



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KUCHARCZYK v. POLAND

(Application no. 3464/06)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Kucharczyk 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 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 3464/06) 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 a Polish national, Mr Wiktor Kucharczyk (“the applicant”), on 29 December 2005.

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

3. On 10 November 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 applicant was born in 1952 and lives in Kielce.

A. Civil proceedings for reinstatement at work

1. Facts before 1 May 1993

5. On 6 November 1991 the applicant lodged a claim against a cooperative, his former employer, with the Kielce District Court, seeking reinstatement in his job.

6. On 19 December 1991 the proceedings were stayed because of other proceedings pending before the Kielce Regional Court.

2. Facts after 1 May 1993

7. On 4 August 1994 the Kielce District Court, finding the proceedings before the Kielce Regional Court had been terminated, decided to resume the proceedings against the applicant's employer.

8. On 18 August 1994 the defendant cooperative was declared insolvent and on 29 September 1994 the Kielce District Court again stayed the proceedings.

9. On 28 November 1997 the Kielce District Court discontinued the proceedings, finding that the applicant's claims had been satisfied in the insolvency proceedings of his former employer.

10. The applicant appealed against that decision.

11. On 30 December 1997 the Kielce Regional Court quashed the challenged decision.

12. On 30 January 1998 the Kielce District Court resumed the proceedings and on 1 April 1998 it stayed them again, finding that the insolvency proceedings had not yet been terminated.

13. On 19 December 2000 the applicant requested the court to resume the proceedings, submitting that the Regional Court had discontinued the insolvency proceedings.

14. On 8 January 2001 the proceedings were resumed.

15. At a hearing on 24 July 2001 the applicant, taking into consideration that liquidation proceedings in respect of the defendant cooperative had been commenced, modified his claim and directed it against the members of the management board of the cooperative in liquidation.

16. On 11 October 2001 the Kielce District Court again stayed the proceedings, because the applicant had failed to provide the court with the addresses of the defendants.

17. The applicant appealed, but the decision of 11 October 2001 was upheld by the Kielce Regional Court.

18. On 19 September 2003 the Kielce District Court resumed the proceedings.

19. On 10 December 2003 the Kielce District Court gave judgment and dismissed the applicant's claim.

20. On 15 December 2003 the applicant requested the court to prepare and deliver the reasoning of the judgment.

21. The judgment with reasoning was sent to the applicant on 18 October 2004.

22. On 10 November 2004 the applicant lodged an appeal against the first-instance judgment.

23. On 6 July 2005 the Kielce Regional Court dismissed the applicant's appeal.

24. On 8 July 2005 the legal adviser, G.P., who had represented the applicant before the courts, sent a letter to the applicant informing him, that "because the proceedings in this case have lasted since 1991", he could no longer act as his representative. The lawyer's letter went on to explain:

"at the time of my appointment you were a member of the trade union and as such you were entitled to legal aid provided for by the union. For several years however, you have no longer been a member of the union and the Świętokrzyski Region, which granted me power of attorney, is no longer under obligation to deal with your affairs."

25. The lawyer failed to submit the letter to the court.

26. On 12 July 2005 the applicant personally submitted a letter to the Regional Court informing it that he had revoked the power of attorney of his lawyer, G.P.

27. On the same day, the applicant requested the court to allow him a legal-aid lawyer to lodge a cassation appeal on his behalf. He based his request on his difficult financial situation and his lack of legal knowledge.

28. On 25 July 2005 the Kielce Regional Court dismissed the applicant's request, relying on the fact that since 1991 the applicant had been represented before the courts by a legal adviser and that he had terminated the latter's power of attorney with effect on 12 July 2005 and voluntarily relinquished free legal aid.

29. The applicant appealed against that decision.

30. On 18 August 2005 the Kielce Regional Court rejected the appeal as inadmissible in law.

B. Proceedings under the 2004 Act

31. On an unspecified date the applicant lodged a complaint 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”), seeking the court's acknowledgement of the unreasonable length of the proceedings and just satisfaction of 10,000 Polish zlotys (PLN).

