



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

FOURTH SECTION

**CASE OF JAGIELLO v. POLAND (no. 2)**

*(Application no. 8934/05)*

*This version was rectified on 5 February 2009  
under Rule 81 of the Rules of Court*

JUDGMENT

STRASBOURG

2 December 2008

**FINAL**

***06/04/2009***

*This judgment may be subject to editorial revision.*



**In the case of Jagiełło v. Poland (no. 2),**

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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

## PROCEDURE

1. The case originated in an application (no. 8934/05) 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 January Jagiełło (“the applicant”), on 2 February 2005.

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

3. On 14 December 2006 the President of the Fourth Section of the Court decided to give notice of the complaint concerning the length of the proceedings 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 1936 and lives in Warszawa.

5. He is a taxi driver by profession. On 4 February 1974 he had a car accident in Bulgaria. On 28 November 1995 he was involved in another car accident in Warsaw.

### **A. Proceedings concerning disability pension**

6. On 5 August 1996 the applicant lodged a claim for a disability pension in connection with both accidents. On 16 October 1996 the Warsaw Social Security Board gave a decision. On 20 December 1996 the applicant appealed against it.

7. On 14 November 1997 the Warsaw Regional Court stayed the proceedings with respect to the disability caused by the accident of 28 November 1995 pending the termination of criminal proceedings against the applicant. The applicant's interlocutory appeal against that decision was dismissed by the Warsaw Court of Appeal on 18 December 1997.

8. As regards the disability resulting from the accident which had occurred in 1974, the Regional Court has still not determined the matter.

9. On 23 July 1998 the applicant filed another motion with the Warsaw Social Security Board to be granted a disability pension in connection with the 1974 accident. On 24 February 1999 he lodged a complaint with the Regional Court alleging inactivity on the part of the Social Security Board.

10. On 3 November 2004 the Regional Court severed part of the applicant's claim concerning the 1974 accident.

11. On 10 November 2004 the Social Security Board gave a decision in respect of the 1974 accident. On 25 November 2004 the applicant appealed against it.

12. On 29 April 2005 the Warsaw Regional Court gave judgment in the criminal proceedings against the applicant concerning the accident which had occurred in 1995. The judgment is final.

13. On 27 September 2005 the Warsaw Regional Court gave a judgment upholding the decision issued by the Warsaw Social Security Board in 2004 in connection with the 1974 accident. The judgment is final.

14. On 1 February 2007 the Warsaw Regional Court gave judgment granting the applicant a right to a disability pension in connection with the 1995 accident. Both parties appealed against that judgment.

15. On 14 August 2007 the Warsaw Court of Appeal gave judgment in which it rejected the applicant's appeal and entertained the appeal lodged by the Warsaw Social Security Board. The Court of Appeal quashed the second-instance judgment of 1 February 2007 and remitted the case.

16. The proceedings in respect of the 1995 accident are still pending.

### **B. Proceedings under the 2004 Act**

17. On an unspecified date the applicant filed a complaint with the Warsaw Regional Court under the 2004 Act as regards the proceedings relating to the 1995 accident.

18. On 8 February 2005 the Warsaw Court of Appeal dismissed the applicant's complaint. The court observed that the proceedings had been stayed because the criminal proceedings against the applicant were pending.

19. On 17 February 2005 the applicant filed a complaint with the Warsaw Regional Court under the 2004 Act alleging that the proceedings concerning the 1974 accident had been unreasonably lengthy.

20. On 5 May 2005 the Warsaw Court of Appeal gave judgment and confirmed that the proceedings had been lengthy. It also granted the applicant PLN 4,000 [EUR 1,200] in compensation.

21. Subsequently, the applicant filed several complaints under the 2004 Act as regards the proceedings relating to the 1995 accident.

On 5 September 2007, having examined the applicant's complaint on the merits, the Warsaw Court of Appeal dismissed the complaint.

On 19 June 2008 the Warsaw Court of Appeal refused to entertain the applicant's complaint lodged on 6 May 2008 on the ground that the statutory period of twelve months had not lapsed since the date of the previous complaint.

