



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

FOURTH SECTION

CASE OF SITAREK v. POLAND

(Application no. 42078/98)

JUDGMENT

*(This version has been rectified under article 81 of the Rules of Court
on 17 September 2003)*

STRASBOURG

15 July 2003

FINAL

15/10/2003

*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 Sitarek 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 R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 24 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 42078/98) 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, Stanisław Sitarek ("the applicant"), on 20 September 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 that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention.

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 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 14 May 2002 the Court declared the application admissible.

THE FACTS

8. The applicant was born in 1947 and lives in Bydgoszcz, Poland.

1. Civil proceedings

9. On 20 August 1992 the applicant filed with the Bydgoszcz Regional Court (*Sąd Wojewódzki*) an action in which he requested that a certain B. M., who had failed to comply with her own declaration to exchange a defective car sold to the applicant for a new one, pay him the amount equivalent to the value of that car.

10. The court held hearings on 14 October 1992, 13 January, 10 February, 5 April, 19 May and 23 June 1993. It ordered an expert opinion.

11. On 29 June 1993 the applicant challenged the participation in the proceedings of an expert. On 6 October 1993 he lodged a complaint about the fact that the case-file had been handed over to the expert.

12. On 29 October 1993 the court requested the expert to submit his opinion in due time.

13. On 7 November 1993 the expert submitted his opinion. On 18 November 1993 the applicant's lawyer challenged that opinion. On 24 November 1993 the applicant requested the court to dismiss the testimony given by certain witnesses.

14. On 25 March 1994 the Regional Court dismissed the applicant's request for an interim measure.

15. At the hearing held on 25 March 1994 the applicant rejected a friendly-settlement proposal made by the defendant. The court ordered a supplementary expert opinion.

16. On 10 May 1994 the applicant challenged the expert opinion.

17. On 30 May 1994 his lawyer requested the court to order the defendant to submit the original of a bill of lading.

18. The court held a hearing on 31 May 1994. Between June and August 1994 the court verified the authenticity of that bill of lading.

19. At the hearing held on 30 August 1994 it imposed a fine on the witness who had failed to appear before the court.

20. Further hearings were held on 30 August and 28 October 1994.

21. On 7 November 1994, at the applicant's request, the court asked the Katowice Customs Office to submit certain documents concerning the customs clearance of the car.

22. On 22 November 1994 a hearing was adjourned because of the absence of the defendant's lawyer.

23. The court held hearings on 27 January, 11 April and 9 May 1995.

24. According to the applicant, the hearings scheduled for 29 August and 15 December 1995, as well as 16 February 1996, were adjourned due to

the defendant's failure to appear before the court. The Government submit that the court did hold those hearings.

25. On 30 October 1995 the hearing was adjourned, according to the applicant, because of the applicant's illness and the defendant's absence. The Government submit that it was adjourned because of the presiding judge's illness.

26. Hearings took place on 12 April, 25 April, 10 May, 3 June and 28 June 1996. The hearing of 25 April 1996 was held at the defendant's home, because of her illness. On 3 June 1996 the court refused the applicant's request for an interim measure.

27. The hearing scheduled for 27 September 1996 was adjourned because of the judge's illness.

28. On 19 November 1996 the court adjourned a hearing as none of the parties had been duly informed about it.

29. On 15 January 1997 the applicant extended his claims.

30. At the hearing held on 17 January 1997 the expert submitted an additional opinion.

31. On 1 September 1997 the court refused the applicant's request to correct the minutes of a hearing.

32. The court did not schedule any hearings between January and October 1997, when it scheduled one for 16 January 1998.

33. In October and November 1997 the case-file was transferred to the Bydgoszcz District Prosecutor (*Prokurator Rejonowy*).

34. The applicant submits that the hearing scheduled for 16 January 1998 was adjourned due to the defendant's failure to appear. The Government submit that it was held on that date.

35. On 3 April 1998 the court held a hearing.

36. On 17 April 1998 it stayed the proceedings until the completion of criminal proceedings against the defendant and certain witnesses. The court considered that the outcome of the civil proceedings would depend on the criminal courts' findings. On the same day it ordered an interim measure. The applicant's lawyer appealed against the decision to stay the proceedings. On 3 July 1998 the Gdańsk Court of Appeal dismissed that appeal.

