



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

FOURTH SECTION

CASE OF WOJNOWICZ v. POLAND

(Application no. 33082/96)

JUDGMENT

STRASBOURG

21 September 2000

FINAL

17/01/2001

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 Wojnowicz v. Poland,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 31 August 2000,

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

PROCEDURE

1. The case originated in an application (no. 33082/96) 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 a Polish national, Mr Krzysztof Wojnowicz (“the applicant”), on 12 October 1995.

2. The Government of Poland (“the Government”) were represented by their Agent, Mr K. Drzewicki.

3. The applicant alleged that, contrary to Article 6 § 1 of the Convention, the civil proceedings to which he was a party were not conducted within a reasonable time.

4. On 2 July 1997 the Commission (Second Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on the merits.

5. The Government submitted their observations on 22 September 1997, to which the applicant replied on 5 December 1997.

6. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force and in accordance with the provisions of Article 5 § 2 thereof.

7. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber called upon to examine the case (Article 27 § 1 of the Convention) was constituted according to the provision of Rule 26 § 1 of the Rules of Court.

8. By a decision of 18 November 1999 the Chamber declared the application admissible.

AS TO THE FACTS

9. The applicant is a Polish national, born in 1948 and residing in Warsaw.

10. Jointly with M.K. and B.W., the applicant owned a company running a car repair shop.

11. On 21 September 1987 the applicant lodged an action with the Warsaw District Court against M.K. and B.W., requesting that the court dissolve the company and distribute its property to its shareholders. At an unspecified later date the court appointed an expert in order to have the value of the company estimated.

12. The first hearing, to be held on 20 February 1987, was adjourned as one of the parties - not the applicant - failed to appear. Subsequently, the judge rapporteur was changed. Likewise, the hearing set for 25 October 1988 was adjourned. On 24 January 1989 the applicant complained to the Ministry of Justice about the conduct of the proceedings. In a letter to the court of 26 January 1989, the applicant requested the court to accelerate the proceedings.

13. In a letter of 4 April 1989, the Ministry of Justice acknowledged that the proceedings had exceeded a reasonable time and that in view thereof the conduct of the proceedings would be henceforth supervised by the Ministry.

14. On 4 October 1989 the Warsaw District Court appointed an administrator for the company.

15. The hearing fixed for 26 November 1989 was adjourned, one of the parties - other than the applicant - not being present.

16. On 13 December 1989 the Warsaw Regional Court quashed the decision to appoint an administrator for the company. The case was subsequently assigned to a new judge rapporteur.

17. In a letter of 25 January 1990, the applicant complained to the president of the Parliamentary Commission on the Administration of Justice about the length of the proceedings. In his reply of 23 February 1990, the president of that Commission stated that the complaint was partly well-founded, particularly in that the court had failed sufficiently to supervise the expert appointed by it. In a communication of 2 April 1990, the applicant stated that supervision by the Ministry had not brought about any tangible results. He further pointed out that the expert could not be held responsible for the delay as he had several times requested the court to give him access to the case-file and, for reasons unknown, this request had not been granted.

18. In a letter of 28 May 1990, the Minister of Justice informed the president of the Parliamentary Commission on the Administration of Justice that according to a progress report on the case, submitted to the Ministry by the President of the Warsaw District Court on 20 April 1990, the expert had obtained the case-file on 2 April 1990 and would present his opinion to the court before 30 May 1990.

19. On 10 June 1990 the applicant complained to the Ombudsman about the length of the proceedings. The Ombudsman transmitted the complaint to the President of the Warsaw District Court who, on 21 August 1990, informed the applicant that he had issued appropriate orders to accelerate the proceedings.

20. On 19 September 1990 the hearing was adjourned, one of the parties other than the applicant being absent. A new judge rapporteur was subsequently appointed.

21. On 18 March 1991 the court heard the expert. On 6 May 1991 the proceedings were suspended, as the parties attempted to reach an out-of-court settlement.

22. The hearings scheduled for 2 August and 14 October 1991 were adjourned because one of the parties other than the applicant did not comply with the summonses. A new judge rapporteur took over.

23. On 18 November 1991 the applicant requested the court to set a date for a new hearing and to take measures in order to discipline the party who sabotaged the proceedings by his consistent refusal to participate.

24. Two further hearings, scheduled for 23 March and 25 May 1992, were adjourned as one of the parties - not the applicant - was absent and the judge rapporteur changed again.

25. On 28 September 1990 the applicant complained to the President of the Warsaw Regional Court about the excessive length of the proceedings.

