



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

1959 · 50 · 2009

FOURTH SECTION

CASES OF WALTOŚ and PAWLICZ v. POLAND

(Applications nos. 28309/06 and 48102/06)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the cases of Waltoś and Pawlicz 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 16 June 2009,

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

PROCEDURE

1. The cases originated in applications (nos. 28309/06 and 48102/06) 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 two Polish nationals, Ms Grażyna Waltoś and Ms Wanda Pawlicz (“the applicants”), on 30 June 2006.

2. The applicants were represented by Mr M. Werner, a lawyer practising in Szczecin-Mierzyn. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 21 June 2007 the President of the Fourth Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 3).

THE FACTS**I THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1949 and 1956, respectively, and live in Koszalin.

A. Civil proceedings for payment

5. On 1 August 1997 the applicants filed a claim with the Koszalin District Court against a housing co-operative concerning the amount of maintenance fees to be fixed in respect of their apartment building.

6. On 24 November 1998 the proceedings were stayed pending the termination of parallel proceedings relating to the alleged nullity of an amendment made to the co-operative's statute. The Koszalin District Court resumed the proceedings on 7 March 2003.

7. On 13 May 2003 a hearing was held. The court requested the Koszalin Regional Court to provide the case-file of the proceedings relating to the alleged nullity of an amendment made to the co-operative's statute.

8. On 16 June 2003 the Koszalin District Court decided to stay the proceedings at the applicants' request. They were resumed, upon the applicants' request, on 17 November 2004.

9. Hearings were subsequently held on 23 February, 11 August, 22 September, 10 November and 9 December 2005.

10. On 30 January 2006 the Koszalin District Court decided to admit an expert opinion. On 6 June and 16 August 2006 the expert requested prolongation of the time-limit for submission of the opinion.

11. On 6 September 2006 the court summoned the expert to submit the opinion within 7 days.

12. In 2007 the District Court held 7 hearings.

13. 18 October 2007 the Koszalin District Court gave a judgment in the case.

14. The judgment was quashed on 27 February 2009 by the Koszalin Regional Court and the case remitted for re-examination.

15. The proceedings are currently pending before the first-instance court.

B. Proceedings under the 2004 Act

16. On 30 November 2005 the applicants lodged 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 6 January 2006 the Koszalin Regional Court dismissed the applicants' complaint, finding that the trial court could not be held responsible for any delays and that the proceedings had been prolonged as it had been necessary to stay them.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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

18. 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..."

19. The Government contested that argument.

20. The period to be taken into consideration began on 1 August 1997 and has not yet ended. It has thus lasted for 11 years and 8 months for 2 levels of jurisdiction.

A. Admissibility

21. 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 had failed to appeal against the decision of 24 November 1998 to stay the proceedings.

22. The Court considers that the Government's objection concerns a matter which goes to the issue of the applicants' conduct and their contribution, if any, to the length of the proceedings. It will accordingly address this issue at the merits stage. It 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. Finally, the Court considers it appropriate to join the applications.

B. Merits

23. 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).

24. The Court notes that the proceedings were stayed until the termination of other proceedings which were decisive for the outcome of the case (see paragraph 6 above). In so far as the Government argue that the applicants failed to appeal against the decision of 24 November 1998 to stay the proceedings (see paragraph 21 above), the Court considers that the State remains responsible also for delays in proceedings the outcome of which is necessary for the examination of another case. In any event, the Court is of the view that where no final decision on the merits of the present cases has been given after they have been pending for over eleven years, the State cannot be considered to have shown due diligence in ensuring their proper conduct. The period of seventeen months during which the proceedings were stayed upon the applicants' request (see paragraph 8 above) cannot justify the overall length of the proceedings.

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present cases (see *Frydlender*, cited above). 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. In particular, the Court notes that no hearing was held in 2006 and there were substantial delays in obtaining the expert opinion (see paragraphs 10-11 above).

26. Having regard to its case-law on the subject, the Court considers that in the instant cases 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

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 applicants claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested the claim.

30. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 5,000 under that head.

B. Costs and expenses

31. The applicants also claimed PLN 3,000 (EUR 660) each for the costs and expenses incurred before the Court.

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

33. The Court considers, having regard to the documents in its possession, that the applicants should be awarded jointly EUR 800.

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. *Joins* the applications and *declares* them 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 each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and, jointly, EUR 800 (eight hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President