



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

FOURTH SECTION

CASE OF GRYZIECKA and GRYZIECKI v. POLAND

(Application no. 46034/99)

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 Gryziecka and Gryziecki 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. 46034/99) against the Republic of Poland lodged on 30 January 1998 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, Danuta Gryziecka and Henryk Gryziecki ("the applicants").

2. The applicants were represented by Mrs Koczorowska, a lawyer practising in Szczecin, Poland. 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 10 January 2002 the Court declared the application admissible.

THE FACTS

8. The applicants, Danuta Gryziecka (“the first applicant”) and Henryk Gryziecki (“the second applicant”), were born in 1950 and 1949 respectively, and live in Niedźwiedź, Poland.

9. On 31 August 1981 J.P. (“the plaintiff”) sued the applicants in the Szczecin Regional Court (*Sąd Wojewódzki*) seeking repayment of the money he had invested in the applicants’ hen house.

10. On 11 September 1981 the case was transferred to the Stargard Szczeciński District Court (*Sąd Rejonowy*) as the court competent to decide it.

11. On 11 November 1981 the applicants filed their pleadings with the court. They acknowledged the plaintiff’s claim in respect of 728,000 old Polish zlotys.

12. On 17 March 1982 the court stayed the proceedings because the plaintiff had not complied with a certain court order. On 30 September 1982 the plaintiff’s lawyer requested to resume the proceedings. On 7 March 1983 the court resumed the proceedings.

13. On 22 March 1983 the court held the first hearing. Subsequently, from that date to 9 February 1989 the court held approximately nine hearings. In the meantime the plaintiff had modified his claim.

14. On an unknown date in 1984 the applicants transferred the sum of 728,000 old Polish zlotys to the plaintiff’s account.

15. In July 1984 the plaintiff died. Subsequently, his wife and daughter (“the plaintiffs”) joined the proceedings as his legal successors.

16. On 9 February 1989 the court held a hearing. The witness did not appear. The court decided to obtain evidence from a bank.

17. On an unknown date in 1989 the plaintiffs modified their claim.

18. From that date to 9 November 1992 the court held a number of hearings. It obtained three expert reports, held one view of the site and heard some witnesses. The plaintiffs again modified their claim.

19. On 9 November 1992 the court decided to obtain fresh expert evidence in order to determine the value of certain construction works made by the second applicant. The expert report was submitted to the court on 22 December 1992.

20. On 27 May 1993 the expert report was served on the applicants’ lawyer. On 3 June 1993 the applicants submitted their observations on it. On 19 April 1994 the plaintiffs asked the court to set a date for a hearing.

21. On 7 July and on 11 August 1994 respectively the court ordered the parties to produce the evidence in support of their submissions.

22. On 19 May 1995 the court held a hearing and heard evidence from certain witnesses. It also ordered the plaintiffs’ lawyer to specify their claim and to produce the marriage certificate of the late plaintiff. On 5 April 1996 the plaintiffs specified the value of the claim.

23. On 10 and on 21 May 1996 respectively, the plaintiffs requested the court to list a hearing. In the meantime, the case had been assigned to a new judge.

24. On 20 August 1996 the court decided that fresh expert evidence be obtained, in order to determine the value of the land on which the hen house had been constructed. On 12 November 1996 the expert report was submitted to the court. On 11 December 1996 it was served on the applicants. On 27 December 1996 they submitted their observations on the report.

25. On 14 January 1997 the plaintiffs' lawyer requested the court to list a hearing. On 18 March 1997 the applicants filed their pleadings with the court.

26. On 24 March 1997 the court held a hearing. The applicants requested that the court index the repayment of their bank loan and the payment made to the original plaintiff in 1984. The applicants also requested to obtain documentary evidence from the land register. The court fixed a one-month time-limit for the parties to produce the evidence. Subsequently, the parties filed their pleadings with the court on 22 April 1997. On 22 May 1997 the applicants filed additional pleadings.

27. On 2 June and on 14 July 1997 respectively the court held hearings. On both occasions a certain witness did not appear before the court. The court fined him. On 16 September 1997 the plaintiffs again modified their claim.

28. On 17 September 1997 the court held a hearing and heard evidence from one witness. The applicants requested the court to obtain expert evidence in order to determine an indexed value of the repayment of their bank loan and the payment made by the applicants in 1984.

29. In the meantime the case had been assigned to a new judge. Subsequently, on 22 January 1998 the court held a hearing.

