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

FOURTH SECTION

CASE OF GOC v. POLAND

(Application no. 48001/99)

JUDGMENT

STRASBOURG

16 April 2002

FINAL

16/07/2002

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 Goc 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 23 October 2001 and on 26 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 48001/99) 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, Stanisław Goc ("the applicant"), on 6 July 1998. The applicant having died on 2 December 2000, the Court accepted that his son, T.G., was entitled to pursue the application.

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

3. The applicant alleged, in particular, that his right to a "hearing within a reasonable time" had not been respected.

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 23 October 2001 the Chamber of the Fourth Section 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 1904 and lived in Warsaw. He was the co-owner of a plot of land and a house in Warsaw.

9. On 23 September 1980 G.G., one of the co-owners ("the petitioner") filed with the Warsaw-Praga District Court (*Sąd Rejonowy*) an application for division of the property.

10. On 2 August 1984 the District Court gave a decision and divided the property. On 21 January 1985, on the applicant's appeal, the Warsaw Regional Court (*Sąd Wojewódzki*) quashed the decision and remitted the case to the District Court.

11. On 24 September 1986, at the request of the petitioner, the District Court issued an interim order enjoining third parties from entering the attic of the house. On 27 May 1988 the court issued another interim order enjoining the applicant and his wife from carrying out any work to the house. On 24 November 1989 the court rejected another request of the petitioner for an interim order.

12. Having obtained a number of expert reports, the District Court gave a preliminary decision (*postanowienie wstępne*) on 22 December 1989. It determined that the house in question consisted of two apartments, basements and an attic. On 9 July 1990, on the applicant's appeal, the Regional Court quashed this decision.

13. On 24 December 1990 the applicant filed with the District Court an application for permission to carry out works on the gas supply to his apartment. On 8 March 1991 the court decided to join his application to the merits of the proceedings concerning the division of the property. On 7 June 1991 the Warsaw Regional Court rejected the applicant's appeal against the decision of 8 March 1991 as inadmissible in law.

14. On 4 March 1992 the District Court rejected the applicant's request for an interim order authorising works to be carried out on the attic of the house. On 10 June 1992 the Regional Court upheld this decision.

15. It appears that on an unspecified date in 1993 the District Court decided to carry out an inspection of the property. In April 1993 the parties paid an advance fee towards the costs of the inspection, as ordered by the court. By a letter of 8 April 1994 the applicant's lawyer informed the court that although the date of the inspection had been fixed on two occasions (for 14 October 1993 and 24 March 1994), it had not taken place since the representatives of the court had not turned up at the site. On 29 April 1994 the court rejected the applicant's request to inspect the property. On 27 May 1994 the applicant's appeal against this decision was dismissed by the District Court as being inadmissible in law.

16. On 29 April 1994 the District Court ordered that expert evidence be obtained from the Institute of Construction Technology (*Instytut Techniki Budowlanej*). As from 2 February 1995 the case file was with the Regional

Court, following the applicant's appeal against an unspecified decision (procedural order) of the District Court. On 20 March 1995 the Regional Court upheld the decision. On 27 April 1995 the case file was returned to the District Court.

17. On 4 May 1995 the District Court requested the Director of the Institute of Construction Technology to appoint an expert to take charge of the preparation of the report ordered by the court. On 8 June 1995 the case file was sent to the Institute of Construction Technology in order to have the report prepared within a two-month period. On 16 August 1995 the District Court requested the Institute to expedite the preparation of the report. On 22 November 1995 the court received the expert report and served copies on the parties.

18. In December 1995 the applicant submitted to the District Court his observations on the expert report. On 22 December 1995 and 20 February 1996 B.G., one of the co-owners, submitted her observations on the expert report. On 15 March 1996 the applicant submitted his pleadings to the court.

19. On 20 March 1996 the applicant again filed with the District Court an application for permission to carry out works on the gas supply to his apartment.

20. On 9 April 1996 the District Court held a hearing. On 20 April 1996 G.G. and B.G. (the co-owners) submitted their pleadings to the court. On 29 October 1996 the District Court held a hearing.

