



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF HERMANOWICZ v. POLAND

(Application no. 44581/08)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

24/02/2010

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 Hermanowicz 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 44581/08) 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 Ziemowit Hermanowicz (“the applicant”), on 11 September 2008.

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

3. On 12 January 2009 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).

4. On 16 June 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 applicant filed an objection.

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

5. The applicant was born in 1965 and lives in Krupski Młyn.

A. Main proceedings

6. On an unspecified date in July 2001 criminal proceedings were instituted against the applicant.

7. On 29 July 2002 the applicant was indicted before the Tarnowskie Góry District Court. He was charged with several offences of fraud. The bill of indictment comprised 12 accused.

8. On 9 September 2002 the case was remitted to the Tarnowskie Góry District Prosecutor.

9. On 21 October 2002, the court ordered that the applicant undergo a psychiatric examination and that an expert's opinion on his health be prepared. The hearing was adjourned until 31 January 2003.

10. Between 7 March 2003 and 13 October 2004 the court held nine hearings, four of which were cancelled. The applicant failed to appear at one of these hearings.

11. During hearings listed for 29 October, 10 and 22 November 2004 witnesses were heard.

12. On 6 December 2004, upon the request of the applicant's co-accused's lawyer, the hearing was cancelled.

13. At hearings, set down for 15 December 2004, 5 January, 2 and 23 February, 14 March, 1 and 22 April 2005, witnesses were heard.

14. Between 13 May 2005 and 20 December 2006 the court held 17 hearings, six of which were adjourned since witnesses had failed to appear before the court.

15. The next hearing, scheduled for 22 January 2007, was adjourned as the applicant's co-accused's counsel had not been properly summoned.

16. The subsequent hearing, scheduled for 9 March 2007, was cancelled due to the judge's illness.

17. On 2 April 2007, due to the judge's prolonged illness, the case was assigned to another judge.

18. In consequence the case had to be reheard from the beginning and the first hearing was set down for 28 November 2007.

19. On 5 October 2007 the case was assigned to a third judge because of the new division of work in the court.

20. The trial was listed for 12 May 2008.

21. The proceedings are still pending before the Tarnowskie Góry District Court.

B. Proceedings under the 2004 Act

22. On 7 February 2008 the applicant filed with the Gliwice Regional Court a complaint about a breach of the right to a trial within a reasonable time in respect of the criminal proceedings instituted against him and asked for just satisfaction. He relied on 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.

23. On 12 March 2008 the Gliwice Regional Court dismissed his complaint. It limited its examination of the length of the proceedings to the period after the entry into force of the 2004 Act and stressed that the Act could not be applied to the protracted length of court proceedings occurring before that date. Having analysed the conduct of the District Court during the period after the entry into force of the 2004 Act, the Regional Court acknowledged the excessive length of the proceedings, finding that there had been a period of unjustified inactivity from 1 March 2007 until 12 March 2008. However, the court did not grant any just satisfaction to the applicant. It held that the applicant had failed to prove that he had suffered any damage or that he had incurred any pecuniary losses on account of the length of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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

25. On 16 June 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 10,000 to the applicant (the equivalent of 2,500 euros (EUR)). The Government

invited the Court to strike out the application in accordance with Article 37 of the Convention.

26. 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.

27. 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).

28. 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).

29. 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).

30. 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

31. 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 ...”

32. The Government contested that argument.

33. The period to be taken into consideration began on an unspecified date in July 2001 and has not yet ended. It has thus lasted until the present day more than eight years for one level of jurisdiction.

A. Admissibility

34. 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

35. 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).

36. 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 (see paragraph 23 above), the Gliwice 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).

37. 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 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Lastly, the applicant complained that he had no effective domestic remedy at his disposal to appeal against the decision of the Gliwice Regional Court given on 12 March 2008 under the 2004 Act. He relied on Article 13 of the Convention, which in so far as relevant reads as follows:

“Everyone (...) shall have an effective remedy before a national authority (...)”

39. At the outset the Court reiterates that it has already found in many cases that the 2004 Act does in general provide the applicant with an effective remedy in respect of a complaint about the length of the proceedings (see *Charzyński v. Poland* (dec.), cited above). The mere fact that the complaint, under the 2004 Act, is examined at one court instance does not make it ineffective for the purpose of Article 13 of the Convention. Moreover, the applicant is entitled to make fresh complaints, provided that he lodges them at one-year intervals, which does not seem to be an unreasonable limitation (see paragraph 24 above with regard to references to domestic law).

40. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

41. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed a lump sum of 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

44. The Government failed to express an opinion on the matter.

45. 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 applicant, ruling on an equitable basis, EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

47. 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 case out of the list;
2. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 6,000 (six thousand euros) in respect of non-pecuniary damage resulting from the violation of Article 6 § 1 of the Convention, 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 amount 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President