



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

FOURTH SECTION

CASE OF GRONUŚ v. POLAND

(Application no. 29695/96)

JUDGMENT

STRASBOURG

28 May 2002

FINAL

28/08/2002

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 Gronuś 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 28 May 2002,

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

PROCEDURE

1. The case originated in an application (no. 29695/96) 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 Adam Gronuś (“the applicant”), on 25 August 1995.

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

3. The applicant alleged, in particular, that the civil proceedings in which he was involved, exceeded a reasonable time.

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) and 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.

5. By a decision of 20 November 2001, the Court declared the application partly admissible.

6. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 15 October 1993 a chimney of a heating plant located in P. and belonging to the State Agency of Agricultural Property, adjacent to the applicant's horticultural farm, partly collapsed, causing damage in the farm. Apparently the applicant requested the Agency to pay compensation for damage which he had sustained. As his efforts to obtain compensation for damage failed, on 17 May 1994 he lodged an action against R.B., the administrator of the State-owned farm in P., with the Słupsk District Court, claiming compensation for the damaged vegetables and equipment. The applicant acted on behalf of "A. E." limited liability company of which he was the sole shareholder.

8. On 8 June 1994 the Słupsk District Court decided that it lacked jurisdiction to examine the case and ordered that the case be examined by the Słupsk Regional Court. On 26 August 1994 the Słupsk Regional Court decided that the decision of 8 June 1994 was premature in that the District Court had failed to establish whether the defendant had been correctly identified by the applicant and, also, had failed to identify the amount of the compensation sought by the applicant, which was relevant for the determination of a court competent *ratione materiae* to examine the case. The court transmitted the case to the Commercial Division of the Słupsk District Court.

9. On 12 September 1994 the applicant lodged an appeal, submitting that the courts had limited themselves to transferring the case-file from one to another, and that there was no hope that any decision on the merits of the case would be taken in a reasonable future. On 16 September 1994 the court ordered the applicant to pay the court fee for the appeal. On 21 September 1994 the applicant requested to be granted exemption from the court fees. On 27 September 1994 the Słupsk Regional Court allowed his request.

10. On 3 November 1994 the Gdańsk Court of Appeal allowed the applicant's appeal and quashed the decision of 26 August 1994, finding that it was not in conformity with the law in that the Regional Court should have established itself the facts relevant for the decision which court had jurisdiction *ratione materiae* to consider the case.

11. On 26 January 1995 a hearing was held before the Słupsk Regional Court. The court decided again that it lacked jurisdiction to entertain the case and on 17 February 1995 transmitted the case to the Commercial Division of the Koszalin Regional Court. On 6 March 1995 the judge of that court ordered that the case be examined by the Civil Division of the Regional Court. On 8 March 1995 the case was registered at the Civil Division of the Koszalin Regional Court.

12. Subsequently the applicant waited for an unspecified time for this decision to be served on him. On 3 June 1995 he complained to the President of the Gdańsk Court of Appeal about the lack of progress in the proceedings. In reply, by a letter of 20 June 1995, the Judge-Supervisor in Civil Proceedings of the Koszalin Regional Court acknowledged that the proceedings were slow, in particular as there had been no progress since the case had been transferred to the Civil Division of the Regional Court on 8 March 1995. It had been only on 5 June 1995 that the judge had ordered the applicant to pay the court fees. However, there was no confirmation in the case-file that this order had been properly served on the applicant, which prevented the court from proceeding further.

13. In a reply of 23 June 1995 to the applicant's complaint about the lack of progress in the proceedings, the President of the Koszalin Regional Court informed him that his case was pending before that court. The President further noted that the problems with identifying the court competent to entertain the case had been in part caused by the fact that the applicant had lodged the action against a natural person, whereas his claim originated in fact from acts for which a State entity could be held liable. However, the applicant's complaint was in part justified, as the case-file had been transmitted to the competent court on 17 February 1995 and a period of three months of inexplicable inactivity followed.

14. On 30 June 1995 the applicant complained to the Minister of Justice about the lack of progress in the proceedings. His complaint was subsequently transmitted for reply to the Koszalin Regional Court. On 16 August 1995 the Judge-Supervisor in Civil Proceedings of the Koszalin Regional Court acknowledged that the proceedings had not been conducted speedily. It was further stated that on 7 June 1995 the applicant had been ordered to pay the court fees. On 14 June 1995 he had requested to be granted exemption from the court fees and subsequently the court ordered him to submit information as to his income. As the applicant had failed to do so, on 21 July 1995 the court ordered that the applicant's income be established on the basis of certain documents to be furnished by the relevant Tax Office. On 11 August 1995 the court requested the Oświęcim Tax Office to issue the relevant information. The Tax Office replied on 15 September 1995. Consequently, the court decided to grant the applicant exemption from the court fees.

