



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

FOURTH SECTION

CASE OF SEWERYN v. POLAND

(Application no. 33582/08)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

15/09/2010

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

In the case of Seweryn 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 33582/08) 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, Ms Krystyna Seweryn (“the applicant”), on 4 July 2008.

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

3. On 14 May 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).

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

4. The applicant was born in 1940 and lives in Warsaw.

A. Main proceedings

5. On 15 January 1999 the applicant lodged with the Warsaw District Court (*Sąd Rejonowy*) a counterclaim for payment against the “*Adwokat*” Housing Co-operative (*Spółdzielnia Mieszkaniowa “Adwokat”*). The

proceedings for payment instituted by the housing co-operative had been pending since 10 October 1997.

6. On 2 February 1999 the applicant lodged a motion for joinder of the cases.

7. On 17 June 1999 the court held a hearing; however it did not give any decision on the applicant's motion.

8. After three years and ten months, on 20 October 2002, the court gave a decision that the case should be examined separately in another set of proceedings and returned the statement of claim to the applicant because of procedural shortcomings. The applicant lodged an interlocutory appeal.

9. On 30 January 2003 the Warsaw Regional Court (*Sąd Okręgowy*) quashed the first-instance decision and remitted the case.

10. On an unspecified date the Warsaw District Court again returned the statement of claim to the applicant because of procedural shortcomings. The applicant lodged another interlocutory appeal.

11. On 15 November 2005 the Warsaw Regional Court quashed the contested decision and remitted the case.

12. Hearings scheduled for 25 January and 6 March 2008 were adjourned as another case had been given priority.

13. On 12 May 2008 the Warsaw District Court gave a default judgment.

14. On 9 June 2008 the court supplemented the judgment by ordering its immediate enforceability.

15. On 30 June 2008 the defendant filed an objection (*sprzeciw*) against the default judgment.

16. On 8 July 2008 the Warsaw District Court quashed the order of immediate enforceability.

17. On 19 August, 30 September, 18 November, 16 December 2008 the Warsaw District Court held hearings. Hearings scheduled for 19 February and 2 April 2009 were adjourned due to the absence of one of the witnesses. On 26 June and 17 November 2009 the court held hearings.

18. The case is still pending before the first-instance court.

B. Proceedings under the 2004 Act

19. On 20 March 2008 the applicant lodged a complaint with the Warsaw Regional Court 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").

20. 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 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

21. On 25 April 2008 the Warsaw Regional Court dismissed the complaint. The court did not analyse the conduct of the trial court. It limited its consideration to the applicant's conduct, namely to the fact that she had made use of her procedural rights, which, in the court's view, had led to delays in the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. 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

23. On 16 October 2009 the Government submitted a unilateral declaration similar to that in the case *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 the applicant PLN 15,500 (the equivalent of approx. EUR 3,800)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

24. The applicant failed to submit her comments within the prescribed time-limit.

25. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out 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).

26. 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).

27. On the facts, and having regard in particular to the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

28. 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 its 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

29. 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...”

30. The Government refrained from submitting any observations on the admissibility and merits of the complaint.

31. The period to be taken into consideration began on 15 January 1999 and is still pending. It has thus lasted eleven years and two months for two levels of jurisdiction.

A. Admissibility

32. 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

33. 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).

34. 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).

35. 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

36. 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

37. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

38. The Government contested the claim finding it exorbitant and unjustified in the light of the case-law of the Court in similar cases.

39. 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 EUR 7,200 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant claimed EUR 3,500 for costs and expenses incurred before the domestic authorities. She further claimed a total of EUR 345 for costs and expenses incurred before the Court, that is, EUR 250 for the medical opinion on her health condition and EUR 95 for translation costs.

41. The Government contested these claims. In particular, in respect of the applicant's claim for reimbursement of costs of the medical opinion the Government submitted that there was no causal link between the applicant's case concerning the excessive length of civil proceedings and her health condition. They further submitted that the cost of the medical opinion and the cost of translations had been negotiated and agreed on by the applicant.

42. 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 documents in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred before the domestic authorities and in respect of the medical opinion. On the other hand, it considers it reasonable to award the applicant, who was not represented by a lawyer in the proceedings before the Court, the sum of EUR 195 under this head.

C. Default interest

43. 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. *Rejects* the Government's request to strike the application out of its list of cases;
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 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, in respect of

non-pecuniary damage and EUR 195 (one hundred and ninety-five euros) in respect of costs and expenses, 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 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 15 June 2010 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President