21. On 21 November 1996 the applicant requested that B.G. and G.G. be ordered to inform the court about their position on his request of 20 March 1996 for permission to carry out works on the gas supply to his apartment.

22. On 3 February 1997 B.G. and G.G. requested the District Court to adjourn the proceedings on account of B.G.'s poor state of health. They also informed the court that they objected to any works being carried out to the house by the applicant.

23. On 4 February 1997 the District Court stayed the proceedings because it could not establish the address of D.B., one of the parties to the proceedings. The proceedings were resumed on 6 October 1997.

24. On 16 December 1997 the District Court again stayed the proceedings because B.G. had died on 3 October 1997.

25. On 16 September 1999 the applicant submitted to the District Court information about B.G.'s sole heir and requested that the proceedings be resumed. On 17 November 1999 the court rejected the applicant's request. On 8 February 2000 the Regional Court upheld that decision.

26. On 10 March 2000 the applicant's lawyer requested the District Court to appoint a guardian to act on behalf of the estate of the late B.G. On 30 August 2000 the court appointed G.G., the petitioner, as guardian of the estate.

27. On 2 December 2000 the applicant died at the age of ninety-six. On an unknown date in 2001 the Warsaw-Praga District Court ruled that the

applicant's sons, T.G. and E.G., were the heirs to his estate. Consequently, T.G. and E.G. took the place of the applicant in the proceedings. Later, the lawyer of T.G. requested the court to resume the proceedings. On 23 October 2001 T.G's lawyer requested the President of the Civil Division of the District Court to expedite the proceedings.

28. It appears that the proceedings are still stayed and, therefore, remain pending before the Warsaw-Praga District Court.

THE LAW

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

29. The applicant complained that the length of the proceedings in his case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

30. The Government contested this view.

A. Period to be taken into consideration

31. The Court first observes that the proceedings started on 23 September 1980, when G.G., one of the co-owners, filed with the Warsaw-Praga District Court an application for division of the property. However, the period to be taken into consideration began not on that date, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. These proceedings are still pending before the Warsaw-Praga District Court. Thus, they have already lasted twenty-one years, six months and three days, of which the period of eight years, ten months and twenty six days falls within the Court's jurisdiction *ratione temporis*.

32. The Court notes that in order to assess the reasonableness of the length of time in question, regard must be had to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Reasonableness of the length of the proceedings

33. The Court recalls that 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 of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, 6 April 2000, to be published in the Court's official reports).

1. Complexity of the case

34. The Government contended that the case was complex as it necessitated the taking of expert evidence in order to determine how the property should be divided up. In the course of the proceedings the court obtained fourteen expert reports. The Government further submitted that the proceedings were rendered even more complex on account of the fact that B.G., one of the parties, died on 3 October 1997.

35. The applicant disagreed with the Government and argued that the case was not complex.

36. The Court notes that of the fourteen expert reports obtained in the proceedings, there was only one report, namely the report of 22 November 1995, which had been ordered by the District Court after 1 May 1993. It can be reasonably inferred, therefore, that the District Court did not consider that the case involved any additional complex legal issues after it had obtained and studied the expert report of 22 November 1995. The Court further observes that the nature of the factual or legal issues examined by the courts in the present case, a dispute over division of rights to a house, does not support the conclusion that the overall length of the proceedings can be explained in terms of its complexity alone.

2. Conduct of the applicant

37. The Government maintained that the applicant had contributed to the prolongation of the proceedings by his attitude and deep sense of resentment towards the other co-owners of the house, which prevented any agreement being reached between the parties. They further contended that the applicant repeatedly objected to most of the proposals for agreement, decisions and interim orders made in the course of the proceedings. Lastly, they submitted that the applicant and the other co-owners could not agree to any of the proposals for the division of the property made by the experts.

38. The applicant argued that he had not contributed to the length of the proceedings. He submitted that significant delays in the proceedings had been caused by the two other co-owners (G.G. and B.G.) who prolonged the proceedings by obstructing procedural orders and summonses.