15. At the hearing of 13 November 1995 the defendant's lawyer raised objections as to the applicant's capacity to represent the A.E. company. Consequently, the court requested the applicant to submit, within the seven-days time-limit, documents to prove that he was authorised to represent the company. On 10 January 1996 the court decided to stay the proceedings since the applicant had failed to comply with that order. On 23 May 1996 the applicant submitted the relevant documents to the court. On 27 May 1996 the court resumed the proceedings.

16. From June 1996 until August 1997 the judge rapporteur was ill. In August 1997 the case was taken over by another judge.

17. At a hearing on 7 October 1997 both parties presented their oral pleadings and expressed their willingness to reach a friendly settlement. The court stayed the proceedings. On 23 October 1997 the applicant requested the court to resume the proceedings since no friendly settlement had been reached.

18. On 16 January 1998 the court resumed the proceedings and partly quashed the applicant's exemption from the court fees. Furthermore, the court dismissed the applicant's request to appoint a lawyer paid under the legal aid scheme. On 28 January 1998 the applicant appealed against this decision. On 27 February 1998 the Gdańsk Court of Appeal apparently ordered that the applicant's legal aid request be re-examined by the Koszalin Regional Court.

19. On 25 June 1998 the Koszalin Regional Court again decided to dismiss the applicant's request to have a lawyer appointed to the case. The applicant appealed and on 2 October 1998 the Gdańsk Court of Appeal decided that the applicant's request be re-examined by the Koszalin Regional Court. On 14 January 1999 the Koszalin Regional Court again decided to dismiss the applicant's request. The applicant appealed and on 14 April 1999 the Gdańsk Court of Appeal dismissed his appeal.

20. A hearing on the merits of the case was held on 13 September 1999. At this hearing the court ordered that further evidence concerning the damage should be submitted by the applicant. On 29 September 1999 the applicant submitted the additional evidence. At the hearing held on 16 November 1999 the court decided to appoint an expert on agriculture in order to estimate the sum of compensation for destroyed plants. On 2 February the expert's opinion was submitted to the court. On 15 March 2000 the court held the hearing in the case and questioned the expert.

21. On 13 April 2000 the Koszalin Regional Court gave a decision awarding the applicant compensation in the amount of 7,506 PLN.

THE LAW

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

22. The applicant complained that the civil proceedings in which he was involved exceeded a reasonable time, in breach of Article 6 § 1 of the Convention, which reads as follows:

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

A. Period to be taken into consideration

23. The proceedings commenced on 17 May 1994, the date on which the applicant lodged his compensation claim with the Słupsk District Court, and ended on 13 April 2000, when the Koszalin Regional Court gave its judgment. They therefore lasted five years and eleven months.

B. The Court's assessment

24. The Government submitted, firstly, that applicant's case had not been of a serious complexity.

25. They argued that what was at stake for the applicant was solely of a pecuniary nature. The proceedings at issue concerned the applicant's claims for compensation. Thus, no special diligence was required in this case, unlike in cases concerning the fundamental interests of a party to civil proceedings.

26. The Government contended that the courts showed due diligence in dealing with the applicant's case. They acknowledged that there were two periods of inactivity in the examination of the applicant's case. The first one lasted from 17 May 1994, when the applicant lodged an action with the Słupsk District Court, until 8 March 1995, when the case was registered in the Civil Division of the Koszalin Regional Court. Throughout that period the Słupsk District Court, the Słupsk Regional Court, the Gdańsk Court of Appeal and the Commercial Division of the Koszalin Regional Court examined their jurisdiction *ratione materiae*. However, the difficulties with establishing which court was to deal with the case were, in part, caused by the applicant who had failed to identify the defendant properly. Thus, this prolongation of the proceedings could not be attributed exclusively to the judicial authorities.

27. The Government further referred to the second period of inactivity, lasting from June 1996 until August 1997. This was caused by illness of the presiding judge. They referred to an explanation given by the President of the Koszalin Regional Court that at the beginning of this period the judge's health problems seemed to have only temporary character, but that finally the judge had to undergo a serious operation and had been hospitalised for a long time. In the opinion of the Government, the Koszalin Regional Court cannot be blamed for the delay caused by the illness of the judge.

28. In the Government's argument, the applicant contributed substantially to the prolongation of the proceedings. He lodged his action against a natural person whereas it should have been directed against the State Agency of Agricultural Property. Thus, the delay of more than six months was caused exclusively by the applicant. They further emphasised that from 16 January 1998 until 12 July 1999 the Koszalin Regional Court and the Gdańsk Court of Appeal had examined exclusively the applicant's

request to appoint for him a lawyer paid under the legal aid scheme. The courts gave altogether six decisions in those proceedings. The conduct of these proceedings, instituted at the applicant's request, prevented the Koszalin Regional Court from a determination of the merits of the case.

29. The applicant disputed the Government's submissions.

30. The Court reiterates 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 and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the *Torri v. Italy* judgment of 1 July 1997, *Reports* 1997-IV, § 24, *Wojnowicz v. Poland*, no. 33082/96, 21 September 2000, § 50).)

