

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

FOURTH SECTION

CASE OF SIENKIEWICZ v. POLAND

(Application no. 52468/99)

JUDGMENT

STRASBOURG

30 September 2003

FINAL

30/12/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sienkiewicz v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr M. FISCHBACH,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 9 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 52468/99) 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, Tadeusz Sienkiewicz ("the applicant"), on 30 March 1999.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the proceedings in his case had not been conducted within a reasonable time.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 10 September 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1937 and lives in Szczecin, Poland.

8. In 1989 the applicant, who worked as head of a department in a state-owned enterprise dealing with conservation of old buildings, was dismissed. Subsequently, he filed with the Szczecin District Court (*Sąd Rejonowy*) an action in which he requested that his dismissal be declared null and void, as well as that he be reinstated in his former post.

9. On 16 February 1990 the court dismissed his action. The applicant appealed, but on 22 June 1990 the Szczecin Regional Court (*Sąd Wojewódzki*) dismissed his appeal.

10. On 7 June 1993 the Ombudsman lodged an extraordinary appeal against the Regional Court's judgment.

11. On 14 July 1993 the Supreme Court quashed that judgment and remitted the case for re-examination.

12. In his pleadings of 28 March 1994 the applicant withdrew his claim for reinstatement in his former post and raised a compensation claim.

13. The District Court held hearings on 9 May and 28 November 1994, as well as on 2 and 25 January 1995.

14. On 25 January 1995 it dismissed the action again.

15. On 30 June 1995 the Szczecin Regional Court dismissed the applicant's appeal against the District Court's judgment.

16. On 2 August 1996 the Ombudsman lodged a cassation appeal against that judgment.

17. On 13 December 1996 the Supreme Court quashed the Regional Court's judgment and remitted the case for re-examination.

18. On 23 April 1997 the Szczecin District Court stayed the proceedings, because of the fact that insolvency proceedings concerning the defendant were pending. The applicant lodged an appeal against that decision. On 30 June 1997 it was dismissed by the Szczecin Regional Court.

19. On 21 September 1998 the District Court resumed the proceedings.

20. On 22 October 1998 it held a hearing.

21. On 26 October 1998 the court awarded the applicant a partial compensation. The applicant appealed against that judgment.

22. On 17 February 1999 the Szczecin Regional Court held a hearing.

23. On 24 February 1999 it quashed the judgment of 26 October 1998 and remitted the case for re-examination.

24. The District Court held hearings on 23 July, as well as on 15 and 29 November 1999.

25. On 29 November 1999 it gave a judgment, in which it awarded the applicant compensation. The applicant appealed.

26. The Szczecin Regional Court held hearings on 10 and 31 May 2000.

27. On 31 May 2000 it amended the judgment under appeal in that it increased the amount of the compensation.

II. RELEVANT DOMESTIC LAW

28. Articles 417 to 424 of the Code of Civil Procedure, as applicable at the material time, provided that the Ombudsman could lodge with the Supreme Court an extraordinary appeal against any final judicial decision. A party to the proceedings could file a request to have such an appeal lodged. On 1 July 1996 that appeal was replaced with a cassation appeal and the procedure for its lodging by the Ombudsman remained largely unchanged for the following two years.

29. At present, the Ombudsman has a six months' time-limit for lodging a cassation appeal on behalf of a party to the proceedings (Article 393 - 4 of the Code of Civil Procedure).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides in so far as relevant:

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

1. The parties' submissions

31. The Government were of the opinion that the case at issue had been very complex because of serious differences in its legal assessment by various courts and the Ombudsman. They made reference to the period in which the proceedings had had to be stayed because of the insolvency proceedings concerning the defendant. Consequently, the Government were of the opinion that that period should be deducted from the overall length of the proceedings.

32. The Government submitted that the applicant had not significantly contributed to the prolongation of the proceedings. They pointed out that the domestic courts had scheduled hearings at regular intervals.

33. The applicant submitted that his case had been very simple and supported by irrefutable evidence. In his view the courts had made it tangled and had not respected the Supreme Court's judgment, which had resulted in the ten years and two months' examination of the case.

2. The Court's assessment

34. The proceedings began in 1989 and ended on 31 May 2000. They therefore lasted over 10 years and 5 months, out of which the period of 7 years and 1 month falls within the Court's competence *ratione temporis*, Poland having recognised the right of individual petition as from 1 May 1993.

35. The Court recalls that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant in the dispute (see, *inter alia*, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

36. The Court agrees with the Government's contention that the case was complex. The legal dispute that arose over it was serious enough to involve courts at three judicial levels and the Ombudsman.

37. The Court finds no reason to contradict the Government's submission that the applicant did not significantly contribute to the delay.

38. It notes that in the course of the proceedings the courts scheduled hearings at regular intervals and no significant periods of inactivity occurred. In the period under consideration eight court judgments were given. The examination of the case by one court usually did not exceed a year. In the light of the number of judgments given in the course of the proceedings and the frequency of hearings held before the domestic courts there seem to be no grounds for criticising the domestic authorities. All the same, the proceedings lasted over seven years within the Court's jurisdiction *ratione temporis*. The Court observes that within that period the case was on three occasions remitted to the Szczecin District Court for re-examination. Although the Court is not in a position to verify the validity of the applicant's view that the lower courts failed to follow the Supreme Court's guidelines as to the further examination of the case, it finds that such a number of remittals of the case significantly delayed the proceedings.

39. The Court further notes that the applicant's case was examined for a certain period of time by the Ombudsman, who on two occasions lodged appeals with the Supreme Court. It is true that the Ombudsman's decision as to whether to avail himself of that remedy was largely dependent on his discretionary powers (see *Zawadka v. Poland* (dec.), no. 48542/99, 7 November 2002). Nonetheless, the Court considers that those decisions could have been taken more speedily.

40. The Court observes that although the proceedings at issue initially concerned an employment dispute on the lawfulness of the applicant's dismissal, special diligence was not required of the domestic courts in view of what was at stake for him, because the applicant withdrew the claim for

reinstatement in his former post as early as in March 1994 and replaced it with a compensation claim.

41. Overall, the Court is of the view that in the circumstances of the case, despite the undeniable activity of the domestic courts, a period of over 10 years and 5 months, out of which 7 years and 1 month fall within the Court's competence *ratione temporis*, exceeds a reasonable time.

42. In view of that, the Court finds that there was a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 25,000 Polish zlotys in respect of non-pecuniary damage.

45. The Government did not comment on his claim.

46. The Court is of the view that the applicant can reasonably be considered to have suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicant should be awarded 2,000 euros (EUR).

B. Costs and expenses

47. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

48. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, to be published in ECHR 2002-VI).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President