30. On 12 March 1998 the court held a hearing. The plaintiffs withdrew their claims against the first applicant. The court closed the proceedings. It did not obtain any expert report even though the applicants had secured money for such a report.

31. On 26 March 1998 the court gave judgment. It partly granted the claim of the original plaintiff's daughter against the second applicant and dismissed the claim of the original plaintiff's wife. The court discontinued the proceedings in respect of the first applicant. None of the parties submitted a notice of appeal.

THE LAW

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

32. 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...”

33. The Government contested this view.

A. Period to be taken into consideration

34. The proceedings started on 31 August 1981, when the plaintiff sued the applicants in the Szczecin Regional 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 ended on 26 March 1998, the date of the Stargard Szczecinski District Court’s judgment. The total length of the applicants’ case at the date of the adoption of this judgment accordingly amounts to 16 years, 6 months and 26 days, of which the period of 4 years, 10 months and 25 days falls within the Court’s jurisdiction *ratione temporis*.

35. 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

36. 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

37. The Government submitted that the case itself had not been complex. However, it had been rendered complex by the fact that the court had to obtain expert opinions in order to determine the value of certain

construction works carried by the second applicant, the value of the land and the amount of money the plaintiffs had invested in the property. Furthermore, the Government maintained that on two occasions the plaintiffs had modified their claim, which added to the complexity of the case.

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

39. The Court considers that, even though the case involved a 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 the remaining grounds invoked by the Government can also not justify the length of the proceedings.

2. Conduct of the applicants

40. The Court notes that it is common ground that the applicants' conduct did not contribute to the length of the proceedings.

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

41. The Government considered that after 1 May 1993 the relevant courts had acted with due diligence in handling the applicants' case. However, they acknowledged that the "reasonable time" requirement had not been respected by the authorities prior to that date. In addition, the Government pointed out that the fact that the case had been twice assigned to new judges had contributed to the delay in the proceedings. Lastly, the Government argued that what was at stake in the litigation in issue was solely of pecuniary nature. Thus, special diligence was not required of the authorities in the present case.

42. The applicants submitted that the courts had failed to handle their case with due diligence. In this regard, they referred to the following delays: from 1 May 1993 to 19 May 1995, from 19 May 1995 to 20 August 1996 and from 20 August 1996 to 24 March 1997. Furthermore, they stated that the fact that the plaintiffs had withdrawn their claims against the first applicant had facilitated the proceedings. The applicants concluded that there had been a violation of Article 6 § 1 of the Convention.

43. The Court notes that on 1 May 1993, the date when Poland recognised the right of individual petition, the proceedings before the District Court had already lasted 11 years, 7 months and 20 days (see paragraphs 10-20 above). It took this court another 4 years, 10 months and 25 days to determine the claim (see paragraphs 20-31 above).

44. The Court observes that the judge rapporteur in this case was changed twice, a fact which undoubtedly contributed to the length of the proceedings (see paragraphs 23 and 29 above).

45. Leaving aside the question whether the respondent State can be held responsible for every delay in the proceedings, it is to be noted that after 1 May 1993 there were periods of inactivity attributable to the authorities. The Court draws attention to the delay of over a year between 3 June 1993 and 7 July 1994 (see paragraphs 20 and 21 above). It further observes that there was a delay of almost two years, between 19 May 1995 and 24 March 1997, when no hearing took place (see paragraphs 22-26 above). The Court notes that the trial court waited almost one year for the plaintiffs' lawyer to specify the claim (see paragraph 22 above). The Court considers that the Government's observations do not explain these delays.

46. 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.

47. 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

48. 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

49. The applicants did not claim any pecuniary damage. However, under the head of non-pecuniary damage, they sought an award of PLN 25,000 to compensate for their moral damage suffered as a result of the protracted proceedings.

50. The Government did not address the applicants' claim.

51. 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 6,250 under this head.

B. Costs and expenses

52. The applicants also claimed PLN 13,267.30 by way of legal costs and expenses incurred in the preparation and defence of their case before the Court. This included 65 hours' work at an hourly rate of PLN 200 and an amount of PLN 267.30 spent on registered mail.

53. The Government did not address the applicants' claim.

54. Having regard to equitable considerations, the Court awards the applicants EUR 1,500 together with any value-added tax that may be chargeable.

C. Default interest

55. 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, the following amounts:
 - (i) EUR 6,250 (six thousand two hundred and fifty 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;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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