



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

FOURTH SECTION

CASE OF KROENITZ v. POLAND

(Application no. 77746/01)

JUDGMENT

STRASBOURG

25 February 2003

FINAL

24/09/2003

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 Kroenitz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 4 February 2003,

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

PROCEDURE

1. The case originated in an application (no. 77746/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mrs Waleria Kroenitz ("the applicant"), on 28 July 2000.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The applicant was exceptionally granted leave to be represented by Mr Cz. Sławski (Rule 36 § 4 of the Rules of Court). The latter was also granted leave to use the Polish language in the proceedings before the Court (Rule 34 § 3 of the Rules of Court).

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

4. The application was allocated to the Fourth Section of the 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. On 30 April the Fourth Section decided to communicate the complaint concerning the length of the proceedings and an alleged interference with the applicant's property rights to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also gave priority to application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

5. The applicant, Mrs Waleria Kroenitz, is a Polish national, who was born in 1903 and lives in Przemyśl, Poland.

A. Proceedings concerning a claim for restitution and compensation.

6. In 1948 the applicant's property was expropriated. On 28 June 1996 the Minister of Economy (*Minister Gospodarki*) annulled the expropriation order.

7. On 23 December 1996 the applicant brought a claim against a company "Domgos" (*Częstochowskie Zakłady Metalowe "Domgos"*) before the Częstochowa Regional Court (*Sąd Wojewódzki*), seeking restitution of her property. The court held hearings on 30 May, 10 July and 17 October 1997.

8. On 30 January 1998 the applicant modified her claim and filed an action for compensation for loss of profits caused by the prolonged impossibility of using her property.

9. On 8 March 1999 the Częstochowa Regional Court held a hearing and gave an interlocutory judgment. It ordered that the property be restored to the applicant.

10. On 9 December 1999 the court was to hold a hearing, but an expert failed to appear because he had not been duly summoned. On 27 January 2000 and 23 March 2000 the court held further hearings.

11. A hearing listed for 15 February 2001 was cancelled since the expert and the defendant failed to appear.

12. The hearing listed for 29 March 2001 was adjourned as the court had ordered the expert to prepare a supplementary report. On 21 February 2002 the court held a hearing.

13. On 8 March 2002 the Regional Court gave judgment and awarded the applicant compensation. Following the defendant's appeal, the proceedings are pending before the Court of Appeal (*Sąd Apelacyjny*).

B. Proceedings concerning a claim for compensation against the State Treasury.

14. On 26 April 1998 the applicant asked the Minister of Economy to award her compensation. On 22 May 1998 the Minister dismissed her request.

15. On 24 June 1998 the applicant filed with the Warsaw Regional Court an action for compensation against the State Treasury the Minister of Economy. The court held hearings on 19 November 1999 and 22 September 2000.

16. On 22 September 2000 the court gave judgment and dismissed the applicant's claim. The applicant appealed.

17. On 24 January and 7 March 2002 the Warsaw Court of Appeal (*Sąd Apelacyjny*) held hearings. On the latter date the court gave judgment. The applicant did not lodge a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

THE LAW

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

18. The applicant complained that the length of both sets of proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention. That Article reads in so far as relevant:

"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

1. Proceedings concerning a claim for restitution and compensation

19. The Government submitted that the proceedings before the Częstochowa Regional Court had in fact constituted two separate sets. The first set began on 23 December 1996, when the applicant had lodged her claim for restitution of property and had come to an end on 8 March 1999, when the Częstochowa Regional Court had given an interlocutory judgment. The second set began on 30 January 1998, when the applicant had modified her claim and they were still pending before the Warsaw Court of Appeal.

The Court first observes that the two sets of proceedings have to be regarded as one, with the second part of proceedings being treated as an integral part of the entire trial for the purpose of determining the applicant's civil right.

The Court concludes that the period to be taken into consideration began on 23 December 1996, when the applicant lodged her claim with the Częstochowa Regional Court seeking restitution of property and has not yet ended. It has thus lasted so far more than 6 years.

2. *Proceedings concerning a claim for compensation against the State Treasury*

20. The period to be taken into consideration began on 24 June 1998, when the applicant lodged her claim with the Warsaw Regional Court. The proceedings were terminated by the Warsaw Court of Appeal on 7 March 2002. Thus, they lasted 3 years, 8 months and 13 days.

