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

FOURTH SECTION

CASE OF W.M. v. POLAND

(Application no. 39505/98)

JUDGMENT

STRASBOURG

14 January 2003

FINAL

14/04/2003

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 W.M. v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 10 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 39505/98) 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, W.M. ("the applicant"), on 27 August 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The applicant was not represented before the Court. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged 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 Court 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 1950 and lives in Warsaw, Poland.

9. On 18 May 1992 the applicant filed with the Warsaw District Court (*Sąd Rejonowy*) an action in which he sought the eviction of a tenant from an apartment situated in a house belonging to him. In addition, the applicant requested that the tenant pay overdue rent and be also evicted from the basement of the building.

10. Having held two hearings, on 9 October 1992 and 5 February 1993, the District Court delivered its judgment on 11 February 1993. It ruled that the tenant should pay the overdue rent and be evicted from the basement, but dismissed the action for eviction from the apartment.

11. The applicant and the defendant appealed against that judgment. A hearing scheduled for 19 October 1993 was adjourned because of an illness of the judge rapporteur.

12. On 26 November 1993 the Warsaw Regional Court gave judgment and remitted the case for re-examination.

13. From 26 November 1993 to 27 November 1995 no hearing was held. From 27 November 1995 to 3 June 1998 the Warsaw District Court scheduled nineteen hearings, two of which were adjourned.

14. On 3 and 17 June 1998 respectively the court adjourned the delivery of its judgment. On 1 July 1998 the court decided to re-open the examination of the case and ordered an expert opinion.

15. On 6 July 1998 the court rejected the applicant's complaint against its decision of 17 June 1998.

16. On 25 January 1999 a summons for a hearing was served on the applicant, but, as the hearing was supposed to take place on 29 January 1999, he requested that it be rescheduled.

17. On 23 June 1999 the court adjourned the delivery of its judgment until 7 July 1999. On 2 August 1999 the court delivered a partial judgment (*wyrok częściowy*). It ordered the eviction of the defendant from the basement and dismissed the claim concerning the eviction from the apartment.

18. On 23 and 26 November 1999 respectively the applicant and the defendant lodged their appeals.

19. On 21 June 2000 the applicant informed the District Court that the defendant had died. He also requested that the defendant's widow join the proceedings as a defendant.

20. On 20 October 2000 the Regional Court held a hearing. No parties appeared. The court stayed the proceedings due to the defendant's death.

21. On 3 November 2000 the Regional Court ordered the applicant to submit information about all legal successors of the deceased defendant. On 14 November 2000 the applicant submitted the information.

22. On 5 December 2000 the Regional Court held a hearing and resumed the proceedings. The court adjourned the hearing until 28 December 2000 at the request of the defendant's widow.

23. On 28 December 2000 the Regional Court held a hearing and set aside the contested partial judgment of the District Court. It discontinued the proceedings in respect of the eviction of the defendant due to his death. It also considered that the proceedings in respect of the applicant's claim for overdue rent could be continued with the participation of the heirs of the defendant.

24. The decision of the Regional Court was served on the applicant on 12 March 2001.

25. On 19 March 2001 the applicant requested the District Court that the proceedings be reopened.

26. It appears that the proceedings are pending before the District Court in respect of the claim for overdue rent.

THE LAW

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

27. 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..."

28. The Government contested this view.

A. Period to be taken into consideration

29. The Court first observes that the proceedings started on 18 May 1992, when the applicant lodged his claim with the Warsaw District Court. 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. The proceedings are apparently still pending before the Warsaw District Court. The total length of the applicant's case at the date of the adoption of this judgment accordingly amounts to 10 years, 6 months and 23 days, of which the period of 9 years, 7 months, 9 days, falls within the Court's jurisdiction *ratione temporis*.

30. In order to assess the reasonableness of the length of time in question, the Court will have regard 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

31. 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, *Humen v. Poland* cited above, § 60; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

32. The Government contended that the case was complex as it required the taking of expert evidence in order to calculate the amount of the overdue rent. They further submitted that the proceedings involved a degree of complexity given that the trial court had to refer to the provisions of the housing law which had been in force at the relevant time.