26. At the hearing on 19 October 1992, the court, presided over by yet another judge rapporteur, heard a witness and an expert.

27. On 28 January 1993 the court heard another witness and an expert.

28. On 5 March 1993 the court appointed an expert in accountancy, who submitted her findings to the court on 31 July 1993, having been twice urged by the court to speed up the preparation of her report.

29. On 16 August 1993 the lawyer of one of the parties requested the court to be served with copies of certain documents submitted by the applicant in a single copy. The applicant submitted copies of the required documents on 20 October 1993.

30. At a hearing held on 25 November 1993, the court heard the expert accountant and, having regard to objections made by one of the parties, requested her to supplement her report. The expert did so on 6 January 1994.

31. On 1 March and 15 March 1994 the hearings were adjourned as on the first date one of the parties - not the applicant - and on the second date his representative were absent.

32. On 10 May 1994 the court, at the request of B.W., one of the parties to the proceedings, admitted in evidence the expert opinion of a construction specialist. This opinion was submitted to the court on 2 August 1994. On 25 October 1994 the court questioned this expert.

33. On 17 November 1994 the Warsaw District Court pronounced a judgment dissolving the company and assigning its property to the applicant. M.K., one of the parties, filed an appeal. On 28 November 1995 the case-file was transmitted to the Warsaw Regional Court.

34. On 18 September 1995 the Warsaw Regional Court considered the appeal, set the first-instance judgment aside, finding that serious errors as to the substantive law had been committed, divided the case into two separate cases. The first concerned the settlement of claims between the company's shareholders and the liquidation of the company, and the second related to the division of the company's property. It ordered both cases to be reconsidered by the Warsaw District Court.

35. The first case was subsequently assigned to another judge rapporteur. On 24 January 1996 a hearing before the District Court was adjourned due to the judge's ill health.

36. On 28 February 1996 another hearing was held, during which the court examined the applicant's request for legal aid. Subsequently the judge rapporteur was changed.

37. On 10 June 1996 a hearing was again cancelled as the judge was ill. On 26 August 1996 the case was re-assigned to another judge rapporteur.

38. On 26 September 1996 a hearing took place and a new expert was appointed in order to evaluate the property. He submitted his report to the court before 17 June 1997.

39. The hearing fixed for 17 June 1997 was adjourned as that expert failed to attend it. On 9 October 1997 the court rejected the applicant's request to have a new expert appointed to the case. At a hearing on 29 October 1997, the expert was questioned and the court requested him to supplement his opinion. Subsequently, a hearing set for 4 March 1998 was adjourned as one of the parties - not the applicant - and his lawyer failed to comply with the summonses.

40. At the hearing on 13 May 1998 the court questioned the expert witness and requested the parties to submit their claims and evidence to the court.

41. At the hearing on 8 July 1998 witnesses called by one of the parties other than the applicant failed to attend. On 14 October 1998 the court heard evidence from witnesses called by the applicant. The hearing listed for 13 January 1999 was adjourned as both the applicant and the presiding judge were ill. On 3 March 1999 a hearing was likewise adjourned because the lawyer of another party was ill. A hearing set for 14 April 1999 was again adjourned as one of the other parties was ill. On 14 June 1999 the court heard evidence from the witnesses called by the applicant. The next hearing was listed for 20 October 1999 but was adjourned due to the judge's ill-health. Subsequently, the judge rapporteur was changed. The next hearing was scheduled for 28 January 2000.

42. As regards the case concerning the division of the company's assets, the first hearing in these proceedings was to be held on 16 January 1998. The hearing was adjourned since one of the parties - not the applicant - and his lawyer failed to attend. A hearing fixed for 22 April 1998 was adjourned for the same reason. At a hearing held on 26 June 1998, an expert was appointed to prepare an expert opinion. A hearing which was to take place on 17 June 1999 was adjourned because the expert failed to comply with the summons, and the date of the next hearing was set for 16 September 1999. This hearing was postponed as the court expert had not been properly summoned. The court heard evidence from this expert at the next hearing on 9 November 1999.

