



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF POTONIEC v. POLAND

(Application no. 40219/08)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

01/03/2010

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 Potoniec 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 40219/08) 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 Krzysztof Potoniec (“the applicant”), on 7 August 2008.

2. The applicant was represented by Mr J. Ciesielski, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 2 April 2009 the Court decided to give notice of the application to the Government. It 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1933 and lives in Warsaw.

A. Main proceedings

6. On an unspecified date in March 2000 criminal proceedings were instituted against the applicant.

7. On 26 March 2001 the applicant was indicted before the Warsaw District Court. The bill of indictment comprised charges of fraud and forgery of documents.

8. At a hearing held on 19 September 2003 the applicant's lawyer lodged a request for the case to be remitted to the Warsaw District Prosecutor. The prosecutor appealed. On 19 November 2003 the request was dismissed.

9. The subsequent hearings, listed for 20 December 2005 and 23 March 2006, were adjourned as on both occasions the victim had not been properly summoned.

10. In the meantime, on 1 January 2006 the case had been assigned to another judge.

11. At the hearing held on 8 June 2006, the court ordered that the documents concerning the applicant's health be obtained.

12. At the hearing held on 14 July 2006, upon the request of the prosecutor, the court ordered that the applicant undergo a psychiatric examination and that an expert's report on his health be prepared.

13. The hearing listed for 5 October 2006 was adjourned as the victim had again not been properly summoned.

14. At the hearings held on 4 December 2006, 20 February and 29 March 2007 the applicant and four witnesses were heard.

15. A further hearing, scheduled for 19 January 2007, was cancelled.

16. On 20 February and 29 March 2007 the court ordered that an additional expert's report be prepared.

17. On 29 May 2007 the court requested the Warsaw District Prosecutor to submit evidence supporting the charges against the applicant as laid down in the bill of indictment.

18. The next hearings, listed for 5 September and 10 December 2007, were cancelled as the time-limit for the prosecutor to submit evidence had been prolonged until 29 February 2008.

19. The subsequent hearing, set down for 10 March 2008, was cancelled due to the judge's illness.

20. On 7 May 2008 the Warsaw District Court acquitted the applicant.

B. Proceedings under the 2004 Act

1. The first complaint

21. On 7 November 2005 the applicant filed with the Warsaw 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. The applicant sought a ruling that the length of the proceedings before the Warsaw District Court had been excessive and an award of just satisfaction in the amount of 9,000 Polish zlotys (PLN) (the equivalent of approx. 2,250 euros (EUR)).

22. On 2 December 2005 the Warsaw 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 Warsaw District Court during the period after the entry into force of the 2004 Act, the court found that the proceedings had been conducted with due diligence and within a reasonable time.

2. The second complaint

23. On 20 February 2008 the applicant filed his second complaint under the 2004 Act. The applicant sought a ruling that the length of the proceedings before the Warsaw District Court had been excessive and an award of just satisfaction in the amount of 50,000 Polish zlotys (PLN) (the equivalent of approx. 12,500 euros (EUR)).

24. On 4 March 2008 the Warsaw Regional Court dismissed his complaint. The court examined only the course of the proceedings after 2 December 2005 (the date on which the applicant's first length complaint had been dismissed). No delays on the part of the District Court were found. As a result, the court stated that during this period the District Court had not violated the applicant's right to have his case heard within a reasonable time.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 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

26. 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 approx. 2,500 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

27. 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.

28. 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).

29. 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).

30. 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).

31. 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

32. 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 ...”

33. The Government contested that argument.

34. The period to be taken into consideration began on an unspecified date in March 2000 and ended on 7 May 2008. It thus lasted eight years and some two months for one level of jurisdiction.

A. Admissibility

35. 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

36. 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).

37. 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 on two occasions the applicant's complaint that the proceedings in his case had exceeded a reasonable time (see paragraphs 21-24 above), the Warsaw 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).

38. 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

39. 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

40. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government found the amount to be exorbitant.

42. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under this head.

B. Costs and expenses

43. The applicant also claimed 21,748 Polish zlotys (PLN) (the equivalent of 5,400 euros (EUR)) for the costs and expenses incurred before the domestic courts as well as for those incurred before the Court.

44. The Government contested the claim.

45. 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 considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 850 for the proceedings before the Court.

C. Default interest

46. 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 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 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 850 (eight hundred and fifty 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President