



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

FOURTH SECTION

CASE OF BUKOWSKI v. POLAND

(Application no. 38665/97)

JUDGMENT

This version was rectified on 10 July 2003 under Rule 81
of the Rules of the Court

STRASBOURG

11 February 2003

FINAL

11/05/2003

In the case of Bukowski 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 R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 21 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 38665/97) 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, Eugeniusz Bukowski (“the applicant”), on 19 March 1997.

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

3. The applicant alleged, *inter alia*, that his right to have his civil rights determined 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.

6. On 1 June 1999 the Chamber gave notice of the applicant's complaints about the unreasonable length of the proceedings to the Government (Rule 54 § (b)) and declared the remaining complaints inadmissible.

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)

8. By a decision of 11 June 2002, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts before 1 May 1993

9. On 15 March 1986 the applicant sued for damages the Warsaw-Mokotów District Office (*Urząd Dzielnicowy*), the Warsaw Architecture Office (*Urząd Stołecznej Architektury*) and three of his neighbours, A.H., H.H. and T.H., in the Warsaw Regional Court (*Sąd Wojewódzki*). The applicant sought 1,000,000 old Polish zlotys (PLZ) for the loss that he had allegedly sustained on account of various impediments to the construction of his house.

10. On 4 January 1988 the applicant withdrew his claims against the first two defendants. Since then, the proceedings have been directed only against his neighbours A.H., H.H. and T.H.

11. Between 1988 and March 1992 the Regional Court listed 8 hearings. It also ordered that 3 reports from construction experts be obtained so as to assess the value of the financial loss sustained by the applicant.

The last of those reports was submitted to the court in December 1992.

B. Facts after 1 May 1993

12. At the hearing held on 29 September 1993 the court heard evidence from Z.S., an expert.

Later, both parties contested Z.S.'s report. The applicant nevertheless asked the court to give a ruling on his claim, stressing that the length of the proceedings had to date exceeded 8 years.

On 18 November 1994 the court ordered that fresh evidence be obtained from Z.S.

13. In December 1994 the presiding judge stepped down and the case was referred to another judge.

14. On 27 February 1995 the applicant complained to the President of the Warsaw Court of Appeal (*Sąd Apelacyjny*) about – in his words – “an exceptional delay in the proceedings”. In a letter of 26 April 1995 the President admitted that the procrastination in the proceedings had indeed been caused by the fact that the Regional Court had failed to keep the proceedings moving along procedural lines. He apologised to the applicant in the name of the administration of justice.

15. On 16 May 1995 the applicant complained to the President of the Supreme Court (*Sąd Najwyższy*) about the inactivity of the Warsaw

Regional Court. On 13 June 1995 the President referred the complaint to the Minister of Justice, an authority responsible for monitoring the conduct of court proceedings. He observed, however, that despite the case having already been brought under the Minister's supervision, since 29 September 1993 no hearing had taken place before the Regional Court.

16. Subsequently, the applicant made three further similar complaints to the President of the Warsaw Court of Appeal.

In a letter of 4 August 1995 the President again apologised to the applicant and admitted that the monitoring of the conduct of the proceedings had not been very successful. He also informed the applicant that the President of the Warsaw Regional Court had been instructed to take steps in order to accelerate the proceedings.

17. On 4 October 1995 the court held a hearing and served copies of Z.S.'s fresh report on the parties. Since the inflation rate and purchasing power of the Polish currency had meanwhile changed substantially, the court ordered the applicant to state the exact amount of damages claimed in the light of current circumstances.

18. On 11 October and 17 October 1995 the applicant filed two pleadings with the court and stated that the current total value of his claim was 355,585.59 new Polish zlotys (PLN).

19. On 6 March 1996 the court held a hearing. It ordered the applicant to pay court fees of PLN 14,342 for having lodged, in the court's view, a new and higher claim, and on pain of the statement of claim being returned to him.

20. On 31 May 1996, on an appeal by the applicant, the Warsaw Court of Appeal quashed the contested order as being premature. It found that the lower court had misconstrued the applicant's pleading and ordered it to obtain from the applicant a clear statement of the amount currently claimed.

21. Meanwhile, on 5 May 1997, the applicant had complained to the court about the lack of progress in the litigation. He stressed that as of that date the length of the proceedings was about 12 years, but his claim was still far from being determined. He repeated that he had not increased, and was not going to increase, the value of the claim.

