



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

CASE OF PODBIELSKI v. POLAND

(12/1998/915/1127)

JUDGMENT

STRASBOURG

30 October 1998

In the case of Podbielski v. Poland¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr I. FOIGHEL,

Mr A.B. BAKA,

Mr J. MAKARCZYK,

Mr E. LEVITS,

Mr J. CASADEVALL,

Mr P. VAN DIJK,

Mr M. VOICU,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 August and 29 October 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the Polish Government (“the Government”) on 26 February 1998, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 27916/95) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a Polish national, Mr Janusz Podbielski, on 31 March 1995.

The Government’s application referred to Article 48 of the Convention. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

2. On 28 April 1998 the President of the Court gave the applicant leave to present his own memorial to the Court and to use the Polish language (Rules 28 § 3 and 31 of Rules of Court B).

Notes by the Registrar

1. The case is numbered 12/1998/915/1127. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

3. On 2 March 1998 the then Vice-President of the Court, Mr R. Bernhardt, decided, under Rule 21 § 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both the instant case and the case of *Styranowski v. Poland*¹.

4. The Chamber to be constituted for that purpose included *ex officio* Mr J. Makarczyk, the elected judge of Polish nationality (Article 43 of the Convention), and Mr Bernhardt, the then Vice-President of the Court (Rule 21 § 4 (b)). On 2 March 1998, in the presence of the Registrar, Mr Bernhardt drew by lot the names of the other seven members, namely Mr F. Matscher, Mr I. Foighel, Mr A.B. Baka, Mr E. Levits, Mr J. Casadevall, Mr P. van Dijk and Mr M. Voicu (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, Mr K. Drzewicki, the applicant and the Delegate of the Commission, Mr S. Trechsel, on the organisation of the proceedings (Rules 39 § 1 and 40). On 25 May 1998, having regard to the views expressed by the applicant, the Government and the Delegate of the Commission, the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

6. Pursuant to the President's orders, the Registrar received the applicant's and the Government's memorials on 29 June and 2 July 1998 respectively. The Agent of the Government and the applicant submitted their supplementary observations on each other's memorials on 10 and 15 July 1998, respectively. On 10 August 1998 the Delegate of the Commission submitted his observations on the memorials and observations submitted by the Agent and the applicant.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, a businessman, was born in 1949 and lives in Świdnica, Poland.

8. On 25 May 1992 he sued the municipality of Świdnica before the Wałbrzych Regional Court (*Sąd Wojewódzki*). The applicant sought payment for construction works which his company had carried out for the municipality on the basis of a contract dated 18 February 1991 and pecuniary penalties resulting from the defendant's breach of the terms of the

1. Case no. 9/1998/912/1124.

contract. On 7 September 1992 the Wałbrzych Regional Court delivered a judgment in which it declared certain clauses of the contract null and void since they violated civil law.

9. The applicant appealed and on 6 November 1992 the Wrocław Court of Appeal (*Sąd Apelacyjny*) quashed the judgment of 7 September 1992 and ordered the case to be reconsidered. Subsequently, on 1 February 1993 the Wałbrzych Regional Court allowed the applicant's claim for payment but declared null and void a clause of the contract imposing penalties for delay in compliance with its provisions. On 27 April 1993 the Wrocław Court of Appeal dismissed both the applicant's and the defendant's appeals against the judgment of the Regional Court.

10. On 25 June 1993 the Ombudsman filed with the Supreme Court (*Sąd Najwyższy*) an extraordinary appeal on behalf of the applicant, submitting that the Court of Appeal's judgment of 27 April 1993 had been in flagrant violation of substantive civil law and had unduly restricted the parties' freedom of contract.

11. On 7 October 1993 the Supreme Court dismissed the extraordinary appeal. It agreed that, contrary to the previous jurisprudence developed against the background of a planned economy, the Civil Code allowed the parties to agree to clauses providing for the payment of pecuniary penalties for delay in compliance with contractual obligations. However, the Supreme Court found that in the present case the lower courts were justified in declaring the relevant contract clauses null and void as the penalties at issue were excessive and disproportionate to the value of the contract.

