



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ANDRULEWICZ v. POLAND (no. 2)

(Application no. 40807/07)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Andrulewicz v. Poland (no. 2),

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 40807/07) 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 Andrzej Andrulewicz (“the applicant”), on 12 September 2007.

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

3. On 25 June 2008 the President of the Fourth Section Court 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).

4. On 16 January 2009 the Government submitted a unilateral declaration and invited the Court to strike out the application, in accordance with Article 37 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Suwałki.

A. Main proceedings

6. On 27 August 1992 the applicant and K. P., disguised as police officers, requested A. J. and Z. T. to present their car registration documents for inspection. Subsequently, as it transpires from the case file, the applicant, assisted by K. P., seized the car and drove away.

7. On 27 August 1992 a criminal investigation was opened against the applicant and K. P. by the Suwałki District Prosecutor's Office.

8. On an unspecified date in 1993 the applicant was committed for trial before the Suwałki District Court on a charge of car theft.

9. On 18 February 1995 a burglary was committed at the Suwałki District Court building and the case documents were stolen.

10. On 15 March 1995 proceedings to have the case documents reconstructed were initiated and the criminal proceedings against the applicant were suspended.

11. On 23 December 1996 the Suwałki District Court decided that the case documents had been partly reconstructed. The applicant appealed.

12. On 3 February 1997 the Suwałki Regional Court upheld the District Court's decision.

13. On 14 February 1997 the Suwałki District Court scheduled a first hearing for 6 March 1997.

14. On 6 March 1997 the criminal proceedings against the applicant were reopened and the first hearing took place.

15. Several subsequent hearings in the case, *inter alia* those of 24 April, 5 June and 26 September 1997 and 4 June 1998, were adjourned because witnesses or the accused failed to appear.

16. On 3 December 1998 the Suwałki District Court decided to have the proceedings suspended as one of the accused, K. P., had gone into hiding.

17. On 25 January 2007 the criminal proceedings were reopened by decision of the Suwałki District Court, as K. P. had been found. He was taken to a hearing under police escort.

18. On 23 May 2007 the Suwałki District Court decided to discontinue the proceedings as the charges against the applicant had become time-barred. That decision became final on 31 May 2007.

B. Proceedings under the 2004 Act

19. On 23 May 2007 the applicant lodged a complaint with the Suwałki Regional Court 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”). He alleged that the length of the criminal proceedings pending against him before the Suwałki District Court had been excessive.

On 26 June 2007 the Suwałki Regional Court, while admitting that the proceedings in the case had been unreasonably lengthy, dismissed the applicant's complaint. The court found, following the Supreme Court's decisions in respect of the interpretation of the 2004 Act that the purpose of the remedies provided by the 2004 Act was not to have an unreasonable length declared and damages awarded but to accelerate the course of pending proceedings. The court concluded that as the proceedings had eventually been discontinued, the complaint lodged by the applicant pursuant to the 2004 Act had served its purpose. It was accordingly unfounded and had to be dismissed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

21. On 16 January 2009 the Government submitted a unilateral declaration similar to that in the case of *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 applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved.

In respect of non-pecuniary damage the Government proposed to award PLN 14,000 to the applicant (the equivalent of approx. 3,500 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

22. The applicant did not agree with the Government's proposal. He considered that the amount proposed did not constitute sufficient just satisfaction for the damage he had sustained and requested the Court to continue the examination of the application.

23. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part of 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).

24. 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).

25. On the facts and for the reasons set out above, in particular the amount of compensation proposed, which is substantially less than the Court would have awarded in similar cases, the Court finds that the Government failed to submit a statement offering 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, by contrast, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

26. 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 the 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 PROCEEDINGS

27. 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 ...”

28. The Government contested that argument.

29. The Court notes that the proceedings commenced on 27 August 1992. 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. Nevertheless, 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 23 May 2007. It thus lasted over fourteen years for one level of jurisdiction.

A. Admissibility

30. 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

31. 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).

32. 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 applicant's complaint that the proceedings in his case exceeded a reasonable time, the Suwałki Regional 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).

33. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government contested the claim.

37. The Court notes that the proceedings against the applicant were eventually discontinued as the charges against him had become time-barred (see paragraph 18 above). It considers however that the applicant must have sustained non-pecuniary damage resulting from the excessively lengthy examination of his case. Ruling on an equitable basis, it awards him EUR 5,000 under that head.

B. Costs and expenses

38. The applicant also claimed 420 Polish zlotys (PLN) (the equivalent of approx. 98 euros (EUR)) for the costs and expenses incurred before the Court, namely two translations he had commissioned: of a letter sent by the Court, as well as observations submitted by the Government. He enclosed two invoices dated 9 July and 12 November 2008.

39. The Government contested this claim, alleging that the invoices the applicant had submitted did not specify which documents had been translated.

40. 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 observes at first that both translations were done after the Court had given notice of the application to the Government on 25 June 2008. It therefore accepts, in particular in the

absence of proof to the contrary, that the translations concerned documents relating to the proceedings before the Court. The Court thus considers that the sum claimed should be awarded in full.

C. Default interest

41. 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. *Dismisses* the Government's request to strike the application out of its list of cases;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 98 (ninety eight euros) in respect of costs and expenses, to be converted into the currency of the respondent State 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President