22. At the hearing which was held on 26 May 1997 the court ordered Z.S. to prepare yet another report and to determine the current value of various items included in his report of 28 February 1995. That order was a consequence of the fact that, since the beginning of 1995, the inflation rate and the purchasing power of the Polish currency had again changed considerably.

23. On 27 August 1997 the court held the next hearing.

24. On 9 September 1997, the applicant lodged a complaint with the Supreme Court, submitting that the length of the proceedings in his case had exceeded all reasonable limits. On 22 September 1997 the Case-law Department of the Supreme Court informed him that he should address his

complaints to the Minister of Justice, who was responsible for monitoring the conduct of the proceedings.

25. On 3 October 1997 the Warsaw Regional Court ordered that evidence from yet another construction expert be obtained.

On 20 December 1997 K.S., an expert, submitted his report to the court.

26. On 20 April, 24 June and 14 September 1998 the Regional Court held hearings.

27. On 15 October 1998 the applicant submitted a pleading to the court, pointing out that K.S. had based his findings on inaccurate indexes of the value of the construction works and had, therefore, come to wrong and unfair conclusions on the assessment of his loss.

28. On 2 November 1998 he submitted his comments on the value of certain construction works, as assessed by K.S. He further asked the court to proceed with his case and to give “any ruling terminating the proceedings that have so far lasted 13 years”.

29. On 26 November 1998 the applicant again asked the court to give a ruling.

30. The next hearing took place on 8 February 1999. The court heard evidence from K.S. and adjourned the proceedings to enable the expert to prepare a supplementary report.

31. At the hearing held on 26 April 1999, the court ordered K.S. to prepare yet another supplementary report.

32. Subsequent hearings were held on 25 August and 22 November 1999. The court heard evidence from the expert and, on 22 November 1999, once again ordered the applicant to specify his claims.

On 10 January 2000 the applicant informed the court in writing that he had already specified his claims on three occasions.

33. On 15 May 2000 the court held a hearing, but then adjourned the proceedings *sine die*.

The next hearings were listed for 10 April and 5 July 2001 and, subsequently, for 14 February and 14 May 2002.

34. In the light of the material before the Court, it appears that the proceedings are still pending in the court of first instance.

THE LAW

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

35. The applicant complained that his claim for damages had not been determined within a “reasonable time”. He alleged a violation of Article 6 § 1 of the Convention which, in its relevant part, reads:

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

A. The parties submissions

1. The applicant

36. The applicant maintained that the length of the proceedings in his case, which had already exceeded 16 years, was manifestly incompatible with the requirement of “reasonable time” laid down in Article 6 § 1 of the Convention.

It was true, he added, that the period that had occurred before 1 May 1993 lay outside the Court's jurisdiction *ratione temporis*. Yet during the subsequent more than 9 years the authorities had not made any significant progress in the proceedings which, as 16 years ago, were still pending before the first-instance court.

37. In the applicant's submission, the issues involved in the determination of his claim were not complicated. The case concerned an ordinary claim for damages based on undisputed facts and the only disputable question to be determined was the loss he had sustained. Such matters, however, were normally for the trial court to determine.

The applicant further argued that the fact that the Regional Court needed to obtain expert evidence had not made the case difficult. He considered that it was only natural that courts referred to experts in cases where the resolution of the claim depended on special knowledge.

38. The applicant admitted that he had several times challenged the expert reports. But, he asserted, he had simply used his procedural rights for good cause because those reports had been incorrect. That had not delayed the proceedings substantially.

In his opinion, the manner in which the Regional Court had handled the case and, especially, had obtained evidence, was the principal cause of delay. In that connection, the applicant stressed that, under Article 6, the courts were responsible for supervising experts' work. This supervision extended to the accuracy, consistency and fairness of experts' findings. It had been for the Regional Court to rule on his claim, despite the fact that the expert reports had been contradictory.

The applicant concluded that Article 6 § 1 had been violated.

2. The Government

39. The Government submitted that the applicant's case involved complicated issues of fact and law. Moreover, the Regional Court had needed to obtain 6 expert reports in order to ascertain the value of the claim. The process of taking evidence had been complex because the experts had

been in disagreement as to the value of the loss sustained by the applicant and, in addition, the applicant had repeatedly contested their reports.

