



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

FOURTH SECTION

CASE OF BROŻYNA v. POLAND

(Application no. 7147/06)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

28/06/2010

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

In the case of Brożyna 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 7147/06) 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, Ms Henryka Brożyna (“the applicant”), on 27 January 2006.

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

3. On 7 July 2008 the 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).

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

4. The applicant was born in 1953 and lives in Olkusz.

A. Main proceedings

5. On 1 December 1999 a bill of indictment was filed against the applicant with the Olkusz District Court, after as it appears a short pre-trial stage. Two charges were brought against her: threatening to kill, and

assaulting, a certain J. B.-D. The prosecutor requested that 12 witnesses be heard.

6. On 12 January 2000 the applicant requested that the case be transferred to the Kraków District Court. She further requested that all the judges of the Olkusz District Court be excluded from the examination of her case. It appears that both applications were dismissed.

7. On 4 September 2000 the applicant lodged an application requesting the hearing to be recorded on tape; this was also dismissed.

8. The first hearing in the case took place on 5 October 2000. The Olkusz District Court heard submissions from the applicant.

9. A hearing scheduled for 21 November 2000 was adjourned on account of the justified absence of the applicant.

10. A subsequent hearing scheduled for 14 December 2000 was also adjourned on account of the absence of a lay judge.

11. On 16 January 2001 the applicant again requested that all the judges of the Olkusz District Court be excluded from the examination of her case.

12. On account of that application, hearings scheduled for 23 January and 9 February 2001 were cancelled.

13. On 18 April 2001 the Katowice Regional Court dismissed the the applicant's application.

14. On 3 January 2002 the court scheduled a hearing for 17 January 2002.

15. On 7 January 2002 the applicant requested 49 certified copies from the case file. On 10 January 2002 she further requested that a lay judge be excluded.

16. On 17 January 2002 the court heard the applicant and set the date for the next hearing for 12 March 2002.

17. On 22 January 2002 the applicant made a request for 2 certified copies from the case file and 11 copies of other documents.

18. On 4 March 2002 the applicant's counsel requested that the hearing be rescheduled. A new hearing was listed for 26 April 2002.

19. On 22 April 2002 the applicant requested that the chairman of the judicial panel be excluded from the examination of her case. She further requested the exclusion of all the judges of the Olkusz District Court. On account of this application the hearing was cancelled.

20. On 30 April 2002 the applicant again requested that the chairman of the judicial panel be excluded from the examination of her case.

21. On 12 June 2002 the Kraków Regional Court granted the applicant's application concerning the exclusion of all the judges. It found that the applicant had slandered the judges in numerous applications she had filed with the court and for this reason it decided to transfer the case to the Miechów District Court.

22. On 9 July 2002 the court scheduled a hearing for 30 August 2002. During the hearing it was disclosed that the applicant had been seeing

a psychiatrist on a regular basis. The prosecutor filed an application to have her examined by a psychiatrist to determine whether she had been sane at the time of the alleged crime.

23. On 18 October 2002 an expert opinion was submitted to the Miechów District Court. The psychiatrist had found that there were still doubts as to the applicant's mental health; hence it was necessary to examine her in a hospital. The Miechów District Court granted this request.

24. On 30 October 2002 the applicant's counsel appealed against the decision ordering her hospitalization. He argued that she had not been correctly summoned for the hearing at which the decision had been taken. Consequently, the said decision was quashed by the Miechów District Court on 4 November 2002.

25. On 14 November 2002 the applicant again requested that all the judges examining her case be excluded. Further, she requested to have her case transferred to the Kraków Regional Court. Her request was granted on 11 December 2002. The court found that the applicant had slandered the judges in numerous applications she had filed. The file was transferred to the Kraków-Nowa Huta District Court.

26. Between 21 January and 11 March 2003 the case file was sent to the Regional Prosecutor's Office in Kraków, for the examination of a complaint the applicant had filed in the meantime of inactivity on the part of the Olkusz District Prosecutor.

27. On 4 April 2003 the Olkusz District Court ordered an expert opinion to be drawn up on the applicant's mental health. The relevant examination was scheduled for 10 June 2003 at the psychiatric hospital in Lublin. It appears that the applicant failed to attend the examination. She also failed to attend subsequent examinations scheduled for 29 January, 7 April, 2 June, 16 July and 8 September 2004, despite a court order to have her escorted to the examination by the police.

28. On 18 July 2003 the applicant requested again that all the judges of the Kraków-Nowa Huta District Court be excluded from the examination of her case. On 7 November 2003 her application was dismissed by the Kraków Regional Court.

29. By applications of 30 March, 29 May and 4 September 2004 the applicant requested that the chairman of the judicial panel be excluded from the examination of her case. They were dismissed by the Kraków-Nowa Huta District Court on 4 May, 14 July and 7 October 2004 respectively.

