



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

FOURTH SECTION

CASE OF BISKUPSKA v. POLAND

(Application no. 39597/98)

FINAL

03/12/2003

JUDGMENT

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

STRASBOURG

22 July 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 Biskupska 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 1 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 39597/98) 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, Ewa Biskupska ("the applicant"), on 15 July 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, in particular, that the proceedings in her case had exceeded a reasonable time.

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 26 March 2002 the Court declared the application partly admissible.

THE FACTS

8. The applicant was born in 1952 and lives in Warsaw.

9. On 13 July 1995 the applicant filed with the Warszawa-Mokotów District Court (*Sąd Rejonowy*) an action against the Office of the Council of Ministers (*Urząd Rady Ministrów*) and a housing co-operative K. In her action she requested, *inter alia*, that a flat be granted to her, submitting that the area of the one allocated to her by co-operative K, on the basis of an agreement between it and the Office of the Council of Ministers, allegedly differed from the area indicated in the decision granting it to her. The applicant also claimed damages for losses allegedly sustained by her as a result of the increase of construction costs.

10. On 18 July 1995 the District Court declared its lack of jurisdiction over the case and transmitted it to the Warsaw Regional Court (*Sąd Wojewódzki*).

11. On 23 September 1995 the court ordered the applicant to indicate the value of her claim (*wartość przedmiotu sporu*). On 5 October 1995 the court again ordered her to indicate that value, considering that the information provided by her in reply to the previous court order was not satisfactory. In her letter of 16 October 1995 the applicant indicated the value of her claim. On 8 November 1995 she was again ordered to provide certain information concerning the value of the claim. On 23 November 1995 she submitted the relevant information.

12. On 27 November 1995 the Warsaw Regional Court, having examined the applicant's request, exempted her partially from the court fees. She appealed against that decision. On 27 February 1996 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed her appeal.

13. On 13 May 1996 the Warsaw Regional Court refused the applicant's request for free legal assistance, considering that at that stage of the proceedings legal assistance was not necessary. The court noted that neither the circumstances of the case, nor the applicant's financial situation called for granting her a legal-aid lawyer. The applicant appealed against that decision. On 19 July 1996 the Warsaw Court of Appeal dismissed her appeal.

14. On 9 October 1996 the Warsaw Regional Court held a hearing. On the same day the defendant co-operative lodged a counter-claim against the applicant.

15. In the pleadings of 15 December 1996 the applicant's lawyer modified her action and raised additional claims, *inter alia*, for compensation for the allegedly deceitful taking over of her previous flat by the Office of the Council of Ministers.

16. On 30 July 1997 the applicant requested an interim measure. On 13 August 1997 the court dismissed her request.

17. On 19 January 1998 the applicant filed another request for an interim measure. On 23 January 1998 the court dismissed it. The applicant appealed against that decision and requested exemption from the court fees relating to that appeal.

18. On 24 March 1998 the court held a hearing.

19. On 3 August 1998 the defendant co-operative's lawyer requested the court not to fix hearings between 15 September and 15 October 1998 because of his vacation plans.

20. On 30 September 1998 the Warsaw Court of Appeal dismissed the applicant's appeal against the decision of 23 January 1998.

21. On 17 February 1999 the applicant submitted a request for legal assistance, stating that she had not been able to contact a lawyer chosen by her.

22. At the hearing held on 9 June 1999 the court ordered an expert opinion concerning the construction costs.

23. On 2 July 1999 it requested the Office of the President of the Council of Ministers to submit documentation concerning the financing of the construction of the applicant's house. On 29 December 1999 the court repeated its request.

24. On 14 January 2000 the Office informed the court that it did not possess any such documentation.

25. On 19 January and 3 April 2001 the court held hearings.

26. On 22 February 2001, in reply to the applicant's complaint, the Ministry of Justice admitted that the proceedings were lengthy and informed her that they had been taken under the President of the Regional Court's administrative supervision.

27. On 10 April 2001 the applicant modified her claim and requested exemption from court fees.

28. On 18 June 2001 the court refused her request. On 30 August 2001 the Warsaw Court of Appeal dismissed the applicant's appeal against that decision.

29. On 6 December 2001 the Regional Court summoned the applicant to pay a fee relating to her extended claim.

30. On 24 January 2002 it declined her request for an interim order.

31. On 18 June 2002 the court stayed the proceedings. On 9 December 2002 the Court of Appeal quashed that decision.

32. On 27 January 2003 the Regional Court rejected the applicant's additional claim of 10 April 2002, since she had not paid the due fee. On the same day it ordered an expert opinion.

33. On 10 April 2003 the court granted the applicant partial exemption from court costs.

34. The proceedings are still pending.

THE LAW

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

35. The applicant complained that the proceedings in her case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, 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. The parties' submissions

36. The Government were of the opinion that the case at issue was very complex and submitted that the applicant herself had admitted it in her application form. In their view the complexity resulted from the fact that there were two defendants in the proceedings. The Government noted that the applicant had initially raised two main claims and eleven additional ones, which had been subsequently changed by her. They made reference to the fact that a large number of documents had had to be gathered and experts had had to be appointed.

