

FOURTH SECTION

**CASE OF PIENIAŻEK v. POLAND**

*(Application no. 62179/00)*

JUDGMENT

STRASBOURG

28 September 2004

**FINAL**

***28/12/2004***

*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 Pieniążek v. Poland,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:  
Sir Nicolas Bratza, *President*,

Mr M. Pellonpää,

Mrs V. Strážnická,

Mr J. Casadevall,

Mr R. Maruste,

Mr L. Garlicki,

Ms L. Mijović, *judges*,

and Mrs F. Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 7 September 2004,

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

## PROCEDURE

1. The case originated in an application (no. 62179/00) 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, Mrs Irena Pieniążek (“the applicant”), on 1 August 1999.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and subsequently Mr. J. Wołasiewicz of the Ministry of Foreign Affairs.

3. On 21 January 2003 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Gdynia, Poland. She is a historian by profession and used to work as a curator in the Gdynia City Museum.

5. On 10 September 1996 the applicant brought a private prosecution on charges of libel against S.L. the director of the Gdynia City Museum to the Gdynia District Court (*Sąd Rejonowy*).

6. On 24 April 1997 the court held a conciliatory hearing. The applicant requested that S.L. retract in the press her defamatory statements. The defendant refused.

7. The trial began on 27 May 1997 but the applicant failed to appear. The court discontinued the proceedings on the ground that the applicant had been duly summoned. The court considered that the applicant had been notified about the service of the summons but failed to collect it from the post office. On 19 June 1997 the applicant appealed against this decision. On 2 September 1997 the Gdańsk Regional Court (*Sąd Wojewódzki*) quashed that decision and ordered that the District Court proceed with the case.

8. On 20 July 1998 the applicant filed a complaint with the District Court submitting that the length of the proceedings in her case had exceeded any reasonable time limit. On 31 July 1998 the president of the Criminal Division of the District Court informed her that the delay in the proceedings was caused by the presiding judge's illness.

9. On 25 October 1999 the president of the Criminal Division of the District Court ordered that the case be transferred to another judge.

10. The next hearing was held on 17 March 2000. On that date upon the court's order, the applicant specified the charges against S.L. Consequently, the court adjourned the hearing to consider discontinuation of the proceedings.

11. On 28 March 2000 the Gdynia District Court discontinued the proceedings, as the offence was time-barred. The court held that the applicant submitted her private prosecution after the time-limit of 3 months from the date on which she had become aware of the identity of the defendant.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

12. Article 178 of the Criminal Code 1969 (which is no longer in force and was repealed and replaced by the so-called “New Criminal Code”), as applicable at the material time, reads as follows:

“§ 1. Anyone who imputes to another person, group of persons or institution such behaviour or characteristics, as may debase them in the public opinion or expose them to loss of the trust necessary for a certain position, occupation or type of activity, shall be liable to imprisonment not exceeding 2 years, a restriction of liberty or a fine.

§ 2. Anyone who raises or makes public untrue allegation about the behaviour or characteristics of another person, group of persons or institutions in order to debase them in the public opinion or expose them to loss of the trust necessary for a certain position, occupation or type of activity, shall be liable to imprisonment not exceeding 3 years.

...

§ 4. The prosecution takes place under a private bill of indictment.”

## THE LAW

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

13. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided 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...”

14. The Government contested that argument.

15. The period to be taken into consideration began on 10 September 1996 and ended on 28 March 2000. It thus lasted 3 years, 6 months and 18 days.

#### A. Admissibility

16. The Government claimed that Article 6 § 1 did not apply to the proceedings at issue, as this provision did not guarantee a right to bring a criminal prosecution against third persons. They recalled that according to the Polish law the applicant had a possibility to join the proceedings as a civil party and lodge a claim for compensation against the defendant or to institute separate civil proceedings for compensation. However, she had not availed herself

of any of those possibilities. They concluded that her application was therefore incompatible *ratione materiae* with the provisions of the Convention.