39. The Court considers that even if certain delays in the proceedings could be attributable to the conduct of the applicant, these delays resulted from the justified exercise of his procedural rights rather than from any desire on his part to thwart the speedy determination of the dispute. In any event, the Court is not convinced that these delays were such as to explain the overall duration of the proceedings.

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

40. The Government contended that the authorities had shown due diligence in the course of the proceedings. They submitted that between 1 May 1993 and 4 February 1997 (the date of the first stay of the proceedings) the Warsaw-Praga District Court had taken numerous measures aimed at a prompt resolution of the dispute. In this connection, the Government referred to the District Court's decision to take expert evidence and submitted that the District Court had attempted to obtain this evidence as quickly as possible. The efforts of the District Court were impeded, according to the Government, because of the applicant's appeal of 2 February 1995 against an unspecified procedural decision of the first-instance court and the subsequent transfer of the case file to the Warsaw Regional Court. After the return of the case file on 27 April 1995, the District Court sent it to the Institute of Construction Technology with a view to the preparation of an expert report. Further, on 16 August 1995 the District Court requested the experts from the said Institute to expedite the preparation of their report.

41. The Government further submitted that at two hearings held in 1996 the District Court had unsuccessfully attempted to persuade the parties to reach a settlement.

42. They further underlined that after the proceedings had been stayed on 16 December 1997, the District Court could not resume the proceedings of its own motion since it had received no information about the heirs of B.G. or the appointment of a guardian of his estate, which, under the Code of Civil Procedure, were necessary conditions for the proceedings to be resumed.

43. Lastly, and as to what was at stake for the applicant, the Government argued that only issue in the proceedings was the manner of use of the property and that the outcome of the proceedings had not been of crucial importance to him. Thus, special diligence was not required of the authorities in the present case.

44. The applicant maintained that after 1 May 1993 the Warsaw-Praga District Court conducted the proceedings in a very dilatory manner. The applicant referred in particular to the delay of almost one year which resulted from the incoherent approach of the District Court to the implementation of its decisions to inspect the property. The applicant

submitted that the District Court decided to carry out an inspection and ordered the parties to pay an advance fee to that end. However, on the two dates fixed by the District Court, namely 14 October 1993 and 24 March 1994, no inspection of the site took place. On 29 April 1994 the District Court eventually decided against an inspection of the property.

45. The applicant contended that the slow progress in the preparation of the expert report by the Institute of Construction Technology caused further delay in the proceedings. In this connection, the applicant submitted that the District Court had had at its disposal effective means to accelerate the preparation of the expert report by imposing a fine on the experts for unjustified delay in the preparation of their report (in accordance with section 287 of the Code of Civil Procedure), but the District Court had not availed itself of that possibility.

46. The applicant further submitted that after one year had elapsed from the date on which the proceedings had been stayed (16 December 1997), and with no action having been taken by the family of the deceased, the court of its own motion could have appointed a guardian for the estate of the late B.G. in order to resume the proceedings. However, the applicant's request to resume the proceedings was rejected on 8 February 2000.

47. With regard to what was at stake for him in the proceedings, the applicant submitted that the excessive length of the proceedings had caused him significant inconvenience, given his advanced age and the difficult conditions in which he was compelled to live in the house.

48. The applicant concluded that there has been a violation of Article 6 § 1 of the Convention.

49. The Court reiterates that the proceedings complained of began on 23 September 1980 in the Warsaw-Praga District Court and they are still pending before that court. There has been, as yet, no final decision on the merits.

50. The Court notes that on an unspecified date in 1993 the District Court decided to inspect the property and that an advance payment for that purpose was made by the parties in April 1993. The District Court fixed two dates for the inspection, namely 14 October 1993 and 24 March 1994. However, no inspection took place on either of these dates. Later, on 29 April 1994, the District Court cancelled its decision to inspect the property. The Court observes that a period of inactivity of about one year occurred in the proceedings as a result of the decisions of the District Court with regard to the inspection of the property.

