

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 406/05
by Wiesław KUŹLAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 10 December 2004,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant was born in 1958 and is serving a prison sentence in Wronki Prison.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. Civil proceedings for compensation

On an unspecified date in January 2000 the applicant lodged with the Gliwice Regional Court (*Sąd Okręgowy*) a civil action against the State Treasury and Racibórz Prison. He sought compensation for the loss of vision in his left eye which, in his view, resulted from the insufficient medical care provided to him in Racibórz Prison after his accident of 17 September 1999 and from the inadequate conditions of his detention in that facility.

On 15 May 2000 the trial court decided to grant the applicant legal-aid. On 9 November 2000 a hearing was held. On 10 October 2001 the court admitted to the case file a report of an expert in ophthalmology.

On 18 December 2003 the Gliwice Regional Court dismissed the applicant's claim. The court held that there was no causal link between the applicant's accident, which was a direct cause of his eye-condition, and the fact that he had been held in solitary confinement in Racibórz Prison without having the assistance of a third person. The court found that, in detention, the applicant had received regular ophthalmological care and treatment since he was already blind in his right eye.

Throughout the proceedings the applicant was represented by a legal-aid lawyer.

The applicant appealed, arguing that the first-instance court had not examined his witnesses.

On 30 July 2004 the Katowice Court of Appeal (*Sąd Apelacyjny*) upheld that judgment on appeal. The applicant was represented before the appeal court by a new legal-aid lawyer. The judgment was served on the applicant on 24 September 2004.

The applicant asserted that he had not been notified of the date of the appellate hearing, that his lawyer had been changed without his being aware of it and that he had not been granted access to the case file. He also submitted that the trial court had not examined his witnesses.

On 29 September 2004 the applicant complained to the Katowice Regional Bar Association (*Okręgowa Rada Adwokacka*) that his lawyer had not met with him before the appeal hearing and that he had collaborated with the respondent.

By letter of 9 November 2004 the applicant was informed that his complaint had been considered ill-founded. An internal inquiry revealed that the applicant's newly-appointed lawyer had sufficient time and means to study the case file and that he had been well prepared to argue the case. It had not been necessary for him to meet with the plaintiff in person before the trial.

A cassation appeal was not available in the applicant's case.

B. Proceedings under the 2004 Act

On 9 November 2004 the applicant filed a complaint under the 2004 Act.

On 14 December 2004 the Katowice Court of Appeal rejected the applicant's complaint. The court held that the 2004 Act did not apply in the applicant's case because the proceedings in question had been terminated prior to the applicant's length of proceedings complaint.

On 14 January 2005 the applicant lodged a claim for damages under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

On 21 June 2006 the Gliwice Regional Court dismissed the applicant's claim. The court's judgment was not accompanied by a reasoned opinion. It appears, however, that the court found that the applicant had failed to prove that the proceedings in his case had been lengthy or that he had incurred any pecuniary damage as a consequence of a breach of the reasonable-time requirement.

On 22 August 2006 a copy of the judgment together with instructions on lodging an appeal was served on the applicant.

The applicant did not appeal and the judgment became final on 13 September 2006.

In 2007 the applicant informed the Court that he had not appealed against the judgment in question because he had considered it pointless in the light of the fact that Poland was a country not subject to the rule of law.

C. Relevant domestic law and practice

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.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about procedural shortcomings on the part of the domestic courts, the outcome and the length of the civil proceedings.

THE LAW

1. The applicant's first complaint relates to the length of the proceedings, which began on an unspecified date in January 2000 and ended on 30 July 2004. The proceedings thus lasted four years and seven months for two levels of jurisdiction.

According to the applicant, the length of the proceedings was in breach of 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..."

The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. In particular, he did not appeal against the Gliwice Regional Court's judgment of 21 June 2006.

The applicant did not submit any comments. In his earlier submissions to the Court, however, he had stated that a further appeal against the judgment in question was pointless because Poland was a country not subject to the rule of law.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey,* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

The Court notes that the impugned proceedings came to an end on 30 July 2004, that is, less than three years before 17 September 2004, the date on which the 2004 Act came into force. It further observes that, pursuant to section 16 of the 2004 Act, it was open to persons such as the applicant to seek compensation in tort from the State Treasury, relying on Article 417 of the Civil Code for damage caused by the allegedly excessive length of proceedings in which a judicial decision on the merits of the case

had already been given (see *Turzyński v. Poland* (dec.), no. 10453/03, 22 November 2005).

The Court has already examined whether a civil action for damages brought under section 16 of the 2004 Act read together with Article 417 of the Civil Code was an effective remedy in respect of the length of judicial proceedings. It held, having regard to the characteristics of these remedies and notwithstanding the absence of established judicial practice in respect of such claims, that these remedies were effective in respect of persons who, on 17 September 2004, when the 2004 Law entered into force, could still lodge such an action with the competent domestic court (see *Krasuski v. Poland*, judgment of 14 June 2005, §§ 69-72).

In the present case, the applicant lodged a claim for damages under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code but he did not appeal against the first-instance judgment dismissing his claim (the Gliwice Regional Court's judgment of 21 June 2006). There is no doubt that a copy of that judgment was correctly served on the applicant on 22 August 2006 and that he received clear and accurate instructions on how to lodge an appeal (see above). In spite of that, the applicant did not appeal and the judgment became final on 13 September 2006. In his submissions to the Court, the applicant stated that he had not appealed against the judgment in question because he had considered it pointless in the light of the fact that Poland was a country not subject to the rule of law (see above).

Having regard to the above considerations, the Court accepts the Government's objection and considers that the applicant failed to exhaust domestic remedies in respect of the excessive length of the impugned civil proceedings and therefore this part of the application must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

2. With regard to the applicant's assertion that the proceedings in his case were unfair and marked by procedural shortcomings, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

The Court observes that the applicant asserted that he had not been notified of the date of the appellate hearing in his civil case, that his lawyer had been changed without his being aware of it and that he had not been granted access to the case file. He also submitted that the trial court had not examined his witnesses.

On the issue of the quality of services provided by the applicant's lawyer, the Court is satisfied with the results of the domestic internal inquiry, which revealed that the applicant's newly-appointed lawyer had had sufficient time and means to study the case file, he had been well prepared to argue the case and it had not been necessary for him to meet with the plaintiff in person

before the trial. Assessing the civil proceedings in the applicant's case as a whole, the Court finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early Registrar	Nicolas Bratza President