43. Both sets of proceedings are still pending before the court of first instance.

AS TO THE LAW

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

44. The applicant complained of the length of civil proceedings to which he was a party. He alleged a violation of 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. “

45. The Government contested this submission.

A. Period to be taken into consideration

46. The Court recalls that Poland recognised the competence of the Convention institutions to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". According to Article 6 of Protocol No. 11 to the Convention, this limitation shall remain valid for the jurisdiction of the Court under that Protocol. It follows that the Court is not competent to examine complaints relating to violations of the Convention by acts, decisions or events that have occurred prior to 1 May 1993. However, in cases where it can, by reason of its competence *ratione temporis*, only examine part of the proceedings, it may take into account, in order to assess their length, the stage reached in the proceedings at the beginning of the period under consideration (see, among other authorities,

the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31; *Humen v. Poland*, no. 26614/95, to be published in the Court's official *Reports* 1999, § 59).

47. The Court notes in this respect that as early as 1989 the Minister of Justice, in reply to the applicant's complaint, acknowledged that the proceedings had exceeded a reasonable time and ordered that the conduct of the case be henceforth supervised by the Ministry.

48. The Court further notes that an appellate court, by a judgment given on 18 September 1995, divided the case into two sets of proceedings, the first concerning the settlement of claims between the former shareholders of the company, the second relating to the division of the company's assets, and that it ordered both cases to be reconsidered. The two cases are still pending before the court of first instance.

49. Accordingly, the period under consideration is seven years and four months.

B. Reasonableness of the length of proceedings

50. According to the Court's case-law, 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 by the Court, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the *Pélissier and Sassi v. France* judgment of 25 March 1999, to be published in the Court's official *Reports* 1999, § 67, and the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

1. Complexity of the case

51. The Government submitted that the case should be regarded as complex both on the facts and in law. They emphasised that there were three parties to the case who changed their position in the course of the proceedings, which added to the complexity of the issues to be determined.

52. The applicant submitted that the case was not complex since there were but three parties to it and since only two lay witnesses were heard by the courts. He stressed that the property concerned consisted merely of a car repair garage, which had fallen in ruin precisely as a result of the length of the proceedings. The applicant stated that no convincing arguments had been advanced by the Government to show that there had been a causal link between the alleged complexity of the case and the length of the proceedings.

53. The Court first notes that the property concerned was a car repair garage run by a company owned by three shareholders. The mere fact that all of them are parties to the proceedings does not, in the Court's view, suffice for a finding that the proceedings were complex. The Court further

notes the applicant's submission that the courts heard only two witnesses. It acknowledges that the courts also appointed a number of experts in order to assess the value of the disputed property. However, having regard to the character and, in particular, the relatively modest size of that property, the Court does not consider that the nature of the factual or legal issues to be examined by the courts warrants the opinion that the case was of such complexity as to justify the length of the proceedings.

2. Conduct of the applicant

54. The Government contended that the applicant and other parties contributed to the length of the proceedings. They refer in particular to the fact that the applicant on numerous occasions complained to various authorities about the length of the proceedings.

55. The applicant argued that he did not contribute to the length of the proceedings in any way. In particular, the fact that on one occasion he submitted certain documents to the court in a single copy and the court had to request that a double copy be submitted in order to have it served on the other parties did not prolong the proceedings, as the court could and indeed did proceed while waiting for these documents to be served on the parties.

56. The Court considers that the applicant bears no responsibility for the length of the proceedings.

3. Conduct of the judicial authorities

57. The Government contended that there had been no periods of inactivity on the part of the courts that would exceed the limits fixed by the applicable legal provisions on civil procedure. They submitted that whenever judge rapporteurs had to be changed, this was done. They further stated that the case had been placed under the supervision of the President of the court to have the progress of the proceedings monitored. The evidence gathered in the case showed that the courts had sought to examine the case thoroughly, having regard to the positions of all parties.

58. The Government concluded that the overall length of the proceedings was reasonable and that there were no major irregularities attributable to the authorities.

59. The applicant stressed that there were long delays in the proceedings caused by the experts. He emphasised that the courts had failed to take any measures to discipline the experts who had been slow or negligent in the preparation of their reports, and concluded that the responsibility for the ensuing delays rested ultimately with the State. The applicant relied in this respect on the *Capuano v. Italy* judgment of 25 June 1987 (Series A no. 119, p. 14, § 32).

60. He further submitted that there had been long intervals between the hearings, *inter alia* between 5 March 1993 and 25 November 1993, between

25 November 1993 and 1 March 1994, between 10 May 1994 and 20 October 1994 and, in particular, between 26 August 1996 and 13 October 1997.

61. The applicant concluded that the proceedings had already lasted over twelve years which, even within the limited scope of the temporal competence of the Convention institutions to examine individual petitions against Poland, could not be considered as being in compliance with the requirements of Article 6 § 1 of the Convention.

