



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

FOURTH SECTION

CASE OF DEWICKA v. POLAND

(Application no. 38670/97)

JUDGMENT

STRASBOURG

4 April 2000

FINAL

04/07/2000

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

In the case of Dewicka v. Poland,

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

Mr M. PELLONPÄÄ, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs S. BOTOCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 and 23 March 2000,

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

PROCEDURE

1. The case originated in an application (no. 38670/97) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mrs Janina Dewicka (“the applicant”), a Polish national, on 26 February 1997. The applicant alleged that her right to have her civil claim determined “within a reasonable time”, as required by Article 6 § 1 of the Convention, had been violated.

2. On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

3. On 15 December 1998 the Court decided to give notice of the application to the Polish Government (Rule 54 § 3 (b) of the Rules of Court). It also gave priority to the application, pursuant to Rule 41. The Government submitted their written observations on the admissibility and merits of the application on 19 February 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 29 March 1999.

4. On 29 June 1999 the Court declared the application admissible. Subsequently, on 9 July 1999, the President of the Chamber granted free legal aid to the applicant in connection with the presentation of her case (Rule 91 § 1 of the Rules of Court).

5. After declaring the case admissible, the Court invited the parties to submit, within six weeks, any evidence or written observations that they wished to put before it. The parties have not submitted any further observations.

6. The Court also informed the parties that it was at their disposal for the purpose of securing a friendly settlement in accordance with Article 38 § 1 (b) of the Convention and invited them to make any proposals they wished to make within six weeks. Since the parties have not reacted thereto, the Court sees no basis on which such a settlement can possibly be effected.

7. Before the Court the applicant was not legally represented. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

8. No party requested the Court to hold a hearing in the present case. The Chamber decided that it was not necessary to hold a hearing.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1911.

10. On 18 February 1991 she requested the Polish Telecommunications Office in Wroclaw (*Telekomunikacja Polska*) to enter into a contract to provide her with telecommunication services and to install a telephone line in her apartment, submitting that it was justified in view of humanitarian reasons such as her old age and disability (in particular, the fact that her mobility, sight and hearing were seriously impaired). She maintained that a total inability to communicate with the outside world in case of emergency was endangering her life.

11. On 19 March 1991 the office replied that at the current stage of development of its services, installing a telephone line in her apartment was technically impossible, although (time and progress in the necessary works permitting) the request would be granted in the near future.

12. Since no such contract had been concluded between the parties by spring 1993, on 19 June 1993 the applicant sued the Polish Telecommunications Office in Wroclaw in the Wroclaw-Fabryczna District Court (*Sad Rejonowy*), seeking a judgment ordering the defendant to enter into a contract for the provision of telecommunication services with her and to install a telephone line in her apartment. She also requested the court to exempt her from court fees and grant her legal assistance. In that respect she relied on a medical certificate describing her state of health.

13. On 24 June 1993 the court, finding that the Wroclaw-Krzyki District Court was competent to deal with the applicant's claim, referred her case to the latter court. The case was registered with the Civil Division of that court on 19 July 1993. On 20 July the court ordered the applicant to

adduce, within seven days, evidence in support of her request for exemption from court fees and legal assistance.

14. On 3 August 1993 the Wrocław-Krzyki District Court granted the applicant a general exemption from court fees and legal assistance. Later, on 13 August 1993, it served the statement of claim on the defendant company, ordering it to submit a reply within seven days.

15. On 6 September 1993 the trial court listed the first hearing in the applicant's case for 12 October 1993. During the hearing, the court established that a similar claim had been lodged by a person living in the same building as the applicant and registered under file no. IC 214/93 with the Civil Division of the Wrocław-Sródmieście Court. Apparently, that court had already ordered in those proceedings that expert evidence be obtained to establish whether it was technically possible to install a telephone line in the building. Considering that such expert evidence might be relevant for the outcome of the applicant's case, her lawyer requested the court to stay the proceedings. On 20 October 1993 the defendant's lawyer lodged a similar request with the court. On 28 October the court ordered that the proceedings be stayed until the termination of the case no. I C 214/93.

16. In that latter case, on an unspecified date, the Wrocław-Sródmieście District Court obtained a report from M., a telecommunications expert, according to whom it was technically possible to install a telephone line in the building. On 28 October 1994 the court gave judgment.

17. On 10 March 1995 the applicant sent a letter to the Wrocław-Krzyki District Court, requesting it to proceed with the determination of her claim. She also stated that it was high time that her claim was decided as it had been submitted for adjudication in 1993 and that both her age (she was eighty-four at the time) and the state of her health called for a speedy resolution of the proceedings. The court deemed her letter to be a request for the proceedings to be resumed, to which it gave effect on 20 March 1995.