17. The applicant opposed the Government's arguments. She argued that the proceedings concerned the protection of her personal rights i.e. her dignity and right to enjoy a good name and reputation. These rights by their very nature constitute "civil rights" within the meaning of the Convention. Therefore, Article 6 § 1 was applicable to the proceedings in question.

18. The Court reiterates firstly that the "civil" character of the right to enjoy a good name and reputation follows from its established case-law (see *Helmers v. Sweden* judgment of 29 October 1991, Series A no. 212-A, p. 14, § 27 and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, § 58).

19. Further, the Court notes that, although Article 6 § 1 does not guarantee a right for the individual to institute a criminal prosecution herself, such a right was conferred on the applicant by the Polish legal system in order to allow her to protect her name and reputation.

20. The Court considers that the existence of a dispute ("*contestation*") concerning a "civil right" does not necessarily depend on whether or not monetary damages are claimed; what is important is whether the outcome of the proceedings is decisive for the "civil right" at issue (see *Helmers*, cited above, § 29). This was certainly so in the present case, as the proceedings concerned the protection of the applicant's good reputation and their outcome was decisive for her professional career. It follows that Article 6 § 1 applies to the present case.

21. The Court concludes that, the application 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**

22. The Government submitted that the case had not been particularly complex. They were of the opinion that what was at stake for the applicant in the proceedings did not require "special diligence" on the part of the national authorities. They further agreed that there had been periods of inactivity in the proceedings attributable to the authorities. Lastly, they also admitted that the applicant had not contributed to the length of the proceedings. Nevertheless, they stressed that the applicant was not present at the first hearing. In conclusion they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

23. The applicant generally disagreed with the Government. She submitted that her case had not been complex. She further maintained that there had been much at stake for her in the proceedings, as they concerned her professional career and the right to enjoy a good reputation. She claimed that the authorities had not handled her case "diligently". Lastly, she invited the Court to find that there had been a violation of Article 6 § 1 of the Convention.

24. 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 (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Humen v. Poland* [GC], no. 266114/95, 15 October 1999, § 60).

25. The Court notes that the parties agreed that the proceedings were not particularly complex (see paragraphs 22 and 23). It does not see any reason to hold otherwise.

26. As regards the conduct of the applicant, the Court further observes that the Government acknowledged that the applicant had not significantly contributed to the length of the proceedings (see paragraph 22 above).

27. The Court also considers that, as it was already acknowledged by the Government, there had been periods of inactivity attributable to the national authorities in the proceedings (see paragraph 22 above). In particular, there was a significant delay between 27 May 1997

and 17 March 2000 (see paragraphs 7-10 above). It further stresses that it took the domestic court almost four years to establish that the offence was in fact time-barred.

28. The Court notes that the applicant's action concerned the protection of her personal rights, i.e. her good name and reputation. Therefore, the Court agrees that what was at stake in the litigation at issue was undoubtedly of significant importance to the applicant and required that the domestic courts show diligence and expedition in handling her case.

29. Consequently, having regard to the circumstances of the case and taking into account what was at stake for the applicant in the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

30. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed PLN 49,303.56 in respect of pecuniary damage. This amount corresponded to the 3 years' worth of salary which the applicant should have received if she had not been involved in the proceedings in question. She further asked for PLN 50,000 in respect of non-pecuniary damage that she had suffered as a result of the protracted length of the proceedings.

33. The Government submitted that the applicant's claims were excessive and that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

34. 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 certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings which cannot sufficiently be compensated by finding a violation. Ruling on an equitable basis, it awards her EUR 2,500 under that head.

### B. Costs and expenses

35. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the domestic courts and the Court.

36. The Government contested the claim.

37. According to the Court's case-law, an applicant is entitled to reimbursement of his 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.

On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant had been incurred by her for this purpose.

The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on an equitable basis, the Court awards the applicant EUR 100 for translation and copying expenses which she incurred in the context of filing and pursuing her application.

### **C. Default interest**

38. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
- 3 *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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys at a rate applicable at the date of the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Nicolas Bratza  
Deputy Registrar President