31. As to the complexity of the case, the Court notes that the applicant sought compensation for damage caused in his horticultural farm by a partly collapsed chimney of a heating plant belonging to a State entity. The damage was uncontested. The evidence presented by the applicant unequivocally indicated that there was a causal link between that accident and the damage it caused in the farm. The principal issue relevant for the ruling in the case was the amount of compensation to be paid by the defendant. Even the fact that the court had to obtain expert evidence in order to estimate the damage could not in itself render the case complex. The Court concludes that the character of the factual and legal issues to be considered by the court do not warrant the opinion that the case was complex.

32. As regards the conduct of the authorities, the Court observes at the outset that there was a period of inactivity between 17 May 1994, when the applicant lodged his action with the Słupsk District Court, and 8 March 1995, when the case was finally registered by the Civil Division of the Koszalin Regional Court. During this period the Słupsk District Court, the Słupsk Regional Court, the Gdańsk Court of Appeal and the Commercial Division of the Koszalin Regional Court examined their jurisdiction *ratione materiae* and *ratione loci* to entertain the case. It is true that the applicant committed a mistake in that he originally lodged his action against a natural person, the manager of the State-owned farm, and not against State entity. However, in the Court's opinion, the rectification of such a procedural error should not have lasted a whole year. It should also be noted that the conduct of the courts in this respect was criticised by the Judge - Supervisor of Civil Proceedings at the Koszalin Regional Court (see § 13 above).

33. The second period of inactivity lasted from June 1996, when the judge conducting the case fell ill, until October 1997, when the next hearing in the case was held by another judge to whom the case had been assigned. The Court notes that the case was assigned to another judge only after a period of one year and a half of complete inactivity.

34. Likewise, there was no progress in the case from January 1998, when the applicant requested the Koszalin Regional Court to have a lawyer appointed under the legal aid scheme, until 12 July 1999, when after the final decision given in this connection by the Gdańsk Court of Appeal, the case file was transmitted back to the Koszalin Regional Court. Therefore it took eighteen months to consider the request of the applicant to have legal aid granted. It is true that the applicant appealed three times against the refusals given in these proceedings. However, the decisions given by the first-instance court were twice subject to reconsideration by the appellate court. Pursuant to the provisions of Polish law, in appeal proceedings, the second-instance court orders reconsideration of the first-instance decision if it finds that the lower court failed to examine properly the relevant evidence. Thus, the lack of diligence on the part of the Koszalin Regional Court in examining the applicant's financial situation made it necessary to consider the legal aid issue twice. Moreover, there were unreasonably long periods of inactivity in the course of these proceedings.

35. The Court also observes that the domestic authorities acknowledged that the proceedings had not been conducted speedily. In particular, in reply to the applicant's complaint about the conduct of the proceedings, the President of the Regional Court of 23 June 1995 acknowledged that the applicant's complaint was in part justified, as the case-file had been transmitted to the competent court on 17 February 1995 and a period of three months of inexplicable inactivity had followed. Moreover, by a letter of 16 August 1995 the Judge-Supervisor in Civil Proceedings of the Koszalin Regional Court acknowledged that the proceedings had not been conducted with requisite diligence.

36. As regards the conduct of the applicant, the Court considers that during the almost six year period of the proceedings, there were six months of delay for which the applicant can be held solely responsible, from 20 November 1995, when the time-limit for submitting certain documents by the applicant expired, until 23 May 1996 when he submitted these documents to the court. Otherwise there is no indication that the applicant contributed to the length of the proceedings.

37. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed PLN 1,504,824 as compensation for the financial loss which he suffered as a result of the length of the proceedings and for non-pecuniary damage suffered by him and by his family. He submitted that as a result of damage caused by the 1993 accident his farm was so badly damaged that it had become completely non-operational. As a result, he lost his livelihood. What was more, he could not obtain compensation for damage caused by the accident within a reasonable time. Had such compensation been awarded within a reasonable time-frame, he would have been able to recover his losses and to start his business operations again.

40. The applicant also submitted that he had suffered non-pecuniary damage on account of the length of the proceedings and of the stress caused by it. He argued that his life prospects and health and those of his family had badly deteriorated.

41. 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.

42. As regards the alleged pecuniary damage, the Court notes that the applicant's claim is primarily based on lost business opportunities which have not been substantiated by the applicant. The Court accordingly dismisses the claim.

43. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 5,000, as compensation for non-pecuniary damage.

B. Costs and expenses

44. The applicant did not claim any costs.

C. Default interest

45. Having regard to the fact that the award is expressed in euros, the Court finds it appropriate to apply a rate of interest of 7,25%.

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, EUR 5,000 (five thousand 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, plus any tax that may be chargeable;
 - (b) that simple interest at an annual rate of 7,25% 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 28 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President