18. On 11 May 1995 the court held a hearing. During that hearing the court decided to obtain evidence contained in the case-file of case no. I C 1280/94. That case-file comprised material relating to a similar claim lodged by L.W., the applicant's grandson, who lived in the same building as she did. The court further ordered that evidence from L.W. be heard and adjourned the trial to 22 June 1995.

19. After the trial date, on 28 June 1995, the court ordered that the material contained in the case-file of case no. IC 214/93 be obtained and taken into consideration.

20. On 3 July 1995 the Wrocław Town Social Welfare Office (*Miejski Ośrodek Pomocy Społecznej*) issued a decision granting the applicant the so-called "domiciliary services" (*usługi pielęgnacyjne*) in view of the fact that

she suffered from *sclerosis*, her sight and hearing were seriously impaired, she was unable to attend to herself and needed care from third persons.

21. On 11 August 1995 the court ordered that the applicant's lawyer submit, within seven days, a reply to a pleading filed by the defendant on an unspecified date. Later, on 11 September 1995, the court issued a reminder to the lawyer, ordering him to submit the reply in question within three days.

22. On 15 September, 20 November and 4 December 1995 the court made orders relating to certain - unspecified - procedural issues.

23. On 19 January 1996 the court took evidence from the applicant at her home as it considered that, given her age and disability, she was unable to appear before it. Apparently, the court encountered certain difficulties in communicating with the applicant. A few days later, on 23 January 1996, the court ordered the applicant's lawyer to submit a medical certificate stating whether the applicant was able to understand and lodge pleadings in her case.

24. On 4 March 1996 the court ordered that evidence from an expert in telecommunications be obtained in order to establish whether it was technically possible to install a telephone line in the applicant's apartment. The expert submitted his report to the court on 16 April 1996. He concluded that even though installing a telephone line in the applicant's apartment had been technically possible since as early as 1994, she had failed to comply with certain formal requirements for persons wishing to enter into a contract for telecommunication services, which had resulted in her being ineligible to enter into such a contract. In the expert's view, the applicant had not submitted documentary evidence demonstrating that priority should have been given to her application for the provision of telecommunication services. Moreover, at the relevant time the Polish Telecommunications Office in Wroclaw had had to deal with many similar requests lodged prior to that of the applicant.

25. A copy of the report was served on the applicant on an unspecified date. Subsequently, on 10 May 1996, the court listed a hearing for 8 August 1996.

26. On 10 August 1996 the applicant filed a motion with the court, challenging the impartiality of the expert. She submitted that the expert was a permanent employee of the defendant and had, therefore, an interest in supporting the arguments of her opponent. She requested the court to reject the expert's report and order that fresh evidence be obtained from another, objective expert. In the applicant's opinion, the expert (who had been appointed at her expense) had manifestly violated basic principles of professional conduct and payment of the fee for preparing his report had not been justified. The court should, therefore, either order the expert to pay back the fee or appoint another expert at its own expense.

27. On 19 August 1996 the court ordered the applicant's lawyer to submit a medical certificate stating whether the applicant was able personally to give statements to and file motions with the court.

28. The next hearing was held on 31 October 1996. On that day the court ordered that fresh evidence from another expert be obtained, but at the applicant's expense. On 14 January 1997 the court requested experts at the Institute of Telecommunications and Acoustics of Wrocław Technical University to prepare a report within one month.

29. On 21 February 1997 the experts from the Institute submitted their report to the court. They concluded that during the period from June 1993 to 12 February 1997 installing a telephone line in the applicant's apartment had been technically possible and, consequently, the defendant had had no reason for not entering into a contract for the provision of telecommunication services with the applicant.

30. Later, on an unspecified date, the applicant filed a pleading with the court, amending the statement of claim. On a further unspecified date the court served a copy of her pleading on the defendant.

31. On 26 May 1997 the court held a hearing but adjourned the proceedings to 14 July 1997. However, in July 1997 a massive flood inundated the south-west of Poland, severely affecting Wrocław and, as a result, the proceedings in the applicant's case were stayed *ex lege* on an unspecified date.

32. On 18 August 1997 the Wrocław-Krzyki District Court held a hearing and gave judgment dismissing the applicant's claim. The applicant appealed on 9 September 1997 to the Wrocław Regional Court (*Sąd Wojewódzki*).

33. An appellate hearing was held on 21 January 1998. The court gave judgment the same day, granting the applicant's claim. Shortly afterwards, the applicant requested the appellate court to provide her with an enforcement order. The court informed her that she should lodge her motion with the court of first instance, which was competent to keep the records of the case in its archives and, if requested, provide the parties to the proceedings with a copy of the final judgment, together with an enforcement order.

34. Subsequently, on an unspecified date, the case-file was transferred to the Wrocław-Krzyki District Court. It was received at the court's registry on 2 April 1998.