51. The Court further observes that on 29 April 1994 the District Court ordered that an expert report be prepared by the Institute of Construction Technology. The preparation of the report took over eighteen months. Even if, as the Government maintained, the period of about two months relating to the transfer of the case file to the Regional Court following the applicant's appeal could be considered attributable to the applicant's

conduct, the Court finds that no persuasive explanation of the significant remaining delay has been offered by the Government. In this respect, the Court recalls that the primary responsibility for delays resulting from the slowness of experts ultimately rests with the State (see, *inter alia*, the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 14, § 32).

52. The Court notes that after 1 May 1993 the District Court held only three hearings in the case, namely on 9 April 1996, 29 October 1996 and 4 February 1997, when the proceedings were stayed for the first time. Moreover, it observes that there was a delay of over five months, between 10 March 2000 and 30 August 2000 in deciding on the applicant's request to appoint a guardian for the estate of the late B.G. The Court also observes that no tangible progress has been achieved in the proceedings since 30 August 2000, despite the fact that, after the appointment of the guardian for the estate of B.G., the proceedings could have been resumed by the District Court in accordance with the relevant rules of the Code of Civil Procedure.

53. As to what was at stake for the applicant in the proceedings complained of, the Court notes that throughout the litigation he was forced to live in austere conditions. Having regard to this consideration and also taking into account the applicant's advanced age, the Court considers that it was in his interest that the final decision in the case be given within a reasonable time.

54. Having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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. Pecuniary damage

56. The applicant's son, T.G., claimed PLN 50,000 (EUR 13,922.53) in compensation for loss of value of the co-owned house which resulted directly from the interim orders issued in the course of the proceedings and the excessive length of those proceedings. The applicant's son submitted in this connection that the interim order of 27 May 1988, whereby the District

Court prevented the applicant from carrying out any work to the house and which has remained in force ever since, has resulted in the house and its various installations becoming seriously rundown.

57. The Government did not address the applicant's claim.

58. The Court first recalls that in the decision as to the admissibility of the present application, it recognised the *locus standi* of T.G., the applicant's son, to pursue the application after the applicant's death on 2 December 2000. The Court considers that, as the person entitled to pursue the application after the applicant's death, T.G. may also take the applicant's place as regards claims for just satisfaction under Article 41 of the Convention and Rule 60 of the Rules of Court (see, *Malhous v. the Czech Republic* [GC], 33071/96, § 67, to be published in the Court's official reports).

59. The Court observes that the sums claimed in respect of pecuniary damage relate to the alleged loss in value of the house co-owned by the applicant on account of the unreasonable length of the proceedings at issue. However, the Court notes that the applicant's son has produced no evidence to the effect that there exists any causal link between the pecuniary damage claimed and the violation of Article 6 § 1 of the Convention established by the Court. Consequently, the Court considers that these claims must be dismissed.

B. Non-pecuniary damage

60. T.G. claimed PLN 20,000 (EUR 5,569) in compensation for non-pecuniary damage on account of the distress suffered by his late father as a result of the fact that he was forced to live for many years in a very cold apartment without hot running water and without a gas supply. T.G. further submitted that the lack of these amenities prevented the family from providing proper care for the applicant, who did not wish to move from his apartment. Lastly, T.G. requested the Court to take into account the distress suffered by the applicant on account of the excessive length of the proceedings and resultant lack of possibility to dispose of his property.

61. The Government did not address this claim.

62. The Court notes that the T.G. has claimed compensation for non-pecuniary damage in respect of the violation of Article 6 § 1 of the Convention. Having accepted that he has *locus standi*, it finds that in the circumstances of the present case T.G. may submit a claim under this head. The Court considers that the applicant undeniably suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings – which is not sufficiently compensated by a finding of a violation of the Convention. Taking into account the circumstances of the case, and making an assessment on an equitable basis, the Court awards T.G. the entire amount sought, namely EUR 5,569.

C. Costs and expenses

63. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

D. Default interest

64. 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's son, T.G., within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,569 (five thousand five hundred and sixty-nine euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, together with any tax that may be chargeable on the above amount;
   (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 claim for just satisfaction lodged by the applicant's son.

Done in English, and notified in writing on 16 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President