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

34. The Court observes that the Government argued that the complexity of the case resulted in part from the fact that the courts experienced difficulties in collecting evidence because of the lapse of time since the facts contested by the parties took place. This argument attempts to justify the length of the proceedings and as such does not convince the Court. It further considers that also the remaining grounds invoked by the Government in support of their submission that the case was complex cannot justify the length of the proceedings (see, *mutatis mutandis*, *Malinowska v. Poland,* no. 35843/97, § 88, 14 December 2000, unpublished).

2. Conduct of the applicant

35. The Government maintained that the applicant had contributed to the prolongation of the proceedings as his conduct had been scarcely consistent with the diligence which must be shown by plaintiff in civil proceedings. They submitted that from 26 November 1993 to 27 November 1995, when no hearing took place, the applicant had not demonstrated any activity to accelerate the proceedings.

36. The applicant argued that he had not contributed to the length of the proceedings.

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

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

38. The Government considered that the relevant courts had acted with due diligence in handling the applicant's case. However, they acknowledged that there was a delay in the proceedings from 26 November 1993 to 27 November 1995 when no hearing took place. They maintained that the delay was caused by the increase in the number of cases not matched by the increase in the number of judges and by the reform of the Polish judicial system between 1989 and 1994. The Government submitted that the length of the proceedings was reasonable having regard to the absence of any requirement on the part of the national authorities to act with special diligence.

39. The applicant stated that the courts had failed to handle his case with due diligence. In this regard, he pointed to the delay of two years in the proceedings before the District Court, namely from 26 November 1993 to 27 November 1995, and to the delay between 23 June 1999, when the District Court had closed the examination of the case, and 20 October 2000, when the Regional Court had held the first hearing. Furthermore, the applicant submitted that the date of delivery of the partial judgment had been postponed several times.

40. The Court notes that the civil action initiated by the applicant on 18 May 1992 has still not been the subject of a final judgment (see paragraphs 8 and 26 above). The Court observes that there were periods of inactivity attributable to the authorities. The first one lasted from 26 November 1993 to 27 November 1995 (see paragraph 13 above). The second period of inactivity lasted form 6 July 1998 to 25 January 1999 (see paragraphs 15 and 16 above). The third one lasted from 26 November 1999 to 20 October 2000, when the Regional Court held a hearing (see paragraphs 18-20 above). The Court considers that the Government's observations do not explain these delays.

41. Furthermore, the Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, pp. 2180–81, § 55 *in fine*). Therefore the delay in the proceedings must be mainly attributed to the national authorities.

42. 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

43. 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

44. The applicant sought an award of pecuniary damage to compensate the financial loss he suffered on account of the unreasonable length of the proceedings at issue. He explained that as a result of the protracted court proceedings, he was deprived of an overdue rent.

45. The Government submitted that there was no causal link between the alleged violation of the Convention and his pecuniary damage claims. Furthermore, they claimed that the applicant had not exhausted domestic remedies in respect of his claim for an allegedly overdue rent.

46. The Court notes that in his claim submitted under the head of pecuniary damage the applicant requested it to award to him the amounts he seeks in the domestic civil court proceedings. However, it is not for the Court to decide his case pending before domestic courts. The Court accordingly dismisses the claim.

B. Non-pecuniary damage

47. The applicant claimed a total sum of 50,000 US dollars as a compensation for non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of his trial.

48. The Government considered that the amount claimed was excessive. They asked the Court to rule that finding a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

49. The Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of his case, which is not sufficiently compensated by the finding of violation of Article 6 §1 of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

C. Costs and expenses

50. The applicant, who was not represented before the Court, claimed reimbursement of costs and expenses incurred in the preparation of his case. He left the amount of an award to the discretion of the Court.

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

52. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. However, the Court notes in this respect that the applicant did not submit any specifications of the costs claimed by him. His claims must, therefore, be rejected (see, *mutatis mutandis*, the *Belziuk v. Poland* judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49; and the *Podbielski v. Poland* judgment of 30 October 1998, *Reports* 1998-VIII, p. 3399, § 52).

D. Default interest

53. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/97, § 124, to be published in ECHR 2002-...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* unanimously
   (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;
   (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS	Nicolas BRATZA
Deputy Registrar	President