35. In the meantime, on 16 March 1998, the applicant had requested the Wrocław-Krzyki District Court to provide her with an enforcement order. As of 20 March 1999, she had not received that order.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. Section 6 of the Code of Civil Procedure, which sets out a general principle known as the “expedition of civil proceedings” (*zasada szybkości postępowania*), provides:

“ The court shall counteract delays in proceedings and shall - insofar as it is possible [to do so] without prejudicing the [proper] elucidation of the case - endeavour to determine the case at the first hearing held.”

37. Section 781¹ of the Code of Civil Procedure, contained in Book Two, entitled “Enforcement proceedings”, provides as follows:

“ The court shall examine a motion for an issue of an enforcement order promptly; [such a motion] shall be examined within three days from the date on which it has been lodged with the court.”

38. Before a creditor can institute enforcement proceedings against a debtor, he or she must, as an indispensable statutory prerequisite, obtain a court order of enforcement (Sections 776 and 883 of the Code of Civil Procedure). In practice, a court issues such a decision by stamping a copy of a final judgment with the set text of the order, which must be followed by the signature of a judge. No court session is held to examine a motion for the issue of an enforcement order.

AS TO THE LAW

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

39. The applicant complained that the Polish courts had failed to determine her civil claim “within a reasonable time” and had therefore violated Article 6 § 1 of the Convention, which states (insofar as relevant) :

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

40. The applicability of Article 6 to the case was not disputed. The Court sees no reason to hold otherwise. The proceedings in question concerned a dispute over the applicant’s right to enter into a contract for the provision of telecommunication services, which is a “civil right” within the meaning of Article 6 § 1 of the Convention.

A. Period to be taken into consideration

41. The Court notes that the period under consideration began on 19 June 1993, when the applicant lodged her claim with the Wrocław-Krzyki District Court. The Court further notes that the proceedings on the merits came to an end on 21 January 1998, when the Wrocław Regional Court allowed the applicant's appeal and granted her claim. However, as of 20 March 1999 at the latest, the applicant was unable to institute enforcement proceedings since the Wrocław-Krzyki District Court had failed to provide her with an enforcement order (see paragraphs 33-35 above).

42. In that context, the Court observes that, for the purposes of Article 6 § 1 of the Convention, the termination of the proceedings on the merits of the claim does not always constitute an end of a "determination of a civil right" within the meaning of that provision. What is decisive is the point at which the right asserted by a claimant actually becomes "effective", that is to say, when his civil claim is finally satisfied. Therefore, in cases such as the present one, where the party to civil proceedings has to institute enforcement proceedings in order to satisfy his or her judicially-determined claim, those proceedings must be regarded as a second stage of proceedings on the merits and, consequently, their integral part (see the *Zappia v. Italy* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1411, §§ 18-20).

43. Accordingly, the length of the proceedings to be considered under Article 6 § 1 is at least five years and nine months.

B. Reasonableness of the length of the proceedings

44. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular, the complexity of the case, the conduct of the applicant and that of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, the *Styranski v. Poland* judgment of 30 October 1998, *Reports* 1998-VIII, p. 3376, § 47, and the *Humen v. Poland* judgment of 15 October 1999, unpublished, § 60).

1. Complexity of the case

45. The Government maintained that the case had been of some complexity. First of all, the trial court had to obtain evidence from two experts and consider material contained in the files of two other cases, nos. I C 214/93 and I C 1280/94 respectively. The need to hear evidence from the applicant in her home was yet another factor contributing to the complexity of the case.

46. The applicant considered that her case was not a complex one.

47. The Court observes that the case concerned the determination of the applicant's right to enter into a simple civil contract. Moreover, the only issue relevant for the final ruling was whether it was technically feasible for the defendant to install a telephone line in the applicant's apartment. In the Court's view, the fact that the court had to obtain expert evidence concerning that matter cannot in itself render the case a complicated one.

2. Conduct of the applicant

48. The Government acknowledged, on the one hand, that the applicant had not contributed substantially to the length of the proceedings. On the other, they maintained that a period of nearly one and a half years (that is, between 28 October 1993 and 20 March 1995), during which the proceedings had been stayed on the applicant's request, should be attributed to her. Also, the fact that the applicant, after the delivery of the second expert report, had amended her statement of claim brought about a further (albeit short) delay in the proceedings.

49. The applicant admitted that she had requested the court to stay the proceedings until the termination of case no. I C 214/94. She considered, however, that it might have accelerated the proceedings since the relevant case concerned a similar claim and the issue of whether it was technically possible to install a telephone line in the building was to be resolved by an expert in that other case. She expected, moreover, that the trial court would resume the proceedings in her case without undue delay. Yet that court, despite the fact that the judgment in those other proceedings had been given on 28 October 1994, did not proceed with her claim. Several months elapsed and she was forced to complain to the court in March 1995 before it listed a hearing.

