



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

FOURTH SECTION

CASE OF PARDUS v. POLAND

(Application no. 13401/03)

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 Pardus 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 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 13401/03) 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 Jerzy Pardus (“the applicant”), on 26 March 2003.

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

3. The applicant alleged, in particular, that the length of several sets of proceedings in which he was involved exceeded a reasonable time, as provided for in Article 6 § 1 of the Convention.

4. On 9 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of one set of civil and one set of criminal proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of these complaints at the same time.

I. THE CIRCUMSTANCES OF THE CASE

A. Civil proceedings for payment

5. On 10 June 1994 the applicant lodged a claim for payment against a certain company with the Warsaw District Court (*Sąd Rejonowy*).

6. On 9 May 1995 the Warsaw District Court granted the claim and made an order for payment.

7. On an unspecified date the defendant appealed.
8. On 26 June 1996 the court stayed the proceedings.
9. Following a request by the applicant, on 29 January 1997 the court resumed the proceedings.
10. Subsequently the case lay dormant until 30 September 2002.
11. On 30 September 2002 the applicant requested the court to reconstruct the case file. He had become aware in the course of another set of proceedings against the member of the management board of the defendant company that the case file was incomplete.
12. On 25 May 2004, after the proceedings for reconstruction, the Warsaw District Court held that it was not possible to reconstruct the file and decided to continue the main proceedings for payment on the basis of the case file as it stood.
13. On 22 November 2005 the Warsaw District Court dismissed the defendant's appeal lodged against the order for payment. This decision became final on 6 January 2006.

B. The applicant's complaint under the 2004 Act in relation to the above proceedings

14. On 22 November 2005 the applicant lodged a complaint with the Warsaw Regional Court (*Sąd Okręgowy*) under 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”). He sought both a ruling declaring that the length of the proceedings before the Warsaw District Court had been excessive and just satisfaction.

15. On 26 January 2005 the Warsaw Regional Court gave a decision in which it acknowledged that the length of the proceedings had been excessive. It found that the Warsaw District Court had remained inactive between April 1997 and September 2002, that is, for the period of five years and six months. At the same time, however, the Warsaw Regional Court refused to grant the applicant any just satisfaction, holding that he had failed to reason his request.

C. Criminal proceedings against the applicant (complaint lodged with the Court on 22 September 2003)

16. On 17 September 1992 the applicant was arrested and, on 18 September 1992, detained, on suspicion of illegally distributing alcohol and handling stolen goods.

17. On 6 November 1992 the applicant was released from detention.

18. On the same day the applicant was placed under police supervision. He had to report to the police station twice a week and could not leave the

city without the prosecutor's permission. This preventive measure was quashed by the Warsaw Regional Court in a decision of 1998, six years after its imposition.

19. On 27 June 1994 the applicant was indicted.

20. On 18 September 2000 the Warsaw District Court gave judgment, acquitted the applicant of two of the charges, found him guilty of handling stolen goods, and sentenced him to a fine.

21. On 4 June 2001 the applicant's lawyer appealed against that judgment.

22. On 30 August 2002 the Warsaw Regional Court quashed the first-instance judgment and remitted the case to the prosecutor to complete the investigation.

23. On 28 January 2003 the Warsaw Regional Prosecutor stayed the investigation.

24. On 19 February 2003 the applicant's lawyer appealed against that decision.

25. On 7 April 2003 the Warsaw Appellate Prosecutor dismissed the appeal.

26. On 14 February 2005 the Warsaw Regional Prosecutor discontinued the investigation.

D. The applicant's complaint under the amended 2004 Act in relation to the criminal proceedings

27. On 21 July 2009 the applicant lodged a complaint with the Warsaw Regional Court that the length of the investigation was excessive. He relied on section 2 of the Act of 20 February 2009 amending the 2004 Act (see paragraph 31 below).

28. On 21 September 2009 the Warsaw Regional Court gave a decision and refused to examine the complaint. The court found that a complaint under the 2004 Act could be lodged only in respect of pending proceedings and that the criminal proceedings complained of had been terminated on 14 February 2005.

29. The applicant appealed and apparently his complaint was re-examined. On 30 November 2009 the Warsaw Regional Court gave a decision in which it acknowledged that the length of the investigation had been excessive and awarded the applicant 10,000 Polish zlotys (PLN).

