



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

FOURTH SECTION

CASE OF PARCIŃSKI v. POLAND

(Application no. 36250/97)

JUDGMENT

STRASBOURG

18 December 2001

FINAL

18/03/2002

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 Parciński v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 36250/97) 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 a Polish national, Roman Parciński ("the applicant"), on 12 January 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki, the Ministry of Foreign Affairs.

3. The applicant alleged that the civil proceedings in his case were not concluded within a reasonable time in breach of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 8 March 2001 the Chamber declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

8. The applicant was born in 1951 and lives in Ryn, Poland.

9. On 27 November 1990 the applicant lodged with the Giżycko District Court (*Sąd Rejonowy*) an action in which he sought from a certain company T compensation in the amount of 5,000,000 old zlotys (PLZ). The amount claimed represented the value of a TV set which the applicant had bought from the defendant and which broke down.

10. On 5 December 1990 the case was transmitted to the Pruszków District Court. On 3 January 1991 the applicant increased the amount of the claimed compensation to PLZ 10,000,000.

11. On 13 February, 12 July and 7 November 1991 hearings were held before the Pruszków District Court.

12. On 12 November 1991 the District Court allowed the applicant's request for interim measures and issued a seizure warrant in respect of a part of property belonging to the T company.

13. On 17 January 1992 the applicant replied to the court's request of 15 January 1992 and confirmed that he sought compensation from the T company. In a letter of 17 January 1992 the Pruszków District Court advised the applicant that the T company had no legal capacity to be sued. The court further pointed out that the company's sole owner lived in Stuttgart, Germany and that it did not have a plenipotentiary authorised to act on its behalf. The court also informed the applicant that the application for an appointment of a receiver for the company was being considered by the Economic Section of the Pruszków District Court.

14. On 29 January 1992 the District Court asked the applicant to confirm whether he still wished to pursue his action against the T company and whether he insisted that Mr Z.S., who was a director of that company, should be considered as a second defendant in the case. On 5 February 1992 the applicant replied that in view of the fact that the branch of the T company situated in Nadarzyn had been liquidated, his action was directed against the company's branch located in Płońsk. He also insisted that Mr Z.S. was a second defendant in the case and increased his claim to PLZ 15,000,000.

15. On 21 February 1992 the applicant asked the District Court why no hearing had been fixed in his case since 7 November 1991. On 2 March 1992 the President of the Pruszków District Court informed the applicant that the delivery of a judgment in the case had been scheduled for 13 November 1991 but had been adjourned in view of the fact that he had requested interim measures and increased his claim. The President also observed that after the applicant had stated that his action had been directed against the branch of the T company situated in Płońsk, the court had advised him that the T company had no legal capacity to be sued and that he should have directed his action against the owner of the company. The

President informed the applicant that he should therefore submit to the court a statement explaining against whom his action was directed and that if he had persisted in claiming compensation from the T company instead of its owner, his action would be rejected on procedural grounds.

16. On 11 March 1992 the applicant identified Mr Z.C., the owner of the T company, as a defendant in his case.

17. On 23 March 1992 the District Court instructed the applicant to inform it whether Mr Z.C. spoke Polish, to submit copies of his statement of claim and of a pleading confirming that Mr Z.S. was the second defendant in the case.

18. On 7 May 1992 the Pruszków District Court requested the Stuttgart District Court (*Amtsgericht*) to serve a summons on Mr Z.C.

19. On 1 June and 9 July 1992 the Pruszków District Court issued decisions concerning the applicant's request that the fees charged by the bailiff who had enforced the court's warrant of 12 November 1991 be reduced.

20. On 3 September 1992 the Stuttgart District Court informed the Pruszków District Court that it had been unable to serve a summons on Mr Z.C.

21. The next hearing took place on 7 October 1992. On that occasion the applicant withdrew his claim against Mr Z.S. The hearing was adjourned as the statement of claim had not been served on Mr Z.C.

22. On 13 February 1993 the applicant submitted to the District Court a statement concerning his financial standing requested by the court on 10 February 1993. On 11 October 1993 a hearing was held.

23. The Government submit that on 9 May 1994 the receiver of the T company informed the Pruszków District Court that the proceedings concerning the compensation claim should be stayed because "the dispute concerns an object which is a part of the estate in bankruptcy".

24. In a letter of 10 November 1994 the applicant informed the District Court that he would be unable to attend the hearing scheduled for 24 November 1994 and asked the court to proceed with the examination of the case in his absence.

25. The next hearing took place on 24 November 1994. The Government submit that on that occasion the applicant failed to appear before the court despite the fact that he had received a summons.

26. During the hearing held on 19 June 1995, the Pruszków District Court stayed the proceedings. The Government aver that the decision to stay the proceedings resulted from the applicant's absence at the hearing and was based on Article 177 § 1 (5) of the Code of Civil Procedure, which allowed to stay the proceedings when the plaintiff failed to attend a hearing and did not ask the court to proceed with the examination of the case in his absence.