50. The Court observes that the applicant, like her opponent, considered that the stay of the proceedings might expedite the determination of her claim, in particular because the relevant expert report was to be obtained in those other proceedings (see paragraph 15 above). The Court finds no reason why the applicant's exercise of her procedural rights in that instance can be seen as unreasonable or dilatory conduct. It is not, therefore, persuaded by the Government's arguments that the applicant contributed to the length of the proceedings in her case.

3. Conduct of the judicial authorities and the question of what was at stake for the applicant

51. The Government considered that the relevant courts had acted with due diligence in handling the applicant's case. During the proceedings, which up to the date of the final judgment of the Wrocław Regional Court lasted about four and a half years, the courts listed several hearings at

reasonable intervals. They also made several procedural orders ensuring that the case be dealt with properly. Nor were there any substantial delays in the proceedings. The only delay occurred in the period during which the proceedings were stayed at the joint request of the parties. The delivery of the first-instance judgment was postponed for a month but it was due to the flood in Wrocław; this delay should, therefore, be regarded as an event due to *force majeure*.

52. The applicant stated that the courts, and more particularly, the court of first instance, had failed to handle her case with due diligence. In that regard, the applicant especially criticised the manner in which the Wrocław-Krzyki District Court had proceeded to obtain evidence from experts. She stressed that the expert report on whether it was technically feasible to install a telephone line in the building in which she lived had been at the court's disposal as early as by the time it had obtained case-file no. I C 214/93. Despite this, the court did not decide to obtain a further report until March 1996 and, what was more, ordered that that expert report be prepared by a permanent employee of the defendant. When she eventually challenged the impartiality of that expert, the court ruled that fresh expert evidence had to be obtained. Therefore, the initial decision to take expert evidence was of no practical effect and delayed the proceedings.

53. The applicant further maintained that the court of first instance had unnecessarily prolonged the trial by repeatedly obliging her lawyer to submit medical certificates concerning her ability to file pleadings, a matter of no apparent relevance for the determination of her claim. Moreover, despite the fact that her claim had been judicially determined on 21 January 1998, she had since then been unable to enforce the final judgment and satisfy her claim because the court had failed to provide her with an enforcement order.

54. Lastly, the applicant submitted that, given her personal circumstances, five years of litigation was a very substantial period. Referring to what had been at stake for her in the proceedings, she stressed the nature of her claim, her age and disability and concluded that her claim had not been determined "within a reasonable time".

55. The Court agrees that what was at stake in the litigation in issue was undoubtedly of crucial importance to the applicant. Indeed, her very great age, her disability and the fact that the outcome of the case was of vital significance for her basic human needs, in particular, the need to maintain essential contact with the outside world, required that the domestic courts show special diligence in handling her case.

56. In that context, the Court observes that in the conduct of the first-instance proceedings the Wrocław-Krzyki District Court displayed a level of diligence which would possibly be acceptable in an average civil case, where no particularly important issue is at stake. It cannot however be said that the court showed any special promptness in - for instance - making

decisions to obtain expert evidence or resuming the proceedings after they had been stayed pending the termination of the other relevant case (see paragraphs 17-29 above).

57. Furthermore, after the completion of the proceedings on the merits and over a period of at least nearly one year (that is, from 2 April 1998 to at least 20 March 1999), the same court failed to provide the applicant with an enforcement order she was seeking, even though to do so required nothing more than a purely technical decision (see paragraphs 34-35 and 38 above). No explanation of this inertia has been supplied by the Government.

58. In sum, basing itself on the above-mentioned period of inactivity and having regard to what was at stake for the applicant in the litigation and the overall length of the proceedings, the Court concludes that the requirement of the “reasonable time” laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. After the case was declared admissible, the applicant has not submitted any claims under Article 41 of the Convention. In an application form, which she submitted in support of her petition, she requested that compensation for “not determining her claim within a reasonable time” be granted to her. She did not mention any specific sum.

61. The Government have not addressed that issue.

62. The Court considers that on account of the protracted length of the proceedings in her case the applicant has suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 15,000 Polish zlotys (PLN) under the head of non-pecuniary damage.

B. Costs and expenses

63. The applicant was granted legal aid by the Court. She did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

64. According to the information available to the Court, the statutory rate of interest applicable in Poland the date of adoption of the present judgment is 21 % per annum.

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, 15,000 (fifteen thousand) Polish zlotys in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 21 % shall be payable on this sum from the expiry of the above-mentioned three months until settlement.

Done in English, and notified in writing on 4 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Matti PELLONPÄÄ
President