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. The relevant domestic law and practice concerning remedies for 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.

31. On 1 May 2009 the Act of 20 February 2009 came into force. It amended the 2004 Act in that it allowed complaints not only against excessive length of judicial proceedings but also against the length of investigations. In its section 2 the Act of 20 February 2009 contained a transitional provision according to which a complaint against excessive length of investigation was available to those complainants who, as with the applicant in the present case, had lodged an application with the Strasbourg Court alleging a violation of Article 6 of the Convention on account of unreasonable length of the proceedings, provided that their application to the Court had been lodged in the course of the investigation and that the Court had not yet adopted a decision concerning the admissibility of their case. The complaint under the transitional provisions had to be lodged within six months of the entry into force of the amended provisions, even if the proceedings in question had meanwhile been terminated.

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

32. On 27 April 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 both sets of proceedings in which the applicant had been involved. In respect of non-pecuniary damage the Government proposed to award PLN 15,000 to the applicant (the equivalent of 3,500 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

33. 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.

34. 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).

35. 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).

36. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court considers that the sum proposed in the declaration in respect of non-pecuniary damage suffered by the applicant as a result of the alleged violation of the Convention does not bear a reasonable relation to the amounts awarded by the Court in similar cases for non-pecuniary damage.

37. On the facts and for the reasons set out above, 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).

38. This being so, the Court rejects the Government's request for this part of the application to be struck out 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 UNREASONABLE LENGTH OF CIVIL PROCEEDINGS

39. The applicant complained that the length of the civil 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...”

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

41. The period to be taken into consideration began on 10 June 1994 and ended on 6 January 2006. It thus lasted eleven years and seven months at two levels of jurisdiction.

A. Admissibility

42. In the present case the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time but refrained from making an award of just satisfaction (see paragraph 15 above). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the above-mentioned *Scordino (no. 1)* judgment, the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

43. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

44. 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).

45. 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).

46. 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 on account of excessive length of civil proceedings.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF CRIMINAL PROCEEDINGS

47. The applicant also complained that the length of the investigation 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...”

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

49. The applicant was arrested on 17 September 1992. However, 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. The criminal proceedings against the applicant were discontinued on 14 February 2005 (see paragraph 26 above). Thus, they lasted eleven years and over nine months. It must, however, be noted that the applicant explicitly complained only about the length of the investigation (see paragraph 47 above). The investigative procedure comprised two stages: the first lasted from 17 September 1992 until 27 June 1994, the date on which the applicant was indicted (see paragraph 19 above), the second stage began on 30 August 2002, that is on the date on which the case was remitted to the prosecutor to complete the investigation (see paragraph 22 above) and lasted until 14 February 2005 (see paragraph 26 above).

Even assuming that the applicant complied with the six-month term laid down in Article 35 § 1 of the Convention, regard being had to the fact that the case was remitted for further investigation on 30 August 2002, the total length of investigation in his case amounted to three years and seven months.

50. As regards the length of the investigation, on 30 November 2009, the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded just satisfaction of PLN 10,000, an amount which the Court considers consistent with its practice, taking into account the period which is subject to the Court's examination (see paragraph 49 above). In this connection and on the basis of the Court's case-law, the Court considers that the applicant can no longer claim to be a victim of a violation of his Convention rights (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-V and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR-2006-...).

It follows that this part of the application is incompatible *ratione personae* with the Convention and must be declared inadmissible in accordance with its Article 35 §§ 3 and 4.

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 PLN 1,017,840 in respect of pecuniary and 12,500 euros (EUR) in respect of non-pecuniary damage.

53. The Government did not express an opinion on the matter.

54. 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 considers that the applicant must have sustained non-pecuniary damage such as distress and frustration, on account of the protracted length of the civil proceedings, which cannot be sufficiently compensated by the above finding of a violation. Making its assessment on an equitable basis and having regard to the sum awarded by the domestic authorities, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant's lawyer did not make any claims 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. *Rejects* the Government's request to strike the remainder of the application out of the list;
2. *Declares* the complaint as regards the excessive length of civil proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the civil proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Polish zlotys 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 amount 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