30. On 14 October 2004 the applicant lodged a complaint about the court's decision of 7 October 2004. It was dismissed as inadmissible on 26 October 2004 by the Kraków-Nowa Huta District Court.

31. On 21 October 2004 the court scheduled a hearing for 17 November 2004.

32. On 16 November 2004 the applicant requested that the case file be sent back to the District Prosecutor's Office for the preparatory proceedings to be completed.

33. On 17 November 2004 neither the applicant nor her counsel attended the scheduled hearing. In the light of the application lodged by the applicant the previous day, the hearing was adjourned.

34. During a hearing held on 14 April 2005 the Kraków-Nowa Huta District Court decided that the question of whether the applicant should be detained pending trial should be examined.

35. On 15 April 2005 the court accepted the evidence from the expert opinion on the extent of the injuries sustained by the victim. On 25 April 2005 the case file was transferred to the Institute of Forensic Medicine in Kraków. A final opinion was prepared on 20 May 2005.

36. A hearing scheduled for 9 May 2005 concerning an application by the District Prosecutor to have the applicant detained pending trial was adjourned because the case file had been transferred to the experts summoned to examine the record of the victim's injuries.

37. A hearing was held on 23 May 2005; neither the applicant nor her counsel attended. In the light of the expert opinion the prosecutor modified the legal classification of the act committed by the applicant.

38. Eventually, on 29 June 2005 the District Prosecutor decided to withdraw the bill of indictment against the applicant. He considered the acts resulting in both the charges against her as having posed a “minimal threat to society” (*znikoma społeczna szkodliwość czynu*).

39. On 28 September 2005 the Kraków District Court discontinued the criminal proceedings against the applicant in respect of the charge of threatening to kill J. B.-D.

40. On 30 November 2005 the Kraków District Court discontinued the criminal proceedings against the applicant in respect of the charge of assaulting J. B.-D.

B. Proceedings under the 2004 Act

41. On 21 June 2005 the applicant filed with the Kraków Regional Court a complaint under the Law of 17 June 2004 on complaints concerning breaches 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”), alleging that the criminal proceedings pending against her had been excessively long.

42. On 28 July 2005 the Kraków Regional Court dismissed her complaint as ill-founded. The court found that the applicant had contributed to the overall length of the proceedings by obstructing the proceedings and filing numerous applications for the exclusion of judges.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. 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 set out in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, *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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

44. 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 ...”

45. The Government contested that argument.

46. The period to be taken into consideration began on 1 December 1999 and ended on 30 November 2005 (for both charges brought against the applicant). It thus lasted six years at one level of jurisdiction.

A. Admissibility

47. 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

48. 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).

49. In this connection, the Government submitted that the applicant had substantially contributed to the overall length of the proceedings. They maintained that she had obstructed the proceedings by filing numerous applications and petitions for, *inter alia*, the exclusion of judges from the examination of her case, which had resulted in the adjournment of the hearings. Further, they stressed that the applicant had slandered the judges, and this had twice resulted in her case being transferred to another court. Lastly, the Government underlined that the applicant had rendered her examination by a psychiatrist impossible by failing to appear for scheduled appointments.

50. The Court notes that the Government attached great importance to the applicant's behaviour, and considered that she had been responsible for the delays in the proceedings.

51. The Court agrees that the conduct of the applicant did contribute to the overall length of the proceedings. However, it finds that a duty to administer justice expeditiously was incumbent on the national courts. In this connection, the Court observes that the case was not of a particularly complex character. Further, domestic courts have at their disposal numerous measures for disciplining the parties in a given trial. Lastly, the Court notes that periods of undue delay occurred which were not attributable to the applicant but rather to the relevant authorities examining the applicant's case (see paragraphs 6-8, 13-14, 22-23, 26-28 above).

52. In these circumstances, and assessing all the relevant facts as a whole, the Court considers that the authorities failed to respect the applicant's right to have her case heard within a "reasonable time". Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in her case had exceeded a reasonable time, the Kraków 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).

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 22,994 Polish zlotys (PLN) (the equivalent of 5,750 euros (EUR)) in respect of pecuniary damage, and PLN 50,000 (the equivalent of EUR 12,500) in respect of non-pecuniary damage.

55. The Government contested these claims.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the claim in respect of non-pecuniary damage, the Court observes that the criminal proceedings against the applicant were eventually discontinued (see paragraphs 39-40 above) and that it has found that she had contributed to their overall length (see paragraph 51 above). It considers however that the applicant must have sustained non-pecuniary damage resulting from the excessively lengthy examination of her case. It thus awards the applicant, ruling on an equitable basis, EUR 1,500 under this head.

B. Costs and expenses

57. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court.

58. The Government contested the claim, stressing that the applicant had failed to submit any invoices to support it.

59. In accordance with 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 are 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 not represented by a lawyer, the sum of EUR 300 under this head.

C. Default interest

60. 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 application admissible;
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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President