37. In the letter of 14 October 1999 the Ministry of Justice informed the applicant that it had recommended the President of the Bydgoszcz Regional Court to reconsider the grounds of the decision to stay the proceedings and requested that the proceedings be taken under his administrative supervision.

38. On 15 October 1999 the applicant requested that the proceedings be resumed. In reply he was informed that his request could not be for the time being examined, because the court could not examine the case-file of the criminal proceedings.

39. His subsequent similar request was declined by the court's decision of 18 November 1999. On 10 December 1999 the Gdańsk Court of Appeal dismissed his appeal against that decision.

40. On 22 November 2002 the Regional Court resumed the proceedings. On the same date it discontinued them.

2. Criminal proceedings

41. On 5 July 1993 the applicant requested the prosecution authorities to institute an investigation concerning the defendant and her husband, submitting that they had given false testimony in the civil proceedings and had used falsified documents.

42. On 31 March 1994 the Bydgoszcz District Prosecutor discontinued the investigation, considering that the alleged offence had not been committed. The applicant's appeal was dismissed by the Bydgoszcz Regional Prosecutor (*Prokurator Wojewódzki*).

43. In reply to the applicant's complaint the Gdańsk Appellate Prosecutor (*Prokurator Prokuratury Apelacyjnej*) ordered the re-opening of the investigation.

44. Between 1994 and 1997 the Bydgoszcz District Prosecutor issued five decisions either discontinuing or staying the investigation, but they were all quashed by the Bydgoszcz Regional Prosecutor.

45. On 15 November 1997 the District Prosecutor submitted a bill of indictment to the Bydgoszcz District Court (*Sąd Rejonowy*).

46. On an unspecified date additional criminal proceedings were initiated on the basis of the material gathered in those proceedings. They concerned a court expert and certain witnesses who had taken part in the civil proceedings.

47. The proceedings against the witnesses were terminated in 1999. They were convicted of forgery.

48. On 10 October 2001 judgment was given in the criminal proceedings against a court expert. He was convicted of giving false testimony in the civil proceedings. On 19 June 2002 the Regional Court amended that judgment.

49. On 4 March 2002 the Bydgoszcz District Court convicted the defendant in the civil proceedings, B. M., and her husband.

THE LAW

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

50. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

1. The Government's submissions

51. The Government were of the opinion that the case was complex and noted that the court had had to order several expert opinions and request various authorities to submit documents. They mentioned difficulties in gathering documents relating to events that had taken place in the remote past and the necessity to deal with new evidence submitted by the applicant in the course of the proceedings. The Government submitted that certain evidence items had been examined in both civil and criminal proceedings and the whole case-file had been at times needed by the civil court and the prosecutor at the same time.

52. The Government observed that the applicant had contributed to the delay by his frequent petitions challenging expert opinions. They referred also to his several requests concerning evidence, witnesses or interim orders. The Government noted that the applicant had extended his claim in 1997.

53. The Government alleged that the delay was mainly attributable to the parties to the proceedings and in particular to the defendant. They emphasised that the Regional Court had attempted to accelerate the examination of the case by, *inter alia*, urging the experts to speed up their work or imposing a fine on a witness for his failure to attend a hearing. The Government observed that hearings had been scheduled at regular intervals.

2. The applicant's submissions

54. The applicant was of the view that the case had not been complex. He denied having contributed to the delay. The applicant observed that all his activities had been aimed at the expedition of the examination of his case.

55. He submitted that the authorities had failed to handle the case properly. The applicant referred to the Regional Court's decision of 23 June 1993 ordering an expert opinion on the basis of forged documents and false testimony. As a result, the expert opinion had related to a car which had not been the one bought by the applicant. The applicant stated that as a

consequence he had had to obtain additional evidence to prove it. He made reference to a one-year period of inactivity between 17 January 1997 and 16 January 1998. The applicant pointed out that even the Ministry of Justice in its letter of 14 October 1999 had expressed criticism of the Regional Court's decision to stay the civil proceedings.

56. He further complained that on several occasions the Regional Prosecutor had quashed the District Prosecutor's decisions discontinuing the criminal proceedings and the latter had again issued similar decisions, disregarding the former prosecutor's instructions. The applicant submitted that the criminal proceedings had been unnecessarily divided into three sets, despite the fact that the same witnesses had been supposed to testify in all of them.

