the Poznań Court of Appeal and the date on which the complaint had been lodged (between 19 October 2004 and 18 March 2005). It found that during the relevant part of the proceedings, there had been no inactivity or undue delay on the part of the domestic court.

C. Third set of proceedings for payment

1. Main proceedings

31. On 16 February 1993 the applicants lodged a claim for payment against the State Treasury with the Szczecin Regional Court.

32. On 23 August 1993 the applicants complained to the President of the Regional Court about the delay in the proceedings and they requested the court to accelerate the proceedings. Following their complaint, a hearing was scheduled for 3 December 1993.

33. On 15 November 1996 a hearing was held.

34. On 24 March 1997 the proceedings were stayed due to events beyond the court's control: criminal proceedings against employees of the District Court were pending and their result was relevant for the proceedings in question.

35. On 28 September 2001 the court discontinued the proceedings. The applicants appealed.

36. On 16 April 2003 the Poznań Court of Appeal quashed the decision of 28 September 2001, finding that the court was obliged to resume the proceedings *ex officio*.

37. On 26 September 2003 the Szczecin Regional Court resumed the proceedings.

38. On 3 February 2004 a hearing was held.

39. On 16 February 2004 the Szczecin Regional Court gave judgment.

40. On 5 October 2004 the Poznań Court of Appeal dismissed the applicants' appeal.

41. On 14 October 2005 the Supreme Court, sitting *in camera*, refused to entertain the cassation appeal as it did not raise any issue of general importance.

42. In the course of the proceedings the applicants complained several times to the Ombudsman, the Ministry of Justice, the President of the District Court and the President of the Regional Court about the delay in the proceedings.

2. The applicants' complaint under the 2004 Act

43. On 15 March 2005 the applicants lodged a complaint under section 5 of the 2004 Act with the Supreme Court. The applicants sought a ruling declaring that the length of the proceedings in the present case had been excessive and an award of just satisfaction.

44. On 12 May 2005 the Supreme Court dismissed their complaint, considering that it was called upon to examine only the conduct of the immediately inferior court. The Supreme Court found that between 13 April 2004 and 18 March 2005, there had been no inactivity or undue delay on the part of the Poznań Court of Appeal.

D. Relevant domestic law and practice

45. 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

46. On 5 February 2009 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicants' rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicants had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicants PLN 18,000 (the equivalent of approx. EUR 4,000). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

47. The applicants did not agree with the Government's proposal and requested the Court to continue the examination of the case. They maintained that the amount offered was too low.

48. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

49. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01,

§§ 85-107, ECHR 2006-...; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

50. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

51. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

52. The applicants complained that the length of the first set of proceedings had exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

53. Pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."

54. The Court observes that the applicants failed to avail themselves of any of the following remedies provided for by Polish law. In their letter of 3 January 2005 they informed the Court that they did not wish to lodge a civil action under Article 417 of the Civil Code read together with section 16 of the 2004 Act (as to the effectiveness of the latter remedy, see *Krasuski v. Poland*, cited above, § 72, (extracts)). Moreover, they did not file a complaint under section 5 of the 2004 Act in the course of the enforcement proceedings.

55. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

56. The applicants complained that the length of the second and the third set of 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...”

57. The Government did not submit observations on the admissibility and merits of the complaint.

58. In relation to the second set of proceedings, the period to be taken into consideration began on 12 November 1993 and ended on 11 October 2005. It thus lasted eleven years, eleven months and one day at two court instances.

59. As regards the third set of proceedings, the Court notes that they commenced on 16 February 1993. 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. However, 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 14 October 2005. It thus lasted twelve years, five months and seventeen days at three court instances.

A. Admissibility

60. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

61. 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).

62. 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' complaints that the proceedings in their case exceeded a reasonable time, the Supreme Court 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 did not take into consideration the overall period of the proceedings.

63. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 6 of the Convention on account of deprivation of access to a court

64. In their observations of 29 November 2008 the applicants raised an additional complaint submitting that on account of the excessive court fees required from them in the course of the enforcement proceedings between 16 May 1995 and 1 April 1997, they had been deprived of their right of access to a court.

65. The Court notes that this complaint was lodged outside the six-month time-limit. Accordingly, it has been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Article 6 of the Convention on account of unfairness of the second set of proceedings

66. The applicants further complained in relation to the second set of proceedings that they had not had a “fair trial”. They relied on Article 6 § 1 of the Convention.

67. The Court notes that the applicants did not lodge a cassation appeal with the Supreme Court against the judgment of 11 October 2005. Therefore, the Court considers that the applicants failed to exhaust the available domestic remedies.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. Article 6 of the Convention on account of unfairness of the third set of proceedings

68. Moreover, the applicants complained that the third set of proceedings had been unfair. In particular, they complained about the manner in which the authorities had applied domestic law and assessed the facts of the case. They relied on Article 6 § 1 of the Convention.

69. The Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

70. The Court observes that the applicants do not allege any particular failure to respect their right to a fair hearing. Assessing the proceedings as a whole, it finds no indication that they were unfairly conducted.

71. 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.

D. Article 1 of Protocol No. 1 to the Convention

72. Finally, in their observations of 29 November 2008 the applicants alleged, with reference to the third set of proceedings, that their right to the peaceful enjoyment of their possession, as guaranteed by Article 1 of Protocol No. 1, was infringed.

73. However, the Court notes that the complaint was submitted only on 29 November 2008, which is more than six months after the date on which the final decision had been taken.

74. Accordingly, the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-compliance with the six-month time requirement.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicants claimed PLN 196,000 (43,780 euros (EUR)) in respect of pecuniary and EUR 21,000 in respect of non-pecuniary damage.

77. The Government contested these claims.

78. 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 11,500 in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicants also claimed PLN 925 (EUR 209) for the costs and expenses incurred before the domestic courts and PLN 2,215.10 (EUR 500) for those incurred before the Court.

80. The Government contested these claims.

81. 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 applicants, the sum claimed for the proceedings before the Court in full.

C. Default interest

82. 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. *Rejects* the Government's request to strike the application out of its list of cases;
2. *Declares* the complaint concerning the excessive length of the second and the third set of proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second and third sets of proceedings;
4. *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 11,500 (eleven thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President