27. On 22 June 1995 the applicant asked the District Court to resume the proceedings in his case and to decide it in spite of his absence at hearings. In

a letter of 27 February 1996 the President of the Pruszków District Court informed the applicant that his request to resume the proceedings had been received by the court on 10 July 1995. The President also advised him that on 1 February 1996 his case had been taken over by a new judge rapporteur.

28. In a letter of 15 May 1997 addressed to the Pruszków District Court the applicant's wife confirmed the receipt of a summons directing her husband to attend the hearing to be held on 4 June 1997. She advised the court that the applicant would not be able to appear before it since he was in the United States.

29. On 4 June 1997 a hearing took place. The Government submit that on that occasion the court decided not to resume the proceedings because of the applicant's absence.

30. On 26 January 1998 the Pruszków District Court sent to the applicant a telegram informing him that the hearing scheduled for 28 January 1998 had been cancelled due to the illness of the judge rapporteur.

31. On 7 August 1998 a hearing took place. The Government submit that on that occasion the court decided not to resume the proceedings because of the applicant's absence.

32. On 24 August 1998 the District Court was informed by the receiver for the T company that the bankruptcy proceedings concerning that company were still pending.

33. On 26 March 1999 the Pruszków District Court decided to discontinue the proceedings. The court based its decision on the fact that no request to resume the proceedings had been submitted to it during the period of three years following its decision to stay the proceedings in the case.

34. On 26 April 1999 the applicant lodged a complaint against the decision of 26 March 1999. He pointed out that in the letter of 27 February 1996 the President of the Pruszków District Court had confirmed the receipt on 10 July 1995 of the applicant's request to resume the proceedings. Moreover, the applicant recalled that the District Court had sent to him a summons and a telegram concerning hearings to be held on 4 June 1997 and 28 January 1998.

35. On 12 August 1999 the Pruszków District Court allowed the complaint and quashed the decision of 26 March 1999.

36. On 5 January 2000 the T company was struck off the company register.

37. On 19 January 2000 the Pruszków District Court issued a decision in a case of "Roman Parciński v. Z (...) C (...) running a foreign company T (...)". The court decided "(1) to resume the proceedings, and (2) to stay the proceedings on the basis of Article 174 § 1 (4) of the Code of Civil Procedure". This provision allowed to stay the proceedings if bankruptcy proceedings were initiated in respect of one of the parties and the subject of the proceedings was a part of the estate in bankruptcy.

38. On 10 March 2000 the Pruszków District Court issued a decision in a case of “Roman Parciński v. the foreign company T (...) in Płońsk”. The court decided to resume the proceedings.

39. The next hearing was set for 27 April 2001. The applicant advised the court that he would not be able to attend it. He also asked the court to decide the case in his absence.

40. On 11 May 2001 the District Court dismissed the applicant’s action. On 25 June 2001 the applicant asked the District Court to serve him with a reasoned decision.

41. The proceedings are still pending.

THE LAW

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

42. The applicant asserted 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...”

43. The Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

44. The Court notes that the period to be taken into consideration began not on 27 November 1990, when the applicant initiated the proceedings, but on 1 May 1993, when Poland’s declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect.

45. The Court further notes the Government’s submission that the period between 1 February 1993 and 14 December 1999 – when the bankruptcy proceedings against the T company, in which the applicant was awarded PLN 66.50, were pending before the Ciechanów District Court – should not be taken into consideration. They relied on the fact that under Article 174 § 1 (4) of the Code of Civil Procedure the impugned proceedings “had to be stayed” until the end of the bankruptcy proceedings. At the same time, the Government appeared to admit that until 19 January 2000 the Pruszków District Court ignored that provision and stayed the proceedings for a different reason (see paragraphs 26 and 37 above).

46. In those circumstances, the Court considers that the Government's submission must be rejected. It follows that the proceedings, which are still pending, have lasted so far eleven years, out of which eight years and seven months are taken into consideration by the Court (see paragraphs 9 and 41 above).

47. 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, *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 59).

B. Reasonableness of the length of the proceedings

48. The applicant contended that the length of civil proceedings in his case was in breach of Article 6 § 1; the Government, on the other hand, disputed this view.

49. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case and the parties' conduct. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment so that the Court does not consider it necessary to consider these questions in detail (see, among other authorities, the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the *Ferraro v. Italy* judgment of 19 February 1991, Series A no. 197, pp. 9-10, § 17).

50. The Court considers that the case was not complex as it concerned a claim for compensation for a broken TV set. Moreover, the Court notes that eleven years after the applicant started litigation the case is still pending. It follows that, having regard to the state of the case on 1 May 1993, the Court cannot regard as "reasonable" in the instant case a lapse of time of eight years and seven months.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant asked the Court to award him PLN 20,000 for “financial and moral losses” resulting from the unreasonable length of the proceedings.

53. The Government submitted that the applicant’s claim was excessive.

54. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant PLN 5,500 under the head of non-pecuniary damage.

B. Default interest

55. 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 30% 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 according to Article 44 § 2 of the Convention, PLN 5,500 (five thousand five hundred Polish zlotys) in respect of non-pecuniary damage, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 30% 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 18 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Nicolas BRATZA
President