3. The Court's assessment

57. The Court notes at the outset that the criminal proceedings referred to by the parties did not relate to “the determination of [the applicant's] civil rights and obligations or of any criminal charge against him”, within the meaning of Article 6 § 1 of the Convention, and it has therefore no competence *ratione materiae* to assess their length. The Court will, however, take into account the fact that the examination of the applicant's civil case was stayed pending the outcome of those proceedings.

58. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999, unreported). The Court notes that the proceedings were initiated on 20 August 1992 and therefore on 1 May 1993 they had already lasted 8 months and 12 days. The period in question ended on 22 November 2002. It thus lasted 9 years, 6 months and 22 days, within the Court's jurisdiction *ratione temporis*.

59. 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).

60. The Court considers that the case discloses a degree of complexity. It notes that the Regional Court had to order a number of expert opinions.

61. The Court observes that the applicant filed a large number of petitions in the course of the proceedings. It recalls, however, that eventually the prosecution authorities submitted to a criminal court a bill of indictment in respect of the defendant, some witnesses and a court expert.

Therefore, in so far as the applicant challenged the credibility of witnesses or authenticity of evidence in the course of the civil proceedings, he cannot be said to have unduly contributed to the delay, since he simply made use of available remedies to pursue his claims.

62. The Court points out that the one-year period of inactivity referred to by the applicant occurred in 1997 and thus in the fifth year of the proceedings. It notes that the subsequent decision to stay the proceedings was criticised even by the domestic authorities. The Court agrees with the applicant that the District Prosecutor's repeated decisions to discontinue the criminal proceedings regardless of the opinion of the Regional Prosecutor, further prolonged the examination of his civil claim.

63. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over nine and a half years, within its competence *ratione temporis*, exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 100,000 Polish zlotys (PLN) as compensation for the damage he allegedly suffered as a result of the length of the proceedings. He submitted that the sum claimed by him consisted of:

- a difference in car prices in 1992 and 2002 (PLN 27,121.52)
- expenses incurred in connection with the domestic proceedings, such as mail or transportation fees (PLN 5,228.83, including PLN 149.79 of costs of registered mail sent to the Court, documented by copies of receipts, and PLN 991 of a translator's fees, relating to the translation of documents for the purposes of the proceedings before the Court, documented by copies of bills)
- loss of earnings in the time spent by him on participation in the domestic proceedings (PLN 30,036.15)
- loss of earnings in the extra time he had to spend on travelling by public transport to his garden, located 20 km from his hometown, because of the lack of a car (PLN 16,862.24)
- loss of a customs-duties bonus (PLN 892)

- loss of a reduction in the amount of insurance contributions (PLN 20,000).

67. The applicant claimed PLN 150,000 as compensation for non-pecuniary damage allegedly sustained by him on account of stress caused by the length of the proceedings and the deterioration of his life standard resulting from the prolonged lack of a car.

68. The Government were of the view that the amounts claimed by the applicant were exorbitant. They pointed out that there was no causal link between the pecuniary damage allegedly sustained by the applicant and the length of the proceedings. The Government considered that finding a violation in the case at issue would provide in itself just satisfaction. Alternatively, they requested the Court to award compensation for non-pecuniary damage on the basis of its case-law.

69. The Court observes that the losses enumerated by the applicant are speculative in nature. He also failed to show a direct link between the length of the proceedings and the pecuniary damage allegedly suffered. The Court therefore dismisses the applicant's claim for pecuniary damage.

70. The Court is of the view that the applicant can reasonably be considered to have suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicant should be awarded 6,500 euros (EUR).

B. Costs and expenses

71. The applicant sought to be reimbursed for costs in connection with the proceedings before the Court.

72. The Government did not comment on this claim.

73. The Court notes that the applicant did not specify what expenses he incurred in order to pursue his application. The only expenses relating directly to this application were referred to by the applicant among various amounts under the head of pecuniary damage. The Court takes note of the applicant's expenses on correspondence and translation in connection with the procedure before it, in the amount of PLN 1140.79 (PLN 149.79 and PLN 991, see § 65 above). It further notes that those expenses were duly documented. Accordingly, the Court awards the applicant EUR 262.

C. Default interest

74. 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-VI).

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
 - (i) EUR 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage
 - (ii) EUR 262 (two hundred and sixty-two euros) in respect of costs and expenses
 - to be converted into Polish zlotys at the rate applicable at the date of settlement, plus 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President