



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

FOURTH SECTION

CASE OF KULIK v. POLAND

(Application no. 40909/08)

JUDGMENT

STRASBOURG

5 January 2010

FINAL

05/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kulik 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 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 40909/08) 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 Kulik (“the applicant”), on 6 August 2008.

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

5. The applicant was born in 1960 and lives in Nowogród Bobrzański.

A. Main proceedings

6. On 4 February 2002 criminal proceedings were instituted against the applicant.

7. On 2 January 2007 the applicant was indicted before the Jelenia Góra Regional Court. He was charged with several counts of robbery. The bill of indictment comprised 14 accused.

8. On 9 March 2007 the Jelenia Góra Regional Court found that it had no competence to deal with the case and referred it to the Zielona Góra Regional Court.

9. On 22 June 2007 the case was remitted to the Zielona Góra Regional Prosecutor in connection with another investigation conducted against one of the applicant's co-accused.

10. The first hearing was set down for 23 January 2008; however, on 22 January 2008, it was adjourned as the applicant's co-accused's counsel had not been properly summoned.

11. The hearing, scheduled for 28 February 2008 was adjourned as a motion for the judge to step down was to be considered.

12. A subsequent hearing, listed for 15 April 2008, was cancelled because it was not possible for the police to bring the applicant's co-accused from prison.

13. The hearing, scheduled for 20 May 2008, was adjourned as priority had been given to another case.

14. The hearing, scheduled for 21 May 2008, was adjourned as another motion for the judge to step down was to be considered.

15. As of August 2009 the proceedings were still pending.

B. Proceedings under the 2004 Act

16. On 16 June 2008 the applicant filed with the Poznań Court of Appeal 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.

17. The applicant stressed that he had been detained while awaiting his trial and sought a ruling that the length of the proceedings before the Zielona Góra Regional Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (the equivalent of approx. 2,500 euros (EUR)).

18. On 19 June 2008 the Poznań Court of Appeal gave a decision in which it acknowledged the excessive length of the proceedings before the Zielona Góra Regional Court, finding that there had been a period of unjustified inactivity from 26 March 2007 until 5 December 2007. However, the court did not grant any just satisfaction to the applicant, pointing out that the decision whether to grant compensation in such proceedings was facultative.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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

20. 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.

21. 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.

22. 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).

23. 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).

24. 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).

25. 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

26. 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 ..."

27. The Government contested that argument.

28. The period to be taken into consideration began on 4 February 2002 and has not yet ended. It has thus lasted until the present day some seven years and nine months for one level of jurisdiction.

A. Admissibility

29. 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

30. 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).

31. 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 18 above), the Poznań Court of Appeal 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).

32. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed a lump sum of 16,000 Polish zlotys (the equivalent of approx. 4,000 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

35. The Government contested the claim.

36. 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, ruling on an equitable basis, it awards the applicant the full sum claimed in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

38. 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 4,000 (four thousand euros) in respect of non-pecuniary damage, 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.

Done in English, and notified in writing on 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President