B. Admissibility

21. The applicant's first complaint relates to the length of the proceedings instituted before the Częstochowa Regional Court, which concern her claim for restitution and compensation. According to her, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

22. As regards the complaint concerning second set of the proceedings, the Government maintained that their length had not been in breach of the "reasonable time" requirement.

The Court considers, with reference to the criteria laid down in its case-law (see, e.g., the *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60, unreported), that the overall length of the impugned proceedings did not exceed a "reasonable time" within the meaning of Article 6 § 1.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

C. Merits

1. *The applicant's submissions*

23. The applicant maintained that the excessive length of the proceedings had put a severe strain on her, in particular in view of her great age (99 years) and disability.

24. She further submitted that, she had not been able to use her property for fifty years. Despite the fact, that in 1996 the expropriation decision had been declared null and void (see paragraph 6 above) she had been still waiting for a sufficient and appropriate redress. Lastly, she stressed that, given her personal circumstances, over five years of litigation was a very substantial period.

2. *The Government's submissions*

25. The Government acknowledged that the case had not been particularly complex. However, they stressed that it had necessitated the obtaining of three expert reports in order to determine the amount of compensation for loss of profits.

26. They also admitted that the applicant had not significantly contributed to the length of the proceedings. Nevertheless, they were of the view that she had contributed to some extent to the prolongation of the proceedings as she had twice challenged the expert reports. They made reference to the fact that the applicant had also modified her claim.

27. As to the conduct of the relevant authorities, the Government contended that the authorities had shown due diligence in the course of the proceedings.

28. The Government further submitted that what was at stake for the applicant had not required "special diligence" on the part of the authorities, unlike in cases concerning employment, pensions and invalidity pensions. Moreover, they argued that the applicant's claim had been entirely satisfied because the Częstochowa Regional Court restored her property and granted her compensation.

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

3. *The Court's assessment*

30. The Court reiterates that the reasonableness of the length of proceedings must be assessed 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII and *Humen v. Poland* § 60 cited above).

31. The Court considers that the case was not particularly complicated. Even the fact, that the court had to obtain expert evidence in order to estimate the amount of compensation could not in itself render the case complex.

32. As regards the conduct of the applicant, the Court observes that it is true that the applicant twice contested the expert report and modified her claim. However, it does not appear that those events significantly prolonged the trial.

33. As to the conduct of the authorities, the Court first notes that there was a delay of more than one year when no hearing was held before the Częstochowa Regional Court i.e. from 30 January 1998 to 8 March 1999 (see paragraphs 8, 9 above). It further observes that there was a significant delay of two years i.e. between 23 March 2000 and 21 February 2002

(see paragraphs 10, 11, 12 above). The Court considers that the Government's observations do not explain these delays.

34. Lastly, the Court considers that what was at stake in the litigation in issue was undoubtedly of crucial importance to the applicant, taking into consideration her great age, her disability and the time she had been waiting for redress (see, *mutatis mutandis*, *Dewicka v. Poland*, no. 38670/97, 4 April 2000, § 55).

35. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

A. Admissibility and merits

36. The applicant also alleged that the length of both sets of proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1. That Article reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

37. As regards the proceedings instituted in the Warsaw Regional Court, the court notes that this complaint is in substance identical to that already examined and rejected in the context of Article 6 § 1 and that it must similarly be declared inadmissible. On the other hand, as regards the proceedings for restitution and compensation, the Court has already found that there has been a violation of Article 6 § 1. For that reason, while finding this claim to be admissible, having regard to its reasoning under Article 6 § 1, the Court considers that it is not necessary to examine the complaint under Article 1 of Protocol No 1 separately (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

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 sought an award of 100.000 Polish zlotys (approx. 25000 euros) for damage that she suffered as a result of the length of the proceedings and for an alleged loss of health caused by the unreasonable delay in deciding her case.

She further claimed the sum of 350.000 Polish zlotys (approx. 87500 euros) as compensation for damages to her property.

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

41. As regards the alleged pecuniary damage, the Court’s conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to her under that head (see, *mutatis mutandis*, *Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

42. The Court considers that the applicant certainly suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings which cannot sufficiently be compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 4000 euros (“EUR”) under that head.

B. Costs and expenses

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

C. Default interest

44. 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. *Declares* admissible the complaint under Article 6 § 1 and the related complaint under Article 1 of Protocol No. 1, relating to the excessive length of the proceedings instituted on 23 December 1996 before the Częstochowa Regional Court;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1;
5. *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 4000 (four 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 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President