12. On 28 January 1994 the Supreme Court agreed to the applicant's request to reopen the proceedings relating to the extraordinary appeal. It amended its judgment of 7 October 1993 and quashed in part both impugned judgments of 1 February 1993 and 27 April 1993. The Supreme Court ordered that all the applicant's claims, save for the payment awarded to the applicant by the judgment of the Wałbrzych Regional Court of 1 February 1993, be reconsidered by the latter court. The Supreme Court was of the opinion that the previous judgments amounted to a violation of substantive civil law. It assessed from a legal point of view the issues of the pecuniary penalties resulting from the defendant's breach of the contract and the possible compensation for damage sustained in consequence by the applicant's company. Furthermore, the Supreme Court explained why and how the relevant provisions of substantive civil law should be applied in the case. It also gave guidelines as to the further course of the proceedings, holding that the court of first instance should establish the value of the claims.

13. Between 6 June and 20 July 1994, the Wałbrzych Regional Court and the Wrocław Court of Appeal examined the applicant's requests for an exemption from the court fees.

14. In a judgment of 20 February 1995 the Wałbrzych Regional Court held that the defendant was obliged to pay pecuniary penalties to the applicant, but reduced their amount to 1,844,300,000 old zlotys as it considered that the penalties fixed in the contract were excessive. Furthermore, it dismissed the applicant's claim for compensation for damage caused by the defendant's delay in payment because the applicant did not show that his company had suffered damage exceeding the amount awarded to him.

15. On 30 March 1995 the applicant appealed against the judgment of 20 February 1995, claiming that the court had failed to make certain findings of fact which were relevant to the outcome of the case and had made procedural errors.

16. Between 12 April and 25 May 1996 the courts of first and second instance examined the applicant's request for an exemption from the court fees for lodging the appeal.

17. On 31 August 1995 the Wrocław Court of Appeal quashed the judgment of 20 February 1995 in so far as it had dismissed the applicant's claim for compensation for damage resulting from the defendant's delay in payment. It ordered that this claim be reconsidered since the trial court had failed to comply with the Supreme Court's legal opinion and guidelines on that matter and also criticised the manner in which the trial court had taken expert evidence.

18. On 23 October 1996 the Wałbrzych Regional Court dismissed the applicant's claim for compensation. On 29 November 1996 the applicant filed with the Wałbrzych Regional Court an appeal to the Wrocław Court of Appeal and requested an exemption from court fees.

19. On 3 January 1997 the Wałbrzych Regional Court exempted the applicant's company from all court fees save for the first 20,000 zlotys (PLN) and dismissed the remainder of the applicant's request. The applicant appealed against this decision. On 13 February 1997 the Wrocław Court of Appeal dismissed his appeal, considering that his company had sufficient financial resources to pay the court fees.

20. On 9 March 1997 the applicant again requested the Wałbrzych Regional Court to grant him a further exemption from the court fees, arguing that in the course of the prolonged litigation the financial situation of his company had worsened. On 14 April 1997 the court exempted him from court fees exceeding PLN 10,000. On 9 June 1997 the Wrocław Court of Appeal dismissed the applicant's appeal against the decision of 14 April 1997.

21. On 1 September 1997 the Wałbrzych Regional Court rejected the applicant's renewed request to be exempted from payment of the court fees. The applicant appealed against that decision, but on 16 October 1997 the Wrocław Court of Appeal rejected his appeal.

22. On 17 December 1997 the Wałbrzych Regional Court rejected the applicant's appeal against the judgment of 23 October 1996 since he had failed to pay the required court fees. Between 29 January 1998 and 30 March 1998 both the Regional Court and the Court of Appeal considered the applicant's requests for exemption from the court fees. On 29 May 1998 the Wrocław Court of Appeal rejected the applicant's complaint against the decision of 17 December 1997.

23. On 30 June 1998 the applicant lodged with the Supreme Court an appeal on points of law. These proceedings are still pending.

PROCEEDINGS BEFORE THE COMMISSION

24. Mr Podbielski applied to the Commission on 31 March 1995. He relied on Article 6 § 1 of the Convention, complaining about the length of the civil proceedings.

25. The Commission (Second Chamber) declared the application (no. 27916/95) admissible on 15 April 1997. In its report of 22 October 1997 (Article 31), it expressed the opinion that there has been a violation of Article 6 § 1 of the Convention by thirteen votes to two. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

26. The applicant in his memorial requested the Court to find that the facts of the case disclosed a violation of Article 6 § 1 of the Convention and to award him just satisfaction under Article 50.