37. The Government maintained that the applicant had contributed to the delay by the failure to specify her claims and comply with the Regional Court's orders to do so. On several occasions she amended her claims, which entailed the defendants' obligation to comment on them. The Government made also reference to the fact that she had lodged two requests for an interim measure, two requests for exemption from court costs and a request for free legal assistance, as well as subsequent appeals against all decisions refusing those requests.

38. The Government admitted that there had been some periods of inactivity and the court could have been more active in urging experts and certain authorities to submit their opinions more speedily.

39. The applicant argued that the mere fact that there were two defendants did not suffice to draw the conclusion that the case was complex. She also stated that the eleven claims mentioned by the Government were closely related to the main one and concerned, *inter alia*, interest and increasing costs of construction.

40. The applicant denied having contributed to the delay by her various requests, relying on her right to make use of remedies available to her in the course of the proceedings.

41. The applicant submitted that the Regional Court had done nothing to expedite the submission of the documents ordered by it from the Office of the President of the Council of Ministers. Nor had it undertaken any

disciplinary measures against the expert delaying the preparation of an opinion. The applicant further emphasised the occurrence of long periods of inactivity, notably between 9 October 1996 and 24 March 1998 (18 months), 24 March 1998 and 9 June 1999 (15 months), as well as between 9 June 1999 and 19 January 2001 (17 months). The applicant also pointed out that the first hearing had been scheduled for 9 October 1996 and thus almost a year after her statement of claim had been submitted to the court.

B. The Court's assessment

42. The Court notes that the proceedings were initiated on 13 July 1995 and they have thus already lasted 7 years, 11 months and 19 days.

43. 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).

44. The Court considers that, in view of the number of the applicant's claims and their changes, the case involves a degree of complexity.

45. It observes that the applicant's conduct prolonged the proceedings to a certain extent, especially her inability to specify claims and the above-mentioned modifications of those claims.

46. Both parties agreed that the Regional Court had failed to hold hearings at regular intervals and properly supervise the gathering of evidence. The Court accepts this contention and notes that the Government did not supply any explanations as to the periods of inactivity mentioned by the applicant.

47. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over 7 years and 11 months exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed in respect of pecuniary damage:

- the equivalent of the flat that had been taken over from her
- rent for a flat
- a flat of 100 square metres
- moving expenses
- 13,902 Polish zlotys (PLN) as the difference between the price she had paid for her flat and the price she allegedly should have paid.

51. The applicant further claimed in respect of non-pecuniary damage:

- PLN 5,000,000
- promotion at work and the increase of her salary
- reimbursement of her application for asylum
- a public apology.

52. The Government considered the applicant's claims as exorbitant. They noted that the claim for promotion and salary increase had no link with the civil proceedings complained of. Nor had it her claim for the reimbursement of the fee for her application for asylum. The Government were of the view that the finding of a violation of Article 6 § 1 of the Convention would itself constitute just satisfaction.

53. The Court finds no causal link between the applicant's claims for pecuniary damage and the violation found. It 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 4,500 euros (EUR).

B. Costs and expenses

54. The applicant sought to be reimbursed:

- PLN 6,000 and PLN 3,660 for her representation by two lawyers (only the latter amount is documented by a receipt)
- PLN 150 for a consultation with a lawyer (documented by a receipt dated 24 September 1996)
- PLN 1,136.68 for court fees

- PLN 46.60 for photocopying documents (not documented, but the applicant submitted that the court where the copies had been made had not issued receipts)
- PLN 16 for a court decision concerning a criminal case
- PLN 10 for a certificate from a bank
- PLN 16 for a certificate of her income submitted together with the request for free legal aid (documented by a receipt)
- PLN 148.25 and PLN 32.30 for her correspondence with the Court (documented by postage receipts)
- PLN 418.46 and PLN 695.89 for the translation of documents from the Court and her letter to the Court (documented by receipts).

55. The Government made no comments on these claims.

56. The Court observes that some of the above claims are not related to the length complaint at issue. It further notes that the consultation referred to by the applicant took place several months before the present application was lodged and the applicant failed to show that it had any relation with the length of the proceedings complained of.

57. The Court considers that only the following expenses were both incurred in connection with the Convention right at issue and duly documented: PLN 3,660 for legal representation, PLN 16 for the income certificate, PLN 180.55 for correspondence with the Court and PLN 1,114.35 for translation. It accepts the applicant's statement that she could not obtain receipts for photocopying. The Court finds that these expenses were incurred necessarily and do not exceed a reasonable level. Accordingly, it awards EUR 1,140 under this head.

C. Default interest

58. 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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage

(ii) EUR 1,140 (one thousand one hundred forty 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;

(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 22 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President