## 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS.

23. The applicant first raised a general complaint that the proceedings in his case were unfair. This complaint falls to be examined under Article 6 § 1 of the Convention, which, in its relevant part, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

24. The Court observes that the applicant did not lodge an appeal against the Warsaw Regional Court’s judgment of 27 September 2005 (concerning the 1974 accident), whereas the proceedings related to the 1995 accident are still pending. Consequently, this part of the application must be rejected under Article 35 §§ 1, 3 and 4 of the Convention for non-exhaustion of domestic remedies (the 1974 accident) and as being premature (the 1995 accident).

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

25. The applicant complained that the length of the two sets of 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...”

26. The Government refrained from making any comments in that respect.

27. As regards the proceedings related to the 1974 accident, the period to be taken into consideration began on 5 August 1996 and ended on 27 September 2005. The proceedings thus lasted over nine years for two levels of jurisdiction. The proceedings related to the 1995 accident started on 5 August 1996 and have not yet ended. They have thus lasted over eleven years for three levels of jurisdiction.

### A. Admissibility

28. In the present case the Warsaw Court of Appeal<sup>1</sup> acknowledged a breach of the applicant’s right to a hearing within a reasonable time in the case concerning the 1974 accident. The court also awarded just satisfaction which was, however, well below the maximum limit provided under the 2004 Act and amounted to approximately 20% of what the Court would be likely to have awarded the applicant at the time in accordance with its practice, taking into account the particular circumstances of the proceedings. Moreover, the court’s decision did not have any acceleratory effects on the proceedings, which have in fact continued until the present

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<sup>1</sup> Rectified on 5 February 2009: “Warsaw Regional Court” was changed to read “Warsaw Court of Appeal”.

day. Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; the Court concludes that, in the circumstances of the case, the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

29. The court also observes that the applicant filed three complaints under the 2004 Act in connection with the proceedings concerning the 1995 accident (see paragraphs 18 and 21 above). The Warsaw Court of Appeal examined two complaints which had been filed in compliance with the procedural requirements on the merits and dismissed them both. Consequently, the Court considers that the applicant exhausted domestic remedies in compliance with Article 35 § 1 of the Convention.

30. The Court further notes that neither that complaint nor the complaint related to the proceedings concerning the 1995 accident is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. Both complaints must therefore be declared admissible.

## B. Merits

31. 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).

32. 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).

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. Furthermore, the Court considers that, in dismissing the applicant’s complaint that the proceedings related to the 1995<sup>1</sup> accident exceeded a reasonable time, the Warsaw Court of Appeal<sup>2</sup> 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).

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<sup>1</sup> Rectified on 5 February 2009: “1974” was changed to read “1995”.

<sup>2</sup> Rectified on 5 February 2009: “Warsaw Regional Court” was changed to read “Warsaw Court of Appeal”.

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

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. Lastly, the applicant submitted numerous complaints relating to the criminal proceedings against him.

34. Having regard to Article 35 § 2 (b) the Court notes that these complaints are essentially the same as those already examined by the Court in the applicant's previous application no. 59738/00 (see *Jagiello v. Poland*, no. 59738/00, 23 January 2007) and that they contain no relevant new information.

35. Consequently, this part of the application must be rejected under Article 35 § 2 (b) of the Convention.

### IV. 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 89,987 Polish zlotys (PLN) and 25,000 euros (EUR) in respect of pecuniary and non-pecuniary damage respectively.

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

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, and having regard to the amount already awarded to the applicant under the 2004 Act (see paragraph 20 above), it awards the applicant EUR 7,000 in respect of non-pecuniary damage.

#### B. Costs and expenses

40. The applicant also claimed PLN 166,89 for the costs and expenses incurred before the domestic courts and the Court.

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

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 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 50 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. *Declares* the complaint concerning the excessive length of both sets of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unreasonable length of both sets of proceedings;
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, to be converted into Polish zlotys at the rate applicable at the date of settlement, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses;
  - (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 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President