62. The Court first observes that the judge rapporteur in this case was changed ten times, four of these changes occurring after 30 April 1993.

63. The Court also notes that, following the judgment of the Warsaw Regional Court of 18 September 1995, the case was divided into two sets of proceedings. In the first set of proceedings, concerning the settlement of claims between the company's shareholders and the liquidation of the company, there subsequently was a delay of four months until 24 January 1996, when a first hearing was to be held before the court of first instance. However, this hearing, as well as that scheduled for 10 June 1996, were adjourned due to the judge's ill health. The first hearing on the merits after the appellate court had quashed the first-instance judgment was therefore held on 26 September 1996, i.e. after one year. Subsequently there was a period of inactivity of nine months during which the expert was preparing the report. The hearing scheduled for 17 June 1997 was adjourned due to the expert's failure to attend it, and four months and twelve days of inactivity followed until a next hearing was held on 29 October 1997.

64. The Court further notes in 1998 only one hearing effectively took place. Likewise, in 1999 only one hearing was held before the Warsaw District Court.

65. The Court further observes that in the proceedings concerning the settlement of the shareholders' claims, on 26 September 1996, the Warsaw District Court appointed an expert to prepare a report on the value of the property. The expert submitted his report to the court on an unspecified date before 17 June 1997, but failed to attend the hearing scheduled for that date. He was eventually heard on 29 October 1997 and on 13 May 1998. Consequently, the District Court had at its disposal the full testimony of this expert witness only after one year, seven months and seventeen days. The Court further notes that the District Court did not avail itself of the measures available to it under national law to discipline the expert. In this respect it recalls that the primary responsibility for delays resulting from the slowness of experts ultimately rests with the State (see, *mutatis mutandis*, the Capuano above-mentioned judgment, p. 14, § 32).

66. The Court further observes that in the proceedings concerning the division of the company's assets, there was a period of inactivity of two years, three months and twenty-eight days following the judgment of the Warsaw Regional Court of 18 September 1995, during which the District

Court held no hearings and took no other steps relevant for disposing of the case. The first hearing in this set of proceedings was scheduled for 16 January 1998. The Court considers that no persuasive explanation of that delay was offered.

67. The Court further notes that the hearing listed for 16 September 1999 was adjourned as the expert to be questioned on that date had not been properly summoned by the District Court.

68. The Court finally notes that both sets of the proceedings, originating from the civil claim brought by the applicant to the Warsaw District Court on 21 September 1997, are still pending before the court of first instance.

69. Having regard to all the evidence before it, the Court considers that the “reasonable time” within which Article 6 § 1 requires a case to be heard was exceeded. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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. Damages

71. The applicant claimed PLN 417,480,000 as a compensation for the financial loss which he suffered as a result of the length of the proceedings. He submitted that the operation of the car repair garage ceased in 1983. As a result, he lost his livelihood. Had the case been dealt with within a reasonable time, he could still use the garage and make profits.

72. The applicant further claimed PLN 100,000,000 as compensation for non-pecuniary damage sustained on account of the length of the proceedings and of the stress caused by it, as a result of which his health had severely deteriorated.

73. The Government submitted that the applicant’s claims were grossly excessive and that the damage sustained by the applicant, if any, should be assessed in the light of the relevant case-law of the Court in its cases against Poland.

74. The Court observes that the applicant’s claim for pecuniary damage is based on lost business opportunities, which are speculative in nature. The Court therefore dismisses that claim.

75. The Court is of the opinion, however, that the applicant can reasonably be considered to have suffered non-pecuniary damage on

account of the length of the proceedings. Accordingly, it considers that, in the circumstances of this case, and deciding on an equitable basis, the applicant should be awarded PLN 25,000.

B. Costs and expenses

76. The applicant also claimed a sum of PLN 2,562 by way of reimbursement of a sum which he had paid to an expert for an assessment of the value of his lost business opportunities. He produced a bill attesting this expenditure. The applicant also submitted that he had incurred further costs but that he could not substantiate them.

77. The Government did not make any submissions regarding this claim.

78. In relation to the claim for costs which was duly documented, the Court awards the applicant PLN 2,562, together with any value-added tax that may be chargeable.

C. Default interest

79. 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 21 %.

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, the following amounts:
 - (i) 25,000 (twenty five thousand) Polish zlotys for non-pecuniary damage;
 - (ii) 2,562 (two thousand five hundred sixty two) Polish zlotys for costs and expenses;
 - (b) that simple interest at an annual rate of 21 % shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President