27. The Government for their part requested the Court in their memorial to find that Article 6 § 1 was not violated in the case at issue.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

28. The applicant contended that the civil proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant provides:

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

29. The Commission agreed with the applicant’s arguments whereas the Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

30. The Court notes that the period to be taken into consideration for the purpose of assessing the length of the proceedings from the angle of the “reasonable time” requirement under Article 6 § 1 began not on 25 May 1992, when the applicant initiated civil proceedings before the Wałbrzych Regional Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of Article 25 of the Convention took effect.

Contrary to the Government’s contention that the period to be taken into consideration ended on 23 October 1996 when the Wałbrzych Regional Court delivered the final judgment on the merits of the case, the Court notes that the proceedings in the applicant’s case are still pending since the final decision on his appeal in cassation has not yet been delivered. Accordingly, the proceedings have lasted so far over six years and five months, out of which five years, five months and twenty-nine days are taken into consideration by the Court (see paragraphs 8, 18 and 23 above).

31. In order to determine the reasonableness of the length of time in question the Court will have regard to the state of the case on 1 May 1993 (see, among other authorities, the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

B. Reasonableness of the length of the proceedings

1. Arguments before the Court

32. The applicant maintained that the issues raised by his action were not complex since they concerned a simple contract. He criticised the conduct of the courts, which in his opinion contributed to the length of the proceedings by delivering erroneous judgments. The case could have been decided as early as 1992 when the first hearing before the trial court had been held and certainly in 1994 at the latest when the Supreme Court gave binding guidelines as to the further course of the proceedings (see paragraphs 8 and 12 above). The applicant invited the Court to conclude that the excessive length of the proceedings had to be imputed to the conduct of the judicial authorities and to find that he was on that account a victim of a breach of Article 6 § 1 of the Convention.

33. The Government disagreed with this analysis. They submitted that the length of the proceedings was reasonable having regard to the absence of any requirement on the part of the national authorities to act with special diligence and to the conduct of the parties to the proceedings. The Government considered that the case was particularly complex for reasons such as the volume of evidence, the need to obtain expert evidence, the legal nature of the issues raised by the applicant's action and the introduction of amendments to the domestic legislation. Furthermore, they contended that, although the applicant could not be held responsible for the totality of the delays in the proceedings, he had substantially contributed to their length by making extensive use of his procedural rights. The Government also disagreed with the applicant's and the Commission's contention that the trial court contributed to the length by failing to comply with the Supreme Court's guidelines of 28 January 1994. In particular, referring to domestic law, they disputed the binding nature of these guidelines (see paragraph 12 above).

For these reasons in particular the Government maintained that there had been no breach of Article 6 § 1.

34. The Commission assessed the reasonableness of the length of the proceedings in the light of the particular circumstances of the case having regard to its complexity and to the conduct of the applicant and of the relevant authorities. It considered that the case was not particularly complex since it concerned the interpretation of a contract and the assessment of the claims resulting from its breach. Also, the length of the proceedings could not be explained by the applicant's conduct since he could not be said to have delayed them substantially. Furthermore, the Commission was of the opinion that the principal legal issues in the case had been resolved by the Supreme Court's judgment and binding guidelines delivered on 28 January 1994 (see paragraph 12 above). It concluded that the national

authorities, in particular the Wałbrzych Regional Court, substantially contributed to the length of the proceedings by failing to follow the binding instructions of the Supreme Court. On that account the Commission found a violation of Article 6 § 1.

2. The Court's assessment

35. The Court recalls that the proceedings in issue have so far lasted over six years and five months (see paragraphs 30–31 above). The applicant and the Government have discussed the reasons for the length of this period with reference to the criteria which it has established for assessing the “reasonable time” requirement of Article 6 § 1 of the Convention, namely the complexity of the case and the conduct of the applicant and of the authorities. The Court will assess the reasonableness of the length of the impugned proceedings on the basis of the same criteria, taking as its point of departure the particular circumstances of the instant case and having regard also to what was at stake for the applicant (see, among other authorities, the *Süßmann v. Germany* judgment of 16 September 1996, *Reports* 1996-IV, pp. 1172–73, § 48). It observes in this respect that the applicant had a strong economic interest at a time of rampant inflation in the respondent State in securing a definitive adjudication of his claim against the municipality within a reasonable period of time.