32. On 1 March 2005 the Kielce Regional Court found that there had been a period of inactivity on the part of the Kielce District Court between 23 December 2003 and 18 October 2004 and granted the applicant PLN 2,000 in just satisfaction. The court found that in the remaining periods the proceedings had been conducted without undue delays.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE PROCEEDINGS

33. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

34. The Government refrained from taking a position on that matter.

35. 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, the state of the proceedings at the time has to be taken into account.

The period in question ended on 18 August 2005. It thus lasted 12 years, 3 months and 20 days, for two levels of jurisdiction.

A. Admissibility

36. In the present case the Regional Court partly acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded him the equivalent of EUR 512 in respect of the length of the proceedings (see paragraph 32, above).

37. The Court considers, based on the facts of which he complains before the Court, that the redress provided to the applicant at domestic level was insufficient (see *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007). Having regard to the criteria for determining victim status in respect of length-of-proceedings complaints as set out in *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR-2006-...), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

38. 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

39. 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).

40. The Court further reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

41. 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).

42. 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LIMITATION OF THE APPLICANT'S ACCESS TO A COURT

43. The applicant also complained under Article 6 § 1 of the Convention of a violation of his right of access to a court on the grounds that the Kielce Regional Court had refused to appoint a legal-aid lawyer to lodge a cassation appeal on his behalf.

44. The Government contested that argument, suggesting that the complaint should be declared manifestly ill-founded. In the Government's view, unlike in the case of *Tabor v. Poland* (no. 12825/02, judgment of 27 June 2006), where the decision refusing to appoint a legal-aid lawyer contained no reasoning, in the present case the domestic court gave reasons for its decision. They submitted that the Regional Court had refused to grant legal aid on the grounds that the applicant had in fact been represented by a professional lawyer, and that he had failed to inform the domestic court in due time that his lawyer was no longer representing him, and of the reasons for that.

45. The applicant submitted that the Regional Court had been aware that he in fact had no right to free legal assistance through the trade union. He considered that the Regional Court's decision of 25 July 2005 amounted to an interference with his right of access to a court safeguarded by Article 6 § 1 of the Convention.

46. The Court notes that on 8 July 2005 the legal adviser who represented the applicant before the domestic courts, informed him that he would no longer act on his behalf (see, paragraph 24, above). However, the lawyer failed to inform the court of this fact. On 12 July 2005, by a letter submitted personally to the Kielce Regional Court, the applicant mistakenly informed the domestic court that he had revoked his lawyer's power of attorney (see, paragraph 26, above). He did not submit any additional information which would have enabled the court to understand exactly what had happened. In particular, he failed to inform the court that it was in fact the lawyer and not he, the applicant, who had terminated the power of attorney.

47. The Court observes that on 25 July 2005 the Regional Court dismissed the applicant's request, relying on that crucial information which the applicant himself had submitted to the court, namely the applicant's decision to revoke his lawyer's power of attorney. The Court further observes that, unlike in the case of *Tabor v. Poland*, cited above, the Regional Court's decision contained reasoning. The domestic court cannot be held responsible for the fact that it gave its decision after having been misinformed by the applicant.

48. In the light of the foregoing, the Court has no reason to doubt that the Regional Court's decision was based on a thorough assessment of the relevant factors.

It follows that the applicant's complaint concerning the limitation of his access to a court is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Relying on Article 6 § 1 of the Convention, the applicant complained that the proceedings in which he had been involved were “unfair and partial”.

50. The Court has examined these complaints as submitted by the applicant. Even assuming that the applicant has exhausted domestic remedies, the Court finds that he has failed to substantiate his complaint about lack of impartiality on the part of the courts. Furthermore, the complaint concerning the outcome of the proceedings in question is clearly of a fourth-instance nature. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 35,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

53. The Government contested this claim.

54. The Court considers that it should award the full sum claimed.

B. Costs and expenses

55. The applicant did not make any claim for costs and expenses.

C. Default interest

56. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,850 (seven thousand eight hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys 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.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President