40. The Government further maintained that the authorities had shown due diligence in dealing with the applicant's case. They nevertheless admitted that there had been some delays that might be attributed to the conduct of the Regional Court. For instance, on certain occasions it had adjourned hearings without a further date having been fixed. It was also true that, in order to accelerate the process of obtaining evidence, the court could have supervised better the conduct of the parties.

41. Yet, in the Government's opinion, the procrastination in the proceedings had at least partly been caused by the applicant's behaviour. In particular, he had made numerous complaints about the length of the trial. That, in turn, had resulted in the case-file having been many times sent to the Court of Appeal and the Supreme Court. According to the Government, the resultant hold-up in the proceedings amounted to 5 months.

42. The Government accepted that it was incumbent on the State to organise its legal system so as to allow the courts to comply with the requirements of Article 6 § 1, including the right to have a hearing within a reasonable time. Yet, in their submission, the authorities had discharged that duty in the present case by increasing gradually, that is to say from 1993 up to the present, the budgetary spending on the judiciary and, especially, on the Warsaw Regional Court, which was the most overburdened court in Poland.

In sum, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

B. The Court's assessment

1. Period to be taken into consideration

43. The Court observes that the proceedings in question began on 15 March 1986 and, according to the information available to the Court, are still pending in the Warsaw Regional Court. They have therefore already lasted 16 years and 10 months (see paragraphs 9 and 34 above).

However, since the Court's jurisdiction *ratione temporis* in respect of Poland covers only the facts and decisions subsequent to 1 May 1993, the Court may take into consideration only the period of 9 years, 8 months and 20 days occurring after that date. It may, however, have regard to the stage in the proceedings reached on that date (see, for instance, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 59, unreported).

2. Compliance with the “reasonable time” requirement

44. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Humen v. Poland* cited above, § 60).

45. In the present case the Government first relied on the complexity of the case and, especially, on the difficulty involved in the process of obtaining expert evidence. In the applicant's submission, the contradictions between experts had not made the case difficult because such matters were normally for the court to resolve (see paragraphs 37 and 39 above).

46. The Court accepts that in the present case the need to take expert evidence on several occasions could have complicated the procedure to some, although not a high, degree. It also accepts that the fact that the applicant repeatedly challenged the expert reports could have caused a certain delay (see paragraphs 12, 27-28 and 38 above). However, those factors cannot justify the total, significant length of the proceedings and several, considerable periods of inactivity on the part of the Warsaw Regional Court.

47. In that regard, the Court observes that from 29 September 1993 to 4 October 1995, that is to say for more than 2 years, no hearing was held (see paragraphs 12-17 above). Subsequently, the court adjourned the proceedings for about 1 year lasting from 6 March 1996 to 26 May 1997 (see paragraphs 19-22 above). It again adjourned them for a similarly long period between May 2000 and April 2001 (see paragraph 33 above). Those successive gaps in the procedure resulted in a total delay of some 4 years.

48. On the material before it, the Court finds no convincing justification for that delay. Nor is it satisfied that the steps taken by the State in order to remedy the situation in the Warsaw Regional Court (see paragraph 42 above) have so far accelerated the proceedings in the applicant's case.

49. In view of the foregoing, the Court concludes that the relevant authorities have failed to respect the applicant's right to have a hearing within a “reasonable time”.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant asked the Court to award him 150,000 Polish zlotys (PLN) for both pecuniary and non-pecuniary damage caused by the protracted length of the proceedings in his case.

52. The Government considered that the amount claimed was inordinately excessive. They asked the Court to rule that the finding of 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.

53. The Court's conclusion, on the material before it, is that the applicant has failed to demonstrate that he sustained any pecuniary damage on account of the length of the litigation in which he has been involved.

54. However, the Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of the proceedings. Making its assessment on an equitable basis, the Court awards the applicant 8,000 euros under this head.

B. Costs and expenses

55. The applicant did not submit any separate claim for costs and expenses involved in the proceedings before the Court.

C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, to be published in ECHR 2002-...)

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 8,000 (eight thousand euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;¹
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President

¹ Rectified on 10 July 2003. The phrase “to be converted into Polish zlotys at the rate applicable at the date of settlement” was missing in the former version of the judgment.