(a) Complexity of the case

36. The Court considers that the subject matter of the litigation was not particularly complex, being concerned with the enforcement of rights and obligations under a straightforward contract. While it is true that the interpretation of the penalty clauses in the contract was rendered complex on account of the evolving nature of the domestic legal system at the relevant time and the uncertainty about the correct approach to be adopted by the courts to this case, it is to be noted that the principal legal issues were clarified by the Supreme Court on 28 January 1994 (see paragraph 12 above). Therefore, the complexity of the subject matter of the case cannot justify the length of the proceedings.

(b) Conduct of the applicant

37. The Court would observe that, although the applicant may have contributed to some extent to the delay in the proceedings by his conduct, for example by continuously pressing his claim to be exempted from the payment of court fees (see paragraphs 13, 16, 18–22 above), this cannot justify the overall length of the proceedings.

(c) Conduct of the national authorities

38. The Court notes that the civil action initiated by the applicant on 25 May 1992 has still not been the subject of a final judgment (see paragraphs 8 and 23 above). It observes that the delay in the delivery of a final decision on the applicant's action has been caused to a large extent by the legislative changes resulting from the requirements of the transition from a state-controlled to a free-market system and by the complexity of the procedures which surrounded the litigation and which prevented an expeditious decision on the applicant's claim. The Court recalls in this respect that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, pp. 2180–81, § 55 *in fine*). Therefore the delay in the proceedings must be mainly attributed to the national authorities.

(d) Conclusion

39. The Court considers that, in the particular circumstances of the instant case, a period of over six years and five months, out of which five years, five months and twenty-nine days are taken into consideration by the Court, without any final decision having been reached yet, exceeds a reasonable time.

There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

40. The applicant claimed just satisfaction under Article 50 of the Convention which provides as follows:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

41. The applicant sought an award of 17,403,624 US dollars to compensate him for the financial loss he suffered on account of the unreasonable length of the proceedings at issue. He explained that his company had intended to start the production of small tractors. It had invested in manufacturing facilities and had incurred marketing costs.

However, as a result of the protracted court proceedings, the company was deprived of its expected revenues which ultimately led to its insolvency. In consequence, a part of its property was taken over by creditors and it lost opportunities in the growing small tractor market.

42. The Government considered that the amount claimed by the applicant was inordinately excessive. They asked the Court to rule that a finding of a violation constituted sufficient just satisfaction. In the alternative they requested the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in civil cases in which normal diligence was required.

43. The Delegate of the Commission also considered that the applicant's claim was grossly excessive. He submitted that the amount of compensation could not be calculated by speculating on the outcome of the proceedings.

44. The Court notes that the applicant's claim for pecuniary damage is mostly based on lost business opportunities which are speculative in nature. It cannot inquire into what the outcome would have been if the applicant had obtained a final decision on his action within a reasonable time. The Court accordingly dismisses the claim.

B. Non-pecuniary damage

45. The applicant also sought an award of non-pecuniary damage. He maintained that as a result of the violation of his rights he had suffered financial hardship and his business name had been discredited since he had defaulted on his debts. He left the amount of an award to the discretion of the Court.

46. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction. In the alternative they requested the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in civil cases in which normal diligence was required.

47. The Delegate of the Commission submitted that a sum of 20,000 zlotys (PLN) might be awarded under this head.

48. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant PLN 20,000.

C. Costs and expenses

49. The applicant also claimed PLN 133,000 by way of legal costs and expenses incurred in the preparation and defence of his case.

50. The Government considered that the applicant's claim was excessive and asked the Court not to allow it in the full amount.

51. The Delegate of the Commission submitted that an amount of PLN 5,000 might be awarded to the applicant under this head.

52. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. However, the Court notes in this respect that the applicant did not submit any specifications of the costs claimed by him. His claims must, therefore, be rejected (see, *mutatis mutandis*, the Belziuk v. Poland judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49).

D. Default interest

53. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 33% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 § 1 of the Convention has been violated;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 20,000 (twenty thousand) zlotys in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 33% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 October 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar