



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

FOURTH SECTION

CASE OF ANDRZEJ and BARBARA PIŁKA v. POLAND

(Application no. 39619/98)

JUDGMENT

STRASBOURG

6 May 2003

FINAL

06/08/2003

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 Andrzej and Barbara Piłka v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

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 8 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 39619/98) 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 two Polish nationals, Mr Andrzej Piłka and Mrs Barbara Piłka ("the applicants"), on 15 August 1997.

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

3. The applicants alleged that their 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 the Court.

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 (Rule 52 § 1).

7. By a decision of 11 June 2002 the Court declared the application admissible.

THE FACTS

8. The applicants were born in 1943 and 1942 respectively and live in Józefów, Poland.

9. The applicants share a house and a plot of land with another family (“the neighbours”). On 2 January 1989 the applicants filed with the Otwock District Court (*Sąd Rejonowy*) a petition in which they requested that the co-ownership of the plot of land and the building be dissolved in accordance with an administrative decision issued in 1983.

10. From 2 January 1989 to 1 May 1993 the court held hearings on the following dates: 23 March, 21 August and 4 December 1989, 15 January, 9 April, 14 May, 21 June, 6 September, and 15 October 1990.

11. On 16 May 1991 the court held a hearing and ordered not to carry out any construction works in the building except for the erection of a wall in the attic. Subsequently, the court held hearings on 16 September 1991 and 16 January 1992.

12. On 30 January 1992 the court stayed the proceedings until the termination of the administrative proceedings concerning the annulment of the 1983 decision.

13. The court held hearings on 11 June and 16 July 1992.

14. On 20 July 1992 the court dissolved the co-ownership of the property. The neighbours appealed.

15. On 30 October 1992 the Warsaw Regional Court (*Sąd Wojewódzki*) quashed the decision of 20 July 1992 and remitted the case for re-examination.

16. On 6 August and 2 September 1993 the experts’ reports were submitted to the court. The neighbours challenged the report of 6 August 1993.

17. Subsequently, the court held hearings on the following dates: 11 May, 6 June and 25 August 1994.

18. On 25 August 1994 the Otwock District Court quashed in part its decision of 16 May 1991 and allowed the applicants to carry out certain works in the building. The neighbours appealed against this decision.

19. A hearing listed for 20 October 1994 was adjourned as the neighbours’ lawyer was not present.

20. On 5 December 1994 a supplementary expert report was submitted to the court. Subsequently, on 21 December 1994 the court held a hearing.

21. On 4 August 1995, in the course of the administrative proceedings, the Mayor of Józefów (*Burmistrz*) issued a decision allowing the construction of a wall dividing the building co-owned by the applicants. On 22 January 1996 the Warsaw Governor (*Wojewoda*) allowed the applicants’ appeal and quashed the decision of the Mayor of Józefów.

22. In the meantime, on 4 January 1996, the court had held a hearing.

23. On 24 January 1996 the neighbours' lawyer requested the court to stay the proceedings until the termination of the administrative proceedings. On 30 January 1996 the court stayed the proceedings.

24. On 14 February 1996 the neighbours lodged an appeal with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) against the decision of the Warsaw Governor.

25. On 15 February 1996 the Otwock District Court resumed the proceedings. On 26 February 1996 the neighbours again requested the court to stay the proceedings. On 15 May 1996 the court held a hearing and stayed the proceedings. On 11 July 1996 the court resumed them.

26. Further hearings were held on 18 October, 23 December 1996 and 27 January 1997.

27. On 27 January 1997 the court issued a preliminary decision (*postanowienie wstępne*) by which it dissolved the co-ownership of the property and divided it into two separate estates. On 30 January 1997 the applicants' neighbours appealed.

28. On 6 February 1997 the court stayed the proceedings as one of the neighbours had died. They were resumed on 18 February 1997.

29. On 29 April 1997 the Warsaw Regional Court held a hearing and quashed the decision of 27 January 1997.

30. At the hearing held on 26 September 1997 before the Otwock District Court the applicants presented their proposal for the division of the building. On 17 October 1997 the neighbours rejected the proposal.

31. On 27 November 1997 the Supreme Administrative Court quashed the decision issued by the Warsaw Governor on 22 January 1996.

32. The Otwock District Court held further hearings on 3 February and 24 March 1998.

33. On 30 March 1998 the court ordered that a valuation of the property be carried out by an expert.

34. On 12 February 1999 the court held a hearing.

35. On 12 April 1999 the court requested the Józefów Town Office (*Urząd Miejski*) to submit an opinion on a plan for the division of the property. On 20 July 1999 the Józefów Town Office submitted its opinion indicating that the division would not be in accordance with a town planning scheme (*plan zagospodarowania przestrzennego*).

36. On 8 March 2000 there was a fire, which substantially destroyed the part of the building belonging to the applicants' neighbours. On 26 April 2000 the applicants submitted to the court a proposal for the division of the building, taking into account the new circumstances of the case.

37. On 27 June 2000 the District Construction Inspector (*Powiatowy Inspektor Nadzoru Budowlanego*) ordered the demolition of the part of the building occupied by the applicants' neighbours and certain adjustments of the applicants' part.

38. The next hearing was held on 12 February 2001. The court decided to obtain a fresh expert report in order to determine the division of the property.

39. Subsequently, the court held hearings on the following dates: 4 June, 20 August and 24 September 2002.

40. It appears that the proceedings are pending in the Otwock District Court.

THE LAW

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

41. The applicants complained that the length of the proceedings in their case exceeded a reasonable time within the meaning 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...”

42. The Government contested this view.

A. Period to be taken into consideration

43. The proceedings started on 2 January 1989, when the applicants filed a petition with the Otwock 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. The total length of the applicants' case at the date of the adoption of this judgment accordingly amounts to 14 years, 3 months and 6 days, of which the period of 9 years, 11 months and 7 days falls within the Court's jurisdiction *ratione temporis*.

44. 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

45. 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

46. The Government submitted that the case had been complex. They referred to the fact that the court had to obtain expert opinions in order to assess the technical state of the building and determine how it should be divided up. Furthermore, the Government maintained that on a number of occasions the court had to stay the proceedings, which had added to the complexity of the case.

47. The applicants disagreed with the Government and argued that the case had not been complex.

48. The Court considers that, even though the case involved a certain degree of complexity on account of the need to obtain extensive evidence, it cannot be said that this in itself justified the length of the proceedings. It further considers that also the remaining grounds invoked by the Government cannot justify the length of the proceedings.

2. Conduct of the applicants

49. The Government contended that the applicants had contributed to the delay as on numerous occasions they had changed their proposals in respect of the division of the property. The Government also referred to the applicants' attitude and deep resentment towards their neighbours.

50. The applicants argued that they had not contributed to the length of the proceedings.

51. The Court does not find any indication that the applicants' conduct caused any discernible delays in the proceedings.

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

52. The Government considered that the relevant courts had acted with due diligence in handling the applicants' case. However, they acknowledged that the trial court had held no hearings in the year 2000.

53. The applicants stated that the courts had failed to handle their case with due diligence. The applicants concluded that there had been a violation of Article 6 § 1 of the Convention.

54. The Court notes that the civil action initiated by the applicants on 2 January 1989 has still not been the subject of a final decision (see paragraphs 8-40 above). It observes that after 30 April 1993 there were three periods of inactivity attributable to the authorities. The first one lasted from 30 March 1998 to 12 February 1999 (see paragraphs 33 and 34 above). The second period of inactivity was between 12 April 1999 and 12 February 2001 (see paragraphs 35-38 above). The third one lasted from 12 February 2001 to 4 June 2002 (see paragraphs 38 and 39 above). The Court considers that the Government's observations do not explain these delays.

55. 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 delays in the proceedings must be mainly attributed to the national authorities.

56. 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

57. 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 and non-pecuniary damage

58. Under the head of pecuniary damage, the applicants claimed several thousand zlotys. However, they did not specify the exact amount. They maintained that on account of the excessive length of the proceedings, they could not begin the construction of a new house.

The applicants did not claim any particular sum in respect of non-pecuniary damage. However, they requested the Court to grant them just satisfaction in an amount it considered equitable, given the detriment suffered by them on account of the length of the proceedings. In particular, they referred to numerous illnesses and problems in their family life, which in their view resulted from the delay in deciding their case.

59. The Government submitted that the applicants' claims were exorbitant.

60. The Court considers that there is no causal link between the breach established and any alleged pecuniary damage. Consequently, it sees no reason to make any award under the head of pecuniary damage.

On the other hand, the Court accepts that the applicants have certainly suffered non-pecuniary damage, such as distress and frustration, resulting from the undue prolongation of their case. Making its assessment on equitable basis, the Court awards the applicants EUR 8,500 under this head.

B. Costs and expenses

61. The applicants also claimed to be awarded a certain amount by way of legal costs and expenses incurred in the domestic court proceedings. In particular, they submitted specifications of fees charged by the court experts and their counsel. However, they did not specify the sum and requested the Court to assess the amount of costs and expenses to be awarded on the basis of its case-law.

62. The Government submitted that the applicants' claim was exorbitant.

63. The Court recalls that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefor. Furthermore, the Court has to be satisfied that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (see the *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, it considers that the applicants have not shown that the legal costs and expenses claimed by them were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (see the *Zimmermann and Steiner*, cited above, pp. 14-15, § 37). The Court accordingly dismisses the claim.

C. Default interest

64. 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. 28957/97, § 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,500 (eight and a half 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President